

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINTON AVENUE
HARTFORD, CT 06105-3730

██████████, 2016
Signature Confirmation

Client ID # ██████████
Request #721038

NOTICE OF DECISION

PARTY

██████████
C/O Attorney ██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████, 2015, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA") granting Long Term Care Medicaid benefits effective ██████████, 2015.

On ██████████, 2015, the Appellant requested an administrative hearing to contest the effective date of the Long Term Care Medicaid benefits as determined by the Department.

On ██████████, 2015, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice scheduling the administrative hearing for ██████████, 2015.

On ██████████, 2015, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice rescheduling the administrative hearing for ██████████, 2015.

On ██████████, 2015 in accordance with sections 17b-60, 17-61 and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing. The following individuals were present at the hearing:

██████████, Appellant's Spouse
Attorney ██████████, Appellant's Representative
Michael Briggs, Department's Representative
Michelle Massicotte, Department's Representative
Miklos Mencseli, Hearing Officer

The Appellant was not present.

The hearing officer held the record open for the submission of additional evidence. On [REDACTED], 2015, the hearing officer closed the record.

The Appellant's Attorney requested a reconvene.

On [REDACTED], 2015, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice to reconvene the administrative hearing for [REDACTED] 2016.

The reconvene was granted to allow the Appellant's Attorney to subpoena the Appellant's granddaughter and her step-father.

The Appellant's Attorney did not issue any subpoenas and the Appellant's granddaughter and step-father were not present for the reconvene hearing.

The following individuals appeared for the reconvene hearing:

[REDACTED], Appellant's Spouse
 Attorney [REDACTED], Appellant's Representative
 [REDACTED], Appellant's Son
 [REDACTED], Appellant's Daughter
 [REDACTED], Appellant's Son in-law
 Michael Briggs, Department's Representative
 Miklos Mencseli, Hearing Officer
 The Appellant was not present.

The hearing officer held the record open for the submission of additional evidence. On [REDACTED], 2016, the hearing officer closed the record.

STATEMENT OF THE ISSUE

The issue to be decided is whether or not the Department was correct in its determination of the effective date of the Applicant's Long Term Care Medicaid benefits.

FINDINGS OF FACT

1. On [REDACTED], 2015, the Department received an application for Medicaid Long Term Care assistance for the Appellant. (Summary, Exhibit 1: Department's W-1LTC application)
2. The Appellant entered St. Vincent's Medical Center on [REDACTED], 2014 and remained there for over 30 days before returning home. (Summary)

3. The Appellant did not return to ST. Vincent's Medical Center until [REDACTED], 2015.
4. On [REDACTED], 2015, the Appellant became a resident of Cambridge Manor facility from his transfer from St. Vincent's Medical Center. (Exhibit 1)
5. The Appellant's spouse, [REDACTED] resides in the community at [REDACTED] [REDACTED]. (Exhibit 1, Testimony)
6. On [REDACTED], 2015, [REDACTED], 2015, [REDACTED], 2015 and [REDACTED], 2015, the Department sent the Appellant's spouse a W-1348LTC Verification We Need form requesting information needed to process the Appellant's application. (Exhibits 6, 7, 8 ,9: Department's W-1348LTC dated [REDACTED]-15, [REDACTED]-15, [REDACTED]-15 & [REDACTED]-15)
7. The facility requested room and board payments to begin [REDACTED], 2015. (Summary)
8. The Department determined that beginning on [REDACTED], 2014 through [REDACTED], 2015 the Appellant transferred to the client's granddaughter, [REDACTED], \$31,250.00 via sixty-nine checks written by the community spouse. The check breakdown is: fourteen for \$300.00, one for \$325.00, fifty for \$400.00, one for \$425.00 and one for \$5000.00. (Summary, Exhibit 21: copies of checks for the period of [REDACTED]-14 to [REDACTED]-15)
9. The Department determined that on [REDACTED], 2015, the Appellant transferred \$10,000.00 to son, [REDACTED]. (Summary, Exhibit 20: People's United Bank statement)
10. On [REDACTED], 2015, the Department sent the Appellant a W-495A Transfer of Assets Preliminary Decision Notice form. The Department's initial decision is the transfers were done in order to be eligible for assistance. (Exhibit 17: W-495A dated [REDACTED]-15)
11. The Appellant's response was the payments to [REDACTED] were for services she provided as a home care/companion for the Appellant.
12. The Appellant provided an Employment And Services Agreement dated and signed on [REDACTED], 2015. It states: "The parties wish to formalize the agreement regarding personal care services beginning [REDACTED], 2015". (Exhibit 22: agreement signed and dated [REDACTED]-15)
13. The Appellant's daughter [REDACTED] and son [REDACTED] are also listed as "Employee/Provider" on the service agreement with [REDACTED]. (Exhibit 22)

14. The \$10,000.00 payment to [REDACTED] was done to help him with a start-up new business, [REDACTED]. He lost his job and had been unemployed for several months. (Exhibit 20, Testimony)
15. The Appellant's spouse provided an affidavit signed and dated [REDACTED], 2015. She states [REDACTED] was hired by her and her spouse to move onto their home to provide homemaker and companion services in early [REDACTED] 2014. The \$10,000.00 was not made to qualify for Medicaid/Title XIX, [REDACTED] needed funds to start a new business. This what parents do, we help our children in any way we can. (Exhibit 23: affidavit signed and dated [REDACTED]-15)
16. On [REDACTED], 2015, the Department sent the Appellant a W-495B Transfer of Assets Notice of Response to Rebuttal/Hardship Claim form. The Department determined that the Appellant did not provide clear and convincing evidence that the transfers were not done for the sole purposes of qualifying for Medicaid. The Department initiated a penalty period that will last 3.39 months due to the transfer of funds. (Exhibit 18: W-495B dated [REDACTED]-15)
17. On [REDACTED], the Department sent the Appellant a W-495C Transfer of Assets Final Decision Notice form. The form states the Appellant is eligible for certain Medicaid benefits effective [REDACTED] 2015, a penalty period will begin [REDACTED] 2015 and continue until [REDACTED] 2015. During the penalty period, Medicaid will not pay for any long term care services. (Exhibit 19: W-495C dated [REDACTED]-15)
18. The Appellant's Spouse, [REDACTED] stated the \$10,000.00 was transferred to help support her son [REDACTED] who was laid-off from work ([REDACTED]) after 20 years. (Testimony)
19. [REDACTED] had been out of work for 9 months when the transfer occurred. (Testimony)
20. The \$10,000.00 was used to purchase video equipment for [REDACTED]'s start-up company, [REDACTED]. Several receipts were provided to the Department verifying the equipment purchases. (Exhibit 23: Receipts for [REDACTED])
21. [REDACTED] does not live with the Appellant and [REDACTED]. (Testimony)
22. The transferred occurred on [REDACTED], 2015. The Appellant entered St. Vincent's Medical Center on [REDACTED], 2015 and then went directly to Cambridge Manor on [REDACTED], 2015. (Testimony)

23. The Appellant spent 10 months prior to entering St. Vincent's Medical Center living at [REDACTED] with [REDACTED]. [REDACTED] could not care for the Appellant by herself. (Testimony)
24. [REDACTED] inquired about securing private care for the Appellant. She determined that the current rate of \$22.00 was expensive. (Testimony)
25. [REDACTED] had just recently been released from prison and initially lived at [REDACTED] Sober House upon release. (Testimony)
26. [REDACTED] arranged the agreement for [REDACTED] to move in and provide the Appellant home care/companion services. (Testimony)
27. The agreed payment amount was \$400.00 a week. [REDACTED] had her own room in the house. She did not pay rent, utilities or food. (Testimony)
28. [REDACTED] assisted the Appellant with his ADL's (Activities of Daily Living), monitored his medications and transported the Appellant to his appointments. (Testimony)
29. On the Appellant's application [REDACTED] stated that on [REDACTED], 2015, \$5000.00 was transferred to [REDACTED] due to Hardship – Unemployed. (Exhibit 1)
30. The \$5000.00 was given to [REDACTED] to purchase a car. (Testimony)
31. The Department presented a Connecticut non driver's license ID for [REDACTED] issued on [REDACTED], 2014. The address on the ID is [REDACTED]. This address is the home of [REDACTED] Mother and Step-Father. (Exhibit 25: Connecticut ID issued [REDACTED]-14)
32. The Department presented a letter dated [REDACTED], 2014 regarding [REDACTED]. The states [REDACTED] resides with her parents at [REDACTED]. The letter also states [REDACTED] is not obligated to pay any rent at this time. The letter is signed by [REDACTED] Step-Father. (Exhibit 26: Letter dated [REDACTED]-14)
33. The Department presented a letter dated [REDACTED], 2014, allegedly signed by [REDACTED]. The letter states [REDACTED] is employed helping me with household chores and care of her physically disabled grandfather. She earns a salary of \$200.00 for duties. (Exhibit 27: letter dated [REDACTED]-14)
34. [REDACTED] vehemently denies that the letter was written and signed by her. (Testimony)

35. The Appellant's Attorney provided a response to the findings presented by the Department. (Exhibit 28: RE: Proposed Findings dated [REDACTED]-15, 19 pages)
36. The Appellant's Attorney maintains that the transfers to [REDACTED] were payments for services she provided as a home care/companion for the Appellant for the period of [REDACTED] 2014 through [REDACTED] 2015. (Exhibit 28)
37. The \$10,000.00 payment to [REDACTED] was done for the purpose of helping out and providing support as he had recently become unemployed. (Exhibit 28)
38. [REDACTED] Step-Father [REDACTED], has filed multiple motions, orders and amendments regarding the Appellant. The Appellant's Attorney claims all are bogus and without merit. (Exhibit 28)
39. On [REDACTED], 2015, the Department provided a Hearing Addendum. (Exhibit 29: Hearing Addendum)
40. The Department's position is unchanged and it stands by the \$41, 250 transfer penalty. (Exhibit 29)
41. The Department's position is [REDACTED] lived at [REDACTED] [REDACTED] during the period from at least [REDACTED] 2014 through [REDACTED] 2015. (Exhibit 29)
42. The Appellant's Attorney objected to the Department's Hearing Addendum. The Applicant requested to call [REDACTED] and [REDACTED] as witnesses to be subpoenaed and testify that [REDACTED] lived with the Applicant and his spouse, [REDACTED] full time from [REDACTED] 2014 through [REDACTED] 2015. (Exhibit 30: letter dated [REDACTED], 2015)
43. On [REDACTED], 2015, the undersigned ruled to accept the Department's addendum as part of the hearing record. The Appellant's request to call additional witness to testify was granted. (Exhibit 31: letter dated [REDACTED]-15)
44. On [REDACTED], 2015, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice to reconvene the administrative hearing for [REDACTED], 2016.
45. The Appellant's Attorney chose not to subpoena [REDACTED] and [REDACTED] as they would be unfriendly witnesses. (Testimony)
46. [REDACTED] and [REDACTED] would not come voluntarily to the hearing. (Testimony)
47. The Appellant's daughter [REDACTED] stated that [REDACTED] moved into her parent's home in [REDACTED] 2014. That [REDACTED] initially lived at an apartment at [REDACTED]

Sober House with her common law partner until he went to prison.
(Exhibit 32: Proposed Supplemental Findings dated [REDACTED]-15 23 pages, Testimony)

48. From [REDACTED], 2014 until she moved in in [REDACTED] 2014, [REDACTED] would be driven to the Appellant's home by her common law partner. (Testimony)
49. [REDACTED] had her own room at [REDACTED]. (Testimony)
50. This contradicts the [REDACTED] affidavit and testimony from the hearing held on [REDACTED], 2015. The Affidavit and testimony stated [REDACTED] moved into the [REDACTED] address in early [REDACTED] 2014. (Exhibit 23, Testimony)
51. [REDACTED] did not purchase a car with the \$5,000.00 payment. The funds were used as an advancement and the Appellant's Spouse reduced [REDACTED]'s weekly payments from \$400.00 to \$300.00. (Exhibit 32, Testimony)
52. [REDACTED] provided pharmacy receipts for [REDACTED] dated [REDACTED], 2015 with the address of [REDACTED]. (Exhibit 32, Testimony)
53. [REDACTED] provided a copy of the Appellant's and [REDACTED]'s 1040 2014 tax return. [REDACTED] is claimed as an exemption on the form. (Exhibit 32: Testimony)
54. Without [REDACTED] services the Appellant's Spouse would have needed to secure other services and the Appellant would have entered a facility sooner. (Testimony)

CONCLUSIONS OF LAW

1. Sections 17b-260 to 17b-264 of the Connecticut General Statutes authorizes the Commissioner of Social Services to administer the Title XIX Medical Assistance program to provide medical assistance to eligible persons in Connecticut.
2. Section 17b-2 of the Connecticut General Statute authorizes the Commissioner of the Department of Social Services to administer the Medicaid program.
3. Section 17b-80(a) of the Connecticut General Statute states that the Department shall grant aid only if the applicant is eligible for that aid.
4. Uniform Policy Manual ("UPM") § 3029.05 provides the transfer of assets basic provisions.

A. General Statement

There is a period established, subject to the conditions described in this chapter, during which institutionalized individuals are not eligible for certain Medicaid services when they or their spouses dispose of assets for less than fair market value on or after the look-back date specified in 3029.05 C. This period is called the penalty period, or period of ineligibility.

B. Individuals Affected

1. The policy contained in this chapter pertains to institutionalized individuals and to their spouses.
2. An individual is considered institutionalized if he or she is receiving:
 - a. LTCF services; or
 - b. services provided by a medical institution which are equivalent to those provided in a long-term care facility; or
 - c. home and community-based services under a Medicaid waiver (cross references: 2540.64 and 2540.92).
5. UPM § 3029.05 (C) (1)(2) provides that the look-back date for transfers of assets is a date that is 60 months before the first date on which both the following conditions exist: the individual is institutionalized and the individual is either applying for or receiving Medicaid.
6. The Department correctly determined that the transfers for the period of [REDACTED], 2014 through [REDACTED] 2015 occurred within the 60 month look back period.
7. UPM § 3029.05 D (1) (2) provides the Department considers transfers of assets made within the time limits described in 3029.05 C, on behalf of an institutionalized individual or his or her spouse by a guardian, conservator, person having power of attorney or other person or entity so authorized by law, to have been made by the individual or spouse. In the case of an asset that the individual holds in common with another person or persons in joint tenancy, tenancy in common or similar arrangement, the Department considers the asset (or affected portion of such asset) to have been transferred by the individual when the individual or any other person takes an action to reduce or eliminate the individual's ownership or control of the asset.
8. The Department correctly determined that the \$41,250.00 in transfers from [REDACTED] 2014 through [REDACTED] 2015 are within the look back period and subject for review.
9. Section 17b-261a(a) of the Connecticut General Statutes provides that any transfer or assignment of assets resulting in the imposition of a penalty period shall be presumed to be made with the intent, on the part of the transferor or

the transferee, to enable the transferor to obtain or maintain eligibility for medical assistance. This presumption may be rebutted only by clear and convincing evidence that the transferor's eligibility or potential eligibility for medical assistance was not a basis for the transfer or assignment.

10. UPM § 3029.10(E) provides that an otherwise eligible institutionalized individual is not ineligible for Medicaid payment of LTC services if the individual, or his or her spouse, provides clear and convincing evidence that the transfer was made exclusively for a purpose other than qualifying for assistance.
11. UPM § 3029.10(F) provides for transferor intended to transfer at fair market value. An institutionalized individual or his or her spouse may transfer an asset without penalty if the individual demonstrates with clear and convincing evidence that he or she intended to dispose of the asset at fair market value.
12. UPM § 3029.10(G) provides for transfer made for other valuable consideration. An institutionalized individual or his or her spouse may transfer an asset without penalty if it is demonstrated with clear and convincing evidence that he or she intended to dispose of the asset in return for other valuable consideration. The value of the other valuable consideration must be equal to or greater than the value of the transferred asset in order for the asset to be transferred without penalty.
13. UPM §3025.15 provides for Transfer Not for the Purpose of Qualifying
 - A. Fair Market Value Received

If fair market value is received, the transfer of the asset is not considered to be for the purpose of establishing or maintaining eligibility.
 - B. Assets Within Limits

If the total of the uncompensated fair market value of a transferred asset plus all other countable assets does not exceed program limits, the transfer of the asset is not considered to be for the purpose of establishing or maintaining eligibility. In the case of multiple transfers involving one asset, this includes the total uncompensated value of all transfers.
 - C. Transfer for Another Purpose

If there is convincing evidence that the transfer is exclusively for another purpose, the transfer of the asset is not considered to be for the purpose of establishing or maintaining eligibility.
14. UPM § 3029.30(B)(1) provides that each form of compensation is assigned a dollar value to compare with the fair market value of the transferred asset. In determining the dollar value of services rendered directly by the transferee, the Department uses the following amounts; (a) for all services of the type normally rendered by a homemaker or home health aid, the current state minimum hourly wage for such services; (b) for all other types of services, the

actual cost.

15. The Department incorrectly determined the Appellant did receive fair market value for the \$31,250.00 used to pay ██████ from ██████, 2014 through ██████, 2015 (sixty-nine checks) as a home care/companion for the Appellant.
16. The Department is correct to determine the \$10,000.00 transferred to ██████ is a gift because the Appellant did not receive fair market value for the transfer.
17. Based on the transfer of \$10,000.00, the Appellant is subject to a Transfer of Asset penalty.
18. Section 17b-261o(c) of the Connecticut General Statutes provides that the commissioner shall impose a penalty period pursuant to subsection (a) of section 17b-261 or subsection (a) of section 17b-261a if the transfer or assignment of assets was made by the Applicant's legal representative or joint owner of the asset.
19. UPM § 3029.05 provides that there is a period established, subject to the conditions described in this chapter, during which institutionalized individuals are not eligible for certain Medicaid services when they or their spouses dispose of assets for less than fair market value on or after the look-back date specified in 3029.05 C. This period is called the penalty period, or period of ineligibility.
20. UPM § 3029.05 (E)(2) provides that the penalty period begins as of the later of the following dates: the date on which the individual is eligible for Medicaid under Connecticut's State Plan and would otherwise be eligible for Medicaid payment of the LTC services described in 3029.05 B based on an approved application for such care but for the application of the penalty period, and which is not part of any other period of ineligibility caused by a transfer of assets.
21. The Department correctly determined ██████, 2015 as the date the Appellant would be otherwise eligible for Medicaid.
22. The Appellant is subject to a penalty period beginning ██████, 2015, the date that the Appellant was otherwise eligible for Medicaid payment of long-term care services.
23. UPM § 3029.05 (F) provides in part that the length of the penalty period consists of the number of whole and/or partial months resulting from the computation described in 3029.05 F. 2. The length of the penalty period is determined by dividing the total uncompensated value of all assets

transferred on or after the look-back date described in 3029.05 C by the average monthly cost to a private patient for LTCF services in Connecticut. For applicants, the average monthly cost for LTCF services is based on the figure as of the month of application.

24. The length of the penalty period is determined by dividing the uncompensated value of the transferred asset by the average monthly cost of care to a private patient for long-term care services in Connecticut.

DISCUSSION

The issue of [REDACTED] living with the Appellant and providing services as companion/home maker is the question regarding the transfer of \$31,250.00. The Department points to the Testimony that changed from the first hearing to the reconvened hearing. When did [REDACTED] start living with the Appellant? Was it in [REDACTED] 2014 or [REDACTED] 2014? There is no requirement that a companion/home maker live with their patient. The undersigned finds it hard to imagine that [REDACTED] grand-parents would pay out \$31,250.00 in over a one year period and not receive something in return. The evidence the Department provided regarding [REDACTED] residency conflicts with the testimony and affidavit provided by the Appellant's representatives. However, the Department did not provide anything from [REDACTED] to dispute the Appellant's representative claims. The Department had issue with the Employment and Services Agreement was dated and signed on [REDACTED], 2015, well after the services began. Also no records, time logs or receipts were provided to verify the services were performed. The Department's policy does require a contract or written verifications only that clear and convincing evidence that the transfer was made exclusively for a purpose other than qualifying for assistance.

The transfer to [REDACTED] is another matter. The Appellant had been ill since his first admittance to the hospital on [REDACTED], 2014. He was able to remain in the community for 10 months until [REDACTED], 2015. During that period he needed care that was provided by [REDACTED]. The transfer occurred on [REDACTED], 2015, eight days before he was admitted to the hospital. The \$10,000.00 transfer was used to purchase video equipment for [REDACTED]'s start-up company, [REDACTED]. What fair market value did the Appellant receive? What value if any did the Appellant receive? The funds could have been used to pay for the Appellant's care in the community or the facility.

DECISION

The Appellant's appeal is **GRANTED IN PART.**

ORDER

1. The Department shall remove the \$31,250.00 as a transfer of asset penalty.
2. The Department shall calculate a penalty period based on the transfer of assets of \$10,000.00 effective for [REDACTED] 2015.
3. The Department shall send the Appellant's representatives a revised W-495C transfer of assets final decision notice.
4. Compliance shall be shown by submission of verification of the Department's compliance with this decision and is due by [REDACTED], 2016.


Miklos Mencseli
Hearing Officer

C: Musa Mohamud, Operations Manager, DSS R.O. #10 Hartford

RIGHT TO REQUEST RECONSIDERATION

The appellant has the right to file a written reconsideration request within **15** days of the mailing date of the decision on the grounds there was an error of fact or law, new evidence has been discovered or other good cause exists. If the request for reconsideration is granted, the appellant will be notified within 25 days of the request date. No response within 25 days means that the request for reconsideration has been denied. The right to request a reconsideration is based on §4-181a (a) of the Connecticut General Statutes.

Reconsideration requests should include specific grounds for the request: for example, indicate what error of fact or law, what new evidence, or what other good cause exists.

Reconsideration requests should be sent to: Department of Social Services, Director, Office of Administrative Hearings and Appeals, 55 Farmington Avenue Hartford, CT 06105.

RIGHT TO APPEAL

The appellant has the right to appeal this decision to Superior Court within 45 days of the mailing of this decision, or 45 days after the agency denies a petition for reconsideration of this decision, provided that the petition for reconsideration was filed timely with the Department. The right to appeal is based on §4-183 of the Connecticut General Statutes. To appeal, a petition must be filed at Superior Court. A copy of the petition must be served upon the Office of the Attorney General, 55 Elm Street, Hartford, CT 06106 or the Commissioner of the Department of Social Services, 55 Farmington Avenue Hartford, CT 06105. A copy of the petition must also be served on all parties to the hearing.

The 45 day appeal period may be extended in certain instances if there is good cause. The extension request must be filed with the Commissioner of the Department of Social Services in writing no later than 90 days from the mailing of the decision. Good cause circumstances are evaluated by the Commissioner or the Commissioner's designee in accordance with §17b-61 of the Connecticut General Statutes. The Agency's decision to grant an extension is final and is not subject to review or appeal.

The appeal should be filed with the clerk of the Superior Court in the Judicial District of New Britain or the Judicial District in which the appellant resides.