

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

██████████ 2016
SIGNATURE CONFIRMATION

CLIENT ID #: ██████████
HEARING ID #: 727056

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2015, the Department of Social Services (the “Department”) sent ██████████s (the “Appellant”) representative, Attorney ██████████ of ██████████ (“Representative”) a notice that she had transferred \$96,820.00 to become eligible for Medicaid, and the Department was imposing a transfer of assets penalty for the period from ██████████ 2015, through ██████████ 2016.

On ██████████ 2015, the Representative requested an administrative hearing to contest the Department’s decision to impose a penalty on the Applicant’s Long Term Care Medicaid benefits.

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

On ██████████ 2015, in accordance with sections 17b-60, 17b-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:

██████████, POA for the Appellant
Attorney ██████████, Appellant’s Representative

████████████████████, Appellant's Granddaughter
Mario Ponzio, Department's Representative
Shelley Starr, Hearing Officer

██████████, Appellant, was not present at the hearing.

The hearing record was held open at the request of both the Department and the Appellant's Representative until ██████████, 2015, for the Department to re-calculate the Appellant's penalty based on the new evidence provided at the hearing and to allow for the Representative's response. On ██████████, 2015, the hearing record was re-opened to ██████████, 2015, for the submission of additional information by the Department and to allow a Representative's response. On ██████████, 2015, the hearing record closed. On ██████████, 2015, the hearing record was re-opened for the final submission of any additional evidence by either the Department or the Representative to ██████████, 2015. On ██████████, 2015, the hearing record closed.

STATEMENT OF THE ISSUE

The issue is whether the Department's decision to impose a Transfer of Assets ("TOA") penalty beginning ██████████, 2015, and ending on ██████████, 2016, was correct.

FINDINGS OF FACT

1. On ██████████, 2013, the Appellant appointed her son ██████████ as her Power of Attorney. (Exhibit C: Post Hearing Memorandum packet dated ██████████, 2015)
2. The Appellant's granddaughter, ██████████ was a caregiver to her grandmother from ██████████ 2011 to ██████████ 2015. (Testimony; Exhibit C: Post Hearing Brief)
3. ██████████ lived with the Appellant for eighteen months, from ██████████ 2011 to ██████████ 2013. (Testimony and Exhibit C: Post Hearing Brief)
4. ██████████ provided care for her grandmother by preparing meals, assisting with medications, assisting with bathing, dressing and personal hygiene, provided transportation to appointments and errands, cleaned and performed massage therapy. (Testimony and Exhibit C: Post Hearing Brief)
5. ██████████ was a Licensed Massage Therapist ("LMT") and had been a licensed Certified Nursing Assistant ("CNA"). (Testimony; Exhibit C: Post Hearing Brief)
6. On ██████████ 2013, ██████████ borrowed \$140,000.00 from the Appellant, to finance the purchase of her home, located next door to the Appellant, and a mortgage deed for the consideration of \$140,00.00 was recorded. (Exhibit 3: Mortgage Deed dated ██████████, 2013, Testimony)

7. It was orally agreed by [REDACTED] and the Appellant's POA, that [REDACTED] would repay the loan debt by way of providing care services to the Appellant. (Hearing Record; Testimony)
8. A written personal care agreement was never drafted between [REDACTED] and the Appellant's POA, detailing their caregiver arrangement. (Hearing Summary; Testimony; Hearing Record)
9. On August 25, 2014, a release of mortgage was recorded, releasing any further debt owed by [REDACTED] to the Appellant. (Exhibit 1: Assistance request form and Hearing summary)
10. On [REDACTED], 2015, the Appellant was admitted to Vanderman Place of Willimantic Connecticut, a long term care nursing facility. (Hearing Summary and Testimony)
11. On [REDACTED] 2015, the Appellant applied for Long Term Care Medicaid assistance ("LTSS"). (Hearing Summary and Testimony)
12. The Appellant is [REDACTED] years old (D.O.B. [REDACTED]), widowed and has a medical diagnosis of Dementia. (Testimony)
13. On [REDACTED] 1, 2015, the Department determined that [REDACTED] provided 1,159.00 hours of caregiver services calculated from the [REDACTED], 2014, forgiveness of the mortgage deed date through [REDACTED] 2015. The Department allowed for a total of \$23,180.00 of caregiver services, based on a State caregiving rate of \$20.00 per hour x 1159.00 (hours) = \$23,180.00 and \$20,000.00 of repaid mortgage payments was deducted from the \$140,000.00 loan. (Hearing Summary, Testimony)
14. On [REDACTED] 2015, the Department granted the Appellant Medicaid coverage. The Department sent the Appellant's Representative a Transfer of Assets Final Decision Notice indicating that the transfers made from the remaining funds from the mortgage release of \$96,820.00, ($\$140,000.00 - \$43,180.00 = \$96,820.00$) were made in order to qualify for Medicaid and Medicaid would not pay for nursing home coverage from [REDACTED] 2015 through [REDACTED] 2016. (Exhibit 18: W-495C Final Decision Notice dated [REDACTED] 2015)
15. At the [REDACTED] 2015, hearing it was discovered that documentation submitted with the Appellant's application was separated and was never reviewed by the Department. (Hearing Record; Testimony; and Exhibit C: Post Hearing Memorandum)
16. On [REDACTED] 2015, the Department reduced the Appellant's penalty from \$96,820.00 to \$8,037.11. (Hearing Record; Exhibit 21: W-495C Final Decision Notice dated [REDACTED] 2015)
17. The Department recalculated and reduced the \$140,000.00 transfer from mortgage

debt based on the following allowable deductions:

Transfer from mortgage deed	\$ 140,000.00
██████████ 2013 payment	\$ - 4,270.00
██████████ 2013 payment	\$ - 10,000.00
██████████ 2014 payment	\$ - 10,000.00
Vanderman Place payments	\$ - 33,401.03
Carmeron Funeral Home	\$ - 5,400.00
██████████	\$ - 6,500.00
Home Property Upgrades	\$ - 8,057.00
Room & Board	\$ - 16,000.00
Harrington Court payments	\$ - 15,154.86
Caregiver provided after ██████████/14	\$ - 23,180.00
	\$ 8,037.11 penalty

18. The Department did not count in the calculation of compensation any caregiving that ██████████ provided to the Appellant prior to the ██████████ 2014, release of mortgage deed. (Hearing Summary; Hearing Record; Testimony)
19. From the time of the ██████████ 2013, \$140,000.00 transfer through ██████████ 2014, ██████████ gave care to the Appellant and the provided documented hours of caregiving would easily compute in excess of the \$8,037.11 calculated penalty. (Exhibit 10: Caregiving Log; Exhibit 3: Mortgage deed dated ██████████, 2013)
20. On ██████████ 2015, the Department sent the Appellant's Representative a revised W-495C Transfer of Assets Final Decision Notice, indicating that the Department reviewed the information and determined that the transfers from the remaining funds from the mortgage release of \$8,037.11 were made in order to qualify for Medicaid. A penalty period beginning ██████████, 2015 and ending ██████████ 2015 was established. (W-495A Preliminary Decision Notice, dated ██████████, 2015)

CONCLUSIONS OF LAW

1. Section 17b-260 of the Connecticut General Statutes provides for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Section 17b-261b(a) of the Connecticut General Statutes provides the Department is the sole agency to determine eligibility for assistance and services under the programs it operates and administers.
3. Uniform Policy Manual ("UPM") § 3029.03 provides that the Department uses the policy contained in Chapter 3029 of the Uniform Policy Manual to evaluate asset

transfers if the transfer occurred on or after February 8, 2006.

4. 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.

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.

The Department incorrectly determined that the transfers made were for the purposes of qualifying for medical assistance, as clear and convincing evidence support otherwise.

The Appellant's Representative has provided clear and convincing evidence to support that the transfer was made for purposes other than qualifying for assistance.

5. UPM § 3029.20(B) provides that other valuable consideration must be in the form of services or payment for services which meet all of the following conditions:
 1. the services rendered are of the type provided by a homemaker or a home health aide; and
 2. the services are essential to avoid institutionalization of the transferor for a period of at least two years; and
 3. the services are either:
 - a. provided by the transferee while sharing the home of the transferor; or
 - b. paid for by the transferee.

The Department correctly determined that the services rendered by [REDACTED] [REDACTED] were not received in accordance with valuable consideration, as the granddaughter did not render the services while sharing the home of the transferor for at least two years.

6. UPM § 3029.30 provides that compensation in exchange for a transferred asset is counted in determining whether fair market value was received.

UPM § 3029.30(A) provides for compensation which is counted and provides:

1. When an asset is transferred, compensation is counted when it is received at the time of the transfer or any time thereafter.
2. Compensation received prior to the time of the transfer is counted if it was received in accordance with a legally enforceable agreement.
3. Compensation may include the return the transferred asset to the extent described at 3029.10.

UPM § 3029.30 (B) provides each form of compensation is assigned a dollar value to compare with the fair market value of the transferred asset and provides:

1. 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.

UPM § 3000.01 provides the definition of compensation and provides that compensation is all money, notes real or personal property, food, shelter, or services received in exchange for something of value.

UPM § 3000.01 provides the definition of a legally-enforceable agreement and provides that a legally enforceable agreement is a binding and credible arrangement, either oral or written, wherein two or more parties agree to an arrangement in consideration of the receipt of money, property, or services and in which all parties can be reasonably expected to fulfill their parts of the agreement.

The Department was incorrect when it determined that the services rendered by [REDACTED] [REDACTED] [REDACTED] was not received in accordance with a legally enforceable agreement.

There is evidence to support that compensation was given to the Appellant in the form of caregiver services in accordance with a legally enforceable oral agreement, with additional written evidence recorded on [REDACTED] 2013, with the recording of \$140,000.00 transfer from the Appellant to [REDACTED]

The oral agreement provided that the \$140,000.00 loan would be repaid by the continued caregiving services provided to the Appellant by her granddaughter, [REDACTED]

The Appellant's Representative has provided clear and convincing evidence

that the transfer was not made for the purposes of qualifying for assistance.

The Department was incorrect to impose a transfer of assets penalty for \$8,037.11 and establishing a penalty period from [REDACTED] 2015, through [REDACTED] 2015.

DISCUSSION

After reviewing the evidence and testimony presented at this hearing, I find that the Department's action to impose an \$8,037.11 penalty and Medicaid period of ineligibility for long term care coverage is not upheld. It is credible that the Appellant's granddaughter entered into a caregiving arrangement by oral agreement in which she provided care to her grandmother to keep her at home and in close proximity to her family. Testimony provided that the granddaughter started caregiving services commencing [REDACTED] 2011, with written evidence of aspects of the arrangement submitted with the [REDACTED], 2013, recording of the \$140,000.00 loan and the [REDACTED], 2014, release. The arrangement provided that the loan would be repaid through continued ongoing care.

I find the Department was incorrect to consider only the care provided from the [REDACTED] [REDACTED] 2014, mortgage release date in the calculation of compensation. I find that the Department should have considered the compensation for caregiving services for prior months, beginning at the time of the recorded [REDACTED] 2013, \$140,000.00 transfer date. Based on the submitted document of accounting hours of caregiving, the additional hours of caregiving services from [REDACTED] 2013 through [REDACTED] 2014, would easily compute in excess of the \$8,037.11 calculated penalty.

In addition, Regulations provide that when there is clear and convincing evidence that the transfer was made exclusively for a purpose other than qualifying for assistance, then the otherwise eligible institutionalized individual is not ineligible for Medicaid payment of LTC services. The testimony by both the Appellant's Power of Attorney and granddaughter, provided evidence substantiating that the oral agreement and arrangement, was not for the purposes of qualifying for Medicaid.

Based on these factors, the Department incorrectly imposed an \$8,037.11 penalty and Medicaid period of ineligibility beginning [REDACTED] 2015 and ending [REDACTED] 2015.

DECISION

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

ORDER

1. The Department shall remove the Appellant's \$8,037.11 penalty effective [REDACTED] 2015 through [REDACTED] 2015.
2. The Department shall submit proof of compliance to the undersigned no later than [REDACTED] 2016.



Shelley Starr
Hearing Officer

cc : Tonya Cook-Beckford, Social Services Operations Manager, DSS, Willimantic.

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 06105-3725.

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.