

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 #: 728640

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

The Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA") denying her application Long Term Care ("LTC") Medicaid benefits for the period of ██████████ 2015 – ██████████ 2016, and granting Medicaid effective ██████████ 2015, with a penalty in place that results from alleged improper asset transfers.

On ██████████ 2015, the Appellant requested an administrative hearing to contest the Department's decision to deny such benefits and to impose a penalty.

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

The Appellant requested that the ██████████ 2015 hearing be rescheduled. This request was granted.

On ██████████ 2015, OLCRAH issued a notice rescheduling the Appellant's hearing to ██████████ 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:

Attorney [REDACTED], Appellant's Conservator of Estate
[REDACTED], Appellant's Spouse
[REDACTED], Appellant's Daughter
[REDACTED], Appellant's Son
Attorney Angelo Maragos, St Camilla Care
Douglas Farrell, Department's Representative
Pamela J. Gonzalez, Hearing Officer

The hearing record was held open to allow for the submission of additional information. The hearing record closed on [REDACTED] 2015.

STATEMENT OF THE ISSUE

The first issue is whether the Appellant transferred assets in the amount of \$141,461.62 during the look-back period for less than fair market value and is consequently subject to a penalty.

The second issue is whether the imposition of a penalty results in undue hardship for the Appellant and should therefore be waived.

FINDINGS OF FACT

1. The Appellant, date of birth [REDACTED] 1940, was first diagnosed with dementia in 2008 or 2009. (Appellant's Daughter's testimony)
2. The Appellant was residing in the community with her spouse. The Appellant's spouse's date of birth is [REDACTED] 1933. (Appellant's Daughter's testimony, On-line application of [REDACTED] 2014 – Department's exhibit A)
3. On [REDACTED] 2010, the Appellant's doctor found that her judgment and insight were within normal limits, her memory had decreased, and described her mood and affect as depressed. (Dr. Shender's Treatment Notes – Appellant's exhibit 12)
4. In 2011, the Appellant was capable of performing all of her activities of daily living, she was a little confused, she took medication for high blood pressure and cholesterol, and may have been taking medication for memory loss. (Appellant's Daughter's testimony, Appellant's exhibit 12)
5. In 2011, the Appellant was capable of travel and went on a trip to Puerto Rico. (Appellant's Daughter's testimony)
6. On [REDACTED] 2011, the Appellant gave a check to each of her three children

as a gift in the amount of \$30,000.00. (Copies of checks dated [REDACTED] 2011 – Department's exhibit H)

7. In [REDACTED] 2011, at time of three \$30,000.00 gift/transfers, the Appellant and her spouse retained assets valued at \$111,672.41. (Assets Spreadsheet – Appellant's exhibit 1)
8. In [REDACTED] 2011, the Appellant and her spouse's monthly combined income totaled approximately \$2,776.00. (W-1LTC Long-term Care/Waiver Form – Department's exhibit E, Appellant's exhibit 1)
9. In [REDACTED] 2011, the Appellant's basic living expenses were met with monthly income. (Appellant's exhibit 1)
10. For the period of [REDACTED] 2011 – [REDACTED] 2013, the Appellant and her spouse met her basic living expenses with monthly income and retained over \$100,000.00 in assets. (Appellant's exhibit 1)
11. At the end of the year 2013/the beginning of the year 2014, the Appellant's condition substantially changed. The Appellant became incontinent, unstable on her feet, she fell and was hospitalized, she would get up at night, she became difficult to manage, she started to forget things, she stopped cooking, she became more confused. (Appellant's Daughter's testimony)
12. During the years 2013-2014, the Appellant's family secured home care for the Appellant. Initially workers would come into the home 3-4 hours per day, every other weekday. The workers would cook and clean and change the Appellant as needed. As the Appellant's condition worsened, the workers came in to provide care five days per week. Sometime in 2014, the workers increased their hours, providing care six days per week. (Appellant's Daughter's testimony)
13. The Appellant employed undocumented workers to provide homecare and paid them in cash. (Appellant's Daughter's testimony)
14. Care givers were providing services in the Appellant's home until the date of her institutionalization. (Appellant's Daughter's testimony)
15. On [REDACTED] 2013, the Appellant gave a check to her daughter in the amount of \$51,461.62 for an alleged loan repayment. The Appellant's spouse signed the check which was written from their joint checking account (People's Securities Statement verifying [REDACTED] 13 check disbursement – Department's exhibit I, Appellant's Daughter's testimony)
16. The Appellant's daughter that received the \$51,461.62 was present at this hearing but did not offer evidence of the specifics of the claimed loan or of a

repayment agreement. (Hearing record)

17. The Appellant's spouse that signed the check from a joint account with the Appellant was present at this hearing but did not offer evidence of the specifics of the claimed loan or of a repayment agreement. (Hearing record)
18. The hearing record contains no specifics of a loan or repayment agreement/arrangement. (Hearing record)
19. On [REDACTED] 2014, the Appellant and her spouse applied on-line, for home care medical assistance. (Department's exhibit A)
20. The Appellant was institutionalized on [REDACTED] 2014. (W-1 LTC – Department's exhibit E)
21. On [REDACTED] 2014, a W-495 Transfer of Assets Preliminary Decision Form was issued proposing the imposition of a penalty for the improper transfer of \$141,461.62. (\$90,000.00 gifts + \$51,461.62 alleged loan repayment) (W-495 Form – Department's exhibit J)
22. On [REDACTED] 2015, the Department denied the Appellant's request for home-care services medical assistance. (Department's Representative's testimony)
23. On [REDACTED] 2015, the Appellant applied for Medicaid long-term care assistance. (Department's exhibit E)
24. The Department screened the Appellant's request for assistance with an application date of [REDACTED] [REDACTED] 2014 which is the date of her institutionalization. (Department's Representative's testimony)
25. The Appellant established asset eligibility in [REDACTED] 2015. (Department's Representative's testimony, Hearing record)
26. On [REDACTED] 2015, the State of Connecticut, Court of Probate, [REDACTED] Probate District appointed an involuntary Conservator of Estate. (Fiduciary's Probate Certificate – Department's exhibit S)
27. On [REDACTED] 2015, the Department granted Medicaid effective [REDACTED] 2015 with nursing home cost payment effective [REDACTED] 2016 due to the imposition of a penalty period resulting from improper asset transfers. (Notice of Approval – Department's exhibit R)
28. On [REDACTED] 2015, St. Camillus Nursing and Rehabilitation Center sent the Appellant a notice of its intention to discontinue providing long term care services because of non-payment resulting from an improper asset transfer penalty imposed by the Department. (Notice dated [REDACTED] 2015 –

Appellant's exhibit 5)

29. The life or health of the Appellant would be endangered by the deprivation of medical care. (Dr. Vergara's medical opinion of [REDACTED] 2015 – Statement dated [REDACTED] 2015 – Appellant's exhibit 5)
30. There is no other person or organization willing and able to provide long-term care services to the Appellant. (Affidavit dated [REDACTED] 2015 - - Appellant's exhibit 5, Appellant's Daughter's testimony, Appellant's Son's testimony)
31. The per diem room rate at St. Camillus is \$457.00. The Appellant owed approximately \$39,601.00 to St. Camillus for the cost of her care from [REDACTED] 2014 – [REDACTED] 2015. (Invoice – Appellant's exhibit 5)
32. The Department rejects the Appellant's claim of undue hardship stating the Appellant did not exhaust all legal methods to prevent eviction. (Department's Representative's testimony)

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.

Section 17b-260 of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to take advantage of the medical assistance programs provided in Title XIX, entitled "Grants to States for Medical Assistance Programs", contained in the Social Security Amendments of 1965.

Subsection (a) of section 17b-261a 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 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."

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. UPM § 3029.03.

There is a period established, subject to the conditions described in chapter, 3029 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 UPM 3029.05(C). This period is called the penalty period, or period of ineligibility. UPM § 3029.05(A).

The look-back date for transfers of assets is the date that is sixty months before the first date on which both the following conditions exist: 1) the individual is institutionalized; and 2) the individual is either applying for or receiving Medicaid. UPM § 3029.05(C).

The look-back date for the Appellant is [REDACTED] 2009.

The Appellant transferred assets valued at \$141,461.62 during the look-back period. (\$90,000.00 on [REDACTED] 2011 + \$51,461.62 on [REDACTED] 2013)

2. UPM Section 3029.10.E provides that an otherwise eligible institutionalized individual is not ineligible for Medicaid payment of LTC services if the individual provides clear and convincing evidence that the transfer was made exclusively for a purpose other than qualifying for assistance.

The Appellant provided clear and convincing evidence that she was in relatively good health for her age and she was of sound mind in [REDACTED] 2011 when she gave each of her three children a gift of \$30,000.00.

The evidence on the record shows that the Appellant was not in relatively good health or of sound mind when she gave \$51,461.62 to her daughter for an alleged loan repayment in [REDACTED] 2013.

3. UPM 3029.15B. provides that the Department considers a transferor to have met his or her foreseeable needs if, at the time of the transfer he or she retained other income and assets to cover basic living expenses and medical costs as they could have reasonable been expected to exist based on the transferor's health and financial situation at the time of the transfer.

The Appellant met her needs in the community for close to three years following the [REDACTED] 2011 asset transfer before applying for long-term care medical assistance in [REDACTED] 2014 and did not foresee admission to a nursing facility therefore, she did not transfer assets in the amount of \$90,000.00 for the purpose of qualifying for medical assistance.

The Appellant's [REDACTED] 2011 asset transfer in the amount of \$90,000.00 was not improper and does not subject the Appellant to a penalty period.

The Appellant made the \$51,462.61 transfer when in fragile health and with increased need for services. She did not meet her foreseeable needs as they could have reasonably been expected to exist. The Appellant nor her representatives provided evidence that the transfer was made for a purpose other than to qualify for assistance.

The Appellant's ██████████ 2013 asset transfer in the amount of \$51,461.62 was improper and subjects the Appellant to a penalty period.

4. UPM Section 3029.10(I) provides that the Department waives the penalty period associated with the transfer of an asset if the Department determines that denial of payment for services would create an undue hardship. In such cases, the Department may pursue recovery against the transferee, if appropriate (Cross Reference: 3029.25).

Connecticut General Statutes 17b-261o(a) provides that except as provided in subsection (c) of this section, the Commissioner of Social Services shall not impose a penalty period pursuant to subsection (a) of section 17b-261 or subsection (a) of section 17b-261a if such imposition would create an undue hardship.

Connecticut General Statutes 17b-261o(b) provides that for purposes of this section, "undue hardship" exists when (1) the life or health of the applicant would be endangered by the deprivation of medical care, or the applicant would be deprived of food, clothing, shelter or other necessities of life, (2) the applicant is otherwise eligible for medical assistance under section 17b-261 but for the imposition of the penalty period, (3) if the applicant is receiving long-term care services at the time of the imposition of a penalty period, the provider of long-term care services has notified the applicant that such provider intends to discharge or discontinue providing long-term care services to the applicant due to non-payment, (4) if the applicant is not receiving long-term care services at the time of the imposition of a penalty period, a provider of long-term care services has refused to provide long-term care services to the applicant due to the imposition of a penalty period, and (5) no other person or organization is willing and able to provide long-term care services to the applicant.

The criteria for undue hardship is met because the Appellant's life or health would be endangered by the deprivation of medical care, and the Appellant is otherwise eligible for medical assistance, the facility in which the Appellant resides has notified her of its intention to discontinue long-term care services, and there is no other person or organization willing and able to provide long-term services to the Appellant.

5. Connecticut General Statutes 17b-261o(c) 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 (1) the applicant made a transfer or assignment of assets to deliberately impoverish such applicant in order to obtain or maintain eligibility for medical assistance, or (2) the transfer or assignment of assets was made by the applicant's legal representative or the joint owner of the assets. The commissioner may waive the imposition of a penalty period pursuant to this subsection if (A) the applicant suffers from dementia or other cognitive impairment and cannot explain the transfer or assignment of assets. (B) the applicant suffered from dementia or other cognitive impairment at the time the transfer or assignment was made, (C) the applicant was exploited into making the transfer or assignment of assets due to dementia or other cognitive impairment, or (D) the applicant's legal representative or the record owner of a jointly held asset made the transfer or assignment of assets without the authorization of the applicant.

The Appellant suffers from dementia and cannot explain the \$51,461.62 transfer but she did not sign the check at issue.

At least two other individuals present at this hearing, the Appellant's spouse and her daughter-the transferee, could have explained the \$51,461.62 transfer at issue but did not.

Although undue hardship exists, the Department shall impose a penalty period because the Appellant made a transfer of assets in the amount of \$51,461.62 to deliberately impoverish herself in order to obtain eligibility for medical assistance.

6. 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.

UPM § 3029.05 F.1. provides 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.

UPM § 3029.05 F.2. provides that 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.

UPM § 3029.05 F.2.a. states, for applicants, the average monthly cost for LTCF services is based on the figure as of the month of application.

The average monthly cost of LTCF services in Connecticut as of the month of the Appellant's application was \$11,851.00.

The Appellant is subject to a penalty period of 4.34 months after dividing the uncompensated value of the transferred asset by the average monthly cost of LTCF services (\$51,461.62, divided by \$11,851.00).

DISCUSSION

Based upon the testimony and the evidence presented and in light of pertinent regulations, I find that the Appellant did not improperly transfer assets of \$90,000.00 during the look-back period. She met her foreseeable needs for almost three years prior to her need for institutionalization.

Regulations state that if an individual provides clear and convincing evidence that the transfer was made for a purpose other than to qualify for medical assistance, then the transfer is not considered to be improper and a penalty is not imposed.

In this case, the Appellant has provided clear and convincing evidence that she was in relatively good health at the time of the \$90,000.00 transfer, she retained sufficient income and assets to meet her foreseeable needs as they existed, and that she was not contemplating the need for long-term care at the time of the transfer.

I do not find this transfer of assets to be improper and do not uphold the Department's penalty imposition.

With respect to the transfer of \$51,461.62 to the Appellant's daughter, there was no evidence presented regarding its propriety. The Appellant's husband signed the check from a joint account held with the Appellant. He was present at the hearing and offered no information pertaining to a loan and repayment agreement. In addition, the Appellant's daughter that received the payment was present and offered no verification or specifics of a loan agreement and repayment arrangement. Lacking clear and convincing evidence that this transfer was made for reasons other than to qualify, I find that it is an improper transfer for which the Appellant is subject to a penalty period.

The Appellant presented evidence of undue hardship, and although she suffers from dementia and cannot explain the transfer, the criteria to waive the penalty is not met because the Appellant's daughter-the transferee, and her husband-the author of the check, were both capable of and available to provide evidence that it was not an improper transfer for purposes of Medicaid eligibility but both failed to do so.

DECISION

The Appellant's appeal to remove the penalty imposed due to a transfer of \$90,000.00 made in [REDACTED] 2011 is **Granted**.

The Appellant's appeal to waive the penalty period imposed due to a transfer of \$51,461.62 made in [REDACTED] 2013 because undue hardship exists is **Denied**.

ORDER

The Department shall remove the penalty period that it imposed for the transfer of \$90,000.00 made in [REDACTED] 2011.

The Department shall proceed with imposition of a penalty period due to the improper transfer of assets made in [REDACTED] 2013 of \$51,462.61.

The Department shall consider the Appellant to be otherwise eligible for Medicaid LTC payments effective [REDACTED] 2015.

The Department shall reopen the Appellant's Medicaid application and process in accordance with the findings of this decision.

Compliance shall be shown by submission of verification that the [REDACTED] 2015 application has been reopened that the penalty has been amended.

Compliance is due to OLCRAH by [REDACTED] 2016.

Pamela J. Gonzalez
Pamela J. Gonzalez
Hearing Officer

Copy: Rachel Anderson, SSOM, DSS Regional Office #32, Stamford
Attorney [REDACTED], [REDACTED], [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
Attorney [REDACTED]

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.