

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 #: 730986

NOTICE OF DECISION

PARTY

██████████  
c/o ██████████.  
██████████  
██████████

PROCEDURAL BACKGROUND

On ██████████ 2015, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Final Decision Notice imposing a transfer of assets penalty for the period from ██████████ 2015, through ██████████ 2016.

On ██████████ 2015, Attorney ██████████, representative for the Appellant (the "attorney") 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 ██████████ 2 ██████████ 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
- Attorney ██████████, Appellant's representative
- ██████████, Paralegal for Law Offices of ██████████
- ██████████, Appellant's grandson
- Paula Wilczynski, Eligibility Services Worker, Department's representative
- Roberta Gould, Hearing Officer

At the Appellant's representative's request, the hearing record remained open for the submission of additional evidence. On [REDACTED] 2015, the record closed.

### **STATEMENT OF THE ISSUE**

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

### **FINDINGS OF FACT**

1. In [REDACTED] of 2013, the Appellant suffered a fall at her home and was admitted to St. Vincent Hospital. (Exhibit 19: Appellant's medical records)
2. On [REDACTED] 2013, the Appellant and her grandson, [REDACTED], signed a Personal Service Contract that [REDACTED] would be compensated at a rate of \$25.00 per hour for home care services provided for the Appellant. (Exhibit 21: Personal Service Contract dated [REDACTED] 2013.)
3. [REDACTED]'s 2013 W-2 Wage and Tax Statement indicates that he was residing at [REDACTED]. (Exhibit 23: W-2 for [REDACTED])
4. On [REDACTED] 2015, the Appellant entered [REDACTED] Lakes long-term care facility. (Hearing record)
5. On [REDACTED] 2015, the Appellant quit claimed her property located at [REDACTED] [REDACTED] to her grandson, [REDACTED]. (Exhibit 18: Quit Claim Deed and Hearing summary)
6. On [REDACTED] 2015, [REDACTED], the Appellant's grandson, signed an affidavit that he had lived with the Appellant since [REDACTED] 2013, and had provided care for her. (Exhibit 4: Affidavit and Schedule of daily services provided)
7. On [REDACTED] 2015, the Appellant applied for Long Term Care Medicaid assistance for herself. (Exhibit 1: Assistance request form and Hearing summary)
8. [REDACTED] is the Appellant's Power of Attorney ("POA"). (Exhibit 5: Durable power of attorney dated [REDACTED] 2012)
9. On [REDACTED] 2015, the Department made a referral to its Resource Division in order to ascertain ownership and fair-market value of the property located at [REDACTED] [REDACTED]. (Exhibit 3: Resource referral and Hearing summary)
10. On [REDACTED] 2015, the Department sent the Appellant's POA a W-1348 Verification We Need form requesting bank account verifications, documentation of care provided for the Appellant by her grandson, a copy of 2012 and 2013 tax returns for [REDACTED] [REDACTED] and documentation verifying residency for [REDACTED] and his

fiancé. (Exhibit 6: W-1348LTC and Hearing summary)

11. On [REDACTED] 2015, [REDACTED], paralegal for the Law Offices of [REDACTED] provided the requested bank account information to the Department. (Exhibit 7: Fax from attorney's office)
12. On [REDACTED] 2015, the Department sent the Appellant's POA a W-1348 Verification We Need form requesting information regarding the Appellant's transfer of assets. (Exhibit 8: W1348LTC and Hearing summary)
13. On [REDACTED] 2015, the Department's Resource Division determined that the property located at [REDACTED] has a fair-market value of \$147,000.00. (Exhibit 3 and Hearing summary)
14. On [REDACTED] 2015, the Department sent the Appellant's POA a W-1348 Verification We Need form requesting bank account verifications and information regarding the transfer of assets. (Exhibit 9: W-1348LTC and Hearing summary)
15. On [REDACTED] 2015, the Appellant's physician, Manuel Pun M.D., provided a written statement indicating that [REDACTED], the Appellant's grandson, had been taking care of the Appellant for two and one half years and the care he provided for her prevented her from entering a long-term care facility. (Exhibit 20: Letter from Manuel Pun M.D.)
16. On [REDACTED] 2015, [REDACTED], paralegal for the Law Offices of [REDACTED] provided documentation of [REDACTED] address change to [REDACTED] as well as a letter from the Appellant's physician, Dr. Manuel Pun. (Exhibit 10: Letter dated [REDACTED] 15 and Hearing summary)
17. On [REDACTED] 2015, the Department sent the Appellant's POA a W-1348 Verification We Need form requesting bank account verifications and transfer of asset information. (Exhibit 11: W-1348LTC and Hearing summary)
18. On [REDACTED] 2015, the Department sent the Appellant's POA and [REDACTED] a W-495A Transfer of Assets Preliminary Decision Notice indicating that \$147,000.00 was transferred by the Appellant when she quit claimed her property located at [REDACTED] on [REDACTED] 2015. (Exhibit 12: W-495A and Hearing summary)
19. On [REDACTED] 2015, the Department received a rebuttal letter from the Appellant's attorney, [REDACTED], with a copy of a Personal Service Contract between the Appellant and her grandson dated [REDACTED] 2013. (Exhibit 13: Letter dated [REDACTED] 2015 and Hearing summary)
20. On [REDACTED] 2015, the Department sent the Appellant's POA and [REDACTED] a W-495B Transfer of Assets Notice of Response to Rebuttal/Hardship Claim indicating

that they did not agree with her rebuttal. (Exhibit 14: W-495B and Hearing summary)

21. On [REDACTED] 2015, the Department sent the Appellant's POA and [REDACTED] a W-495C Transfer of Assets final Decision Notice indicating that the Appellant had transferred her property at [REDACTED] to become eligible for Medicaid and would not be eligible for Medicaid benefits for the period of [REDACTED] 2015, through [REDACTED] 2016. (Exhibit 15: W-495C and Hearing summary)
22. [REDACTED], the Appellant's grandson, was living with her at [REDACTED] from [REDACTED] of 2013, through [REDACTED] of 2015, at which time the Appellant permanently entered a long-term care facility. (Hearing record)
23. [REDACTED] provided home care services for the Appellant in the amount of \$223,950.00 during the period of [REDACTED] 2013, through [REDACTED] 2015. (Exhibit 21)

### **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-260 of the Connecticut General Statutes authorizes the Commissioner 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.
3. 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.
4. UPM § 3028.10(E) provides that an institutionalized individual or his or her spouse may transfer an asset without penalty if he or she provides clear and convincing evidence that the transfer was made exclusively for a purpose other than qualifying for assistance.
5. UPM § 3028.10(G) provides that 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. (Cross Reference: 3028.20)

6. The Department was incorrect when it determined that the Appellant quit claimed her property located at [REDACTED] in order to qualify for assistance.
7. UPM § 3028.20(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.
8. UPM § 3029.10(F) provides that an institutionalized individual, or his or her spouse, may transfer an asset without penalty if the individual provides clear and convincing evidence that he or she intended to dispose of the asset at fair market value.
9. The Department was incorrect when it determined that the Appellant did not provide clear and convincing evidence that she intended to dispose of her home property for fair market value when she quit claimed it to her grandson, [REDACTED].
10. On [REDACTED] 2015, the Department incorrectly imposed a transfer of assets penalty for the period from [REDACTED] 2015, and ending on [REDACTED] 2016.

### **DISCUSSION**


After reviewing the evidence and testimony presented at this hearing, I find that the Department acted incorrectly to impose a transfer of assets penalty. It is credible that the Appellant's grandson was living with her from [REDACTED] of 2013, through [REDACTED] of 2015, when she entered a long-term care facility. Regulations provide that when there is clear and convincing evidence that an applicant for Medicaid assistance transfers assets for other valuable consideration there is no transfer of asset penalty imposed. The Appellant's representatives provided substantial evidence that indicates her grandson lived with her for the two years preceding her institutionalization and while residing with her, provided homemaker services for the Appellant that exceeded the value of the home property.

**DECISION**

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

**ORDER**

1. The Department shall reopen the Appellant's [REDACTED] 2015, application for Medicaid and continue the eligibility process.
2. No later than [REDACTED] 2015, the Department will submit to the undersigned verification of compliance with this order.

  
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Roberta Gould  
Hearing Officer

PC: Bonnie Shizume, Social Services Program Manager, DSS, New Haven R.O.  
Brian Sexton, Social Services Operations Manager, DSS, New Haven R.O.  
Lisa Wells, Social Services Operations Manager, DSS, New Haven R.O.  
Ellen Croll-Wissner, LTC Liaison, DSS, New Haven R.O.

### **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.