

STATE OF CONNECTICUT  
DEPARTMENT OF SOCIAL SERVICES  
OFFICE OF LEGAL COUNSEL, REGULATIONS AND ADMINISTRATIVE HEARINGS  
55 FARMINGTON AVENUE  
HARTFORD, CT 06105-3725

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

CLIENT ID #: ██████████  
HEARING ID #: 759747

NOTICE OF DECISION

PARTY

Attorney ██████████  
Re: ██████████  
██████████  
██████████

PROCEDURAL BACKGROUND

On ██████████ 2016, the Department of Social Services (the "Department") sent ██████████ (the "Applicant") a Notice of Action ("NOA") imposing a transfer of assets penalty on her Medicaid for Long Term Care benefits for the period from ██████████ 2015 through ██████████ 2015.

On ██████████ 2016, the Applicant, through her attorney, ██████████ (the "Appellant") requested an administrative hearing to contest the Department's decision to impose a penalty on the Applicant's Long Term Care Medicaid benefits.

On ██████████ 2016, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ██████████ 2016.

On ██████████ 2016, 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:

██████████, Appellant, Counsel for ██████████, the Applicant  
██████████, assistant to Attorney ██████████  
██████████, the Appellant's daughter

La'Kisha Prince, Department's representative  
Maureen Foley-Roy, Hearing Officer

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

### **STATEMENT OF THE ISSUE**

The issue is whether the Department's decision to impose a Transfer of Assets ("TOA") penalty on the Applicant's Medicaid for Long Term Care benefits beginning [REDACTED] 2015 and ending on [REDACTED] 2015 for a transfer of \$13,000 made on [REDACTED] 2015 was correct.

### **FINDINGS OF FACT**

1. In 2004, when she was [REDACTED] years old, the Applicant went to live with her son who worked five days a week from 7 am to 3:30 pm. The Applicant's family arranged that her two daughters (who did not live in the home) would care for her while their brother was at work. (Exhibit 1: Letter from [REDACTED] dated [REDACTED] 2015)
2. The Applicant and her children never entered into a legally binding contract regarding the care and services provided and the children did not expect to be compensated for caring for their mother. (Appellant's testimony)
3. The Applicant's medical conditions included spinal stenosis and severe arthritis. The Applicant had numbness in her hands and legs, hearing loss and difficulty swallowing. (Exhibit 4: Letter from [REDACTED] dated [REDACTED] 15)
4. Beginning in [REDACTED] of 2004 and continuing until [REDACTED] of 2010, the Applicant's daughter came to the Applicant's home each Monday, Wednesday and Thursday for a minimum of three hours each day and performed the following tasks: medication monitoring, banking, transportation to medical appointments, shopping and socialization. (Exhibit 4 and Appellant's Exhibit A: Logs)
5. During the remainder of the hours, the Applicant was cared for by her son and another daughter. (Exhibit 1)
6. The Applicant and her daughter had a joint checking account to facilitate the Applicant's bill paying. (Exhibit D: Letter from [REDACTED] dated [REDACTED] 2016)
7. On [REDACTED] 2010, the Applicant gave checks for \$13,000 to three of her children in appreciation for all they had done for her. She did not issue a

- check to the daughter with whom she shared a checking account. (Exhibit E: copies of checks from [REDACTED] of 2010 and Exhibit D)
8. It was the Applicant's intention that the daughter with whom she shared a checking account also receive \$13,000 but the daughter did not avail herself of the funds at that time. (Exhibit B: Letter from Applicant and Exhibit D: Letter from [REDACTED] dated [REDACTED] 2016)
  9. Beginning in [REDACTED] of 2010, in addition to the tasks included in FOF #4, the Applicant's daughters began to assist the Applicant with bathing and dressing as well as preparing meals, housecleaning and laundry. (Exhibit 4 and Exhibit A)
  10. On [REDACTED] 2015, the Applicant was admitted to a skilled nursing facility for rehabilitation after a hospitalization for pneumonia. (Exhibit 10: Ascend Connecticut application)
  11. On [REDACTED] 2015, the Applicant wrote a check for \$13,000 to the daughter who had not previously received a check. (Exhibit 3: Check to [REDACTED] dated [REDACTED] 2015)
  12. On [REDACTED] 2015, the Applicant was given approval for a long term stay in the facility. (Exhibit 10)
  13. On [REDACTED] 2015, the Applicant applied for Medicaid for Long Term Care. (Department's summary)
  14. On [REDACTED] 2016, the Department issued a notice advising that they were granting Medicaid for long term care and imposing a penalty beginning [REDACTED] 2015 and ending on [REDACTED] 2015 because the Applicant had transferred \$13,000 on [REDACTED] 2015 for the purpose of becoming eligible for Medicaid for Long term care assistance. (Exhibit 5: W495C: Transfer of Assets Final Decision Notice)

### **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. UPM § 3029.05 A 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.
4. UPM § 3029.05 B provides that the policy contained in the chapter on transfers of assets pertains to institutionalized individuals and to their spouses.
5. UPM § 3029.05 D 1 provides that 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.
6. The look-back date for transfers of assets is a 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).
7. 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 by the average monthly cost to a private patient for long-term care services in Connecticut. Uncompensated values of multiple transfers are added together and the transfers are treated as a single transfer. UPM § 3029.05(F).
8. 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. Conn. Gen. Stat. § 17b-261a(a).
9. UPM Section 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.
10. The evidence presented indicates that the Applicant transferred \$13,000 to her daughter on [REDACTED] 2015 in order to complete a transaction that originated in 2010 and not for the purpose of qualifying for assistance.
11. The Department incorrectly imposed a transfer of assets penalty for the

period from [REDACTED] 2015 through [REDACTED] 2015 when granting Medicaid for Long term care for the Applicant because the Applicant did not transfer \$13,000 in [REDACTED] of 2015 for the purpose of qualifying for assistance.

### **DISCUSSION**

The Appellant makes the argument that the \$13,000 should be considered permissible as in exchange for “other valuable consideration”, asserting that the care provided by the daughter prevented the Applicant from being institutionalized far earlier. While that may or may not be true, it is a moot point as the other valuable consideration policy specifically requires that such care be provided by someone who is sharing the Applicant’s/transfers home. The Applicant’s daughter did not share her home and thus, does not fit the criteria to have the \$13,000 be considered for “other valuable consideration.

In 2004, at the age of [REDACTED], the Applicant went to live with her son and depended on her other children for her care as she aged. As the years passed, the Applicant needed more care, which her children continued to provide. No one in this family foresaw the Applicant going into a facility; the plan was that the siblings would care for their mother for as long as she lived. The Applicant was admitted to a facility for short term rehabilitation. When the rehab was complete, it was determined that the best course of action for the Applicant would be to remain in the nursing facility long term because the son with whom she was living had become mentally ill, (an unforeseen circumstance). In 2010, when Applicant was [REDACTED], she gave each of her children \$13,000 to show her appreciation for their years of care. Three of her children received checks and cashed or deposited them immediately. The Applicant shared a checking account with one daughter and that daughter did not avail herself of the funds which her mother intended her to have at that time. However, the Applicant’s intention was to give her daughter \$13,000 back in 2010, when her other children received such a gift. The Applicant’s potential eligibility was not the basis for the \$13,000 that the Applicant gave to her daughter on [REDACTED] 2015. Therefore, the undersigned finds that on [REDACTED] 2015, the Applicant’ did not give her daughter the \$13,000 for the purpose of qualifying for assistance and the Department was incorrect when it imposed a transfer of assets penalty.

### **DECISION**

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

### **ORDER**

The Department is ordered to remove the penalty imposed from [REDACTED] 2015 through [REDACTED] 2015 and grant Medicaid for Long Term Care effective [REDACTED] [REDACTED]

of 2015.

Compliance with this order should be sent to undersigned no later than [REDACTED] **2016** and shall consist of documentation that the penalty was removed.

*Maureen Foley-Roy*  
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Maureen Foley-Roy  
Hearing Officer

PC: Brian Sexton, Lisa Wells, Operations Managers, DSS Regional Office # 20,  
New Haven  
Bonnie Beal Shizume, Program Manager, DSS, New Haven  
La’Kisha Prince, Eligibility Services, DSS, New Haven

### **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.