

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

REQUEST #765063

CLIENT ID ██████████

NOTICE OF DECISION

PARTY

██████████
██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████, 2016, the Department of Social Services (the "Department") sent ██████████ ██████████ ("Appellant") a Transfer of Assets, Final Decision Notice stating that although the Appellant was eligible for certain Medicaid benefits, effective ██████████ 2016, the Department had determined that the Appellant was not eligible for Medicaid payment for long-term care ("LTC") services during the period of ██████████ 2016 through ██████████ 2016.

On ██████████, 2016, the Appellant's representative (██████████) requested an administrative hearing on behalf of the Appellant to contest the effective date of eligibility for LTC Medicaid benefits as determined by the Department.

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

OLCRAH granted the Appellant's Representative two continuances.

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 to address the Appellant's effective date of eligibility for LTC Medicaid benefits as determined by the Department.

The following individuals were present at the hearing:

██████████, Appellant's Representative/Witness (By telephone)
██████████, CPA, Witness for the Appellant
██████████ Witness for the Appellant
Tiffany Roman, Representative for the Department
Alyssa Kibbie, Representative for the Department
Hernold C. Linton, Hearing Officer

The hearing record was closed on ██████████ 2016.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Appellant's effective date of eligibility for LTC Medicaid benefits as determined by the Department is correct due to the imposition of a Transfer of Assets penalty, based on the Appellant's gifting of assets valued at \$100,000.00 to her son.

FINDINGS OF FACT

1. On ██████████, 1997, the Appellant and her late husband became owners of 100 shares of stock in the ██████████ Children's Center. (Hearing Summary; Dept.'s Exhibit G: Certificate of Shares)
2. On ██████████ 2000, the Appellant acquired a 10% ownership interest in the ██████████ Children's Center, based on her funding of the business. (Hearing Summary; Dept.'s Exhibit I: Shareholders and Officers Sheet)
3. On ██████████ 2015, the Appellant transferred her 10% interest in the ██████████ Children's Center to her son for an undisclosed value received. (Hearing Summary; Dept.'s Exhibit H: Transfer of Shares Document)
4. On ██████████ 2015, the Appellant applied for Home and Community Based Services under the Home Care ("W-01") program. (Hearing Summary; Dept.'s Exhibit C: W-1LTC)
5. At the time of her application, the Appellant reported a 10% ownership interest in the ██████████ Children's Center. (Hearing Summary; Dept.'s Exhibit C)
6. In the Tax Year of 2014, the business generated \$3,197,003.00 in gross income and \$61,472.00 in net income payable to its shareholders. (Hearing Summary; Dept.'s Exhibit L: 2014 Tax Return)
7. The Department determined that the Appellant's 10% ownership interest in the ██████████ Children's Center valued \$100,000.00, based on the valuation of the liability insurance amount of \$1,000,000.00. (Hearing Summary; Dept.'s Exhibit K: Certificate of Liability Insurance; Dept.'s Exhibit M: ██████████/16 Memorandum)

8. On [REDACTED] 2016, the Department sent the Appellant a (“W-495A”), Transfer of Assets Preliminary Decision Notice indicating that it believed that the Appellant transferred assets, valued at \$100,000.00 in order to qualify for assistance. (Hearing Summary; Dept.’s Exhibit E: [REDACTED]/16 W-495A-Transfer of Assets-Preliminary Decision Notice)
9. The Department did not receive a response from the Appellant or her Representative to the W-495A, to indicate that the transfer was for a reason other than to qualify for assistance. (Hearing Summary; Dept.’s Exhibit E)
10. In [REDACTED] 2016, the Appellant became asset eligible and otherwise eligible for Medicaid payment of LTC services, based on the date of her application and her countable assets at the time. (Hearing Summary)
11. The Department determined that the Appellant was not eligible for Medicaid payment of LTC services until [REDACTED] 2016, due to the imposition of a transfer of asset penalty for Medicaid payment of LTC services from [REDACTED] 2016 through [REDACTED] 2016. (Hearing Summary; Dept.’s Exhibit F: Transfer of Asset Calculations; Dept.’s Exhibit O: [REDACTED]/16 W-495C-Transfer of Assets-Final Decision Notice)
12. On [REDACTED] 2016, the Department sent the Appellant a Notice of Denial stating that her application for LTC services had been denied as the value of her countable assets exceeded the allowable amount. (Hearing Summary; Dept.’s Exhibit P: [REDACTED] 16 Notice of Denial)
13. The Appellant reported that she transferred her 10% ownership interest in the [REDACTED] Children’s Center to her son on [REDACTED] 2015. (Dept.’s Exhibit C)
14. The Appellant provided no evidence as to the reason why she transferred her 10% ownership interest in the [REDACTED] Children’s Center to her son on [REDACTED] 2015. (Hearing Record)
15. The Appellant was seventy-seven (77) years of age (DOB [REDACTED] 1937), and needed assistance with completing her activities of daily living (ADL’s) at the time that she transferred her 10% ownership interest to her son. She needed a wheelchair to assist with ambulation. (Dept.’s Exhibit C)
16. The Appellant provided a Certified Public Accountant (“CPA”) who is accredited in Business Valuations (“ABV”), Senior Business Appraisals (“ASA”), and a manager of a business valuation firm, as an expert witness. (Appellant’s Exhibit #1: [REDACTED] 16 Valuation Report)
17. The marketing appraisal completed by the CPA for the Appellant regarding the [REDACTED] Children’s Center, concluded that rarely, if ever, there is a correlation between the liability insurance amount and the fair market value of the business that is being insured. (Appellant’s Exhibit #1: [REDACTED]/16 Valuation Report)

18. The marketing appraisal completed by the CPA for the Appellant concluded that the Appellant's 10% ownership interest in the ██████████ Children's Center valued \$19,084.00, based on the reported revenues for the year 2014, and the lack of a controlling interest and marketability. (Appellant's Exhibit #1)
19. Using the net corporate income allocated to the Appellant for 2014 of \$6,147.00 for her 10% ownership interest, multiplied by 10.4 the Appellant's life expectancy rate at the time, the Department's revised value of the Appellant's 10% ownership interest in the ██████████ Children's Center is \$63,928.80, taken into consideration the general marketability of the Appellant's 10% interest with respect to the other shareholders as potential buyers. (Dept.'s Email dated ██████████ 16 from A. Kibbie)
20. There was no correlation between the Appellant's life expectancy rate and the fair market value of her 10% ownership interest in the ██████████ Children's Center. (Appellant's Exhibit #1: ██████████ 16 Valuation Report) (CPA's testimony)
21. In 2010, the Appellant received \$18,253.00 in reported annual net corporate income after-taxes for her 10% ownership interest in the ██████████ Children's Center. (Hearing Summary; Dept.'s Exhibit L)
22. In 2011, the Appellant received \$14,808.00 in reported annual net corporate income after-taxes for her 10% ownership interest in the ██████████ Children's Center. (Hearing Summary; Dept.'s Exhibit L)
23. In 2012, the Appellant received \$9,973.00 in reported annual net corporate income after-taxes for her 10% ownership interest in the ██████████ Children's Center. (Hearing Summary; Dept.'s Exhibit L)
24. In 2013, the Appellant received \$12,118.00 in reported annual net corporate income after-taxes for her 10% ownership interest in the ██████████ Children's Center. (Hearing Summary; Dept.'s Exhibit L)
25. In 2014, the Appellant received \$6,147.00 in reported annual net corporate income after-taxes for her 10% ownership interest in the ██████████ Children's Center. (Hearing Summary; Dept.'s Exhibit L)
26. The Appellant's average reported net corporate income after-taxes for 2011 through 2014 from her 10% ownership interest in the ██████████ Children's Center is \$12,259.80. (Hearing Summary; Dept.'s Exhibit L)
27. The market appraisal completed by the CPA and provided for the record by the Appellant's representative significantly understated the fair market value of the Appellant's 10% ownership interest in the ██████████ Children's Center as between \$11,000.00 and \$20,000.00. (Appellant's Exhibit G: ██████████/16 Response)

28. Because of the fluctuation in the Appellant's after-tax corporate income for 2010 through 2014, the average after-tax corporate income of \$12,259.80 for the period is used to calculate the fair market value of the Appellant's 10% ownership interest in the ██████████ Children's Center. (\$18,253.00 for 2010; plus \$14,808.00 for 2011, \$9,973.00 for 2012, \$12,118.00 for 2013, and \$6,147.00 for 2014; equals \$61,299.00; divided by 5 years; equals \$12,259.80, average after-tax corporate income) (See Facts # 21 through 26)
29. The income approach is generally used when determining the value of an ownership interest in a closely held business. To find the fair market value, the after-tax corporate income is then divided by the Capitalization Rate, which is a percentage used to convert after-tax corporate income into a value to determine the fair market value of an ownership interest in a closely held business and to account for the lack of control and marketability. (Appellant's Exhibit F: Calculation of Value)
30. The Capitalization Rate for the ██████████ Children's Center was calculated at 15.8% for 2014. (Appellant's Exhibit F: Calculation of Value)
31. The Appellant's average reported net corporate income after-taxes for 2011 through 2014 of \$12,259.80, divided by 15.8%, the Capitalization Rate for 2014, is \$77,593.67. (See Facts # 20 through 30)
32. Using the income approach, the fair market value of the Appellant's 10% ownership interest in the ██████████ Children's Center is \$77,593.77. (See Facts # 20 through 31)
33. The Appellant's Representative withdrew the Appellant's undue hardship claim that had been contemplated. (Stipulated Agreement)

CONCLUSIONS OF LAW

1. The Department is the state agency that administers the Medicaid program pursuant to Title XIX of the Social Security Act. The Department may make such regulations as are necessary to administer the medical assistance program. Conn. Gen. Stat. § 17b-2; Conn. Gen. Stat. § 17b-262
2. The Department is the sole agency to determine eligibility for assistance and services under the programs it operates and administers. Conn. Gen. Stat. § 17b-261b(a)
3. The Department shall grant aid only if the applicant is eligible for that aid. Conn. Gen. Stat. § 17b-80(a)
4. The Department uses the policy contained in this chapter to evaluate asset transfers, including the establishment of certain trusts and annuities, if the transfer

occurred, or the trust was established, on or after [REDACTED] 2006. Uniform Policy Manual ("UPM") § 3029.03

5. 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 UPM 3029.05(C). This period is called the penalty period, or period of ineligibility. UPM § 3029.05(A)
6. 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)
7. 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)
8. 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. UPM § 3029.10(E)
9. "Fair Market Value" is defined in Section 0500 (Glossary and Terms) of the UPM as the amount at which an asset can be sold on the open market in the geographic area involved at the time of the sale or the amount actually obtained as a result of bona fide efforts to gain the highest possible price.
10. 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. UPM § 3029.10(F)
11. Since the Appellant failed to provide clear and convincing evidence, the Department correctly determined that the Appellant transferred her 10% ownership interest in the [REDACTED] Children's Center to her son on [REDACTED] 2015 in order to qualify for assistance.
12. The Department incorrectly determined the fair market value of the Appellant's 10% ownership interest in the [REDACTED] Children's Center as \$100,000.00, based on the amount of its liability insurance coverage, and \$63,928.80, based on the her annual income for 2014 multiplied by her actuarial life expectancy.

13. Federal Law provides that in the case of a transfer of an asset made on or after [REDACTED] 2006, the date specified in this subparagraph [the start date of the penalty period] is the first day of a month during or after which assets have been transferred for less than fair market value, or the date on which the individual is eligible for medical assistance under the State plan and would otherwise be receiving institutional level care described in subparagraph (C) based on an approved application for such care but for the application of the penalty period, whichever is later, and which does not occur during any other period of ineligibility under this subsection, 42 United States Code ("U.S.C.") § 1396p(c)(1)(D)(ii).
14. The penalty period begins as of 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(E)(2)
15. Because the Appellant became asset eligible for Medicaid payment of LTC services effective [REDACTED] 2016, the Department's determination of [REDACTED], 2016 as the start date of the period of ineligibility for Medicaid payment of LTC services for the Appellant is correct.
16. The Department's imposition of a penalty period for Medicaid payment of LTC services for the Appellant is correct.
17. The length of the Appellant's penalty period is determined by dividing \$77,593.67 by \$12,170.00, the average cost of LTC, which equals 6.37 months.
18. The Department's determination of [REDACTED], 2016 as the end date for the penalty period for Medicaid payment of LTC services for the Appellant is incorrect.

DISCUSSION

The Appellant's representatives provided credible evidence to establish the fair market value for the Appellant's 10% ownership interest in the [REDACTED] Children's Center was initially overstated by Department as \$100,000.00. The Appellant's average net corporate income is divided by the Capitalization Rate, which is percentage rate used in closely held business to reflect a lack of control and marketability, in calculating the fair market value of an ownership interest. The average net corporate income is also used due to the fluctuation of the net corporate income from year to year. Based on the evidence provided to rebut the Department's assigned value, the undersigned finds the Department's assigned value (\$100,000.00) for the Appellant's ownership interest in question to be unreasonable, as the Department did not take into consideration acceptable market principles in determining the fair market value of the asset.

Additionally, the undersigned reduced the uncompensated value of the transfer to reflect the fair market value the asset transferred by the Appellant, which further reduced the penalty period.

The Department was correct in imposing a penalty period. However, the Department's length of the penalty is incorrect based on the uncompensated value used by the Department.

DECISION

The Appellant's appeal is **DENIED** in part, and **GRANTED** in part.

ORDER

1. The Department will establish a penalty period effective [REDACTED], 2016 based on the transfer of asset penalty for \$77,593.67.
2. No later than fourteen (14) days from the date of this hearing decision, the Department will provide the undersigned with verification of the Department's compliance with this order.

Hernold C. Linton

Hernold C. Linton
Hearing Officer

Pc: **Cheryl Parsons**, Social Service Operations Manager,
DSS, R.O. #40, Norwich

Fair Hearing Liaisons, DSS, R.O. # 40, Norwich

[REDACTED]

[REDACTED]

[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.