

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 #: 739077  
RECONSIDERATION ID#: 798606

**NOTICE OF RECONSIDERED DECISION**

**PARTY**

██████████  
C/O Attorney ██████████  
██████████  
██████████

**PROCEDURAL BACKGROUND**

On ██████████ 2015, the Department of Social Services (the "Department") sent ██████████ (the Appellant), and his conservator a notice of its decision to impose a penalty against his application for Long Term Care Medicaid benefits because he transferred assets in order to become eligible for Medicaid.

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

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

On ██████████, 2015 the Appellant's conservator requested a reschedule.

On ██████████ 2016 OLCRAH issued a notice rescheduling the hearing for ██████████ 2016.

On ██████████, 2016 the Appellant's conservator requested to be excused from the hearing and be represented by his attorney ██████████ ("The Appellant's conservator's attorney")

On [REDACTED] 2016 the Appellant's conservator's attorney requested a reschedule.

On [REDACTED] 2016 OLCRAH issued a notice rescheduling the hearing for [REDACTED], 2016.

On [REDACTED] 2016 the Appellant's conservator requested a reschedule.

On [REDACTED], 2016 OLCRAH issued a notice rescheduling the hearing for [REDACTED] 2016.

On [REDACTED] 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:

[REDACTED], Appellant's spouse  
[REDACTED], Appellant's son  
[REDACTED] Appellant's conservator  
[REDACTED] Appellant's conservator's attorney  
Emily Loveland, Department's representative  
Marci Ostroski, Hearing Officer

The hearing record remained open until [REDACTED] 2016 for the submission of additional evidence from the Appellant and until [REDACTED] 2016 for the Department's rebuttal. Additional exhibits were received from both parties and on [REDACTED] 2016, the record closed.

A separate decision was issued for the issue of Community Spouse Protected Amount.

On [REDACTED] 2016 the undersigned issued a hearing decision denying the Appellant's appeal.

On [REDACTED], 2016 the Director of OLCRAH granted the reconsideration request for the purpose of reviewing the partial return of assets.

On [REDACTED], 2016 the Department submitted a brief and exhibits.

The Appellant's representative did not submit additional information to be considered or a rebuttal to the Department's submission. The Hearing record closed on [REDACTED], 2016

### STATEMENT OF THE ISSUE

The issue to be determined is whether assets transferred by the Appellant result in a penalty period for Long Term Care Medicaid.

### FINDINGS OF FACT

1. On [REDACTED], 2005 the Appellant's spouse [REDACTED] suffered a stroke and was hospitalized until [REDACTED], 2005 when she was institutionalized for a short term stay at [REDACTED] Facility. (Ex. 9: [REDACTED] Medical Group evaluation dated [REDACTED] 06)
2. In [REDACTED] 2005 the Appellant's spouse was discharged from the [REDACTED] rehab facility to [REDACTED] home for sub-acute rehabilitation until [REDACTED] of 2006 when she discharged home. (Ex. 7: Rehabilitation Medicine Associates notes dated [REDACTED]/06, Ex. 2: Appellant's Spouse's Affidavit)
3. In [REDACTED] 2006 when the Appellant's Spouse returned to the home, the Appellant's son [REDACTED] began visiting his parent's home 5-7 days a week to assist with the household and provide companionship. He was not providing assistance with the Appellant or his spouse's activities of daily living. (Ex. 2: Appellant's Spouse's Affidavit, Appellant's Son's testimony)
4. In [REDACTED] 2006 the Appellant's son noticed that the Appellant was acting recklessly and exhibiting poor judgment with money so his name was added to the Appellant's bank accounts. The Appellant's son began accessing the accounts for transfers and bill payments at this time. The Appellant's spouse was in agreement with this process (Appellant's son's testimony, Ex. 11: Letter from [REDACTED] dated [REDACTED]/16, Ex. 2: Affidavit of [REDACTED])
5. The Appellant suffered from [REDACTED] and on [REDACTED] 2006 was arrested for [REDACTED]. (Appellant's son's testimony, Ex. 10: Criminal Motor Vehicle Conviction Case Detail)
6. Between [REDACTED] 2006 and [REDACTED] 2008 the Appellant's son continued to visit his parents on a regular basis and assist them with transportation to doctors' appointments, cleaning and upkeep of the house, laundry, cooking, medication reminders, running errands, grocery shopping, and providing support and companionship. (Appellant's son's testimony, Ex. 2: [REDACTED] Affidavit dated [REDACTED]/16, Ex. 3: written statement from [REDACTED] dated [REDACTED]/16)
7. In [REDACTED] 2008 the Appellant wandered away from his home and suffered from a seizure and a head injury. He was found unresponsive and was hospitalized.

(Ex. 11: Letter from [REDACTED] dated [REDACTED]/16, Appellant's son's testimony)

8. From [REDACTED] 2008 through [REDACTED] 2009 the Appellant was institutionalized at [REDACTED] (Ex. 11: Letter from [REDACTED] dated [REDACTED]/16, Appellant's son's testimony)
9. [REDACTED] placed a lien on the Appellant's home for non-payment in the amount of 68,264.46. (Ex. G: Email from Appellant's son, HUD Settlement statement)
10. In [REDACTED] 2009 the Appellant's spouse moved into an Assisted Living Facility; the [REDACTED] Rent and assisted living fees here were \$1595.00 per month and meals and caregivers were offered at an additional cost. The additional costs for these services varied. (Ex. 11: Letter from [REDACTED] dated [REDACTED]/16, Appellant's son's testimony)
11. From [REDACTED] 2009 through [REDACTED] 2012 the Appellant resided at [REDACTED] Living Facility at a cost of \$4250.00 per month. (Ex. 11: Letter from [REDACTED] dated [REDACTED]/16, Appellant's son's testimony)
12. The Appellant's and his spouse's combined monthly gross income in 2009 was approximately \$4330.00. (Appellant's Conservator's Attorney's Summary of Argument)
13. On [REDACTED], 2010 the Appellant's home sold for 187,500.00. The Appellant and his spouse netted 80,562.00 from the sale of which \$50,000.00 was given to their son and the remaining funds were used to pay back bills for the household. (Ex. G: Email from [REDACTED], HUD settlement statement)
14. On [REDACTED] 2012 the Appellant was admitted to [REDACTED] Home skilled nursing facility subsequent to a fall which broke his hip. He was also diagnosed at admission with [REDACTED], pneumonia, and cognitive decline. (Ex. 11: Letter from [REDACTED] dated [REDACTED]/16, Appellant's son's testimony)
15. On [REDACTED] 2013, the Appellant applied for Long Term Care benefits under Medicaid. (Department's Summary)
16. On [REDACTED] 2013 the Appellant's son was named conservator of person and estate by the Probate Court for the Appellant and the Appellant's spouse. (Ex..KK: Court of Probate Decree/Appointment of Conservator)
17. On [REDACTED] 2013 the Appellant's son was removed by the Probate Court as the Appellant's conservator as he had failed to provide the Probate Court with an inventory and periodic accounting. [REDACTED] Home where the Appellant was residing had petitioned the Probate Court for the removal of the son as conservator as the facility was owed \$85,460.00 for cost of the Appellant's care

that had not been addressed. Attorney [REDACTED] was appointed conservator of estate and person. (Ex. JJ: Court of Probate Decree)

18. As part of the application process, the Department reviewed assets that were transferred by the Appellant during the 60 month look back period, to determine whether the Appellant received fair market value for the transferred assets. (Record)
19. The Department determined that between [REDACTED], 2008 and [REDACTED] 2010 multiple transfers were made out of the Appellant and his spouse's assets to their son. (Ex. N: transfer spreadsheet)
20. On [REDACTED], 2014, the Department mailed the Appellant a Preliminary Decision Notice and transfer spreadsheet, advising him that the \$91,993.86 transferred to his son would be subject to a transfer of asset penalty. (Ex. N: W-495A Transfer of Assets Preliminary Decision Notice)
21. Counsel for the Appellant provided to the Department verification of payments made by the Appellant's son directly to the Appellant's assisted living facility. The Department discovered additional assets at this time owned by the Appellant and his spouse and requested additional information. (Ex. O: Ledger from [REDACTED], Ex. P: W1348 [REDACTED]/14, Ex. S: W1348 [REDACTED]/15, Ex. T: W1348 [REDACTED]/15, Ex. V: W1348 [REDACTED]/15)
22. On [REDACTED] 2015 the Appellant expired. (Ex. HH: Narrative)
23. The Department recalculated the penalty amount based on further withdrawals and deposits between the Appellant and his son through [REDACTED] 2014. (Ex. W: Final spreadsheet of transfers)
24. On [REDACTED], 2015 the Department granted the Appellant's [REDACTED] 2013 Long Term Care Medicaid application retroactive to [REDACTED] 2013. (Ex. Y: Notice of Action [REDACTED]/15)
25. On [REDACTED] 2015, the Department mailed the Appellant a Final Decision Notice advising him the portion of assets he transferred which is subject to penalty is \$92,415.95. (Ex. X: W-495C Transfer of Assets Final Decision Notice)
26. Counsel for the Appellant provided the Department with documentation of payments made by the son on the Appellant's spouse's behalf. The Department recalculated the penalty. (Department's testimony, Appellant's Conservator's Attorney's testimony)
27. On [REDACTED], 2016 the Department issued a revised W495C with a new penalty amount of \$76,891.47 (Ex. 18: W-495C Transfer of Assets Final Decision

Notice)

28. On [REDACTED] 2015 the Appellant's spouse moved to [REDACTED] Living Facility. The Appellant's son contributed funds to the cost of her monthly care. (Ex. 17: Highlands spreadsheet and proof of payments)

### **CONCLUSIONS OF LAW**

1. Section §17b-260 of the Connecticut General Statutes provides that the Department will administer Title XIX of the Social Security Act ("Medicaid") in the State of Connecticut.
2. Section §17b-261b(a) of the Connecticut General Statutes provides that the Department "shall be the sole agency to determine eligibility for assistance and services under programs operated and administered by said department."
3. Federal law provides that the "single State agency is responsible for determining eligibility for all individuals applying for or receiving benefits" in the Medicaid program. 42 C.F.R. 431.10(b)(3)
4. Subsection (a) of section § 17b-261(a) of the Connecticut General Statutes provides that any disposition of property made on behalf of an applicant or recipient by a person authorized to make such disposition pursuant to a power of attorney, or other person so authorized by law shall be attributed to such applicant.
4. An applicant is "the individual or individuals for whom assistance is requested." Uniform Policy Manual ("UPM") §1500.01
5. The Appellant is the applicant in this matter. Disposition of property by the Appellant's powers of attorney are attributed to the Appellant.
6. 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."
7. 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.

8. 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).
9. 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).
10. The look-back date for the Appellant is [REDACTED] 2008.
11. Compensation in exchange for a transferred asset is counted in determining whether fair market value was received. UPM § 3029.30.
12. Compensation received prior to the time of the transfer is counted if it was received in accordance with a legally enforceable agreement. UPM § 3029.30 (A)(2)
13. The Appellant and his spouse did not possess a legally enforceable agreement with their son to compensate him for care received.
14. The Department correctly determined that the transfer was not made in accordance with compensation because it was not received in accordance with a legally enforceable agreement.
15. UPM § 3029.20(B) addresses transfers made in return for other valuable consideration and provides 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.
16. The Department correctly determined that the transfer was not made in

accordance with other valuable consideration because the Appellant's son did not live with the Appellant for a period of at least two years and there was no evidence provided that the son provided services which prevented institutionalization for a period of at least two years.

17. UPM § 3029.10(F) provides for transfers not resulting in a penalty; 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.
18. The Department correctly determined that the Appellant did not receive fair market value for the transfer of \$76,891.47 to his son.
19. 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 reasonably been expected to exist based on the transferor's health and financial situation at the time of the transfer. UPM § 3029.15(B)
20. The Department correctly determined that the Appellant did not meet his foreseeable needs because at the time of the transfers the Appellant did not retain enough assets or income to cover his basic living expenses and medical costs.
21. The Appellant did not establish with clear and convincing evidence that he transferred \$76,891.47 for a purpose other than qualifying for assistance.
22. The Department was correct to find that the Appellant transferred \$76,891.47 for the purpose of qualifying for Long Term Care Medicaid.
23. Section § 17b-261a(d)(1) of the Connecticut General Statutes provides For purposes of this subsection, an "institutionalized individual" means an individual who has applied for or is receiving (A) services from a long-term care facility, (B) services from a medical institution that are equivalent to those services provided in a long-term care facility, or (C) home and community-based services under a Medicaid waiver.
24. Section § 17b-261a(d)(2) of the Connecticut General Statutes provides in part An institutionalized individual shall not be penalized for the transfer of an asset if the entire amount of the transferred asset is returned to the institutionalized individual. A transferee may return any portion of a transferred asset to the transferor. If any transferred asset is returned to the transferor, the Department of Social Services shall adjust the penalty period to the extent permitted by federal law, provided the ending date of the penalty period as originally determined by the department shall not change.

25. UPM § 3029.10 (H) provides for transfers not resulting in a penalty: Return of Transferred Asset

1. An institutionalized individual is not penalized based on the transfer of an asset if the entire asset has been returned.
2. If only part of the transferred asset is returned, the penalty period is adjusted
3. The adjusted penalty period described in 3029.10 H. 2 is based on the uncompensated value of the original transfer minus the value of the part of the asset that is returned.
4. The part of the asset that is returned to the individual is considered available to the individual during the time period from the date of its transfer to the date of its return, and remains available for as long as the individual has the legal right, authority or power to liquidate it.

26. The Department correctly determined that the Appellant [REDACTED] was the institutionalized individual.

27. The Department correctly determined that assets were not returned to the institutionalized individual subsequent to the Appellant's spouse's move on [REDACTED] 2015 to the Highlands assisted living as the institutionalized individual had expired prior to these transactions.

28. The Department correctly determined that payments made on behalf of the Appellant's spouse after the Appellant's date of death did not qualify as a partial return of assets

29. 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).

30. 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.

31. UPM § 3029.05 (F) provides in part 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. 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. For applicants, the average monthly cost for LTCF services is based on the figure as of the month of application.
32. The average monthly cost of LTCF services in Connecticut as of [REDACTED] 2013, the month of the Appellant's application was \$11,183.00.
33. The Appellant is subject to a penalty period of 6.88 months after dividing the uncompensated value of the transferred asset by the average monthly cost of LTCF services (\$76,891.47 divided by \$11,183.00).

### **DISCUSSION**

The Department's determination that the Appellant transferred assets to qualify for assistance is upheld. Counsel for the Appellant argued that the Appellant's son [REDACTED] provided companionship and homemaker services for the Appellant's spouse and would be entitled to other valuable consideration for his time. While it is credible the son did provide companionship to his parents, there is no evidence from the Appellant's or his spouse's doctors that the Appellant's son, provided care that prevented institutionalization. The Appellant's son did not provide assistance with activities of daily living. The son did not reside with the Appellant or his spouse for a period of at least two years.

In terms of compensation there was no legally enforceable agreement either verbally or in writing that the Appellant's son would provide care for the Appellant or his spouse in exchange for payment. The transfer is not in accordance with the regulations that govern compensation or other valuable consideration and is therefore improper.

Counsel for the Appellant argued that the Appellant and his spouse met their foreseeable needs at the time of the bulk of the transfers to their son between the years of 2008-2009. Counsel argued that the Appellant had over \$70,000 in assets at that time plus income. However it was in 2008 when the Appellant was institutionalized for the first time in [REDACTED] and accrued a bill there of 68,264.46 which remained unpaid until the sale of the Appellant's home in 2010 when funds were again transferred to the son.

Both the Appellant and his spouse had a history of significant medical issues

which resulted in multiple hospitalizations and institutionalizations for each of them as far back as 2005. Their financial foreseeable needs were significant at the time of the transfers to the son. At the time when their home was sold both the Appellant and his spouse were advanced in age and residing in assisted living with additional costs that their monthly income did not cover. The only equity they had left in their house upon its sale in 2010 was given to the son when both of them had current financial need. The evidence shows that there were not only liens placed against the home for previous unpaid medical bills but also back taxes and significant back household bills that had gone unpaid. Had the Appellant and his spouse been meeting their financial needs throughout their illnesses they would not have accrued such significant debts.

In the reconsideration request the Appellant's conservator argued that the Department should have considered the payments that the Appellant's son made toward the Appellant's spouse's assisted living expenses as a partial return of assets and reduced the penalty period. The Connecticut General Statutes and Uniform Policy Manual are clear that a reduction of the penalty period due to partial return of assets only applies when the assets are returned to the institutionalized individual applying for Medicaid. As the payments were made after the institutionalized individual, the Appellant, expired there is no partial return of assets.

There is no clear and convincing evidence that the transfers were made for a purpose other than qualifying for assistance therefore the Department's action to assign a penalty is upheld. The amount of the penalty and length of the penalty period are upheld.

### **DECISION**

The Appellant's appeal is **DENIED**

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Marci Ostroski  
Hearing Officer

cc: Musa Mohamud, SSOM, Hartford  
Judy Williams, SSOM, Hartford  
Tricia Morelli, SSPM, Hartford  
Emily Loveland, Eligibility Services Specialist, Hartford  
[REDACTED], Appellant's Conservator's Attorney

### **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.