

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

██████████, 2017
Signature Confirmation

CLIENT No # ██████████
Request # 803268

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████ 2016, the Department of Social Services - ("the Department") sent ██████████ (the "Appellant") a Final Decision Notice imposing a transfer of assets penalty for the period from ██████████ 2016 through ██████████, 2018.

On ██████████, 2016, ██████████ attorney – in –fact for ██████████ in care of ("c/o") ██████████ requested an administrative hearing to contest the Department's decision to impose a penalty on the Applicant's Long Term Care Medicaid benefits. Appellant requested an administrative hearing to contest the decision to terminate such benefits.

On ██████████ 2016, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ██████████, 2017.

On ██████████ 2017, the Appellant's counsel requested a continuance of the hearing which OLCRAH granted.

On ██████████, 2017, OLCRAH issued a notice scheduling the administrative hearing for ██████████ 2017.

On ██████████, 2017, in accordance with sections 17b-60, 17-61 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 for [REDACTED] (daughter of [REDACTED])
 [REDACTED] a, Appellant's brother (son of [REDACTED])
 [REDACTED], Appellant's daughter (granddaughter of [REDACTED])
 [REDACTED], Appellant's family friend
 [REDACTED], Appellant's attorney ([REDACTED])
 Jessica Gomez, Department's Representative
 Michelle Masicotte, Department's Representative
 Almelinda McLeod, Hearing Officer

The hearing record remained open for the submission of additional evidence. On [REDACTED] 2017 the hearing record was closed.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly imposed a Transfer of Assets ("TOA") penalty on the Appellant's application for Long Term Care Medicaid.

FINDINGS OF FACT

1. The Appellant is [REDACTED] years old, DOB- [REDACTED] and resided at [REDACTED] [REDACTED] (Exhibit 1, W-1LTC application).
2. On [REDACTED], 2013, the Appellant was diagnosed with Dementia. (Exhibit 8, Medical records)
3. On [REDACTED] 2004, [REDACTED] and [REDACTED] were appointed as the Appellants Durable General Power of Attorney ("POA"). (Exhibit V, Durable power of attorney court document)
4. The Appellant's daughter, [REDACTED], resides at [REDACTED] [REDACTED]. She purchased this home in 1981 and is the registered owner. (Appellant's testimony)
5. [REDACTED] is next door to [REDACTED] [REDACTED] (Appellant's testimony)
6. On [REDACTED] 2010, the Appellant's POA testified she moved in with the Appellant to [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] (Appellant's testimony)
7. The Department, through various resources [Ascend, Medical documents, Driver's license, Employer and Bank statements] verified the Appellant's

- POA/daughter resides at [REDACTED].
(Department's testimony)
8. The Department requested verification but was unable to verify that the Appellant's POA/ daughter changed her address to [REDACTED] [REDACTED] (Department's testimony)
 9. The Appellant did not change her address to [REDACTED] [REDACTED] with her employer, the post office or the DMV because she felt that the move would be temporary and her house was just next door; there was no problem going over to get her mail. (Appellant's testimony)
 10. The Appellant currently works fulltime at the [REDACTED] as a Director of Marketing and Employment services. She has been employed with the [REDACTED] [REDACTED] since [REDACTED] [REDACTED], 1978 and has taken on more responsibilities over the years. (Exhibit T, [REDACTED] letter)
 11. The Appellant's POA provided care to the Appellant since 2010. The services the Appellant's POA provided for the Appellant were performed prior to 7:30 am and after 4:30 pm in the morning Monday through Fridays and 48 hours on the weekends. The services she provided were getting her up in the morning, toileting, dressing, making her breakfast and lunch, laundry, grocery shopping, picking up supplies, cleaning her home and all of the Appellant's finances. (Exhibit 7 and S, Affidavit of [REDACTED])
 12. When the Appellant's POA was working, the Appellant's needs were met through the Home Health services of EDDY from [REDACTED] 2014 to [REDACTED] 2015 for a total of \$1607.00 and from Home Health Services from [REDACTED], 2010 to [REDACTED] 2014, for a total of \$8785.00. (Exhibit 9, Aide print- out.)
 13. All of the expenses associated with the home health services were paid for from the Appellant's funds. (Appellant testimony)
 14. On [REDACTED], 2016, the Appellant entered into Noble Horizons, [REDACTED] CT. (Exhibit 2, ASCEND print out)
 15. On [REDACTED] 2016, the Appellant's POA, through the law offices of [REDACTED] as Authorized Representative, applied for Long term Care Medicaid assistance for the Appellant. (Exhibit 1, W1-LTC application)
 16. The Appellant is a recipient of Social Security in the amount of \$1044.90 per month. The Appellant has Medicare part A and Part B as of [REDACTED] 1992. (Exhibit 1, W-1 LTC application)

17. The W1-LTC application indicated that within the last 5 years, there was a transfer of Assets from the Appellant to the Appellant's POA/ daughter. (Page 11 of Exhibit 1)
18. On [REDACTED], 2016, a total of \$60,445.59 was withdrawn from First Niagara account xxxx[REDACTED] and transferred to [REDACTED]. (Exhibit 10, Exhibit 1, W-1LTC application, Exhibit W-495 A)
19. On [REDACTED], 2016, \$40,492.69 from Transamerica Life Insurance policy # [REDACTED] was transferred to [REDACTED] (Exhibit 1, W-1LTC application & Exhibit 13, W-495A.)
20. On [REDACTED] 2016, [REDACTED] valued at \$195,000 was transferred to [REDACTED] (Exhibit 1, W-1LTC application, Exhibit 13, W-495 A)
21. On [REDACTED], 2016, the Department issued a Preliminary Decision Notice indicating that transfer of property located at [REDACTED] [REDACTED] was made in order to be eligible for assistance. (Exhibit 13, W-495A)
22. On [REDACTED], 2016, the Department issued a Preliminary Decision Notice indicating that the transfer of the Transamerica Life Insurance policy # [REDACTED] in the amount of \$40,442.69 was made in order to become eligible for assistance. (Exhibit 13, W-495A)
23. On [REDACTED] 2016, the Department issued a Preliminary Decision Notice indicating that the transfer of the First Niagara account xxxxxxxx[REDACTED] in the amount of \$60,445.59 was made in order to become eligible for assistance. (Exhibit 13, W-495A)
24. On [REDACTED] 2016, the Appellant through her attorneys responded to the Preliminary decision stating the transfer were for other valuable consideration and provided affidavits from [REDACTED] [REDACTED], family members and friends indicating [REDACTED] moved in sometime in 2010. The care provided by [REDACTED] avoided the cost of skilled nursing facility. (Exhibit 12, Letter from [REDACTED])
25. On [REDACTED], 2016, the Department issued a W-495 C Transfer of Assets, Final Decision Notice form. The form states the Appellant is eligible for Medicaid effective [REDACTED] 2016, a penalty period will begin [REDACTED] 2016 and continue until [REDACTED] 2018. During the penalty period, Medicaid will not pay for any long term care services. (Exhibit 13, W-495C)

26. On [REDACTED], 2016, the Department imposed a penalty of \$295,888.28 consisting of \$60,445.59 from the First Niagara bank account # [REDACTED] and \$40,442.69 from the Transamerica Life Insurance policy and \$195,000 from the real property located at [REDACTED] due to transfers from the Appellant to her daughter, [REDACTED]. (Exhibit 13, W-495C)

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 the Title XIX, entitled "Grants to States for Medical Assistance Programs", contained in the Social Security Amendments of 1965.
3. Section 17b-261 a (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 § 3029.10 (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 § 3029.10 (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. UPM § 3029.20 A. provides 1. Other valuable consideration may be received either prior to or subsequent to the transfer. 2. The value of the other valuable consideration, computed as described in 3029.20 A. 3,

- must be equal to or greater than the value of the transferred asset in order for the asset to be transferred without penalty. 3. The value of the other valuable consideration, as described in 3029.20B, is equal to the average monthly cost to a private patient for long term care services in Connecticut, multiplied by the number of months the transferee avoided the need for the transferor to be institutionalized.
7. UPM § 3029.20 B. provides for the criteria for other valuable consideration. 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 A. provides an individual or his or her spouse may transfer his or her home without penalty to his or her:
 - a. spouse; or
 - b. child under age 21; or
 - c. child of any age if the child is considered to be blind or disabled under criteria for SSI eligibility ; or
 - d. sibling, if the sibling:
 - (1) has an equity interest in the home; and
 - (2) was residing there for a period of at least one year before the date the individual is institutionalized ; or
 - e. son or daughter, other than one described in 3029.10 A. 1. B. and 3029.10 A. 1 c, who:
 - (1) was residing in the home for a period of at least two years immediately before the date the individual is institutionalized ; and
 - (2) provided care to the individual which avoided the need of institutionalizing him or her during those two years.
 9. The Appellant and her representatives did not provide clear and convincing evidence that the services provided to the Appellant by the home health services was paid for by [REDACTED], the transferee.
 10. The Appellant and her representatives did not provide clear and convincing evidence that [REDACTED] resided at the Appellant's address located at [REDACTED]
 11. The Appellant and her representatives did not provide clear and convincing evidence that the transfer was made exclusively for a purpose other than to qualify for assistance.
 12. UPM 3029.15 (B) provides that an institutionalized individual or the individual's spouse is considered to have transferred an asset exclusively for a purpose other than qualifying for assistance under circumstances which include, but are not limited to , the following: 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.

13. UPM 3029.15 D provides that the Department considers a transfer to be made for purposes other than to qualify when: 1. The institutionalized individual would have been eligible if the transferor had retained the assets; 2. and the transferred asset was not the institutionalized individual's or spouses home; and 3. The transferred asset was not the proceeds of a home equity loan, reverse mortgage or similar instrument that reduces the institutionalized individual's or the spouse's equity in his or her home.
14. The Department correctly determined that the Appellant did not meet her foreseeable needs because at the time of the transfers the Appellant did not retain enough assets to cover her basic living expenses and medical costs.
15. The Appellant and her representatives did not establish with clear and convincing evidence that she transferred \$295,888.28 for a purpose other than qualifying for assistance.
16. UPM 3029.05 (F) provides 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.
17. 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 described in 3029.05 (C) by the average monthly cost to a private patient for LTCF services in Connecticut.
18. UPM 3029.05 (E) (2) provides that the penalty period begins as the later of the following dates: the date on which the individual is eligible for Medicaid under Connecticut 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.
19. UPM 3029.30-P (4) pertains to the Calculating and Imposing the Penalty Period and provides to divide the remainder by the average monthly cost

of care to a private patient in a LTCF. This figure is \$12,388.00 on or after [REDACTED]/16.

20. The Department correctly determined the penalty period as 23.89 months from [REDACTED], 2016 (date of LTSS eligibility) and ending on [REDACTED] 2018. (\$295,888.28 / \$12388.00 average cost of care = 23.89 months.)

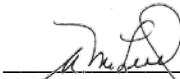
DISCUSSION

After reviewing the evidence and testimony presented at this hearing, the Department was correct to impose a transfer of assets penalty.

The Appellant's daughter/ POA testified she was trying to fulfill her promise to the Appellant that she would not be placed in a nursing home. Though I have no doubt, that the Appellant's daughter provided services for the Appellant during her available time prior to her work, after work and on the weekends, there was no clear and convincing evidence to support that [REDACTED] resided at [REDACTED] [REDACTED] for two years prior to the Appellant's institutionalization. All documentary evidence showed she resided in her home located at [REDACTED] situated right next door to the Appellant. Without documentary evidence she resided at the Appellant's address two years prior to institutionalization, I find no clear and convincing evidence that the transfers were made for any other purpose than to qualify the Appellant for Medicaid. The Department is upheld.

DECISION

The Appellant's appeal is DENIED.



 Almelinda McLeod
 Hearing Officer

CC: Cathy Robinson Patton, DSS, Deputy Director
 Tricia Morelli, SSPM , Torrington Regional Office
 Jessica Gomez, LTSS , Fair Hearing Liaison, Bridgeport Regional Office
 Michelle Masicotte, LTSS, Fair Hearing Liaison, Bridgeport Regional Office
 Atty. [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 Legal Counsel, Regulations, and Administrative Hearings, 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 his 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.