

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

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

Client ID # ██████████
Request # 803412

NOTICE OF DECISION

PARTY

██████████
For ██████████
██████████
████████████████████

PROCEDURAL BACKGROUND

On ██████████, 2016, the Department of Social Services (the “Department”) sent ██████████ (the “Appellant”) a notice that she had transferred \$19,680.00 to become eligible for Medicaid and the Department was imposing a penalty period of ineligibility for Medicaid payment of long term care services effective ██████████ 2016 through ██████████, 2016.

On ██████████, 2016, the Appellant, through her son and Power of Attorney ██████████ (“POA”) requested an administrative hearing to contest the Department’s penalty determination.

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

On ██████████ 2017, the POA requested a continuance of the administrative hearing, which OLCRAH granted.

On ██████████ 2017, the 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:

██████████, Power of Attorney for ██████████
██████████, Witness for the Appellant and Spouse of POA
Michael Briggs, Department Representative
Lindsey Meyer, Department Representative
Jennifer Bucci, Department Representative
Almelinda McCloud, Fair Hearing Officer, Observer
Lisa Nyren, Fair Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly determined: 1) the Appellant transferred \$19,680.00 to become eligible for Medicaid; and 2) the \$19,680.00 transfer subjected the Appellant to a penalty period of ineligibility for Medicaid payment of long-term care services.

FINDINGS OF FACT

1. On ██████████ 2005, the Appellant appointed her sons ██████████ (“POA”) and ██████████ as Power of Attorney. Each agent may act separately under the Enhance Power of Attorney agreement. (Exhibit 8: Enhanced Power of Attorney)
2. In ██████████ at the age of eighty-five (85), the Appellant was diagnosed with dementia. (POA’s Testimony)
3. The Appellant lived alone in a condominium located thirty (30) minutes from the POA’s home address. (POA’s Testimony)
4. Beginning in 2005, the POA managed the Appellant’s financial affairs that included paying bills and writing checks on behalf of the Appellant. The POA completed condominium maintenance and repair work as needed for the Appellant. (POA’s Testimony)
5. ██████████, the POA’s spouse, grocery shopped for the Appellant. (Witness’ Testimony)
6. Family members provided transportation to the Appellant for medical appointments. (POA’s Testimony)
7. In 2009, the Appellant fell and broke her hip resulting in hospitalization and a rehabilitation stay. (POA’s Testimony)

8. In 2009, the Appellant hired a live-in aide. The live-in aide assisted the Appellant with her activities of daily living such as mobility, bathing, toileting and meal preparation. In addition, the live-in aide provided housekeeping services and companionship. (POA's Testimony)
9. On [REDACTED] 2014, the Department of Veterans Affairs ("VA") appointed the POA as custodian for the Appellant and managed the Appellant's monthly VA benefit. (Exhibit D: VA Letter)
10. By [REDACTED] 2016, the Appellant's dementia progressed to include dangerous outbursts by the Appellant and hospitalization for a wrist injury. (POA's Testimony)
11. On [REDACTED], 2016, the Appellant entered Sharon Health Care Center (the "facility"), a skilled nursing facility. (Exhibit 1: W-1LTC Application)
12. On [REDACTED] 2016, the Department received an application for Medicaid for long-term care from the POA on behalf of the Appellant. (Exhibit 1: W-1LTC Application)
13. On [REDACTED] 2002, the Appellant opened a Savings Certificate [REDACTED] ([REDACTED] with Putnam County Savings Bank ("PCSB") in trust for her two grandchildren: [REDACTED] and [REDACTED] with an opening balance of \$3,000.00. (Exhibit 4: PCSB Savings Certificate)
14. As of the administrative hearing [REDACTED] is age 27 years. (POA's Testimony and Witness Testimony)
15. As of the administrative hearing [REDACTED] is age 24 years. (POA's Testimony and Witness Testimony)
16. As of [REDACTED], the balance in [REDACTED] was \$9,565.41. (Exhibit 4: PCSB Savings Certificate)
17. On [REDACTED] 2016, the POA made two withdrawals from [REDACTED] for \$9,561.87 and \$3.54 and closed [REDACTED] (Exhibit 4: PCSB Savings Certificate and Exhibit 5: Bank Check [REDACTED])
18. On [REDACTED] 2010, the Appellant opened a Savings Certificate [REDACTED] [REDACTED] with PCSB in trust for her two grandchildren: [REDACTED] [REDACTED] and [REDACTED] with an opening balance of \$9,056.10. (Exhibit 4: PCSB Savings Certificate)
19. As of the administrative hearing [REDACTED] is age 30 years. (POA's Testimony and Witness' Testimony)

20. As of the administrative hearing [REDACTED] is age 27 years. (POA's Testimony and Witness Testimony)
21. As of [REDACTED] 2016, the balance in [REDACTED] was \$9,562.69. (Exhibit 4: PCSB Savings Certificate)
22. On [REDACTED] 2016, the POA made two withdrawals from [REDACTED] for \$9,559.15 and \$3.54 and closed [REDACTED]. (Exhibit 4: PCSB Savings Certificate and Exhibit 5: Bank Check [REDACTED])
23. On [REDACTED] 2016, PCSB issued bank check [REDACTED] ("bank check") to the Appellant for \$19,121.02 for funds withdrawn from [REDACTED] and [REDACTED]. (Exhibit 5: Bank Check [REDACTED] and POA's Testimony)
24. The POA deposited the bank check to joint checking account [REDACTED] with M & T Bank ("MTB [REDACTED]") held by the POA and the Appellant. (Exhibit 4: PCSB Savings Certificate, Exhibit 5: Bank Check [REDACTED], and Exhibit 6: MTB [REDACTED])
25. The POA argued accounts [REDACTED] and [REDACTED] belonged to the Appellant's grandchildren, [REDACTED], and [REDACTED] respectively. (POA's Testimony)
26. On [REDACTED] 2016, the POA issued the Appellant an invoice for accounting and fiduciary services for the period [REDACTED] 2008 through [REDACTED] 2016 for \$19,680.00. The invoice lists 96 months x 3 hours per month x \$60.00 per hour = \$17,280.00. The invoice lists preparation of support documentation for the facility and Medicaid application as \$2,400.00 (32 hours x \$60.00 per hour = \$2,400.00). \$17,280.00 cost of monthly services + \$2,400.00 cost of Medicaid application = \$19,680.00. Accounting services include receiving weekly mail, managing banking accounts, and payment of household bills. Fiduciary services include management of custodial fiduciary account, disbursement of funds from U.S. Treasury Veterans Administration, filing reports, and completing annual audits. (Exhibit 7: Invoice)
27. On [REDACTED] 2016, the POA issued check [REDACTED] in the amount of \$19,680.00 from MTB [REDACTED] to himself listing accounting and fiduciary services under the memo section of the check. (Exhibit 6: MTB [REDACTED] and Exhibit 7: Invoice)
28. On [REDACTED], 2016, the POA accepted check [REDACTED] as payment for accounting services and fiduciary services provided to the Appellant for the period [REDACTED] 2008 through [REDACTED] 2016. (Exhibit 6: MTB [REDACTED], Exhibit 7: Invoice, and POA's Testimony)

29. On [REDACTED] 2016, the Appellant died at the nursing facility. (Hearing Record)
30. The Department determined the Appellant asset eligible for Medicaid effective [REDACTED] 2016 without eligibility for room and board under the LTC program due to the imposition of a \$19,680.00 transfer of asset penalty starting [REDACTED] 2016 and ending [REDACTED] 2016. (Hearing Record)
31. On [REDACTED] 2016, the Department mailed a notice, Form W495A Transfer of Assets Preliminary Decision Notice to the POA on behalf of the Appellant regarding the transfer of assets. The notice stated that the Department initially determined that the Appellant transferred \$19,680.00 on [REDACTED] 2016 for the purpose of qualifying for Medicaid because proof has not been provided to the Department confirming transfer was not to become eligible for Medicaid. (Exhibit 9: W495A Transfer of Assets Preliminary Decision Notice)
32. On [REDACTED] 2016, the POA filed a rebuttal response to the [REDACTED] 2016 notice on behalf of the Appellant. The POA argued that the transfer was payment made for accounting and fiduciary services provided by the POA as outlined in the invoice previously submitted. The POA argued as trustee of the Appellant's Irrevocable Trust, the trustee is permitted reasonable expenses of the administration of the Appellant's estate. The POA argues as the appointed fiduciary by the US Department of Veteran's Affairs ("VA"), he is permitted to manage the monthly distribution of VA funds on behalf of the Appellant. The Appellant writes, "I had elected to defer payment for these services to a later date rather than on an annual basis." (Exhibit A: Email [REDACTED]/16)
33. On [REDACTED] 2016, the Department mailed a notice, Form W-495B Transfer of Assets Notice of Response to Rebuttal to the POA on behalf of the Appellant that the Department disagrees with the rebuttal response submitted by the POA. The Department determination of the transfer of \$19,680.00 on [REDACTED] 2016 to qualify for Medicaid remains and the Department will set up a penalty period for 1.5 months. (Exhibit 10: W-495B Transfer of Assets Notice of Response to Rebuttal)
34. On [REDACTED] 2016, the Department mailed notice W495C Transfer of Assets Final Decision Notice to the POA on behalf of the Appellant regarding an improper transfer of assets totaling \$19,680.00 on [REDACTED] 2016 for the purpose of qualifying for Medicaid. The Department will impose a penalty period of 1.5 months, beginning [REDACTED] 2016 through [REDACTED], 2016 in which the Appellant will remain ineligible for LTC benefits under Medicaid during the penalty period. (Exhibit 11: W495C Transfer of Asset Final Decision Notice)

35. On [REDACTED] 2016, the Department granted the Appellant Medicaid effective [REDACTED] 2016 with a penalty period beginning [REDACTED] 2016 and ending on [REDACTED] 2016 under the LTC program. (Exhibit 3: Notice of Action [REDACTED]/16, Exhibit 11: W-495C Transfer of Asset Final Decision Notice)

CONCLUSIONS OF LAW

1. Section 17b-2(6) of the Connecticut General Statutes provides that the Department of Social Services is designated as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Statute provides that the Department of Social Services shall be the sole agency to determine eligibility for assistance and services under programs operated and administered by said department. [Conn. Gen. Stat. § 17b-261b(a)]
3. Section 17b-261(a) of the Supplement to the Supplement of the Connecticut General Statute provides that Medical assistance shall be provided for any otherwise eligible person whose income, including any available support from legally liable relatives and the income of the person's spouse or dependent child, is not more than one hundred forty-three per cent, pending approval of a federal waiver applied for pursuant to subsection (e) of this section, of the benefit amount paid to a person with no income under the temporary family assistance program in the appropriate region of residence and if such person is an institutionalized individual as defined in Section 1917 of the Social Security Act, 42 USC 1396p(h)(3), and has not made an assignment or transfer or other disposition of property for less than fair market value for the purpose of establishing eligibility for benefits or assistance under this section. Any such disposition shall be treated in accordance with Section 1917(c) of the Social Security Act, 42 USC 1396p(c). Any disposition of property made on behalf of an applicant or recipient or the spouse of an applicant or recipient by a guardian, conservator, 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, recipient or spouse. A disposition of property ordered by a court shall be evaluated in accordance with the standards applied to any other such disposition for the purpose of determining eligibility. The commissioner shall establish the standards for eligibility for medical assistance at one hundred forty-three per cent of the benefit amount paid to a household of equal size with no income under the temporary family assistance program in the appropriate

region of residence. In determining eligibility, the commissioner shall not consider as income Aid and Attendance pension benefits granted to a veteran, as defined in section 27-103, or the surviving spouse of such veteran. Except as provided in section 17b-277 and section 17b-292, the medical assistance program shall provide coverage to persons under the age of nineteen with household income up to one hundred ninety-six per cent of the federal poverty level without an asset limit and to persons under the age of nineteen, who qualify for coverage under Section 1931 of the Social Security Act, with household income not exceeding one hundred ninety-six per cent of the federal poverty level without an asset limit, and their parents and needy caretaker relatives, who qualify for coverage under Section 1931 of the Social Security Act, with household income not exceeding one hundred fifty per cent of the federal poverty level without an asset limit. Such levels shall be based on the regional differences in such benefit amount, if applicable, unless such levels based on regional differences are not in conformance with federal law. Any income in excess of the applicable amounts shall be applied as may be required by said federal law, and assistance shall be granted for the balance of the cost of authorized medical assistance. The Commissioner of Social Services shall provide applicants for assistance under this section, at the time of application, with a written statement advising them of (1) the effect of an assignment or transfer or other disposition of property on eligibility for benefits or assistance, (2) the effect that having income that exceeds the limits prescribed in this subsection will have with respect to program eligibility, and (3) the availability of, and eligibility for, services provided by the Nurturing Families Network established pursuant to section 17b-751b. For coverage dates on or after January 1, 2014, the department shall use the modified adjusted gross income financial eligibility rules set forth in Section 1902(e)(14) of the Social Security Act and the implementing regulations to determine eligibility for HUSKY A, HUSKY B and HUSKY D applicants, as defined in section 17b-290. Persons who are determined ineligible for assistance pursuant to this section shall be provided a written statement notifying such persons of their ineligibility and advising such persons of their potential eligibility for one of the other insurance affordability programs as defined in 42 CFR 435.4.

4. Statute 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. [Conn. Gen. Stat. § 17b-261a(a)]

5. Statute provides that any transfer or assignment of assets resulting in the establishment or imposition of a penalty period shall create a debt, as defined in section 36b-645, that shall be due and owing by the transferor or transferee to the Department of Social Services in an amount equal to the amount of the medical assistance provided to or on behalf of the transferor on or after the date of the transfer of assets, but said amount shall not exceed the fair market value of the assets at the time of transfer. The Commissioner of Social Services, the Commissioner of Administrative Services and the Attorney General shall have the power or authority to seek administrative, legal or equitable relief as provided by other statutes or by common law. [Conn. Gen. Stat. § 17b-261a(b)]
6. Uniform Policy Manual (“UPM”) § 3029 provides for the technical eligibility requirement in the Medicaid program pertaining to the transfer of an asset for less than fair market value. The policy material in this chapter pertains to transfers that occur on or after February 8, 2006.
7. UPM § 3029.03 provides that the Department uses the policy contained in this chapter to evaluate assets transfers, including the establishment of certain trusts and annuities, if the transfer occurred, or the trust or annuity was established, on or after February 8, 2006.
8. 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.

UPM §3029.05(D)(2) provides that in the case of an asset that the individual holds in common with another person or persons in joint tenancy, tenancy in common or similar arrangement, the Department considers the asset (or affected portion of such asset) to have been transferred by the individual when the individual or any other person takes an action to reduce or eliminate the individual’s ownership or control of the asset.
9. 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 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.
10. UPM § 3029.05(B)(1) provides that the policy contained in this chapter pertains to institutionalized individuals and to their spouses.

- UPM§ 3029.25(B)(2) provides that an individual is considered institutionalized if he or she is receiving:
- a. LTCF services; or
 - b. Services provided by a medical institution which are equivalent to those provided in a long-term care facility; or
 - c. Home and community-based services under a Medicaid waiver (cross references: 2540.64 and 2540.92)
11. UPM § 3029.05(C) provides that the look-back date for transfers of assets is a date that is 60 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.
12. UPM § 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.
13. Statute provides that for the purposes of determining eligibility for the Medicaid program, an available asset is one that is actually available to the applicant or one that the applicant has the legal right, authority or power to obtain or to have applied for the applicant's general or medical support. If the terms of a trust provide for the support of an applicant, the refusal of a trustee to make a distribution from the trust does not render the trust an unavailable asset. Notwithstanding the provisions of this subsection, the availability of funds in a trust or similar instrument funded in whole or in part by the applicant or the applicant's spouse shall be determined pursuant to the Omnibus Budget Reconciliation Act of 1993, 42 USC 1396p. The provisions of this subsection shall not apply to a special needs trust, as defined in 42 USC 1396p(d)(4)(A). For purposes of determining whether a beneficiary under a special needs trust, who has not received a disability determination from the Social Security Administration, is disabled, as defined in 42 USC 1382c(a)(3), the Commissioner of Social Services, or the commissioner's designee, shall independently make such determination. The commissioner shall not require such beneficiary to apply for Social Security disability benefits or obtain a disability determination from the Social Security Administration for purposes of determining whether the beneficiary is disabled. [Conn. Gen. Stats. § 17b-261(c)]
14. UPM § 4010.05(A)(1) provides that if the assistance unit is the record owner of an asset, the unit is considered the legal owner unless it establishes otherwise, with clear and convincing evidence.

UPM § 4000.01 provides that the legal owner of an asset is the person who is legally entitled to enjoy the benefit and use of the asset.

UPM § 4005.05(B)(2) provides that under all programs except Food Stamps, the Department considers an asset available when actually available to the individual or when the individual has the legal right, authority or power to obtain the asset, or to have it applied for, his or her general or medical support.

15. UPM § 4030.05(A)(8) provides that bank accounts include the following. This list is not all inclusive. Trustee Account.
16. The Department correctly determined the Appellant as legal owner of [REDACTED] and [REDACTED] do not own [REDACTED]
17. The Department correctly determined the Appellant as legal owner of [REDACTED] and [REDACTED] do not own [REDACTED]
18. 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.
19. UPM 3029.30 provides that compensation in exchange for a transferred asset is counted in determining whether fair market value was received.
 - A. Compensation which is counted
 1. When an asset is transferred, compensation is counted when it is received at the time of the transfer or any time thereafter.
 2. Compensation received prior to the time of the transfer is counted if it was received in accordance with a legally enforceable agreement.
 3. Compensation may include the return of the transferred asset to the extent described at 3029.10.
20. The POA on behalf of the Appellant failed to provide clear and convincing evidence that the reason for the transfer of \$19,680.00 on [REDACTED] 2016 was not for qualifying for assistance. The POA offered two arguments for the transfer of assets. In the first argument, the POA states the accounts belonged to the Appellant's grandchildren. However, the POA closed the accounts and did not distribute any funds to the grandchildren, rather accepting the funds himself. In the second argument, the POA states monies were payment for fiduciary and accounting services provided to the Appellant between 2008 and 2016. Documentation of such services provided by the Appellant is an invoice dated [REDACTED] 2016, 5 weeks after filing the application for LTC Medicaid, charging the Appellant for fiduciary and accounting services.

21. The Department correctly determined the Appellant transferred assets totaling \$19,680.00.
22. The Department correctly imposed a transfer of assets penalty against the Appellant due to the transfer of assets. The Appellant is subject to a transfer of asset penalty.
23. UPM § 3029.05(F)(1) provides 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).
24. 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 date described in § 3029.05(C) by the average monthly cost to a private patient for LTCF services in Connecticut.
 - a. For applicants, the average monthly cost for LTCF services is based on the figure as of the month of application.
25. UPM § P-3029.30 provides for the average cost of care as \$12,388.00
26. The Department correctly determined the penalty period as 1.58 months beginning [REDACTED] 2016 ending [REDACTED] 2016. ($\$19,680.00$ transfer / $\$12,388.00$ average cost of care = 1.58 months; 0.58×30 days = 17 days)

DECISION

The Appellant's appeal is DENIED.

Lisa A. Nyren

Lisa A. Nyren
Fair Hearing Officer

CC: Annette Lombardi, Social Services Operations Manager
Lindsey Meyer, Eligibility Services Worker
Jennifer Bucci, Eligibility Services Specialist

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.