

STATE OF CONNECTICUT  
DEPARTMENT OF SOCIAL SERVICES  
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS  
55 FARMINTON AVENUE  
HARTFORD, CT 06105-3730

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

Client ID # ██████████  
Request #811041

NOTICE OF DECISION

PARTY

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████████████████████  
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PROCEDURAL BACKGROUND

On ██████████ 2017, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA") granting Long Term Care Medicaid benefits effective ██████████ 2017.

On ██████████ 2017, the Appellant requested an administrative hearing to contest the effective date of the Long Term Care Medicaid benefits as determined by the Department.

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

On ██████████, 2017, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice rescheduling 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:

- ████████████████████, Appellant's son, Power of Attorney ("POA")
- ████████████████████ Appellant's Daughter In-law, Power of Attorney ("POA")
- Attorney ██████████, Appellant's Representative
- Jennifer Cox, Facility Business Office Manager
- Noah Cass, Department's Representative

Miklos Mencseli, Hearing Officer

The Appellant was not present.

The Appellant's Attorney requested a reconvene.

On [REDACTED] 2017, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice to reconvene the administrative hearing for [REDACTED] 2017.

The reconvene was granted to allow the Appellant's Attorney to provide additional testimony and evidence.

The following individuals appeared for the reconvene hearing:

[REDACTED], Appellant's son, Power of Attorney ("POA")

Attorney [REDACTED], Appellant's Representative

Jennifer Cox, Facility Business Office Manager

[REDACTED], CEO, [REDACTED])

Karonesa Logan, Department's Representative

Noah Cass, Department's Representative

The Appellant was not present

The hearing officer held the record open for the submission of additional evidence by the Appellant's representatives and for the Department to review the documentation. On [REDACTED], 2017, the hearing officer closed the record.

### **STATEMENT OF THE ISSUE**

The issue to be decided is whether or not the Department was correct in its determination of the effective date of the Applicant's Long Term Care Medicaid benefits.

### **FINDINGS OF FACT**

1. On [REDACTED] 2016, the Department received an application and verifications from the Appellant for Medicaid Home and Community based services (W01) assistance. (Summary, Exhibit A: Department's W-1LTC application)
2. The Appellant's spouse ([REDACTED]) also was applying for W01 assistance.
3. On [REDACTED], 2016, the Appellant entered [REDACTED] Rapid Recovery Rehab Center facility.
4. The Appellant's spouse entered [REDACTED] Rapid Recovery Rehab Center facility on [REDACTED] 2016.

5. From [REDACTED] 2016 through [REDACTED], 2016 the Department sent the Appellant's Representatives W-1348LTC Verification We Need form requesting additional verifications in order to determine eligibility. (Exhibit 2: W-1348LTC forms #1- #14)
6. The Department received the requested verifications from the Appellant's representatives.
7. The Department determined the following transfers occurred for Appellant and the Appellant's spouse:
  - [REDACTED] 11, gift to two grandchildren for education [REDACTED] - \$10,000.00 from Webster Bank [REDACTED] (Exhibit G: copy of check [REDACTED])
  - [REDACTED]-14, gift to grandchildren - \$7,700.00 from TD Bank [REDACTED] (Exhibit H: TD Bank account statement)
  - [REDACTED]-14, wired withdrawal - \$40,000.00 from Webster Bank [REDACTED] (Exhibit I: Webster Bank statement)
  - [REDACTED]-14, wired withdrawal to [REDACTED] Law Group - \$48,000.00 from Webster Bank [REDACTED] (Exhibit J: Webster Bank statement)
8. The Appellant and his spouse purchased two promissory notes from [REDACTED] on the following dates:
  - [REDACTED] 2013 for \$53,000.00 (Exhibit K)
  - [REDACTED] 2014 for \$40,000.00 (Exhibit L)

(Total amount of notes is \$93,000.00)
9. On [REDACTED] 2016, the Office of Legal Counsel determined the notes should be treated as transfers for less than fair market value, impose penalty by subtracting the payments received from [REDACTED] from the total of the two notes. (Summary)
10. The Department determined the Appellant and her spouse received \$53,810.63 in payments from [REDACTED]. The Department then calculated a penalty amount of \$39,189.37 [ $\$93,000.00$  (promissory notes) -  $\$53,810.63$  (payments received) =  $\$39,189.37$ ]. (Exhibit M: [REDACTED] deposit verifications and calculation of penalty amount)
11. On [REDACTED] 2016, the Department sent the Appellant a W-495A Transfer of Assets Preliminary Decision Notice. The Department determined that the Appellant transferred \$194,889.37 during the look back period to

determine eligibility. (Exhibit C: W-495A dated [REDACTED] 16)

12. On [REDACTED] 2016, the Department sent the Appellant a revised W-495A Transfer of Assets Preliminary Decision Notice. The Department determined that the Appellant transferred \$144,889.37 during the look back period to determine eligibility. (Exhibit D: W-495A dated [REDACTED] 16)
13. The Department determined the Appellant's portion of the penalty is \$72,444.68 [ $\$144,889.37$  (total amount of transfers) / 2 equals \$72,444.68] (Exhibit F: Transfers of Assets worksheet)
14. On [REDACTED] 2017, the Department sent the Appellant a W-495C Transfer of Assets Final Decision Notice. The notice confirmed the Department's action as stated on the W-495A notice. (Exhibit E: W-495C dated [REDACTED] 17)
15. The Department stated that a penalty period would begin on [REDACTED] 2016 and will end [REDACTED], 2017. The Department calculated the penalty by dividing the transfer penalty amount of \$72,444.68 by \$12,170.00, the average monthly cost of nursing home care in Connecticut. (Exhibit E, Exhibit F)
16. The Appellant's Attorney submitted Fair Hearing exhibits to dispute the Department's determination of the transfer of asset penalty. (Exhibit 1: 187 pages received as email on [REDACTED]-17)
17. The Appellant submitted a Note Modification Agreement for the promissory notes dated [REDACTED] 2013 and [REDACTED] 2014. (Exhibit 1)
18. The terms of the notes were modified so there is no deferral and no balloon payments and the notes prohibits the cancellation of the balance upon death of the lender. (Exhibit 1)
19. The Department determined that the modifications met the Department's policy regarding promissory notes regarding fair market value. The Department removed the notes from the transfer of assets penalty.
20. The Department determined the Appellant's portion of the penalty is \$52,850.00 [ $\$105,700.00$  (new total amount of transfers) / 2 equals \$52,850.00] (Exhibit V: Transfers of Assets worksheet)
21. The Department stated that a penalty period would begin on [REDACTED] 2016 and will end [REDACTED] 2016. The Department calculated the penalty by dividing the transfer penalty amount of \$52,850.00 by \$12,170.00, the average monthly cost of nursing home care in Connecticut. (Exhibit V)

22. The Appellant's Attorney provided a Monthly Asset Worksheet for the Appellant and her spouse from [REDACTED] 2011 through [REDACTED] 2016. (Exhibit 2: Monthly Asset Worksheet received as email on [REDACTED]-17)
23. At the time of the transfer on [REDACTED]-11, the Appellant and her spouse had \$248,495.86 in total assets. The assets included bank accounts and annuities. (Exhibit 2)
24. At the time of the transfer on [REDACTED]-14, the Appellant and her spouse had \$165,136.08 in total assets. The assets included bank accounts and annuities. (Exhibit 2)
25. The Appellant and her spouse have had medical issues since 2008 as indicated by the medical documents submitted by their representatives. (Exhibit 1)
26. The Monthly Asset Worksheet documents the Appellant and her spouse's living and medical expenses prior to their Applications. The worksheet shows the spending down of assets to pay for the expenses. (Exhibit 2)
27. The \$48,000.00 wire transfer on [REDACTED]-14 went to [REDACTED] Law Group to purchase 100,000 shares of [REDACTED] stock. (Exhibit 1, Testimony)
28. [REDACTED] is the Chief Executive Officer (CEO) of [REDACTED] Inc. (Exhibit 4 email received on [REDACTED]-17, affidavit signed by [REDACTED])
29. [REDACTED] is a member and managing partner of [REDACTED] Law Group. (Exhibit 4, affidavit)
30. The stock is in the Appellant's name. The stock certificate number is [REDACTED]. The common stock value was \$0.001 per share. (Exhibit 1, copy of stock certificate, [REDACTED] company stock ledger)
31. The Appellant still owns the stock. (Testimony)
32. The \$40,000.00 wire transfer on [REDACTED]-14 went to [REDACTED] Law Group to purchase 160,000 shares of [REDACTED] stock by the Appellant's spouse. (Exhibit 4, Testimony)
33. The 160,000 shares were purchase at 0.25 per share. (Exhibit 4, affidavit)
34. The purchase came directly from [REDACTED] block of shares. (Exhibit 4, affidavit)

35. [REDACTED] as an oversight did not contact the transfer agent, Corporate Stock Transfer to issue the shares. (Exhibit 4, affidavit)
36. The Appellant's spouse's has no proof, no stock certificate that he owns 160,000 shares of [REDACTED] stock.
37. The stock ledger has the Appellant's spouse listed at number [REDACTED] 160,000 shares, 0 for [REDACTED] certificate number, dated issued of [REDACTED]-14, zero for investment and blank for Holdings certificate #. (Exhibit 4)
38. [REDACTED] has no revenue, no cash and has not filed an annual or quarterly report with the Securities and Exchange Commission since [REDACTED] 2016. (Exhibit 1, FORM 10-Q dated [REDACTED] 2016, Exhibit 4, affidavit)
39. The FORM 10-Q shows zero revenues for the six months ending [REDACTED] 2016. (Exhibit 1, FORM 10-Q)
40. Scottrade has issued a Warning regarding [REDACTED]. in regards to buying and selling the common stock. (Exhibit 3, Scottrade printout dated [REDACTED]-17)
41. The Corporate Stock Transfer will not issue certificates as [REDACTED] has a delinquent balance. (Exhibit 3, Stock Transfer statement dated [REDACTED]-17)
42. [REDACTED] is not willing or capable of paying the Corporate Stock Transfer so certificates could be issued to the Appellant's spouse. (Exhibit 4)
43. The shares the [REDACTED] hold are restricted and cannot be sold in the open free market. (Exhibit 4)
44. The stock is restricted as [REDACTED] never filed the registration statement with the Securities and Exchange Commission. (Exhibit 4)
45. All the shareholders of [REDACTED] are holding worthless stock. (Exhibit 4)
46. The stocks were purchased as investments. The [REDACTED] were hoping for a higher rate of return on investment than other investment options. (Testimony)
47. The Appellant representatives claimed the [REDACTED] were not informed of the opportunity to claim undue hardship. (Testimony)
48. The Department's W-495A Transfer of Assets Preliminary Decision Notice dated [REDACTED]-16 and [REDACTED]-16 sent to the Appellant's list the criteria to claim undue hardship. (Exhibits C & D)

49. The Department received notices from [REDACTED] Rapid Recovery Rehab Center dated [REDACTED], 2017. The letter concerning the Appellant states the facility due to the transfer penalty will remain unpaid for care and services rendered. Attached were a billing statement, medical evaluation and affidavit. (Exhibit U)
50. On [REDACTED] 2017, [REDACTED] Rapid Recovery Rehab Center issued a amended letter for the Appellant. The letter states it intends to discontinue providing long term care services to the Appellant. (Exhibit U)
51. On [REDACTED] 2017, the Department responded to the notices. The claim of undue hardship was denied as the Department made a determination that the Appellant made transfers in order to obtain eligibility. (Exhibit U)

### **CONCLUSIONS OF LAW**

1. Sections 17b-260 to 17b-264 of the Connecticut General Statutes authorizes the Commissioner of Social Services to administer the Title XIX Medical Assistance program to provide medical assistance to eligible persons in Connecticut.
2. Section 17b-2 of the Connecticut General Statute authorizes the Commissioner of the Department of Social Services to administer the Medicaid program.
3. Section 17b-80(a) of the Connecticut General Statute states that the Department shall grant aid only if the applicant is eligible for that aid.
4. Uniform Policy Manual ("UPM") § 3029.05 provides the transfer of assets basic provisions.

#### A. General Statement

There is a period established, subject to the conditions described in this chapter, during which institutionalized individuals are not eligible for certain Medicaid services when they or their spouses dispose of assets for less than fair market value on or after the look-back date specified in 3029.05 C. This period is called the penalty period, or period of ineligibility.

#### B. Individuals Affected

1. The policy contained in this chapter pertains to institutionalized individuals and to their spouses.
2. 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).
5. UPM § 3029.05 (C) (1)(2) 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: the individual is institutionalized and the individual is either applying for or receiving Medicaid.
6. The Department correctly determined that the transfers on ■■■-11, ■■■-14, ■■■-14 and ■■■-14 occurred within the 60 month look back period.
7. UPM § 3029.05 D (1) (2) provides 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. 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.
8. The Department correctly determined that the \$105,700.00 in transfers are within the look back period and subject for review.
9. Section 17b-261a(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.
10. 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.
11. The transfers made on ■■■-11 for \$10,000.00 and ■■■-14 for \$7,700.00 were not made for the purpose of qualifying for assistance. The Appellant and her spouse had sufficient funds to remain in the community.



12. The Department is incorrect in counting the \$17,700.00 (\$10,000.00 + \$7,700.00) as a transfer of asset penalty.
13. UPM § 3029.10(F) provides for transferor intended to transfer at fair market value. An institutionalized individual or his or her spouse may transfer an asset without penalty if the individual demonstrates with clear and convincing evidence that he or she intended to dispose of the asset at fair market value.
14. UPM § 3029.10(G) provides for transfer made for other valuable consideration. 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.
15. UPM §3025.15 provides for Transfer Not for the Purpose of Qualifying
  - A. Fair Market Value Received

If fair market value is received, the transfer of the asset is not considered to be for the purpose of establishing or maintaining eligibility.
  - B. Assets Within Limits

If the total of the uncompensated fair market value of a transferred asset plus all other countable assets does not exceed program limits, the transfer of the asset is not considered to be for the purpose of establishing or maintaining eligibility. In the case of multiple transfers involving one asset, this includes the total uncompensated value of all transfers.
  - C. Transfer for Another Purpose

If there is convincing evidence that the transfer is exclusively for another purpose, the transfer of the asset is not considered to be for the purpose of establishing or maintaining eligibility.
16. UPM § 3029.30(B)(1) provides that each form of compensation is assigned a dollar value to compare with the fair market value of the transferred asset. In determining the dollar value of services rendered directly by the transferee, the Department uses the following amounts; (a) for all services of the type normally rendered by a homemaker or home health aid, the current state minimum hourly wage for such services; (b) for all other types of services, the actual cost.
17. The Department incorrectly determined the Appellant did not receive fair market value for the \$48,000.00 used to purchase 100,000 shares of █████ on █████-14.

18. The Appellant has retained the shares as evident by the stock certificate provided.
19. The 100,000 shares are countable assets in determining eligibility and are to be reviewed at each redetermination.
19. The Department is correct to determine the \$40,000.00 is a transfer.
20. The Appellant's spouse has no stock certificate to verify his purchase of 160,000 shares of [REDACTED] stock. The company's stock ledger lists the Appellant but has zero as his investment.
21. The Appellant's spouse has no documentation that he received fair market value for the \$40,000.00.
21. Based on the transfer of \$40,000.00, the Appellant is subject to a Transfer of Asset penalty.
22. Section 17b-261o(c) of the Connecticut General Statutes provides that the commissioner shall impose a penalty period pursuant to subsection (a) of section 17b-261 or subsection (a) of section 17b-261a if the transfer or assignment of assets was made by the Applicant's legal representative or joint owner of the asset.
23. UPM § 3029.05 provides that there is a period established, subject to the conditions described in this chapter, during which institutionalized individuals are not eligible for certain Medicaid services when they or their spouses dispose of assets for less than fair market value on or after the look-back date specified in 3029.05 C. This period is called the penalty period, or period of ineligibility.
24. 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.
25. The Department incorrectly determined the amount and start period of the Appellant's penalty period.
26. UPM § 3029.25 (B)(1)(a)(b)(2)(3) provides the conditions for undue hardship. When an individual would be in danger of losing payment for LTCF or equivalent services described at 3029.05 B solely because of the imposition of a penalty period, the Department does not impose such penalty under the following conditions: the long-term care facility or medical institution has

threatened the individual with eviction due to non-payment and the individual has exhausted all legal methods to prevent the eviction; or the medical provider has threatened to terminate home and community-based services being provided under a Medicaid waiver; and the transferor establishes that the transferee is no longer in possession of the transferred asset and the transferee has no other assets of comparable value with which to pay the cost of care; and there is no family member or other individual or organization able and willing to provide care to the individual.

27. The Appellant does not meet the criteria for undue hardship:

1. The facility did not issue an eviction notice due to non-payment.
2. The amended letter states it intends to discontinue providing medical services. The Appellant is in a facility and not receiving home and community-based services being provided under a Medicaid waiver.

### DISCUSSION

The Department is to count the 100,000 shares purchased by the Appellant as a countable asset. The \$40,000.00 is to be considered a transfer. The Appellant Spouse has no stock certificate and the company ledger does not show the \$40,000.00. It shows zero under investments. If the ledger is a record of the transaction as stated on the hearing record and by affidavit, why is the \$40,000.00 not listed by the Appellant's Spouse name on the ledger? The Appellant's purchase of 100,000 shares which occurred after the Appellant's Spouse purchase is listed with the \$48,000.00 under investment. The Appellant o has stock certificates. It did not occur to anyone to question why no certificates were issued for the Appellant's Spouse when the certificates for the Appellant were received.

### DECISION

The Appellant's appeal is **Granted**.

### ORDER

1. The Department shall remove the \$65,700.00 as a transfer of asset penalty.
2. The Department shall calculate a penalty period based on the transfer of assets of \$40,000.00( $\$40,000.00 / 2 = \$20,000.00$  for each spouse) effective for [REDACTED] 2016.
3. The Department shall send the Appellant's representatives a revised W-495C transfer of assets final decision notice.
4. Compliance shall be shown by submission of verification of the Department's compliance with this decision and is due by [REDACTED] 2017.



Miklos Mencseli  
Hearing Officer

C: Musa Mohamud, Operations Manager, DSS R.O. #10 Hartford



### **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.