

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

██████████ 2019
SIGNATURE CONFIRMATION

CLIENT ID #: ██████████
HEARING ID #: ██████████

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████, 2018, the Department of Social Services (the “Department”) sent ██████████ ██████████ (the “Appellant”) a Notice of Transfer of Assets imposing a penalty for the period from ██████████ 2017, through ██████████ 2019.

On ██████████, 2018, ██████████, Power of Attorney (“POA”) for the Appellant, requested an administrative hearing to contest the Department’s decision to impose a penalty on the Applicant’s Long Term Care Medicaid benefits.

On ██████████ 2018, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████, 2018.

On ██████████, 2018, ██████████ ██████████ ██████████ (the “Attorney”) requested to reschedule the administrative hearing.

On ██████████, 2018, the OLCRAH issued a notice scheduling the administrative hearing for ██████████ 2018.

On ██████████ 2018, the Attorney requested to reschedule the administrative hearing.

On ██████████, 2018, the OLCRAH issued a notice scheduling the administrative hearing for ██████████ 2018.

On ██████████, 2018, the Attorney requested to reschedule the administrative hearing.

On [REDACTED], 2018, the OLCRAH issued a notice scheduling the administrative hearing for [REDACTED] 2018.

On [REDACTED], 2018, 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 POA
[REDACTED], former Attorney for Appellant
[REDACTED], Attorney for Appellant
Marilyn Phillips, Eligibility Services Worker, Department's Representative
Roberta Gould, Hearing Officer

At the request of the Attorney the hearing record remained open for the submission of additional evidence. The hearing record closed on [REDACTED] 2018.

STATEMENT OF THE ISSUE

The issue is whether the Department correctly determined an effective date of Medicaid based on a Transfer of Assets ("TOA") penalty.

FINDINGS OF FACT

1. The Appellant is 66 years old. (Hearing record)
2. The Appellant has been diagnosed with Multiple Sclerosis, severe facial pain, memory issues and depression. (Exhibit 6: Personal & Financial services agreement, Testimony of Atty [REDACTED] and testimony of [REDACTED] [REDACTED])
3. On [REDACTED] 2005, the Appellant purchased group Long-Term Care insurance for herself. (Exhibit 8: LTC insurance policy)
4. On [REDACTED] 2011, the Appellant was admitted to [REDACTED] [REDACTED] (Exhibit 5: Discharge/Transfer notice and Hearing summary)
5. On [REDACTED] 2012, the Appellant was divorced from her husband. (Exhibit 1: W-1 LTC application)
6. On [REDACTED], 2012, the Appellant appointed [REDACTED] as her Durable Power of Attorney. (Attorney's Exhibit 1)
7. On [REDACTED], 2012, the Appellant signed a Personal and Financial Services Agreement with her POA that specified financial management services, patient advocacy services, medication management, shopping for personal items, transportation services and long-term care oversight for the remainder of the Appellant's life. The Agreement stipulated that compensation for services provided

to the Appellant would be at \$30.00 per hour and that the POA would, at times, operate as an independent contractor, delegating responsibilities to others to obtain services for the Appellant. (Exhibit 6 and Hearing summary)

8. On [REDACTED] 2012, the Appellant's POA set up a Special Needs Trust for the benefit of the Appellant with the POA's funds of \$53,760.59, with provisions for the Appellant's care in the event of her POA's inability to provide as her Trustee. (Exhibit 7: Supplemental needs trust dated [REDACTED]/2012 and Hearing summary)
9. From [REDACTED] through [REDACTED], the Appellant privately paid for the balance of her LTC care services after her long-term care insurance policy paid for a portion of the care she received while a resident of [REDACTED]. (POA's testimony and Atty Linnea Levine's testimony)
10. From [REDACTED] of 2010, through the present, the Appellant's POA provided oversight of the Appellant's personal care services, financial planning, liquidation of the Appellant's assets, assisted with applications for Medicaid assistance, assisted with securing qualified health care professionals for the Appellant and supported the Appellant's aging parents with setting up in-home care. (Exhibit 9, [REDACTED] testimony and POA's testimony)
11. The Appellant's POA did not provide home health aide or homemaker services. She delegated those contracted services to [REDACTED] and [REDACTED], and paid them a total of \$50,650.00 for services provide to the Appellant. (Exhibit 9)
12. From [REDACTED] of 2012, through the present, [REDACTED] provided the Appellant assistance with her handicap van service, assistance with wheelchair service and repairs, and dropping off supplies not provided by the LTC facility. He was paid for these services pursuant to the Personal and Financial Services Agreement between the Appellant and her POA. (Exhibit 9 and Appellant's Exhibit 65: Affidavit of [REDACTED] dated [REDACTED]/2018)
13. On [REDACTED], 2013, the Appellant's POA issued a check in the amount of \$50,000.00 for the Appellant's [REDACTED] Insurance Policy. (Appellant's Exhibit 9: copy of check dated [REDACTED]/2013)
14. From [REDACTED] 2013, through the present, [REDACTED] provided the Appellant with medical transportation and assistance with household chores, for which she was paid pursuant to the Personal and Financial Services Agreement between the Appellant and her POA. (Exhibit 9 and Appellant's Exhibit 66: Affidavit of [REDACTED] dated [REDACTED]/2018)
15. The total amount paid to the Appellant's POA for all services provided for the Appellant during the period of [REDACTED] through [REDACTED] was \$271,960.50. (Exhibit 9 and [REDACTED] testimony)

16. From [REDACTED] to [REDACTED] the Appellant's POA reported income and paid taxes on all income received from services rendered under the Personal and Financial Services Agreement set up for the Appellant. (Exhibit 13: POA's tax returns, Exhibit 9: Legal memorandum of [REDACTED] dated [REDACTED]/2018, [REDACTED] testimony and Hearing summary)
17. The Appellant did not receive quality health care at [REDACTED]. As a result, she was suicidal and in poor health. (Exhibit 9 and POA's testimony)
18. On [REDACTED] 2017, the Appellant was transferred from [REDACTED] to [REDACTED]. (Exhibit 5 and Hearing summary)
19. On [REDACTED], 2017, the Appellant's POA applied for Long Term Care Medicaid assistance through the law office of Attorney [REDACTED] as an authorized representative. (Exhibit 1 and Hearing summary)
20. The Appellant is legally blind, is wheelchair bound, is unable to write, has impaired Activities of Daily Living ("ADL") function and is not independent with self-care due to advanced Multiple Sclerosis. (Hearing record and Hearing Officer observation)
21. On [REDACTED] 2018, the Department's Legal Division reviewed the Appellant's Personal and Financial Services Agreement and determined that it is legally sound and enforceable. (Hearing summary and Department's testimony)
22. On [REDACTED], 2018, the Department issued the Appellant a *W-495A Transfer of Assets Notice Preliminary Decision Notice* stating that the Department's initial decision regarding her transfer was that she made a transfer in the amount of \$232,202.34 during the period of [REDACTED] through [REDACTED] in order to be eligible for Medicaid assistance. The Department contends that the services provided by the Appellant's POA were either duplicative of the services provided by the LTC facility or were the type that one does out of the normal love and affection for a close friend. (Exhibit 3: W-495A and Hearing summary)
23. On [REDACTED], 2018, the Department sent the Appellant a *W-495B Notice of Response to Rebuttal/Hardship Claim* stating that the Department would set up a penalty period during which they would not pay for long-term care medical services due to the transfer totaling \$232,202.34 (\$257,761.00 paid to POA @ \$30.00/hour x 8592.033 hours - \$75,740.66 amount @ allowable minimum wage from 2013 through 2016 = \$182,020.34 + \$50,000.00 [REDACTED] Insurance policy). (Exhibit 3: W-495B and Hearing summary)
24. On [REDACTED], 2018, the Department sent the Appellant a *W-495C Transfer of Assets Final Decision Notice* stating that Medicaid is being granted with a penalty period beginning on [REDACTED] 2017, and ending on [REDACTED] 2019, due to a transfer of income in the amount of \$232,202.34 from the Appellant. (Exhibit 3 and Hearing summary)

25. There is evidence in the record to reflect that funds removed from the Appellant's bank account and ██████ Insurance policy in the amount of \$271,960.50 during the period of ██████ through ██████ were used to pay for services and care provided to the Appellant. (Hearing record)

26. The issuance of this decision is timely under Connecticut General Statutes §17b-61(a), which requires that a decision be issued within 90 days of the request for an administrative hearing. The Appellant requested an administrative hearing on ██████ 2018. Therefore, this decision is not due until ██████ 2018. However, the Appellant's attorney requested to reschedule the administrative hearing on three occasions and the close of the hearing record was further extended through ██████ 2018, to allow for the submission of additional evidence by the Appellant's attorney. Because of the delay in the close of the hearing record, this final decision was not due until ██████, 2019, and is therefore timely.

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 Title XIX, entitled "Grants to States for Medical Assistance Programs", contained in the Social Security Amendments of 1965.
3. UPM § 3029.05(C) provides that the look-back date for transfers of assets is a 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.

The Department correctly looked back 60 months prior to the Appellant's application in order to determine whether any improper asset transfers occurred.

4. 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.
5. Uniform Policy Manual ("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.

6. UPM § 1540.15(C)(1) provides that in the absence of available documentary evidence, the Department verifies information through contacts with persons who are not members of the assistance unit.
7. UPM § 1540.15(C)(2) provides that verification through collateral contacts consists of obtaining oral or written affirmations of the unit's statements from persons who are capable of providing first-hand testimony.

The Appellant's POA provided verification of the circumstances regarding the care provided for the Appellant before and during her institutionalization via affidavits from caregivers [REDACTED] and [REDACTED]

8. UPM § 3029.10(G) 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 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: 3029.20)
9. UPM § 3029.30(A)(2) provides that compensation received prior to the time of the transfer is counted if it was received in accordance with a legally enforceable agreement.

UPM § 3000.01 provides that a **legally-enforceable agreement** is a binding and credible agreement, either oral or written, wherein two or more parties agree to an arrangement in consideration of the receipt of money, property, or services and in which all parties can be reasonably expected to fulfill their parts of the agreement.

The Personal and Financial Services Agreement is a legally-enforceable agreement between the Appellant and her POA, [REDACTED]. The agreement was in place as of [REDACTED] 2012, specifying the services to be provided for the Appellant, the amount paid to the POA for those services to be \$30.00 per hour, and that the POA would delegate some of the care for the Appellant.

10. UPM § 3029.30(B) provides that each form of compensation is assigned a dollar value to compare with the fair market value of the transferred asset.
 1. In determining the dollar value of the 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 aide, the current state minimum wage for such services;

- b. for all other types of services, the actual cost.

The Department received documentation that the POA did not provide homemaker or home health aide services for the Appellant, but rather care management and financial management services as well as those of an independent contractor, who delegated responsibilities to others to obtain appropriate services for the Appellant, that she received \$30.00 per hour as specified in the Personal and Financial Services Agreement, and that home health aide services were provided by [REDACTED] and [REDACTED].

- 11. 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.
- 12. **The Department was incorrect when it determined that the Appellant did not provide clear and convincing evidence that she received care management and financial management services at the fair market value of \$30.00 per hour, as outlined in the legally enforceable Personal and Financial Services Agreement between the Appellant and her POA, and that home health aide services were provided by contractors whom the POA hired to provide those services.**
- 13. **On [REDACTED], 2018, the Department incorrectly imposed a transfer of assets penalty for the period from [REDACTED] 2017, through [REDACTED] 2019.**
- 14. **The Department incorrectly determined that the Appellant improperly transferred assets of \$232,202.34 during the Medicaid eligibility look-back period.**

DISCUSSION

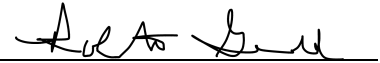
After reviewing the evidence and testimony presented at the hearing, I find that the Department's action to impose a Medicaid period of ineligibility for long-term care coverage is not upheld. The Department's Legal Division reviewed the Appellant's Personal and Financial Services Agreement and determined that it is legally sound and enforceable. It is credible that the Appellant received financial and care management services provided by her POA at the rate of \$30.00 per hour, as well as contracted home health aide services, as documented by affidavits of her caregivers and the POA's tax returns. Department policy states that in determining the value of services rendered by the transferee the actual cost of such services is used. The Appellant's POA provided credible evidence that the services provided for the Appellant were in accordance with a legally enforceable agreement established in 2012. I find that the transfers during the period of [REDACTED] through [REDACTED] of \$232,202.34 is not subject to a Medicaid penalty and that the POA provided clear and convincing evidence that she did not transfer the assets in order to qualify for Medicaid.

DECISION

The Applicant's appeal is **GRANTED**

ORDER

1. The Department shall reopen the Appellant's [REDACTED] 2017, application for Medicaid and continue the eligibility process.
2. No later than [REDACTED], 2019, the Department will submit to the undersigned verification of compliance with this order.



Roberta Gould
Hearing Officer

Pc: Fred Presnick, Social Services Operations Manager, DSS Bridgeport
Yecenia Acosta, Social Services Operations Manager, DSS Bridgeport
Tim Latifi, Social Services Operations Manager, DSS Bridgeport
Marilyn Phillips, Eligibility Services Worker, DSS Bridgeport

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.