

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

██████████, 2019
Signature Confirmation

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

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2018, the Department of Social Services (“the Department”) sent ██████████ (the “Appellant”) a final decision notice that she transferred \$28,700.00 and \$5,421.63 in order to become eligible for Long Term Care “LTC”) Medicaid and the Department was imposing a penalty period of ineligibility for Medicaid payment of long term care services effective ██████████ 2018 through to ██████████, 2018.

On ██████████, 2018, the Appellant’s Power of Attorney and son requested an administrative hearing to contest the Department’s penalty determination.

On ██████████2, 2018, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a Notice scheduling the administrative hearing for ██████████ 2018.

On ██████████, 2018, 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 and Power of Attorney
Christine Forgette, Department Representative, Bridgeport
Sinseara Mercado, Department Representative, Bridgeport
William Salwocki, Department Representative, Host Danbury
Almelinda McLeod, Hearing Officer

██████████ was not present due to her disability.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to impose a transfer of asset penalty beginning ██████████ 2017 and ending on ██████████, 2018 was correct.

FINDINGS OF FACT

1. The Appellant is █ years old dob-██████████ was widowed in ██████████1986. (Exhibit 3, W-1LTC)
2. On ██████████ 2017, the Appellant had been permanently admitted into the St. John Paul II Care and Rehab Center, where she is permanently disabled and requires 24 hours care and assistance with all her activities of daily living ("ADLs"). (Hearing summary & Exhibit 3, POAs testimony)
3. Prior to that, the Appellant lived in the community where she was able to get around on her walker until she fell and broke her back. For approximately one year, prior to her institutionalization, the Appellant was in and out of Danbury Hospital and Maplewood skilled nursing facility. (POA's testimony)
4. The Appellant's disabled daughter, ██████████ (who resided with the Appellant) and ██████████, the Appellant's son, became the Appellant's Power of Attorney (POA) when the Appellant became incompetent. (POA's testimony)
5. The Appellant also has a disabled son, ██████████, who resides in Troy, New York.(Hearing summary and POAs testimony)
6. On ██████████ 2018, the Appellant's property located AT 7 Nash Place in Norwalk, CT sold for \$265,000.00. From the proceeds of the sale, \$248,066.34 was given to the seller. From that figure, \$48,692.77 the balance of the Appellants mortgage was paid off. William Raveis real estate fees were deducted leaving a balance of \$194,190.27. (Exhibit 4, closing statement and Exhibit 9, DePanfillis & Vallerie, LLC attorney ledger)
7. On ██████████, 2018, from the balance of \$194,190.27, a disbursement of \$117,158.69 was given to POA, ██████████, \$6,000 payable to ██████████, \$3000.00 payable to ██████████ (Promissory Note) , \$307.00 payable to ██████████ for fuel, \$10,500.00 payable to St. John

Paul and \$13, 223.00 payable to Magner Funeral Home. (Exhibit 9-DePanfilis & Vallerie, LLC attorney ledger)

8. The POA explained that the disbursement of \$117,158.69 included a reimbursement of \$28,700. The total of \$28,700 was from monthly checks provided to the Appellant from \$300 to \$650 from [REDACTED] 2012 to [REDACTED] 2017. (Hearing summary and Exhibit 10, Explanation of disbursements and POA testimony)
9. On [REDACTED] 2018, the POA requested to have the Appellant's Life Insurance policies with Colonial Penn policy # [REDACTED] and [REDACTED] change ownership to himself. (Exhibit 11, Colonial Penn policy information and request)
10. On [REDACTED] 2018, the POA requested to have the United Mutual of Omaha policy # [REDACTED] change ownership to himself. (Hearing Summary, Exhibit 13, Mutual of Omaha policy information and change ownership request)
11. On [REDACTED], 2018, the POA requested to have the Columbian Financial Group policy # [REDACTED] transfer ownership to himself. (Exhibit 12, Columbian Financial Group policy and request)

12. The cash surrender values from each life Insurance policy; which totals \$5,421.63, is as follows: (Exhibits 11,12, 13 and 14)

| | | |
|---------------------------|------------|-----------|
| Colonial Penn | [REDACTED] | \$907.49 |
| Colonial Penn | [REDACTED] | \$2120.42 |
| Columbian Financial Group | [REDACTED] | \$889.97 |
| United of Omaha | [REDACTED] | \$1503.75 |

13. On [REDACTED], 2018, the POA wrote a check to [REDACTED] in the amount of \$5,421.68. (Exhibit 14, canceled check)

14. The transfer of Ownership of the life insurance policies were granted as follows: (Hearing summary)

| | |
|--------------------------|------------------|
| Colonial Penn policies | [REDACTED], 2018 |
| Columbia Financial Group | [REDACTED] 2018 |
| Mutual of Omaha | [REDACTED], 2018 |

15. Senior Planning Services indicated that POA did not write the check of \$5,421.68 to the Appellant because he did not want to wait for the check to clear in order to write the check out to [REDACTED]. (Exhibit 15, Timeline from Senior Planning)

16. The POA wrote a check out to [REDACTED] because he was the most disabled of the Appellant's children. (POAs testimony)
17. On [REDACTED] 2018, the Appellant applied for Long Term Care assistance through the Medicaid program. It was declared in **Section N- Transfer of Assets** of the W-1LTC application that on [REDACTED], 2016, \$21,000 was transferred to [REDACTED] and on [REDACTED], 2018, \$40000 was transferred to [REDACTED] and the POA purchased the Appellant's life insurance policies for \$5,421.63. (Exhibit 3, W 1LTC)
18. The Appellant's monthly income consists of Gross Social Security Income of \$1189.00, \$1082.61 from the State of Connecticut Retirement System from her deceased husband and \$500.00 rent from her disabled daughter, [REDACTED]. (Hearing summary)
19. The Department determined that all transfers to both the adult disabled children were not subject to a penalty. (Hearing summary)
20. On [REDACTED], 2018, the Department issued a W-1348 Verification We Need Form requesting verifications of invoices from facilities, promissory notes, explanation of deposits and withdrawals and a signed agreement to explain the monthly payments from 2012 to 2017. (Exhibit 16- W-1348)
21. On [REDACTED], 2018, the POA and his wife wrote a statement explaining that from 2012 to 2017, they provided the Appellant with a stipend of \$300 to \$500 or more to help pay her monthly bills with the understanding that they would be reimbursed when either the house sold or at the time of her death. (Exhibit 17, POA letter of explanation)
22. [REDACTED] 2018, the Department issued a 2nd W-1348, Verification We Need form requesting copies of bills, receipts or cancelled checks to show what the transactions of \$5,000 or more were for. Verification of deposits and withdrawals, re-submission of verifications provided and the signed agreement by both parties and an explanation on the monthly payments since the monthly payments were not being deposited into her account. (Exhibit 17, W-1348)
23. On [REDACTED] 2018, the Department received the 2nd page of exhibit 10, the explanation of disbursement of funds with a signed note from the Appellant indicating that she acknowledged receiving monthly checks to help her with living expenses and that she agreed to pay back at time of sale of the home located at [REDACTED], South Norwalk, Connecticut. (Exhibit 19)
24. The checks provided did not establish what the checks were for except for a few checks that were designated with smiley faces, Happy Easter,

Happy Mother's day, Happy Valentines' day and Happy Birthday indicating these were gifts. (Exhibit 20, canceled checks, Department testimony)

25. On [REDACTED], 2018, the Department issued a 3rd W-1348 requesting verification of promissory notes, the agreement signed by both parties regarding repayment and an explanation of what the monthly payments were for since the funds were not deposited into the Appellant's account. (Exhibit 21, W-1348)
26. On [REDACTED] 2018, the Department issued a 4th W-1348 requesting same verification. (Exhibit 22, W-1348)
27. On [REDACTED] 2018, the Department issued a 5th W-1348 requesting same verification plus appraisal information. (Exhibit 23 W-1348)
28. On [REDACTED] 2018, the Department issued a 6th W-1348 requesting same verification plus Fairfield County Bank account statements for full look back. (Exhibit 24, W-1348)
29. On [REDACTED] 2018, the Department issued a 7th W-1348 requesting for verification of what the monthly funds were for and appraisal information. (Exhibit 25, W-1348)
30. On [REDACTED] 2018, the Department issued an 8th W-1348 requesting same verification. (Exhibit 26, W-1348)
31. On [REDACTED] 2018, the Appellant provided an e-mail statement stating "My wife and I have given my mother a check once a month or so. She would always complain about the little bit of money she was receiving from Social Security and my dad's pension. She was struggling to meet the overhead of running the household without going deep or deeper in debt. So my wife and I had stepped in to help cover the cost of running her home in any miscellaneous bills that she may have had. At no time did I ever nor did I feel I had to audit her checkbook." (Exhibit 27, E-mail correspondence to Betty Weissler)
32. The POA acknowledged that there was no legally enforceable contract between the POA and the Appellant with respect to the monthly checks. He testified "I would never make my mother sign anything". (POA testimony)
33. On [REDACTED], 2018, the Department determined that the transfer of \$28,700 from the sale of the Appellant's house was an improper Transfer of Assets because it was made in order to qualify for Medicaid assistance and issued a W-495 A Preliminary Decision Notice. (Exhibit 33, W-495A)

34. On [REDACTED], 2018, the Department determined that the transfer of \$5,421.63 from the 4 Life Insurance policies were an improper Transfer of Assets because the Appellant did not receive any of the funds. (Exhibit 34, W-495A)
35. On [REDACTED] 2018, the Department issued a final decision stating that the Appellant was found to be eligible for Medicaid effective May 1, 2018; however the Department determined that the transfers of \$28,700 and \$5,421.63 were both improper. As a result of the improper transfer of Assets, the penalty will start effective May 1, 2018 and will end on July 22, 2018, which means Medicaid will not pay for services during this time.

CONCLUSIONS OF LAW

1. Section 17b- 2 (6) of the Connecticut General Statutes (“CGS”) 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. Subsection (a) of Section 17b-261 (a) CGS provides that any disposition of property made on behalf of an applicant for recipient by a person authorized to make such disposition pursuant to a power of attorney , or other person so authorized by law shall be attributed to such applicant.
3. Uniform Policy Manual (“UPM”) § 3029.05 (A) provide there is a period established, subject to the conditions described in chapter 3029, during which institutionalized individuals are not eligible for certain Medicaid services when they or their spouses dispose of assets for less than fair market value on or after the look-back specified in UPM 3029.05 (C). This period is called the penalty period or period of ineligibility.
4. UPM § 3029.05 (B) (2) provides an individual is considered institutionalized if he or she is receiving: a. LTCF [long term care are facility] 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.
5. **The Appellant is an institutionalized individual.**
6. UPM 3029.05 (C) provides 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.

7. UPM § 3029.05 (D) (1) 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.
8. **The look back period from the Appellant's application for LTC Medicaid dated May 24, 2018 is May 24, 2013.**
9. **The Department was correct to evaluate the transfers that occurred within the look back period.**
10. UPM 3029.10 (C) (1) pertains to Transfers to a disabled child and provides; an institutionalized individual, or his or her spouse, may transfer assets of any type without penalty to his or her child who is considered to be blind or disabled under the criteria for SSI eligibility.
11. **The Department correctly determined that both transfers to the Appellant's two adult disabled children were not subject to a penalty.**
12. UPM 3029.30 (A) provides, compensation in exchange for a transferred asset is counted in determining whether fair market value was received. The compensation which is counted is 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.
13. UPM 3025.15 (A) pertains to 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 maintain eligibility.
14. UPM 3025.15 (C) pertains to 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 maintain eligibility.
15. UPM 3029.10 (E) pertains to Transfers made exclusively for reasons other than Qualifying and provides 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 he transfer was made exclusively for a purpose other than qualifying for assistance.

16. UPM 3029.10 (E) pertains to Transfers made exclusively for reasons other than Qualifying and provides 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 he transfer was made exclusively for a purpose other than qualifying for assistance.
17. **The Appellant did not provide clear and convincing evidence that the \$5,421.63 cash surrender values from the 4 life insurance policies during the look back period had been made exclusively for a purpose other than qualifying for assistance.**
18. **The Appellant did not provide clear and convincing evidence that the transfer of \$28,700 was reimbursement due to expenses incurred by the Appellant during the look back period and not for the purpose of qualifying for assistance.**
19. **The Department correctly determine that the \$5, 421.63 (total amount of the cash surrender values on the 4 Life insurances) was improper because the Appellant did not receive fair market value for the cash values of the life Insurance policies when the POA took ownership of the Appellant's Life Insurance.**
20. **The Department correctly determined that the reimbursement total of \$28,700.00 was improper because there was no legally enforceable agreement prior to the transfer. The POA provided a note after the transfer explaining that it was an understanding that the POA and his wife would be re-imbursed when she sold her house or upon her death.**
21. UPM 3029.05 (G) (1) provide that during the penalty period , the following Medicaid services are not covered: a) LTCF services; and b) services provided by a medical institution which are equivalent to those provided in a long term care facility; and c) home and community based services under a Medicaid waiver.
22. UPM 3029.05 (G) (2) provide that payment is made for all other Medicaid services during a penalty period if the individual is otherwise eligible for Medicaid.
23. UPM 3029.05 (F) (2) (a) provide 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. For applicants, the average monthly cost for LTCF services is based on the figure as of the month of application.

24. The average monthly cost for a private patient for LTCF services in Connecticut effective January 1, 2018 is \$12,604.00.
25. UPM 3029.05 (F) (3) provides that uncompensated values of multiple transfers are added together and the transfers are treated as a single transfer. A single penalty period is then calculated, and begins on the date applicable to the earliest transfer.
26. UPM 3029.05 (F) (4) provides that once the Department imposes a penalty period, the penalty runs without interruption, regardless of any changes to the individual's institutional status.
27. **The transferred total of \$34,121.63 from the reimbursement of \$28,700 and the \$5421.63 cash value of the 4 life insurance policies during the look back period subjects the Appellant to transfer of assets penalty and a period of ineligibility for the Medicaid program.**
28. **The Appellants penalty period of ineligibility of Medicaid payment for Long Term care services equals to 2.70 months. (\$34,121.63/ \$12,604.00 = 2.707206442)**
29. **The Department correctly assessed a penalty period of ineligibility for Medicaid payment for the Appellant's long term care services to run from April 1, 2018 to June 22, 2018.**

DECISION

The Appellant's appeal is DENIED

Almelinda McLeod

Almelinda McLeod
Hearing Officer

CC: Carol Sue Shannon, SSOM Danbury
Christine Forgette, Fair Hearing Liaison, Bridgeport
Sinseara Mercado, Fair Hearing Liaison, LTC, 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 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.