

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 Request #: 135934

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████, 2019, the Department of Social Services (the “Department”) sent ██████████ (the Appellant), a Notice of Action (“NOA”) imposing a transfer of assets penalty on the Medicaid for Long Term Care benefits for the Appellant’s father, ██████████, (the “Applicant”), in the amount of \$127,302.75.

On ██████████ 2019, ██████████ with ██████████ requested an administrative hearing on behalf of the Applicant to contest the Department’s decision to impose a penalty.

On ██████████ 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ 2019.

On ██████████, 2019, ██████████ requested a reschedule on behalf of the Applicant.

On ██████████ 2019 OLCRAH issued a notice rescheduling the hearing for ██████████

2019.

On [REDACTED] 2019, OLCRAH issued a notice changing the location of the administrative hearing for [REDACTED] 2019.

On [REDACTED] 2019 [REDACTED] requested a reschedule on behalf of the Applicant.

On [REDACTED] 2019 OLCRAH issued a notice rescheduling the hearing for [REDACTED] 2019.

On [REDACTED], 2019, OLCRAH issued a notice changing the hearing officer for the administrative hearing on [REDACTED] 2019

On [REDACTED] 2019, 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, Applicant's son and Power of Attorney
[REDACTED], Appellant's daughter, Applicant's granddaughter
[REDACTED] Appellant's witness
[REDACTED], Applicant's attorney
[REDACTED] Applicant's attorney
Kimberly Divirgilio, Department's representative
Daniel Butler, Esq., Department's attorney
Linda Guliuzza, Esq., Department's attorney
Jennifer Zakrzewski, Department's paralegal
Liza Morais, Department's observer
Matthew Kalarickal, Department's observer
Marc Ostroski, Hearing Officer

The Applicant was not present at the administrative hearing due to his institutionalization at a skilled nursing facility.

The Applicant's attorney requested to reconvene the administrative hearing.

On [REDACTED] 2019, OLCRAH issued a notice to reconvene the administrative hearing for [REDACTED] 2019.

The following individuals were present at the reconvened hearing:

[REDACTED] Appellant, Applicant's son
[REDACTED], Applicant's attorney
[REDACTED], Applicant's attorney

Kimberly Divirgilio, Department's representative, participated by telephone
Daniel Butler, Esq., Department's attorney
Marci Ostroski, Hearing Officer

The hearing record remained open until [REDACTED], 2019, for the submission of briefs and additional evidence from the Appellant and the Department and until [REDACTED], 2019, for a rebuttal brief and exhibits from the Appellant and the Department. Additional exhibits were received from both parties and on [REDACTED] 2019, the record closed.

STATEMENT OF THE ISSUE

The issue to be determined is whether assets transferred by the Applicant result in a penalty period for Long Term Care Medicaid.

FINDINGS OF FACT

1. The Applicant's date of birth is [REDACTED] 1935. (Appellant's Exhibit 20: Applicant's medical records)
2. On [REDACTED], 2009, the Department received an application for community Medicaid coverage for the Applicant's spouse [REDACTED] (the "spouse"). The Department met with the Applicant's son on [REDACTED], 2009 to review the Medicaid application process and request bank statements for the application. The Applicant's spouse received community Medicaid coverage through [REDACTED] 2010. (Department's Supplemental Exhibit 1: Case Notes)
3. On [REDACTED], 2014, the Applicant and his spouse submitted an application for assistance with the Department for the Supplemental Nutrition Assistance Program ("SNAP"). They also submitted a separate application for the Medicare Savings Programs which would pay the cost of their Medicare part B premiums. Both the Applicant and his spouse signed the applications. (Department's Supplemental Exhibit 3: W1E General Application, Department's Supplemental Exhibit 4: W1QMB: Medicare Savings Application/Redetermination)
4. On [REDACTED] [REDACTED] 2014, the Applicant's spouse verbally requested the Department to name her son as her authorized representative ("AREP") so he could assist them with their documents. (Department's Supplemental Exhibit 5: Case Notes)
5. On [REDACTED] 2016, the Applicant's spouse died from injuries she sustained as a pedestrian in a hit and run motor vehicle accident. (Hearing Record, Appellant's Exhibit 1: [REDACTED] Police Incident Report)

6. After his spouse's death, the Applicant lived alone in his apartment. His sons came to check on him every day and bring groceries and assist with financial management. (Appellant's testimony)
7. The Appellant retained the services of [REDACTED] in reference to the fatal hit and run accident of the Applicant's spouse. [REDACTED] specialized in personal injury law. [REDACTED] met with both the Applicant and the Appellant to open the estate and file a personal injury lawsuit against the driver of the motor vehicle that killed the Applicant's spouse. [REDACTED] testimony)
8. On [REDACTED] 2016, the Appellant represented by [REDACTED], petitioned the [REDACTED] Probate court for the Administration or Probate of Will on behalf of the Applicant's spouse and petitioned to file a wrongful death claim. The petition listed the Applicant as the surviving spouse and the Appellant as petitioner and child of the decedent. (Appellant's Exhibit 21: PC-200 Petition for Administration or Probate of Will)
9. On [REDACTED] 2016, the Appellant was named administrator of the Applicant's spouse's estate. (Appellant's Exhibit 23: PC-260 Decree Granting Administration or Probate of Will)
10. [REDACTED] continued to work with the Appellant and the Applicant regarding the wrongful death suit and the probating of the Applicant's spouse's estate. The Applicant participated in approximately three meetings with [REDACTED]. The Applicant was aware the intent of the suit was to obtain monetary compensation for the Applicant's spouse's death. ([REDACTED] testimony, Appellant's testimony)
11. The Appellant was concerned about the Applicant's memory loss and discussed his concerns with the Applicant's primary care physician, [REDACTED] (the "doctor"). On [REDACTED], 2016, the Applicant's doctor placed him on Donepezil for memory loss. On [REDACTED] 2016, the Applicant had an MRI of the brain. (Appellant's testimony, Appellant's Exhibit 20: Applicant's medical records, Appellant's Supplemental Exhibit 3: Letter from Dr. [REDACTED] [REDACTED] [REDACTED]/19)
12. On [REDACTED], 2016, the Appellant, signed the Applicant's W1QMB: Medicare Savings Application/Redetermination form as helper or representative. The Appellant signed the SNAP redetermination forms again on [REDACTED] 2018, and was listed as the Applicant's guardian on the [REDACTED], 2018 SNAP redetermination, (Department's Supplemental Exhibit 7: W1QMB: Medicare Savings Application/Redetermination, Department's Supplemental Exhibit 8: SNAP redetermination printout, Department's Supplemental Exhibit 9: Notice of Renewal of Eligibility)

13. On [REDACTED], 2017, the Applicant had an appointment with his doctor. At that appointment the Appellant reported that the Applicant had taken at least one fall at home and was unsteady on his feet. (Appellant's Exhibit 20: Applicant's medical records)
14. At the [REDACTED] 2017 appointment, the Applicant's doctor reviewed his MRI and determined that there were "numerous perivascular spaces in the basal ganglia note and white matter disease and diffuse volume loss..." The Applicant had the following diagnoses: basal cell carcinoma of skin, stage 3 chronic kidney disease, Hypercholesterolemia, Hypertension, and memory loss. He was prescribed the following medications: Amlodipine Besylate, Atorvastatin, Donepezil, Ecotrin, Losartan, Metoprolol, thiamine and vitamins B-12 and D3. The doctor's notes reflect that the Applicant was unwilling/unable to take medications as directed. The Applicant did comply with the vitamins and with the Donepezil for memory loss. (Appellant's Exhibit 20: Applicant's medical records, Appellant's testimony)
15. On [REDACTED], 2017, the Appellant as administrator of the estate of the Applicant's spouse, represented by [REDACTED], filed a Summons and Complaint against the driver of the motor vehicle that killed the Applicant's spouse seeking money damages. (Department's Exhibit 16: Superior Court Complaint)
16. On [REDACTED] 2017, the wrongful death lawsuit was settled for \$250,000.00 with net proceeds to the Applicant's spouse's estate of \$165,000.00. Because the suit was settled for less than the limits of the policy, [REDACTED] had to obtain probate court approval for the compromised settlement amount. (Appellant's Exhibit 3: Affidavit of [REDACTED], [REDACTED] testimony)
17. On [REDACTED] 2017, the Probate Court judge issued a decree authorizing the compromise of the claim. (Department's Exhibit 5: PC 463 Decree Settling Doubtful or Disputed Claim, Appellant's Exhibit 3: Affidavit of [REDACTED])
18. On [REDACTED] 2017, the Applicant signed an affidavit stating that he would disclaim all proceeds from the above settlement and would allow them to be equally divided between his two sons. This affidavit was filed with the Probate Court on [REDACTED] 2017. (Appellant's Exhibit 3: Affidavit of [REDACTED])
19. On [REDACTED], 2017, the Appellant submitted the Financial Report to the [REDACTED] Probate Court regarding the Applicant's spouse's estate. The report reflects \$154,605.50 to be distributed in equal amounts to the Appellant and his brother, the Applicant's other son. The Applicant did not receive any proceeds from the settlement of his spouse's estate. (Department's Exhibit 7: PC 246 Financial Report)

20. In 2017, the Applicant's income included \$987.00 per month in Social Security benefits and a pension of \$95.26. (Appellant's Exhibit 9: [REDACTED] account statements, Appellant's Exhibit 25: Letter from [REDACTED] Pension Fund)
21. In 2017, the Applicant's assets included a savings account with [REDACTED] [REDACTED] with month end balances ranging from \$941.05 to \$2728.58, a life insurance policy with a face value of \$10,000, and a burial plot. (Appellant's Exhibit 13: W1-LTC Long Term Care/Waiver Application, Appellant's Exhibit 9: [REDACTED] statements, Department's Hearing Summary: [REDACTED] Case Information)
22. In 2017, the Applicant's rent was federally subsidized through the HUD program. The Applicant was responsible to pay \$286.00 per month in rent. (Department's Supplemental Exhibit 8: SNAP renewal form, [REDACTED]/17)
23. On [REDACTED] 2018, the Applicant had an appointment with his doctor. The doctor's notes reflect dementia, gait disorder and incontinence and state that the Applicant "needs assisted living at least". The doctor referred the Applicant to a social worker and a visiting nurse for evaluation and treatment of falling episodes and gait disturbance. The Applicant's sons, the Appellant and his brother, reported to the doctor that "he is getting worse, falling at home, incontinent, and needs their care all the time and they are overwhelmed with his care. They agree(ed) to have VNA and social service evaluation but want to wait until next month". The doctor ordered an MRI. (Appellant's Exhibit 20: Applicant's medical records)
24. On [REDACTED] 2018, the Applicant had a second MRI. The results reflected in part "fairly extensive patchy and confluent T2 hyperintense signal is seen throughout the supratentorial white matter, presumably a reflection of moderate to severe chronic microvascular ischemic changes". (Appellant's Exhibit 20: Applicant's medical records)
25. On [REDACTED] 2018, the Probate Court issued a decree approving the Financial Report filed on [REDACTED], 2017, and authorizing the distribution of the estate's assets. (Department's Exhibit 8: PC263A Decree/Financial Report and Distribution Decedent's Estate)
26. On [REDACTED] 2018, the Appellant found the Applicant on the floor of his apartment. He had a loss of consciousness. The Applicant was taken to [REDACTED] [REDACTED] by ambulance and admitted. (Appellant's testimony, (Department's Supplemental Exhibit 13: Connecticut Level 1 Form, [REDACTED]/18)
27. On [REDACTED] 2018, [REDACTED] discharged the Applicant to [REDACTED] skilled nursing facility for long term care. (Department's Supplemental Exhibit 13: Connecticut Level 1 Form, [REDACTED]/18)

28. On [REDACTED] 2018, [REDACTED] submitted a Level of Care form to the Department's Level of Care determination contractor, Ascend. The Applicant admitted to the facility with a fever and had a medical history of dementia, behavioral disturbance, tachycardia, diseases of the circulatory system, syncope and collapse, and chronic kidney disease. [REDACTED] reported that the Applicant was in need of chronic and convalescent nursing because he had uncontrolled, unstable, and chronic conditions requiring continuous skilled nursing services and/or nursing supervision on a daily basis or has chronic conditions requiring substantial assistance with personal care on a daily basis. The Applicant required hands on assistance with bathing, dressing, eating/feeding, toileting, mobility, transfer, and continence. The Applicant was disoriented to person, place, and time, unable to remember past and present events such that daily supervision is needed to prevent self-harm. (Department's Supplemental Exhibit 13: Connecticut Level 1 Form, [REDACTED] 18)
29. On [REDACTED], 2018, [REDACTED] provided additional information to Ascend in reference to the level of care request. [REDACTED] reported in the Applicant's admission history that he has had dementia for years but did not have worsening confusion until the last few months. The report also stated that the Applicant previous to his admission lived alone at home but his sons took turns going to his home to assist him with washing, dressing and meals. (Department's Supplemental Exhibit 14: [REDACTED] fax; Admission History)
30. On [REDACTED], 2018, Ascend granted long term care approval for the Applicant's stay at the skilled nursing facility with the rationale that the Applicant had a pertinent medical history. Skilled nursing care is needed for planned occupational and physical therapy 5-6 times per week. The Applicant has severe orientation, memory, judgement, and communication needs requiring daily supervision. The Applicant requires hands on assistance with 7 out of 7 activities of daily living and support with instrumental activities of daily living such as medication support and meal preparation. (Department's Supplemental Exhibit 13: Connecticut Level 1 Form, [REDACTED]/18)
31. On [REDACTED], 2018, the Applicant transferred to the [REDACTED]. (Department's Supplemental Exhibit 14: [REDACTED] fax; Admission History)
32. On [REDACTED] 2018, the Department received an application on behalf of the Applicant for Long Term Care benefits under Medicaid. That application was denied for failure to provide information. (Department's Summary, Department's testimony)
33. On [REDACTED], the Department received a second application on behalf of the Applicant for Long Term Care benefits under Medicaid from [REDACTED] and signed by the Appellant as representative. (Appellant's Exhibit 13:

W1-LTC Long Term Care/Waiver Application)

34. As part of the application process, the Department reviewed the Applicant's assets during the 60 month look back period, to determine whether the Applicant transferred assets. (Record)
35. The Department determined that the probate laws of intestacy supported that the Applicant was entitled to the first \$100,000.00 and half of the remainder of his spouse's estate proceeds of \$154,605.50 ($100,000 + (54,605.50 / 2) = \$127,302.75$). The Department determined that his disclaimer of the estate proceeds on [REDACTED], 2017 and [REDACTED], 2017, was an improper transfer of assets in the amount of \$127,302.75 made with the intent to qualify for assistance. (Department's Summary, Department's Exhibit 2: W495-A Transfer of Assets Preliminary Decision Notice)
36. On [REDACTED] 2018, the Department mailed the Appellant a Preliminary Decision Notice, advising him that the \$127,302.75 transferred from the Applicant to his sons through the spousal share disclaimer would be subject to a transfer of asset penalty. The Department allowed until [REDACTED] 2018 for the Applicant's rebuttal. (Department's Exhibit 2: W-495A Transfer of Assets Preliminary Decision Notice)
37. On [REDACTED] 2018, the Applicant's representative requested an extension of time to provide the rebuttal to the Department's W495-A Transfer of Assets Preliminary Decision Notice. (Hearing Summary)
38. On [REDACTED] 2019, the Department was contacted by the Applicant's new attorney. The Department allowed an extension of time until [REDACTED] 2019, for counsel to review the Applicant's case and provide a rebuttal to the W495-A Transfer of Assets Preliminary Decision Notice. (Hearing Summary)
39. On [REDACTED] 2019, the Department had not received a rebuttal from the Applicant regarding the proposed penalty. The Department sent the Appellant a W495B Transfer of Assets Notice of Response to Rebuttal. The notice stated in part "we have not received a rebuttal for review. You made the transfers on [REDACTED] 17 and [REDACTED]/17. We will set up a penalty period starting [REDACTED]/18. The penalty will end on [REDACTED]/19". (Department's Exhibit 2: W-495B Transfer of Assets Notice of Response to Rebuttal)
40. On [REDACTED] 2019, the Department sent the Appellant a W-495C Transfer of Assets Final Decision Notice. The notice stated in part "We have decided that you transferred \$127,302.75 on [REDACTED]/17 and [REDACTED]/17 to become eligible for Medicaid. Although you are eligible for certain Medicaid benefits beginning [REDACTED]/18 we are setting up a penalty period starting [REDACTED]/18. This penalty ends [REDACTED]/19". (Department's Exhibit 2: W-495C Transfer of Assets Final Decision Notice)

41. On [REDACTED] 2019, the Department granted the Applicant's [REDACTED], 2018 Long Term Care Medicaid application retroactive to [REDACTED] 2018 with the penalty on long term care services and supports. (Hearing Summary, Appellant's Exhibit 18: Notice of Action [REDACTED]/19)
42. At the administrative hearing on [REDACTED] 2019, the Applicant's attorney signed the Waiver of Right to a Timely Hearing Decision under Section 17b-61(a) of the Connecticut General Statutes waiving the requirement that a final decision be issued by the Hearing Officer within 90 days of the date the hearing was requested. (Hearing Record)

CONCLUSIONS OF LAW

1. Section § 17b-260 of the Connecticut General Statutes provides that the Department will administer Title XIX of the Social Security Act ("Medicaid") in the State of Connecticut.
2. Section § 17b-261b(a) of the Connecticut General Statutes provides that the Department "shall be the sole agency to determine eligibility for assistance and services under programs operated and administered by said department."
3. Title 42 Section § 431.10(b)(3) of the Code of Federal Regulations ("CFR") provides that the "single State agency is responsible for determining eligibility for all individuals applying for or receiving benefits" in the Medicaid program.
4. Subsection (a) of section § 17b-261 of the Connecticut General Statutes provides that any disposition of property made on behalf of an applicant or 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.
5. Subsection (a) of section § 17b-261a 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 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."
6. "The Department's Uniform Policy Manual ("UPM") is the equivalent of a state regulation and, as such, carries the force of law." *Bucchere v Rowe*; 43 Conn Supp. 175 178 (194) (citing Conn. Gen. Stat. § 17b-10; *Richard V. Commissioner of Income Maintenance*, 214 Conn. 601, 573 A.2d712 (1990)).

7. UPM § 3029.03 provides the Department uses the policy contained in Chapter 3029 of the Uniform Policy Manual to evaluate asset transfers if the transfer occurred on or after February 8, 2006. .
8. UPM § 3029.05(A) provides 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 date specified in UPM 3029.05(C). This period is called the penalty period, or period of ineligibility.
9. UPM § 3029.05(C) provides the look-back date for transfers of assets is the 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.
10. The look-back date for the Applicant is ██████████, 2013.
11. Section § 45a-437 (a)(3) of the Connecticut General Statutes provides for distribution to spouse in intestate succession: If there is no will, or if any part of the property, real or personal, legally or equitably owned by the decedent at the time of his or her death, is not effectively disposed of by the will or codicil of the decedent, the portion of the intestate estate of the decedent, determined after payment of any support allowance from principal pursuant to section 45a-320, which the surviving spouse shall take is: (3) If there are surviving issue of the decedent all of whom are also issue of the surviving spouse, the first one hundred thousand dollars plus one-half of the balance of the intestate estate absolutely.
12. The Department correctly calculated the Applicant's share of his spouse's estate proceeds of \$154,605.50 to be \$127,302.75 ($100,000 + (54,605.50 / 2) = \$127,302.75$).
13. UPM § 3029.15(B) provides the Department considers a transferor to have met his or her foreseeable needs if, at the time of the transfer, he or she retained other income and assets to cover basic living expenses and medical costs as they could have reasonably been expected to exist based on the transferor's health and financial situation at the time of the transfer.
14. The Department correctly determined that the Applicant did not meet his foreseeable needs because at the time of the transfers based on his health and financial situation the Appellant did not retain enough assets or income to cover his basic living expenses and medical costs.

15. The Appellant did not establish with clear and convincing evidence that the Applicant transferred \$127,302.75 for a purpose other than qualifying for assistance.
16. The Department was correct to find that the Applicant transferred \$127,302.75 for the purpose of qualifying for Long Term Care Medicaid.
17. UPM § 3029.05(F) provides the length of the penalty period is determined by dividing the total uncompensated value of all assets transferred on or after the look-back date by the average monthly cost to a private patient for long-term care services in Connecticut. Uncompensated values of multiple transfers are added together and the transfers are treated as a single transfer.
18. 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.
19. UPM § 3029.05 (F) provides in part 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. 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.
20. The average monthly cost of LTCF services in Connecticut as of [REDACTED] 2018, the month of the Applicant's application was \$12,604.00.
21. The Appellant is subject to a penalty period of 10.1 months after dividing the uncompensated value of the transferred asset by the average monthly cost of LTCF services (\$127,302.75 divided by \$12,604.00).

DISCUSSION

The Department's determination that the Applicant transferred assets to qualify for assistance is upheld. Counsel for the Applicant disputed the imposition of the penalty based on two main arguments. Counsel argued that the transfer was not done with the intent to qualify for Medicaid as outlined in § 17b-261a of the Connecticut General Statutes. Additionally, Counsel argued that at the time of the transfer, the Applicant retained enough assets and income to meet his foreseeable need as outlined in UPM § 3029.15.

Much of the administrative hearing revolved around the tragic passing of the Applicant's spouse and how the circumstances of her death affected the Applicant's actions in reference to his disclaimer of the funds he was entitled to as her surviving spouse. The Appellant testified that the Applicant referred to the settlement money as "bloody money" and that he did not want to have any part of the proceeds from the lawsuit. While he may have felt very strongly about the origin of the funds, the record shows that he did participate and consent to the filing of the wrongful death claim. The Department argues that because the Applicant chose to pursue the claim rather than refusing to participate in the pursuit of funds, he used the disclaimer as an estate planning tool to funnel the funds to family members and preserve the assets for his heirs addressed in the language cited in Forsyth v Rowe, 226 Conn. 818(1993) "our conclusion reflects the legislative concern that the medicaid program not be used as an estate planning tool. The medicaid program would be at fiscal risk if individuals were permitted to preserve assets for their heirs while receiving medicaid benefits from the state."

The Applicant had limited income and assets and had been relying on forms of public assistance through Medicaid, the SNAP program, HUD, and the Medicare Savings Program to meet his daily needs for several years. The Appellant's testimony that he was unaware of public assistance benefits or the requirements of the Medicaid program prior to the Applicant's institutionalization, is not credible and not supported by the hearing record.

The Applicant was advanced in age, [REDACTED] at the time of the transfer, and his medical records reflect a worsening medical state. While his family had always been attentive to his needs the record reflects that at the time of the transfer the Applicant's needs were increasing to the point of overwhelming his family and nursing home placement was imminent. The Applicant's attorney argued that the Applicant's circumstances were similar to Socci v. Bremby; CV15-6028687, 2016 Conn.Super. LEXIS 2575(J.D. of New Britain, J. Shortall, Oct. 3, 2016). The court found that though Ms. Socci was ninety one years old there was no evidence in the record of any medical diagnosis that might portend the need for institutional long term care. The court found that "there is in the record a letter from her treating physician stating that 'there was no warning nor could patient have foreseen that she was to have a (cerebrovascular accident)'." In this case, medical records do not reflect that the Applicant had a singular catastrophic medical event, as Socci did, that placed him in the nursing home, but rather a history of cognitive and physical decline.

Long term nursing home placement was foreseeable at the time of the transfers based on the Applicant's age and worsening medical condition as reported in the medical records by the Applicant's doctor. The medical records reflect that his sons were concerned with his condition. The Applicant's income and assets were not sufficient to meet those foreseeable needs. The Applicant applied for

Medicaid to cover the cost of his stay at the nursing facility back to [REDACTED] 2018, very soon after his admission date of [REDACTED], 2018. There is no evidence in the record that the Applicant had any form of long term care coverage as claimed in the Appellant's Post Hearing Brief.

The Appellant's attorney argued that the Applicant's situation is similar to Matter of Collins v. Zucker 144A.D.3d 1441(N.Y.App.Div 3d Dept., 2018). The Appellant's attorney argued that, like in Collins, the Applicant did suffer from chronic medical conditions and had experienced falls but he was able to remain at home with assistance. The court found in Collins "the fact for future need for nursing home care may be foreseeable for a person of advanced age with chronic medical conditions is not dispositive of the question of whether a transfer by such person is based solely on speculation and other evidence indicates otherwise". The evidence in Collins did indicate that the transfer was not made with the intent to qualify for assistance. In Collins, the Applicant had transferred the funds over two years prior to applying for Medicaid coverage and had retained over \$200,000 in assets which she used to pay for her care. In this case, the Applicant requested Medicaid coverage six months after the transfer and at the time of the transfer he retained less than \$3000 in liquid assets. Collins was also able to establish that the purpose of the transfers was to assist the grandson, a veteran with young children and a service related disability, in purchasing and repairing a house. Here, the Applicant did not establish with clear and convincing evidence a purpose for the transfer other than qualifying for assistance. He simply argued he did not want the funds that he had actively pursued.

While both the Department and the Appellant's attorney cited case laws applicable to this type of transfer and circumstances surrounding the Medicaid application, such as Rathbun v Commissioner of Social Services, I found that the statutes and regulations provided clear guidance on the merits of this case and I relied more heavily on those statutes and regulations than on any of the cases reviewed for this decision

There is no clear and convincing evidence that the transfers were made for a purpose other than qualifying for assistance therefore the Department's action to assign a penalty is upheld.

DECISION

The Appellant's appeal is **DENIED**



Marci Ostroski
Hearing Officer

cc: Musa Mohamud, Operations Manager, Hartford
Judy Williams, Operations Manager, Hartford
Jessica Carroll, Operations Manager, Hartford
Peter Bucknall, Operations Manager, Waterbury
Jamel Hilliard, Operations Manager, Waterbury
Kimberly Divirgilio, Eligibility Services Worker, Waterbury
Daniel Butler, Esq., Department of Social Services Principal Attorney

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.