

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

██████████ 2019  
Signature confirmation

Case: ██████████  
Client: ██████████  
Request: 143454

**NOTICE OF DECISION**

**PARTY**

██████████  
██████████  
██████████  
██████████

**PROCEDURAL BACKGROUND**

On ██████████, 2019, the Department of Social Services (the "Department") issued ██████████ (the "Appellant") a *Notice of Action* establishing a penalty period of ineligibility for Medicaid payment of her long-term care services from ██████████ 2019 through ██████████ 2019.

On ██████████, 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") received the Appellant's ██████████, 2019 postmarked request for an administrative hearing.

On ██████████, 2019, the OLCRAH issued a notice scheduling an administrative hearing for ██████████ 2019. The OLCRAH granted the Appellant's request for a postponement of the administrative hearing.

On ██████████ 2019, in accordance with sections 17b-60, 17b-61, and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, the OLCRAH held an administrative hearing at the ██████████ (the "Facility"), a skilled nursing facility. The following individuals participated in the proceeding:

██████████, Appellant  
██████████, Appellant's witness (mother)  
██████████, ██████████ office manager, Appellant's witness  
██████████, ██████████ social worker, Appellant's witness

Kenneth Smiley, Department's representative  
Eva Tar, Hearing Officer

The hearing record closed [REDACTED], 2019.

### **STATEMENT OF ISSUE**

The issue is whether the Department correctly determined that the Appellant was subject to a penalty period of ineligibility for Medicaid payment of long-term care services from [REDACTED] 2019 through [REDACTED] 2019 for \$26,651.00 in transfers for less than fair market value.

### **FINDINGS OF FACT**

1. In [REDACTED] 2018, the Facility admitted the Appellant as a patient. (Department's representative's testimony)
2. The Appellant was a Medicaid recipient at the time of her admittance to the Facility under a home care program. (Department's representative's testimony)
3. In [REDACTED] 2018, the Appellant owned real property in the community located at [REDACTED], [REDACTED] (the "real property"). (Appellant's testimony)(Appellant's Exhibit A)
4. Prior to the sale of the Appellant's real property, the Facility did not collect monthly applied income from the Appellant, deferring the collection of the applied income until the Appellant's real property sold. [REDACTED] testimony)(Department's Exhibit 6)
5. The Appellant used her monthly income from Social Security to pay the real property's two mortgages, heat, and electric costs. The Appellant did not make improvements on the real property in the 18 months prior to its sale. (Appellant's testimony)([REDACTED]' testimony)
6. On [REDACTED], 2018 the Appellant's mother paid [REDACTED] for a joystick mounting bracket for delivery to the Appellant at the Facility. (Appellant's Exhibit B)
7. On [REDACTED] 2018, the Department sent an internal referral to its resources unit to place a lien on the real property. (Department's Exhibit 4)
8. The Department did not place a lien on the real property. (Department's representative's testimony)
9. On [REDACTED] 2018, the Appellant sold the real property to a sibling for \$123,000.00, netting \$28,455.74 after the settlement of two mortgages, sewer costs, closing costs, and related fees due from the seller. (Appellant's Exhibit A)

10. The Department does not dispute that the Appellant's real property sold for fair market value. (Department's representative's testimony)
11. On [REDACTED] 2019, the Appellant's mother purchased \$979.22 in furniture for delivery to the Appellant at the Facility. (Appellant's Exhibit B)
12. On [REDACTED] [REDACTED] 2019, the Appellant transferred \$7,500.00 to her mother. (Department's Exhibit 8)
13. On [REDACTED], 2019, the Appellant's mother paid \$5,405.00 for an irrevocable burial contract in the Appellant's name with [REDACTED]. (Department's representative's testimony)
14. On [REDACTED] 2019, the Appellant paid \$19,151.00 to the Facility as the delayed payment for the retroactive applied income. (Department's Exhibit 5)
15. The Department does not dispute that the Appellant's \$19,151.00 payment on [REDACTED] 2019 equals the exact amount of monthly applied income that was due to the Facility in the relevant period. (Department's representative's testimony)
16. The Appellant did not have Medicaid coverage in [REDACTED] 2019, as she had failed to complete the review process. (Department's representative's testimony)
17. The Appellant's Medicaid discontinuance effective [REDACTED] [REDACTED] 2019 was addressed by a prior administrative hearing. (Department's representative's testimony)
18. On [REDACTED], 2019, the Department received a completed redetermination form from the Appellant. (Department's representative's testimony)
19. On [REDACTED], 2019, the Department re-granted the Appellant Medicaid coverage effective [REDACTED] 2019, with a penalty period for improper transfers of assets running from [REDACTED] 2019 through [REDACTED] 2019. (Department's Exhibit 11)
20. Connecticut General Statutes § 17b-61 (a), as amended on passage by Section 309 of *Public Act No. 19-117 (January Session)*, in part provides that a final decision shall be rendered not later than 90 days from the date the Commissioner receives a request for a fair hearing, provided the time for rendering a final decision shall be extended whenever the aggrieved person requests or agrees to an extension, or when the Commissioner documents an administrative or other extenuating circumstance beyond the Commissioner's control.

On [REDACTED] 2019, the OLCRAH received the Appellant's hearing request. This final decision initially would have become due by [REDACTED] 2019. However, the Appellant requested a postponement of the hearing. This postponement of 12 days

and an additional extension of five days to the close of the hearing record extended the deadline for the rendering of a final decision through [REDACTED] 2019. This final decision is timely.

### **CONCLUSIONS OF LAW**

1. Section 17b-2 of the Connecticut General Statutes designates the Department as the state agency for the administration of so identified state and federal programs.
2. "The Commissioner of Social Services may make such regulations as are necessary to administer the medical assistance program...." Conn. Gen. Stat. § 17b-262.

"The department's uniform policy manual is the equivalent of a state regulation and, as such, carries the force of law." *Bucchere v. Rowe*, 43 Conn. Supp. 175, 178 (1994) (citing Conn. Gen. Stat. § 17b-10; [Richard v. Commissioner of Income Maintenance, 214 Conn. 601, 573 A.2d 712 \(1990\)](#)).

3. "An individual is considered institutionalized if he or she is receiving: a. LTCF [long-term care facility] services...." Uniform Policy Manual ("UPM") § 3029.05 B. 2. a.

#### **The Appellant is an institutionalized individual.**

4. Section 17b-261 (a) of the Connecticut General Statutes provides in part that:  
Medical assistance shall be provided for any otherwise eligible person whose income, ..., is not more than one hundred forty-three per cent, pending approval of a federal waiver applied for pursuant to subsection (e) of this section, of the benefit amount paid to a person with no income under the temporary family assistance program in the appropriate region of residence and if such person is an institutionalized individual as defined in Section 1917 of the Social Security Act, 42 USC 1396p(h)(3), and has not made an assignment or transfer or other disposition of property for less than fair market value for the purpose of establishing eligibility for benefits or assistance under this section. Any such disposition shall be treated in accordance with Section 1917(c) of the Social Security Act, 42 USC 1396p(c). Any disposition of property made on behalf of an applicant or recipient or the spouse of an applicant or recipient by a guardian, conservator, person authorized to make such disposition pursuant to a power of attorney or other person so authorized by law shall be attributed to such applicant, recipient or spouse....

Conn. Gen. Stat. § 17b-261 (a).

"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." UPM § 3029.05 A.

**The Department acted within its authority to review the Appellant's income and asset activity to determine whether the Appellant disposed of assets for less than fair market value.**

5. Section 17b-261r (a) of the Connecticut General Statutes addresses the determination of applied income, notice, and action by a skilled nursing facility to recover applied income from a recipient of medical assistance. For purposes of this section, "applied income" means the income of a recipient of medical assistance, pursuant to section 17b-261, that is required, after the exhaustion of all appeals and in accordance with state and federal law, to be paid to a nursing home facility for the cost of care and services.

**As a recipient of medical assistance, the Appellant was required to pay applied income to the Facility toward her cost of care and services.**

6. "Any transfer or assignment of assets resulting in the imposition of a penalty period shall be presumed to be made with the intent, on the part of the transferor or the transferee, to enable the transferor to obtain or maintain eligibility for medical assistance. This presumption may be rebutted only by clear and convincing evidence that the transferor's eligibility or potential eligibility for medical assistance was not a basis for the transfer or assignment." Conn. Gen. Stat. § 17b-261a (a).

"Transfers Made Exclusively for Reasons Other than Qualifying. 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." UPM § 3029.10 E.

**The Appellant provided clear and convincing evidence that \$25,785.22 in transfers in [REDACTED] 2019 were made for fair market value. [\$250.00 + \$979.22 + \$5,405.00 + \$19,151.00]**

**The Appellant did not provide clear and convincing evidence that \$865.78 in transfers in [REDACTED] 2019 were made for fair market value.**

7. "During the penalty period, the following Medicaid services are not covered: a. LTCF [long-term care facility] 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." UPM § 3029.05 G.1.

"Payment is made for all other Medicaid services during a penalty period if the individual is otherwise eligible for Medicaid." UPM § 3029.05 G.2.

Section 3029.05 E. of the Uniform Policy Manual provides:

The penalty period begins as of the later of the following dates: 1. the first day of the month during which assets are transferred for less than fair market value,

if this month is not part of any other period of ineligibility caused by a transfer of assets; or 2. 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 [long-term care] 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.

UPM § 3029.05 E.

**██████████ 2019 is the first date of the month in which the Appellant was otherwise eligible for Medicaid payment of the LTC services based on an approved application for such care but for the application of the penalty period.**

8. Section 3029.05 F. 2. of the Uniform Policy Manual addresses the calculation and length of a penalty period of ineligibility attributed to a Medicaid recipient due to transfers of assets. 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.

“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.” UPM § 3029.05 F.3.

“For recipients, the average monthly cost for LTCF services is based on the figure as of: (1) the month of institutionalization; or (2) the month of the transfer, if the transfer involves the home, or the proceeds from a home equity loan, reverse mortgage or similar instrument improperly transferred by the spouse while the institutionalized individual is receiving Medicaid, or if a transfer is made by an institutionalized individual while receiving Medicaid (Cross Reference: 3029.15).” UPM § 3029.05 F.2.b.

As of ██████████ 2019, the average monthly cost for LTCF services in Connecticut equaled \$12,851.00.

**The Department incorrectly determined that the Appellant is subject to a penalty period of ineligibility for Medicaid payment of long-term care services from ██████████ 2019 through ██████████ 2019 for \$26,651.00 in transfers for less than fair market value.**

**The Appellant's penalty period of ineligibility of Medicaid payment for long-term care services equals two (2) days. [(\$865.78 divided by \$12,851.00) multiplied by 30 days, rounded up to nearest day]**

**The Appellant is ineligible for Medicaid payment of long-term care services from [REDACTED] 2019 through [REDACTED] 2019, for uncompensated transfers of \$865.78 in [REDACTED] 2019.**

### DISCUSSION

With respect to the [REDACTED], 2019 transfer of \$19,151.00 to the Facility, the Department does not dispute that the Appellant owed the Facility \$19,151.00 in unpaid applied income by the time of the payment. The Appellant paid an overdue bill owed to the Facility for services she received from that Facility; therefore this payment is not an improper transfer. The payment cannot be used to establish a penalty period of ineligibility for Medicaid long-term care services.

With respect to the [REDACTED], 2019 transfer of \$7,500.00 to the Appellant's mother, the Appellant opined that the transfer was to allow the Appellant's mother to reimburse family members for expenses they had incurred on the Appellant's behalf.

The Appellant established by clear and convincing evidence that \$6,634.22 of the \$7,500.00 transferred to the Appellant's mother were a good faith reimbursement of goods and services paid by the mother from the mother's funds on the Appellant's behalf. From her own finances, the Appellant's mother purchased the following items on the Appellant's behalf: a \$250.00 item from [REDACTED] that was delivered to the Appellant at the Facility; a \$5,405.00 burial contract in the Appellant's name; and \$979.22 in furniture that was also delivered to the Appellant at the Facility.

However, the hearing officer did not find the remainder of the Appellant's receipts persuasive that she was liable to reimburse family members for their purchases. The evidence was not clear and convincing that the Appellant received the items and services allegedly purchased by these relatives for the Appellant's use.

A [REDACTED], 2018 invoice by [REDACTED] for a "full appraisal" was troubling in part for its numerous blank fields. The Appellant's sibling, who a little over two weeks later purchased the Appellant's real property, is identified as the "Borrower" on the invoice. It is reasonable to conclude that the appraisal was completed for the sibling so she could attain a mortgage to purchase the real property from the Appellant. This expenditure is not one that a seller is typically liable to reimburse.

A [REDACTED] 2019 order summary indicates that an individual purchased women's clothing that was delivered to the real property. The individual's billing address and shipping address are listed on the invoice as the address of the real property with the identifier of "This is not a gift." The Appellant had not resided at that location for approximately a year, and in fact, no longer owned the real property. Also compelling is that the Appellant also had been receiving personal deliveries at the Facility for at least six months. This order summary was not clear and convincing evidence that purchase of the clothing was for the Appellant, that the Appellant had received this clothing, and that the Appellant was liable to reimburse the individual for the clothing's purchase.

Similarly, on [REDACTED] 2018, another individual purchased a 50-inch 4K Ultra HD Smart LED TV with HDR which was delivered to that individual at his [REDACTED], [REDACTED] address. There is no evidence in the hearing record to demonstrate that this specific television was received by the Appellant at the Facility.

The hearing officer recalculated the Appellant's penalty period of ineligibility for Medicaid payment of long-term care services and arrived at a two-day penalty period, to run from [REDACTED] 2019 through [REDACTED] 2019, based on \$865.78 in uncompensated transfers in [REDACTED] 2019.

**DECISION**

The Appellant's appeal is GRANTED in part. The penalty period of ineligibility for Medicaid long-term care payments will run from [REDACTED] 2019 through [REDACTED] 2019.

**ORDER**

1. The Department will remove its original penalty period, substituting instead a penalty period of ineligibility for Medicaid long-term payments to run from [REDACTED] 2019 through [REDACTED] 2019.
2. Within 21 calendar days of the date of this decision, or [REDACTED] 2019, documentation of compliance with this Order is due to the undersigned.

*Eva Tar - electronic signature*  
Eva Tar  
Hearing Officer

Pc: Kenneth Smiley, DSS-Willimantic  
Tonya Cook-Beckford, DSS-Willimantic  
Brian Sexton, DSS-Middletown



### **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.