



██████████, Appellant's Daughter and Power of Attorney  
 Michael Barr, Department Representative  
 Michael Briggs, Department Representative  
 Lisa Nyren, Fair Hearing Officer

### **STATEMENT OF THE ISSUE**

The issue to be decided is whether the Department correctly determined: 1) the Appellant transferred \$50,000.00 to become eligible for Medicaid; and 2) the \$50,000.00 transfer subjected the Appellant to a penalty period of ineligibility for Medicaid payment of long-term care services.

### **FINDINGS OF FACT**

1. The Appellant appointed his daughter ██████████ ("daughter") Power of Attorney. (Daughter's Testimony)
2. On ██████████ 2016, the Appellant and his spouse moved to ██████████ ██████████ ("assisted living facility"), an assisted living facility, upon the Appellant's discharge from a rehabilitation facility due to a urinary tract infection (UTI). (Exhibit 1: LTC Application and Exhibit 6: Physician's Letter)
3. Upon admission to the assisted living facility, the Appellant required assistance with transfers and showers. The Appellant is incontinent. The Appellant ambulates with the use of a wheelchair. The Appellant has dementia. (Daughter's Testimony)
4. The Appellant is age ██████████ born on ██████████. (Exhibit 1: LTC Application)
5. The Appellant's spouse passed away on ██████████. (Exhibit 1: LTC Application)
6. On ██████████ 2018, ██████████ MD ("PCP"), the Appellant's primary care physician, wrote a letter on behalf of the Appellant. The PCP writes, "[The Appellant] is living at an assisted living facility and does not require a nursing home level of care." (Exhibit 6: Physician's Letter)
7. On ██████████ 2018, the daughter received \$50,000.00 from a ██████████ ██████████ checking account owned by the Appellant and his daughter. Personal check ██████████ for \$50,000.00 made out to the daughter listed "down payment of house" in the memo section. The signature on the

check [REDACTED] is blocked out. (Exhibit 1: LTC Application, Exhibit 7: Personal Check, Exhibit 8: Daughter's Letter and Daughter's Testimony)

8. The daughter accepted check [REDACTED] for \$50,000.00 as a gift from the Appellant and used the funds to purchase a home on [REDACTED] 2018. Purchase price: \$300,000.00. Contract Deposit: \$30,000.00. Total Due at Closing: \$59,782.42. (Daughter's Testimony, Exhibit 8: Affidavit and Exhibit 9: Closing and Disbursement Statement)
9. On [REDACTED] 2019, the daughter completed an affidavit declaring her father gave her money to place a deposit on a house. The daughter states in the affidavit that her mother passed on [REDACTED] 2018 and on [REDACTED], 2019, the date of her mother's eulogy, she learned she would lose her current housing due to the death of her landlord and impending eviction. The daughter writes, "My father then gave us money which he was planning on doing with my mother before she passed. He gave us the amount needed that we could afford the monthly payment, utilities and living expenses. At this time my father was not in a nursing home. He was and is still currently living in an Assisted Living facility in [REDACTED]." (Exhibit 8: Affidavit)
10. On [REDACTED] 2019, the Department received an application for Medicaid for LTC from the daughter on behalf of the Appellant. (Exhibit 1: LTC Application)
11. On [REDACTED] 2019, the Appellant entered [REDACTED] (the "facility"), a skilled nursing facility. (Exhibit A: Brief)
12. On [REDACTED] 2019, the Department determined the Appellant made an improper transfer of assets totaling \$50,000.00 on [REDACTED] 2018 and mailed a notice, Form W495A Notice of Possible Improper Transfer of Assets ("W495A"), to the Appellant regarding the transfer of assets. The notice states that the Department determined that the Appellant transferred \$50,000.00 on [REDACTED], 2018 because you applied for medical help for LTC services and you transferred assets that affect your eligibility and you have not provided proof that the transfer was not made in order to be eligible for assistance. (Exhibit 2: W495A Notice of Possible Improper Transfer of Assets)
13. The attorney submitted a rebuttal response on behalf of the Appellant which included the daughter's affidavit and a copy of check [REDACTED]. The Department reviewed the rebuttal response and upheld the preliminary decision to impose a transfer of asset penalty. (Hearing Record)
14. On [REDACTED] 2019, the Department mailed a notice, Form W-495B Response to Your Transfer of Assets Explanation ("W495B") to the

Appellant. The notice states that the Department disagrees with the rebuttal response submitted by the daughter. The Department's determination of the transfer of \$50,000.00 on [REDACTED] 2018 to qualify for Medicaid remains and the Department will set up a penalty period beginning [REDACTED] 2019 and ending [REDACTED] 2019 in which the Department will not pay for LTC services which includes daily room and board at a nursing facility. (Exhibit 3: W-495B Response to Your Transfer of Assets Explanation)

15. On [REDACTED] 2019, the Department granted the Appellant Medicaid under the Husky C Medically Needy Aged, Blind, Disabled Spenddown program effective [REDACTED] 2019 through [REDACTED] 2019 and Husky C LTC Facility Resident – Spenddown program effective [REDACTED] 2019 with a penalty period beginning [REDACTED] 2019 and ending on [REDACTED] [REDACTED] 2019 during which time Medicaid will not pay for room and board at the nursing facility. (Exhibit 4: Notice of Action and Exhibit 3: Response to Your Transfer of Assets Explanation)
16. On [REDACTED] 2019, the Department mailed a Notice of Action to the Appellant regarding Medicaid eligibility and an improper transfer of assets. The notice states, "You are eligible for Medicaid. However, we are imposing a penalty period for improper transfer of assets that affects your coverage. Your penalty period starts [REDACTED] 19 and ends [REDACTED] 19. During this time, Medicaid will not pay for room and board at a nursing home and the long-term care facility will bill you directly for this." (Exhibit 4: Notice of Action)
17. 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 [REDACTED] 2019. Therefore, this decision is due not later than [REDACTED] 2019.

### **CONCLUSIONS OF LAW**

1. Section 17b-2(6) of the Connecticut General Statute ("Conn. Gen. Stat.") 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. "The Department of Social Services shall be the sole agency to determine eligibility for assistance and services under programs operated and administered by said department." Conn. Gen. Stat. § 17b-261b(a)

3. State statute provides as follows:

Medical assistance shall be provided for any otherwise eligible person whose income, including any available support from legally liable relatives and the income of the person's spouse or dependent child, 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. A disposition of property ordered by a court shall be evaluated in accordance with the standards applied to any other such disposition for the purpose of determining eligibility. The commissioner shall establish the standards for eligibility for medical assistance at one hundred forty-three per cent of the benefit amount paid to a household of equal size with no income under the temporary family assistance program in the appropriate region of residence. In determining eligibility, the commissioner shall not consider as income Aid and Attendance pension benefits granted to a veteran, as defined in section 27-103, or the surviving spouse of such veteran. Except as provided in section 17b-277 and section 17b-292, the medical assistance program shall provide coverage to persons under the age of nineteen with household income up to one hundred ninety-six per cent of the federal poverty level without an asset limit and to persons under the age of nineteen, who qualify for coverage under Section 1931 of the Social Security Act, with household income not exceeding one hundred ninety-six per cent of the federal poverty level without an asset limit, and their parents and needy caretaker relatives, who qualify for coverage under Section 1931 of the Social Security Act, with household income not exceeding one hundred fifty per cent of the federal poverty level without an asset limit. Such levels shall be based on the regional differences in such benefit amount, if applicable, unless such levels based on regional differences are not in conformance with federal law. Any income in excess of the applicable amounts shall be applied as may be required by said federal law, and assistance shall be granted for the balance of the cost of authorized medical assistance. The Commissioner of Social Services shall provide applicants for assistance under this section, at the time of

application, with a written statement advising them of (1) the effect of an assignment or transfer or other disposition of property on eligibility for benefits or assistance, (2) the effect that having income that exceeds the limits prescribed in this subsection will have with respect to program eligibility, and (3) the availability of, and eligibility for, services provided by the Nurturing Families Network established pursuant to section 17b-751b. For coverage dates on or after January 1, 2014, the department shall use the modified adjusted gross income financial eligibility rules set forth in Section 1902(e)(14) of the Social Security Act and the implementing regulations to determine eligibility for HUSKY A, HUSKY B and HUSKY D applicants, as defined in section 17b-290. Persons who are determined ineligible for assistance pursuant to this section shall be provided a written statement notifying such persons of their ineligibility and advising such persons of their potential eligibility for one of the other insurance affordability programs as defined in 42 CFR 435.4.

Conn. Gen. Stat. § 17b-261(a)

4. State statute provides as follows:

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)

5. State statute provides as follows:

Any transfer or assignment of assets resulting in the establishment or imposition of a penalty period shall create a debt, as defined in section 36b-645, that shall be due and owing by the transferor or transferee to the Department of Social Services in an amount equal to the amount of the medical assistance provided to or on behalf of the transferor on or after the date of the transfer of assets, but said amount shall not exceed the fair market value of the assets at the time of transfer. The Commissioner of Social Services, the Commissioner of Administrative Services and the Attorney General shall have the power or authority to seek administrative, legal or equitable relief as provided by other statutes or by common law.

Conn. Gen. Stat. § 17b-261a(b)

6. State statute provides as follows:

The Commissioner of Social Services, pursuant to section 17b-10, shall implement the policies and procedures necessary to carry out the provisions of this section while in the process of adopting such policies and procedures in regulation form, provided notice of intent to adopt regulations is published in the Connecticut Law Journal not later than twenty days after implementation. Such policies and procedures shall be valid until the time final regulations are effective.

Conn. Gen. Stat. § 17b-261a(e)

7. "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))
8. Section 3029 of the Uniform Policy Manual ("UPM") provides in part for "the technical eligibility requirement in the Medicaid program pertaining to the transfer of an asset for less than fair market value. The policy material in this chapter pertains to transfers that occur on or after February 8, 2006."
9. "The Department uses the policy contained in this chapter to evaluate assets transfers, including the establishment of certain trusts and annuities, if the transfer occurred, or the trust or annuity was established, on or after February 8, 2006." UPM § 3029.03
10. "The policy contained in this chapter pertains to institutionalized individuals and to their spouses." UPM § 3029.05(B)(1)
11. Department policy provides as follows:

An individual is considered institutionalized if he or she is receiving:

- a. LTCF services; or
- b. Services provided by a medical institution which are equivalent to those provided in a long-term care facility; or
- c. Home and community based services under a Medicaid waiver (cross references: 2540.64 and 2540.92)

UPM § 3029.05(B)(2)

12. Department policy provides as follows:

There is a period established, subject to the conditions described in this chapter, during which institutionalized individuals are not eligible for certain Medicaid services 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)

13. Department policy provides as follows:

The look-back date for transfers of assets is a date that is 60 months before the first date on which both the following conditions exist:

1. The individual is institutionalized; and
2. The individual is either applying for or receiving Medicaid.

UPM § 3029.05(C)

14. Department policy provides as follows:

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.

UPM § 3029.05(D)(1)

In the case of an asset that the individual holds in common with another person or persons in joint tenancy, tenancy in common or similar arrangement, the Department considers the asset (or affected portion of such asset) to have been transferred by the individual when the individual or any other person takes an action to reduce or eliminate the individual's ownership or control of the asset.

UPM § 3029.05(D)(2)

15. "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)

"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.” UPM § 3029.10(F)

16. Department policy provides as follows:

Compensation in exchange for a transferred asset is counted in determining whether fair market value was received.

A. Compensation which is counted

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.

UPM § 3029.30

Department policy provides as follows:

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.

UPM § 3029.15(B)

17. “Prior to denial or discontinuance of LTC Medicaid benefits, the Department notifies the individual and his or her spouse of its preliminary decision that a transfer of an asset is determined to have been improper.” UPM § 3029.35(A)(1)

18. On ██████████ 2019, the Department correctly issued form W495A to the Appellant.

19. Department policy provides as follows:

An institutionalized individual, or his or her spouse, who is notified of the Department’s determination that an asset transfer was improper, has ten days from the date of the notice to rebut this determination prior to the implementation of the negative action. The Department may grant an extension if the individual so requests and the request is reasonable.

UPM § 3029.35(B)(1)

Department policy provides as follows:

If the individual rebuts the Department's preliminary decision to impose a penalty period, the Department has ten days from the receipt of the rebuttal to send an interim notice to the individual stating that it is either upholding or reversing its preliminary decision.

UPM § 3029.35(C)(2)

20. On [REDACTED] 2019, the Department correctly issued the Appellant a W495B, interim notice.
21. The attorney for the Appellant and the daughter failed to provide clear and convincing evidence that the reason for the transfer of \$50,000.00 on [REDACTED] [REDACTED], 2018 was not for qualifying for assistance. In 2016, due to declining health, the onset of dementia, and a stay in a rehabilitative facility, the Appellant and his spouse moved into the assisted living facility. In 2018, two months after the death of the spouse, the Appellant transferred \$50,000.00 to the daughter; the same month the Appellant's PCP writes a letter which states he does not require nursing home level of care. The existence of the PCP letter validates the Appellant may have not required nursing home care in [REDACTED] 2018 at the age of [REDACTED] but it does not address the potential for nursing home care without any reference to the Appellant's medical condition. However, the existence of the PCP letter does imply that the Appellant considered the impact the transfer of \$50,000.00 might have on his potential eligibility for Medicaid. Subsequently, in less than two years after the transfer, the Appellant applied for Medicaid in [REDACTED] 2019 pending his admission to a long term care facility. It is also noted, the affidavit submitted by the daughter lists the date of death for the spouse as [REDACTED] 2018, while the Appellant's LTC application lists the date of death as [REDACTED] 2018. The affidavit lists the eulogy for the spouse as [REDACTED] 2019, the same date as the death of the daughter's landlord. Documents presented list the check [REDACTED] dated [REDACTED] 2018 and the closing on the daughter's home property as [REDACTED] 2018.
22. The Department correctly determined the Appellant transferred assets totaling \$50,000.00.
23. The Department correctly determined the Appellant is subject to a transfer of asset penalty under Medicaid Husky C LTC.
24. "The Department sends a final decision notice regarding the rebuttal issue at the time of the mailing of the notice regarding the disposition of the Medicaid application." UPM § 3029.35(C)(4)

25. On [REDACTED] 2019, the department correctly issued a notice of action to the Appellant regarding his Medicaid eligibility and the imposition of a penalty due to the improper transfer of assets.

**DECISION**

The Appellant's appeal is DENIED.



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Lisa A. Nyren  
Fair Hearing Officer

CC: [REDACTED]  
Fred Presnick, DSS RO 30  
Yecenia Acosta, DSS RO 30  
Tim Latifi, DSS RO 30  
Michael Barr, DSS RO 30  
Michael Briggs, DSS RO 30

### **RIGHT TO REQUEST RECONSIDERATION**

The appellant has the right to file a written reconsideration request within **15** days of the mailing date of the decision on the grounds there was an error of fact or law, new evidence has been discovered or other good cause exists. If the request for reconsideration is granted, the appellant will be notified within 25 days of the request date. No response within 25 days means that the request for reconsideration has been denied. The right to request a reconsideration is based on §4-181a (a) of the Connecticut General Statutes.

Reconsideration requests should include specific grounds for the request: for example, indicate what error of fact or law, what new evidence, or what other good cause exists.

Reconsideration requests should be sent to: Department of Social Services, Director, Office of Administrative Hearings and Appeals, 55 Farmington Avenue Hartford, CT 06105.

### **RIGHT TO APPEAL**

The appellant has the right to appeal this decision to Superior Court within 45 days of the mailing of this decision, or 45 days after the agency denies a petition for reconsideration of this decision, provided that the petition for reconsideration was filed timely with the Department. The right to appeal is based on §4-183 of the Connecticut General Statutes. To appeal, a petition must be filed at Superior Court. A copy of the petition must be served upon the Office of the Attorney General, 55 Elm Street, Hartford, CT 06106 or the Commissioner of the Department of Social Services, 55 Farmington Avenue Hartford, CT 06105. A copy of the petition must also be served on all parties to the hearing.

The 45 day appeal period may be extended in certain instances if there is good cause. The extension request must be filed with the Commissioner of the Department of Social Services in writing no later than 90 days from the mailing of the decision. Good cause circumstances are evaluated by the Commissioner or the Commissioner's designee in accordance with §17b-61 of the Connecticut General Statutes. The Agency's decision to grant an extension is final and is not subject to review or appeal.

The appeal should be filed with the clerk of the Superior Court in the Judicial District of New Britain or the Judicial District in which the appellant resides.