

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

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

CLIENT ID #: ██████████
HEARING ID #: 142495

NOTICE OF DECISION

PARTY

██████████
██████████
██████████
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PROCEDURAL BACKGROUND

On ██████████, 2019, the Department of Social Services (the "Department") issued a notice of action ("NOA") to ██████████ (the "Appellant") in care of ██████████ (the Appellant's "Daughter"), granting Medicaid, but imposing a penalty period of ineligibility for payment for nursing facility care due to an improper transfer of assets.

On ██████████, 2019, the Appellant, through his Daughter and POA, requested an administrative hearing to appeal the Department's imposition of a penalty period.

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

On ██████████, 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:

██████████, the Appellant's Daughter
Glenda Gonzalez, Department's representative

Gary Sardo, Department employee not participating in hearing
James Hinckley, Hearing Officer

STATEMENT OF THE ISSUE

The issue is whether the Department was correct when it imposed a Medicaid penalty period of ineligibility due to an improper transfer of assets.

FINDINGS OF FACT

1. The Appellant is currently 74 years old and resides in a nursing facility in Connecticut. He has numerous medical diagnoses including coronary artery disease and diabetes, and is confined to a wheelchair. (Hearing Record)
2. In 2017, the Appellant and his wife were residents of Florida and lived in the community. (Hearing Record)
3. In 2017, the Appellant's wife had advanced cancer and was in poor health, and the Appellant was her caregiver. (Hearing Record)
4. On [REDACTED], 2017, the Appellant's Daughter received a phone call from a friend of the Appellant's in Florida, letting her know that both the Appellant and his wife were in the hospital. (Daughter's testimony, Hearing Record)
5. On [REDACTED], 2017, his Daughter, along with her sister, left immediately for Florida, driving straight through and arriving on [REDACTED], 2017. (Daughter's testimony, Hearing Record)
6. When they arrived in Florida on [REDACTED], 2017, the Appellant was hospitalized with a urinary tract infection and possible stroke, and his wife was in the intensive care unit. (Hearing Record)
7. On the following day, [REDACTED], 2017, the Appellant's wife died. (Hearing Record)
8. The Appellant and his wife were together for 43 years. Following her death, he became deeply despondent. The hospital tried to assess his mental status for signs of a stroke but the results were inconclusive because it was difficult to determine whether his slow speech and detachment resulted from a stroke or from his grief. (Daughter's testimony, Ex. A: Hospital Records)
9. On [REDACTED], 2017, the Appellant was discharged from the hospital to a nursing facility in Florida, [REDACTED]. (Hearing Record)
10. The Appellant's Daughter took care of his wife's funeral arrangements and performed cleaning and repairs to the Appellant's Florida home to prepare it for

sale. She left Florida on [REDACTED] 2017. (Daughter's testimony)

11. On [REDACTED], 2017, the Appellant was readmitted to the hospital in Florida. (Hearing Record)
12. On [REDACTED], 2017, the Appellant's Daughter returned immediately to Florida after receiving a phone call from the hospital there that the Appellant was critically ill with kidney failure, liver failure and congestive heart failure. (Hearing Record)
13. By [REDACTED], 2017, the Appellant was no longer critically ill and had recovered well enough that he was able to be readmitted to the [REDACTED] nursing facility. (Daughter's testimony, Ex. D: [REDACTED] admission/discharge records)
14. During the time the Appellant's Daughter was in Florida she continued to prepare his home for sale by performing cleaning and making repairs. She left Florida on [REDACTED], 2017. She located a nursing facility in Connecticut where she could transfer the Appellant at the end of the month so that he could be closer to family. (Daughter's testimony, Hearing Record)
15. On [REDACTED], 2017, the Appellant was discharged from [REDACTED] nursing home. His Daughter took him back to Connecticut and, on [REDACTED] 2017, he was admitted to [REDACTED] (Ex. D, Ex. F: [REDACTED] admission records)
16. The Appellant's Daughter took many days off from work to deal with her father's affairs in Florida, exhausting her vacation time and taking more than 24 days of unpaid family medical leave. (Ex. E: Payroll records from Daughter's employer)
17. At the time of the Appellant's admission to [REDACTED] on [REDACTED] 2017, he was expected to remain in a nursing home for the rest of his life. (Daughter's testimony)
18. Shortly after his admission to [REDACTED], the Appellant Daughter began liquidating his assets such as annuities and life insurance policies, in anticipation of him privately paying his nursing home costs until his funds were exhausted. (Daughter's testimony)
19. After spending some time at the nursing home, the Appellant discussed with his Daughter the possibility that he could return to the community and live with her and her son. (Daughter's testimony)
20. At the time of their discussions, the Appellant's Daughter and her youngest son lived in an apartment. The Daughter had lived in the apartment since [REDACTED] 2007 and it suited her family's needs. The rent for the two bedroom apartment was affordable at \$950.00, which included heat and utilities. (Daughter's

testimony, Ex. G: Lease information)

21. The Daughter's apartment was entirely unsuitable as a residence for the Appellant. It did not have a bedroom available for him, and was on the second floor and not wheelchair accessible. (Daughter's testimony, Ex. G)
22. Beginning [REDACTED] 2017, the Appellant and his Daughter contracted with a real estate agent to search for houses suitable for the Appellant to live. The agent was tasked with searching for homes that had a first floor bedroom and bathroom, and wheelchair accessibility for the Appellant. The agent located approximately twelve homes that were potentially suitable and showed all the homes, with the Appellant in attendance for every showing. (Ex. H: Letter from real estate agent)
23. After viewing several homes, the Appellant and his Daughter located one that would be perfectly suitable for the Appellant. It had a first floor bedroom and bathroom and an open floorplan with wide doorways that the Appellant could navigate with his wheelchair. (Daughter's testimony, Hearing Record)
24. The Appellant's Daughter would not have been able to purchase the home without some financial assistance from her father. (Daughter's testimony)
25. On [REDACTED] 2017, the Appellant transferred \$46, 527.76 to his daughter. (Hearing Record)
26. On [REDACTED] 2017, the Appellant's daughter purchased the home, using the money the Appellant gifted her as a down payment. (Hearing Record)
27. On [REDACTED], 2017, the Appellant was discharged from [REDACTED] to live with his Daughter at the newly purchased home. The entry on his discharge summary for the question: *Patient/Resident's Reaction to Discharge/Transfer* reads, "Eager to move home to new home with daughter since coming to the area from Florida". (Ex. J: [REDACTED] discharge summary)
28. All aspects of the new home were either suitable for the Appellant or modified to be that way. All the doorways were wide enough for the Appellant's wheelchair to fit through. The arms of his wheelchair could fit underneath the high dining room table, allowing him to get close. The toilet was modified for his use. Grab handles were installed in various places throughout the home. The walk-in shower had a wide entrance and a flat floor, allowing the Appellant to use a shower chair. His bedroom was furnished with a hospital bed, and a television was wall mounted for viewing from the bed. (Daughter's testimony, Ex. S: Photographs)
29. The Appellant lived with his Daughter for approximately one year. During that

time she was his primary caregiver while not at work. Aides from home health agencies provided care when she was at work, but the aides were at times unreliable, showing up late, or not showing up, or leaving early. When those problems occurred, the Daughter went in to work late, or left early, or left work and then returned, so that the Appellant could receive his meals and his medications at the proper times. The Daughter assisted her father with activities of daily living and provided a significant amount of care during the one year. The care she provided was essential to the Appellant avoiding institutionalization during that time. (Daughter's testimony, Ex. N1: Letter from [REDACTED] M.D., Ex N2: Letter from [REDACTED], MD, Ex. N3: Letter from [REDACTED], MD)

30. On [REDACTED], 2018, the Appellant had to be taken to the emergency room for a urinary tract infection with high fever. He was discharged on [REDACTED] 2019 to another nursing home, [REDACTED]. (Hearing Record)
31. The Appellant's admission to [REDACTED] was originally planned to be a rehabilitation stay, with his eventual discharge back home. (Ex. O: [REDACTED] admission information)
32. At some point the Appellant decided, because of his declining health, that living at home would be an increasing challenge, and that he was better off remaining in the nursing home. (Daughter's testimony)
33. On [REDACTED], 2019 the Appellant applied for Medicaid for payment of long term care. (Ex. 14: Medicaid application form)
34. The Department determined, during its review of the Appellant's application, that he transferred \$46,527.76 to his Daughter during the look back period. (Hearing Record)
35. The Appellant was not eligible for Medicaid for [REDACTED] 2019 and [REDACTED] 2019 because he still had \$15,000.00 in his bank account. He became asset eligible for the program as of [REDACTED] 2019. (Hearing Summary)
36. On [REDACTED], 2019, the Department issued a notice to the Appellant of its preliminary decision that the \$46,527.76 that he transferred to his Daughter on [REDACTED] 2017 was made in order to be eligible for assistance. The notice provided the Appellant until [REDACTED] 2017 to provide rebuttal of the preliminary decision. (Ex. Q: W-495A Transfer of Assets Preliminary Decision Notice)
37. On [REDACTED], 2019, as part of a running email exchange the Appellant's Daughter had with the worker who was processing the case, the Daughter wrote to the worker that she had received the Preliminary Decision Notice and did not agree with it. The Daughter wrote a one paragraph response mentioning the care she provided to her father during the one year, the time and costs to her of providing the care, and time and costs of making several trips to Florida,

that the transferred money was used to purchase that home where he had been living and that her “father had no intentions of ending up in a nursing home”, however “was the one that decided to stay...when he got sick the last time...” (Ex. R: email exchange)

38. On [REDACTED], 2019, the worker responded to the Daughter’s [REDACTED], 2019 email, “We have to send that form – it is policy. I can use this email as your response to the form and proceed. Just let me know.” The Daughter responded on the same day, expressing that she was very upset with the decision. On the same day the worker then responded, “The policy says you would have to have lived with your dad for at least 2 years. It’s not an accusation of stealing. I will have my supervisor review your email and make a decision.” (Ex. R)
39. Earlier messages from the email exchange were a running discussion of the general processing of the case, such as of what documents were needed, or had been received, or had been mailed, or were still waiting on a third party, etc. The exchange also included discussions of how long the Daughter provided care and whether they had a contract/care agreement for payment for the care. (Ex. 16: email exchange)
40. On [REDACTED], 2019, the Department issued a notice to the Appellant that because it did not agree with his rebuttal/hardship claim it was setting up a penalty period from [REDACTED] 2019 to [REDACTED], 2019. (Ex. 3: W-495B Notice of Response to Rebuttal/Hardship Claim)
41. On [REDACTED], 2019, the Department issued a notice to the Appellant that its final decision was to set up a penalty period beginning [REDACTED] 2019 and ending [REDACTED], 2019, because the Appellant transferred \$46,527.76 on [REDACTED] 2017 to become eligible for Medicaid. (Ex. 4: W-495C Transfer of Assets Final Decision Notice)
42. On [REDACTED] 2019, the Department issued a NOA to the Appellant that granted Medicaid effective [REDACTED] 2019, but explained “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]1/2019 and ends [REDACTED]/2019. 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....” (Ex. 19: [REDACTED], 2019 NOA)
43. On [REDACTED], 2019, the Daughter wrote an email to the worker asking for an extension. The worker asked the Daughter to clarify what kind of extension she was asking for and the Daughter responded, “For the preliminary decision notice for the transfer of assets”. The worker then responded that she already granted the case on [REDACTED], 2019 with a penalty. She informed the Daughter of her right to a fair hearing. The Daughter responded it was her understanding that she had until [REDACTED]/2019 to provide rebuttal. The worker responded that the

Department did not request or need any additional information and that the Daughter's email response was the rebuttal to the preliminary notice. The Daughter responded that she never gave approval to use the email as her rebuttal and the worker advised her to request a hearing. (Ex. R)

CONCLUSIONS OF LAW

1. The Department is the state agency that administers the Medicaid program pursuant to Title XIX of the Social Security Act. The Department may make such regulations as are necessary to administer the medical assistance program. Conn. Gen. Stat. § 17b-2; Conn. Gen. Stat. § 17b-262
2. 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, 177 (1994) (citing Conn. Gen. Stat. 17-3f(c) [now 17b-10]; *Richard v. Commissioner of Income Maintenance*, 214 Conn. 601, 573 A.2d 712(1990)).
3. 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. UPM § 3029.03
4. 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. UPM § 3029.05(A)
5. 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. UPM § 3029.05(C)
6. **The Appellant's Medicaid application was filed on [REDACTED], 2019. The look-back date for the Appellant's application is [REDACTED], 2014.**
7. **[REDACTED] 2017, the date the Appellant transferred \$46,527.76 to his Daughter, was during the look-back period.**
8. "The transfers described in 3029.10 do not render an individual ineligible for Medicaid payment of long term services...." UPM § 3029.10
9. "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)

10. **The Appellant and his daughter did not try to make the argument that the asset transfer was fair market value compensation for services provided by the Daughter. The Appellant and his Daughter did not have a care agreement between them, and the Daughter did not keep a log of the hours and types of services she provided for her father. Neither party intended for there to be direct payment for services, and the provisions in UPM § 3029.10(F) do not apply to this case.**
11. “An institutionalized individual, or his or her spouse, may transfer as asset without penalty if the individual provides clear and convincing evidence that he or she intended to dispose of the asset for other valuable consideration. The value of the other valuable consideration must be equal to or greater than the value of the transferred asset in order for the asset to be transferred without penalty.” UPM § 3029.10(F)
12. For services rendered of the type provided by a homemaker or home health aide to be considered other valuable consideration, the services must be essential to avoid institutionalization of the transferor for a period of at least two years. UPM § 3029.20(B)
13. **The Appellant’s Daughter did not provide services to the Appellant that enabled him to avoid institutionalization for at least two years. The transferred asset cannot be exempt from a penalty based on being compensation for other valuable consideration.**
14. **The Department correctly determined that the transfer was not exempt from being a penalty based on receiving fair market value, or based on receiving other valuable consideration.**
15. **The Department did not allow the Appellant the opportunity to present a full rebuttal to its Transfer of Assets Preliminary Decision Notice, and failed to assess all of the ways that the transfer could be excluded from resulting in a penalty period.**
16. Conn. Gen. Stat. § 17b-261a(a) 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 was not a basis for the transfer or assignment.

17. "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.
18. UPM § 3029.15(A) to (E) describe circumstances when a transfer does not result in a penalty because it is considered to have been made exclusively for reasons other than qualifying. Paragraphs (A) to (E) are preceded by the provision, "An institutionalized individual or the individual's spouse is considered to have transferred an asset exclusively for a purpose other than qualifying for assistance under circumstances *which include, but are not limited to*, the following:" (emphasis added) UPM § 3029.15
19. **The Appellant, and his Daughter, acting as his POA, did not contemplate Medicaid eligibility when the transfer was made. The transfer was solely to make it possible for the Appellant to live in the community with his family as he wished. It would not have been possible for him to leave the nursing home had he not contributed toward the purchase of a home that met his medical needs. His intent was the *opposite* of being for the purpose of qualifying for assistance. It was so he could delay his need for Medicaid. Instead of exhausting his remaining assets, which would only have paid the cost of his nursing care for a few months, he avoided institutionalization and the need to apply for Medicaid for over one year.**
20. **The transfer of assets made by the Appellant was exclusively for a purpose other than qualifying or assistance. I rely on the plain meaning of the requirement in UPM § 3029.15 as it is worded. The circumstances of the Appellant's transfer fall squarely within them. The transfer did not, and was not intended to, benefit the Daughter *at all*. She did not need or want to own a home with two unused bedrooms. She did not need wide doorways and a walk-in shower to accommodate a shower chair, and those features likely add no value to the home. She left an apartment where she lived for ten years that was perfect for her family in order to accommodate the Appellant's needs. The transfer was so that the Appellant's needs could be met, not to enrich his Daughter, and had nothing to do with impoverishing the Appellant so that he could for Medicaid. It was, therefore, *exclusively* for a purpose other than qualifying for assistance and does not result in a penalty period.**

21. The Department was incorrect when it imposed a penalty period of ineligibility for payment for nursing facility care against the Appellant for an improper transfer of assets. The penalty must be removed.

DISCUSSION

The Appellant's Daughter provided a full chronology of events from when her father was first hospitalized in Florida in [REDACTED] 2017 until now. The supporting documentation she provided gave her accounting of the facts a high degree of credibility. The evidence she provided included her father's Florida hospitalization records, Florida nursing home records, Connecticut nursing home records, her own employee records, documentation describing her former apartment, an attestation from her real estate agent, documentation describing the home that was eventually chosen for purchase, photographic evidence of the wheelchair accessibility of the home's living and bathroom areas, and of the home modifications that were made, attestations from two of her father's doctors, and more. The Appellant's Daughter was also very careful with the facts. I found nothing in the evidence that contradicted any of her testimony or written statements. Even when she wrote that her father "was in the hospital for a week", a check of the records confirmed that he was hospitalized for exactly 7 days. Given the completeness of her chronology and the credibility of her account, the hearing record is not lacking in any way.

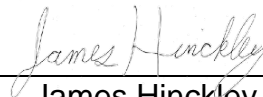
To be perfectly clear, the above relevant facts that concern the care the Appellant's Daughter provided him, and the unreimbursed expenses she incurred, and the unpaid days she took off from work, are not relevant from the standpoint of evaluating their value as a form of direct compensation for the transfer. But they are relevant as to the Appellant's *intent*, and the Daughter's *intent* as his POA. The nearly gapless chronology provided by the Daughter clearly demonstrates that the intent of the transfer was not to qualify for Medicaid but for the Appellant to live at home with family and avoid institutionalization for as long as possible. The reasonableness of the plan is borne out by the facts. While the Appellant did not avoid institutionalization for a full two years, the standard for *Other Valuable Consideration*, he did so for one full year. What he contributed as down payment on the home would have only paid his nursing home costs for less than four months. After one year's time the Appellant still had \$15,000.00 remaining in the bank. If the Appellant were trying to impoverish himself so that he could qualify for Medicaid, that would not have been the case. In fact, the Appellant retained enough assets to allow his return home, financially at least, had health problems not intervened. He only spent his remaining assets down, appropriately, on his nursing home care, when Medicaid became the only option left.

DECISION

The Appellant's appeal is **GRANTED.**

ORDER

1. The Department must remove the penalty period of ineligibility for payment for nursing facility care that it imposed against the Appellant.
2. As compliance with this decision, the Department must provide proof that the penalty against the Appellant has been removed. The proof must be sent directly to the undersigned fair hearing officer by no later than [REDACTED] 2019.



James Hinckley
Hearing Officer

cc: Tyler Nardine
Cheryl Stuart
Glenda Gonzalez

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.