

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

██████████ 2020
Signature Confirmation

Client ID ██████████
Case ID ██████████
Request 151591

NOTICE OF DECISION

PARTY

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██████████
██
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PROCEDURAL BACKGROUND

On ██████████ 2019, the Department of Social Services (the “Department”) sent ██████████ ██████████ (“POA”), Power of Attorney for ██████████ ██████████ (the “Appellant”) a notice stating that the Department will impose a penalty period effective ██████████, 2019 through ██████████ 2019 for payment of long term care services under Medicaid due to the improper transfer of assets.

On ██████████ 2020, ██████████ ██████████ (“Co-Conservator”), Co-Conservator of the Estate and Co-Conservator of the Person for the Appellant, requested an administrative hearing on behalf of the Appellant to contest the Department’s penalty determination.

On ██████████ ██████████ 2020, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ 2020.

On ██████████ 2020, in accordance with sections 17b-60, 17-61 and 4-176e to 4-189 inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing.

The following individuals were present at the hearing:

██████████ Co-Conservator for the Appellant
 ██████████, Co-Conservator for the Appellant (former POA)
 Lauren Kimbro, Department Representative
 Christine Morin, 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 \$41,000.00 to become eligible for Medicaid; and 2) the \$41,000.00 transfer subjected the Appellant to a penalty period of ineligibility for Medicaid payment of long-term care services.

FINDINGS OF FACT

1. The Appellant owned a joint checking account ██████████ (“joint checking ██████████”) with her daughter ██████████ (“daughter”) at ██████████ ██████████ (the “bank”). (Exhibit 4: Bank Statement)
2. On ██████████ 2019, the daughter transferred \$41,000.00 from the joint checking account ██████████ to her personal checking account without the Appellant’s authorization. (Exhibit 4: Bank Statement, POA’s Testimony, and Exhibit 5: Statement)
3. The daughter refused to return the \$41,000.00 to the Appellant. (POA’s Testimony)
4. On ██████████ 2019, the Appellant appointed ██████████ (“POA”), her granddaughter, as her Power of Attorney. (Exhibit 2: Durable Statutory Power of Attorney)
5. On ██████████ 2019, ██████████ (“nursing facility”), a skilled nursing facility admitted the Appellant to their facility. (Exhibit 1: Long-term Care/Waiver Application)
6. On ██████████ 2019, the Court of Probate named the POA and ██████████ ██████████ ██████████ (“co-conservator”) as Co-Conservators of the Person/Estate of the Appellant. (Exhibit A: Certificate/Conservatorship)
7. On ██████████ 2019, the Department received an application for Medicaid under the Long Term Care (“LTC”) program from the POA on behalf of the

Appellant. The application lists the POA as the Appellant's authorized representative. (Exhibit 1: Long-term Care/Waiver Application)

8. The Appellant is age [REDACTED] born on [REDACTED]. (Exhibit 1: Long-term Care/Waiver Application)
9. On [REDACTED] 2019, the POA submitted a letter to the Department explaining the reason for the transfer of funds totaling \$41,000.00 on [REDACTED] 2019. The POA writes, "[The Appellant's] daughter took [the Appellant] to the bank knowing [the Appellant] had a stroke and was not able to speak or think clearly for herself. Between [REDACTED] and the [REDACTED] 2018 [the daughter] took [the Appellant] to the bank and had the bank add her on to [the Appellant's] account. [The daughter] transferred \$41,000.00 from [the Appellant's] account and deposited that money to her own account ending in [REDACTED] account number. ... [The daughter] refuses to return the money back to [the Appellant's] account. This money was not a gift and it was not authorized by [the Appellant] to be transferred from one account to another." (Hearing Record)
10. On [REDACTED] 2019, the Department determined the Appellant made an improper transfer of assets totaling \$41,000.00 on [REDACTED], 2019 and mailed a notice, Form W495A Transfer of Assets Preliminary Decision Notice ("W495A"), to the POA regarding the transfer of assets. The notice states that the Department determined that the Appellant transferred \$41,000.00 on [REDACTED] 2019 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 3: W495A Transfer of Assets Preliminary Decision Notice)
11. The co-conservator and POA did not contact local law enforcement regarding the daughter's withdrawal of \$41,000.00 from the joint checking account [REDACTED] as the daughter held joint ownership of the account, giving her full access to the funds, and the monies were transferred to her own personal account. (Co-Conservator's Testimony)
12. On [REDACTED] 2019, the Department mailed a notice, Form W-495C Transfer of Assets Final Decision Notice ("W495C") to the Appellant. The notice states that the Department's determination of the transfer of \$41,000.00 on [REDACTED] 2019 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-495C Transfer of Assets Final Decision Notice)

13. On [REDACTED] 2019, the Department determined the Appellant eligible for Medicaid beginning [REDACTED] 2019 with a penalty period beginning [REDACTED] 2019 and ending on [REDACTED] 2019 during which time Medicaid will not pay for room and board at the nursing facility. (Exhibit 3: W-495C Transfer of Assets Final Decision Notice)
14. On [REDACTED] 2020, the Department recalculated the penalty period with the period of ineligibility beginning [REDACTED] 2019 ending on [REDACTED] 2019. $\$41,000.00$ total transfer / $\$13,143$ Cost of LTC = 3.119 months, $.119 \times 30$ days = 3.57 days, penalty 3 months and 3 days} (Exhibit 6: Department Email)
15. 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] 2020. Therefore, this decision is due not later than [REDACTED] 2020.

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-five 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.

2020 Supplement to the 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)

Department policy provides as follows:

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 in return 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. (Cross Reference: 3029.20)

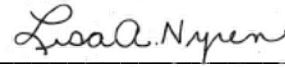
UPM § 3029.10(G)

- “If the transferor has become incompetent since the transfer and is incompetent at the time the Department is dealing with the transfer, the transferor’s conservator must provide the information.” UPM § 3029.15(A)(2)
16. “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)
 17. The Department correctly determined the Appellant as institutionalized.
 18. The Department correctly determined [REDACTED] 2019 falls within the 60 month look back date for transfers of assets.
 19. On [REDACTED] 2019, the Department correctly issued form W495A to the Appellant.
 20. The Department correctly determined the Appellant transferred assets totaling \$41,000.00. The Co-Conservator and POA on behalf of the Appellant failed to provide clear and convincing evidence that the reason for the transfer of \$41,000.00 on [REDACTED] 2019 was not for qualifying for assistance. The Co-conservator cites no police report was made because the daughter held joint ownership of joint checking [REDACTED]; the daughter had the full right to withdraw, deposit and manage the funds in account [REDACTED]. Testimony provided indicates the Appellant added the daughter to joint checking [REDACTED] in [REDACTED] 2018 after suffering a stroke, but failed to provide any medical documentation to support this claim. In addition, the Appellant’s medical condition is not known at the time of the transfer or during the year leading up to the Appellant’s admission to the nursing facility in [REDACTED] 2019. Testimony provided states the Appellant and POA requested the return of the monies from the daughter, but failed to provide any additional evidence supporting any requests for the return of the money.
 21. The Department correctly determined the Appellant transferred assets totaling \$41,000.00.
 22. The Department correctly determined the Appellant is subject to a transfer of asset penalty under Medicaid Husky C LTC.
 23. “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)

24. On [REDACTED] 2019, the Department correctly issued a notice of action to the POA regarding the Appellant's Medicaid eligibility and the imposition of a penalty due to the improper transfer of assets.

DECISION

The Appellant's appeal is denied.



Lisa A. Nyren
Fair Hearing Officer

CC: [REDACTED]
Rachel Anderson, DSS RO 20
Cheryl Stuart, DSS RO 20
Lisa Wells, DSS RO 20
Christine Morin, DSS RO 20
Lauren Kimbro, DSS RO 20

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.