

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

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

Case #: ██████████  
Client ID # ██████████  
Request # 153197

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████, 2020, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA") granting Medicaid L01 Long Term Care ("LTC") program effective ██████████, 2019 however due to Transfer of Assets the Department will impose a penalty of \$20,000 effective ██████████, 2019 and ending on ██████████ 2020.

On ██████████ 2020, the Appellant requested an administrative hearing to contest the Department's decision to impose such penalty.

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

On ██████████, 2020, the Appellant requested a continuance of the hearing, which was granted.

On ██████████, 2020, OLCRAH issued a notice scheduling the administrative hearing for ██████████ 2020.

On ██████████ 2020, The Department did not appear for the scheduled hearing. OLCRAH re-scheduled the administrative hearing.

On [REDACTED], 2020, OLCRAH issued a notice scheduling the administrative hearing for [REDACTED] 2020.

On [REDACTED], 2020, OLCRAH re-issued a notice scheduling the administrative hearing to correct the subject of the administrative hearing. The re-scheduled administrative hearing was scheduled for [REDACTED], 2020.

The [REDACTED] 2020 administrative hearing was re-scheduled for [REDACTED], 2020 due to miscommunication regarding this administrative hearing.

On [REDACTED] 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:

[REDACTED], Appellant's son and authorized representative  
Leila Miranda, Department Representative  
Almelinda McLeod, Hearing Officer

[REDACTED], Appellant was not present due to her institutionalization

### **STATEMENT OF THE ISSUE**

The issue to be decided is whether the Department's decision to impose a transfer of asset penalty beginning [REDACTED] 2019 to [REDACTED], 2020 was correct.

### **FINDINGS OF FACT**

1. The Appellant is [REDACTED] years old who resided at [REDACTED], [REDACTED] CT for approximately 30 years, rent free but responsible for condo fees and utilities. (Exhibit 1, W-1LTC application and A-Rep testimony)
2. The condo at [REDACTED] was owned by her son, [REDACTED] who resided at [REDACTED], CT. [REDACTED]. He is the Appellant's authorized Representative (A-Rep). (A-Rep testimony)
3. On [REDACTED] 2019, the A-Rep discovered the Appellant on the floor unconscious. She was taken to Hartford Hospital. (A-Rep testimony)
4. Prior to [REDACTED] 2019, the Appellant never saw a doctor but appeared to be in relatively good health as she was independent in all

her Activities of daily living “ADL’s” with the exception of a minor heart attack when she was ■ years old, from which she quickly recovered. The Appellant received her medications in the mail, but it is uncertain whether she took her medications. (A-Rep’s testimony)

5. On ■ 2019, the Appellant was admitted into ■, a skilled nursing facility and approved for long term care. (Hearing record)
6. On ■ 2019, the A-Rep applied for long term care facility (“LTCF”) Medicaid on behalf of the Appellant. (Exhibit 1, W-1 LTC application)
7. On ■ 2019, the Department issued a W-1348 “We Need Verification From You” form requesting verification in order to determine eligibility for LTCF Medicaid. The due date for the requested information was ■ 2019. (Hearing summary)
8. Requested verifications were received by the Department. (Department testimony)
9. On ■, 2019, the Department discovered a check # ■ from ■ under account # ■ for \$20,000.00 was issue to the A-Rep on ■ 2020. (Exhibit 5- canceled check)
10. The ■ account ■ listed the Appellant or the A-Rep as the owners of this account. The A-Rep did not deposit any of his own money in this account in the last two years prior to her institutionalization. (Exhibit 5 and A-Rep testimony)
11. On ■, 2020, the Department telephoned the A-Rep to inquire about the \$20,000.00 check issued to him and were informed that the Appellant gave the A-Rep the \$20,000.00 and that the Appellant did not know she was going to be institutionalized. (Hearing summary)
12. On ■ ■ 2019, the Department determined that the \$20,000.00 was an illegal transfer of assets and was not for the benefit of the Appellant. The Department issued a W-495 A, Transfer of Assets Preliminary Decision Notice. (Hearing summary)
13. The W-495 A notice informed the Appellant that the initial decision was that the transfer was made in order to become eligible for Medicaid assistance. The decision was based on two things. 1. An application for Long term care was submitted and 2. There was no proof that the

transfer was not made in order to qualify for assistance. The notice provide the opportunity to rebut the initial decision. (Exhibit 6A)

14. On [REDACTED], 2020, the Department received the rebuttal letter from the A-Rep stating that the Appellant had overflowed the toilet several times in the past two years and provided 2 estimates for repairs. (Exhibit 3)
15. The first estimate was from [REDACTED] dated [REDACTED] 2019 with an estimate of \$22, 323.42 for water damages in the 2<sup>nd</sup> floor bathroom and damages to the dining area on the first floor underneath the 2<sup>nd</sup> floor bathroom, as a consequence of the water damage. (Exhibit 4A)
16. The second estimate was from [REDACTED] dated [REDACTED] [REDACTED] 2019 with an estimate of \$21,972.12 for restoration, services and remodel of the bathroom and dining room for the water damage. The estimate also included services for the living room, hallway and stairs in order to have a seamless repair because the ceilings were adjacent to one another. (Exhibit 4B and A-Rep testimony)
17. On [REDACTED] 2019, the Department issued a W-495 B “Notice of response to Rebuttal “informing the Appellant that the Department did not agree with the rebuttal. The letter indicated a penalty of 46 days and during that time; the Department will not pay for long term medical services which include daily room and board rate or services received in the nursing facility. However, other medical services, such as doctor’s or hospital cost would be covered, if eligible for Medicaid. (Exhibit 6B)
18. On [REDACTED] 2020, the Department issued a W-495 C informing the Appellant she became asset eligible effective [REDACTED] 2019; however a \$20,000.00 penalty will be imposed starting on [REDACTED] [REDACTED] 2019 and will end on [REDACTED] 2020. (Exhibit 6C)
19. The pick- up date for [REDACTED] to receive payment was [REDACTED] 2020. (Hearing summary )
20. There was no agreement between the Appellant and the A-Rep that the Appellant would be responsible for damages while residing in his condo because she was his mother. (A-Rep testimony)
21. The issuance of this decision is timely under section 17b-61(a) of Connecticut General Statutes, 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. This decision, therefore, was due no later than [REDACTED] 2020. However, the

hearing record, which had been anticipated to close on [REDACTED] 2020, did not close due to a request for a re-schedule at the Appellant's request. The administrative hearing subsequently had to be re-scheduled several times due to various Departmental delays and other technicalities. Because there was a [REDACTED] day delay in the close of the hearing record at the request of the Appellant, this final decision was not due until [REDACTED] 2020. Effective [REDACTED] [REDACTED] 2020, the Commissioner of Department of Social Services has ordered an extension of the final hearing decision to 120 days from the date of the hearing request due to the public health emergency. This final decision is now not due until [REDACTED], 2020, and is therefore timely.

### **CONCLUSIONS OF LAW**

1. Section 17b- 2 (6) of the Connecticut General Statutes ("CGS") 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. Subsection (a) of Section 17b-261 (a) CGS provides that any disposition of property made on behalf of an applicant for recipient by a person authorized to make such disposition pursuant to a power of attorney , or other person so authorized by law shall be attributed to such applicant.
3. Uniform Policy Manual ("UPM") § 3029.05 (A) provide 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 specified in UPM 3029.05 (C). This period is called the penalty period or period of ineligibility.
4. UPM § 3029.05 (B) (2) provides an individual is considered institutionalized if he or she is receiving: a. LTCF [long term care are facility] 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.

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

5. UPM 3029.05 (C) provides 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.

6. UPM § 3029.05 (D) (1) provides 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.

**The look back period from the Appellant's application for LTC Medicaid dated [REDACTED], 2019 is [REDACTED] 2014.**

**The Department was correct to evaluate the transfers that occurred within the look back period.**

7. UPM 3029.10 (E) pertains to Transfers made exclusively for reasons other than Qualifying and provides 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.

**The hearing record reflects that the water damage due to the overflowing toilet happened in the 2 previous years prior to institutionalization. However, the A-Rep did not get an estimate for repairs at the onset of the damage. The A-Rep received the first estimate on [REDACTED] 2019, a month prior to her institutionalization and the second estimate on [REDACTED] 2019; subsequent to her institutionalization into a LTCF.**

**The hearing record reflects that the [REDACTED] # [REDACTED] check was written to the A-Rep on [REDACTED], 2019 and there was no memo to indicate what the \$20,000.00 was for.**

**The hearing record reflects the A-Reps testimony that there was no agreement between the Appellant and the A-Rep regarding monies set aside for repairs or reimbursements for repairs.**

**The Department correctly determined that the Appellant did not provide clear and convincing evidence that the transfer of \$20,000.00 had been made exclusively for a purpose other than qualifying for assistance.**

8. UPM 3029.15 (B) provides the Department considers a transferor to have met his or her foreseeable needs if, at the time of the transfer, he or she retained other income and assets to cover basic living expenses and medical costs as they could have reasonably been expected to exist based on the transferor's health and financial situation at the time of the transfer.

The assertion that the ■ year old Appellant was in good health by the A-Rep at the time of the transfer cannot be validated. The hearing record reflects that the Appellant had not seen a doctor after a mild heart attack when she was ■ years old. The A-Rep testified that although, she was getting her medications in the mail, he was unaware what she took or even if she took them; therefore there is no evidence that the Appellant was compliant with her medications. In addition, the evidence that the Appellant was immediately long term care approved upon her admission into the LTCF after she was found unconscious on the floor indicates she was not in good health.

The Department correctly determined that there is no evidence that the Appellant retained her income or assets to meet her foreseeable needs based on her health at the time of the transfer.

9. UPM 3029.05 (G) (1) provide that during the penalty period , the following Medicaid services are not covered: a) LTCF 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.
10. UPM 3029.05 (G) (2) provide that payment is made for all other Medicaid services during a penalty period if the individual is otherwise eligible for Medicaid.
11. UPM 3029.05 (F) (2) (a) provide that the length of the penalty period is determined by dividing the total uncompensated value of all assets transferred on or after the look back date described in 3029.05 C by the average monthly cost to a private patient for LTCF services in Connecticut. For applicants, the average monthly cost for LTCF services is based on the figure as of the month of application.
12. The average monthly cost for a private patient for LTCF services in Connecticut effective January 1, 2019 is \$12,851.00.
13. UPM 3029.05 (F) (3) provides that 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.
14. UPM 3029.05 (F) (4) provides that once the Department imposes a penalty period, the penalty runs without interruption, regardless of any changes to the individual's institutional status.

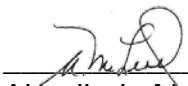
15. The transferred total of \$20,000.00 from the [REDACTED] Account during the look back period subjects the Appellant to transfer of assets penalty and a period of ineligibility for the Medicaid program.
16. The Appellants penalty period of ineligibility of Medicaid payment for Long Term care services equals to 2.70 months. ( $\$20,000.00 / \$12,851.00 = 1.5562991$ )
17. The Department correctly assessed a penalty period of ineligibility for Medicaid payment for the Appellant's long term care services to run from [REDACTED] 2019 to [REDACTED], 2020.

### DISCUSSION

The A-Rep testified the transfer of \$20,000.00 was going to be used for the repairs of the water damage due to the overflowing toilet; however there was no agreement between the Appellant and the A-rep that monies would be put aside for the repairs to the condo while she resided there. The evidence shows that the water damage occurred in the 2 previous years prior to the Appellant's institutionalization. There is no indication that the water damage was addressed prior to the Appellant's institutionalization as the first estimate was issued with 1 month previous to her institutionalization and the 2<sup>nd</sup> estimate was immediately within 2 months after her institutionalization. The A-Rep has failed to show clear and convincing evidence that the transfer of \$20,000.00 was made for any other purpose other than to qualify for Medicaid. The Department is upheld.

### DECISION

The Appellant's appeal is DENIED.

  
 Almelinda McLeod  
 Hearing Officer

CC: Musa Mohamud, SSOM Hartford  
 Judy Williams, SSOM Hartford  
 Jessica Carroll, SSOM Hartford  
 Jay Bartolomei, Fair Hearing Liaison Supervisor, Hartford  
 Leila Miranda, Fair Hearing Liaison, Hartford



### **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.