

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

██████████ 2020
Signature confirmation

Case: ██████████
Client: ██████████
Request: 157631

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2020, the Department of Social Services (the "Department") issued ██████████ (the "Appellant") a revised *Transfer of Assets/Final Decision Notice* alleging that the Appellant's transfers of \$67,907.58 in assets rendered him ineligible to receive Medicaid coverage of long-term care services or home-care services from ██████████ 2019 through ██████████ 2020.

On ██████████, 2020, the ██████████ Probate Court appointed ██████████ (the "Conservator") the Appellant's conservator of estate.

On ██████████ 2020, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") received the Appellant's faxed request for an administrative hearing, as petitioned by the Conservator.

On ██████████ 2020, the OLCRAH issued a notice scheduling an administrative hearing for ██████████ 2020. The OLCRAH granted the Conservator's requests for a postponement of the administrative hearing.

On ██████████ 2020, in accordance with sections 17b-60, 17b-61, and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, the OLCRAH held an administrative hearing by telephone conferencing. The following individuals participated in the proceeding:

██████████, Appellant's Conservator
██████████, Counsel for ██████████
██████████, Appellant's Witness (son)
██████████, Appellant's Witness (son)

[REDACTED], [REDACTED], Appellant's Witness
Ilirjana Sabani, Department's Representative
Eva Tar, Hearing Officer

The hearing record closed on [REDACTED] 2020.

STATEMENT OF ISSUE

The Appellant disputes the Department's [REDACTED] 2020 determination that his \$67,907.58 in transfers rendered him ineligible for Medicaid payment of long-term care services from [REDACTED] 2019 through [REDACTED] 2020.

FINDINGS OF FACT

1. The Appellant's date of birth is [REDACTED]. (Department Exhibits 12 and 14)
2. The Appellant's children are [REDACTED], and [REDACTED]. ([REDACTED] Testimony) [REDACTED] Testimony)
3. [REDACTED] (the "eldest grandson") is [REDACTED] son and the Appellant's first-born grandson. ([REDACTED] Testimony) ([REDACTED] Testimony)
4. In or around [REDACTED], the Appellant retired at the age of [REDACTED] years. (Appellant Exhibits B and C)
5. Since his retirement, the Appellant has been living with different family members in [REDACTED], [REDACTED], and [REDACTED]. ([REDACTED] Testimony) ([REDACTED] Testimony)
6. The Appellant did not pay rent when he lived with family members; the family members also did not ask him to pay them rent. ([REDACTED] Testimony) ([REDACTED] Testimony)
7. On [REDACTED] 2017, the Appellant withdrew \$5,000.00 (the "\$5,000.00 transfer") in a cashier's check from his [REDACTED] account [REDACTED]. (Department Exhibits 15 and 16) (Appellant Exhibits H and I)
8. The Appellant would withdraw large sums of cash prior to visiting [REDACTED]. ([REDACTED] Testimony)
9. The Appellant visited [REDACTED] from [REDACTED] 2017 through [REDACTED] 2017. (Appellant Exhibit G)
10. From [REDACTED] 2018 through [REDACTED] 2019, the Appellant received in-patient care at [REDACTED], a skilled nursing facility. (Department Exhibit 14)
11. On [REDACTED] 2019, the Appellant transferred \$1,779.00 (the "\$1,779.00 transfer") from his [REDACTED] account to [REDACTED]. (Department Exhibit 7)

12. The \$1,779.00 transfer on [REDACTED] 2019 was a tuition payment for [REDACTED] son, one of the Appellant's grandchildren. ([REDACTED] Testimony) (Appellant Exhibit B)
13. From [REDACTED] 2019 through [REDACTED] 2019, the Appellant withdrew a total of \$15,300.00 (collectively, the "\$15,300.00 transfers") in cash from his [REDACTED] account in 23 transactions in increments of \$500.00 or \$700.00 at relatively short intervals, some withdrawals occurring only a day or two apart. (Department Exhibit 7)
14. The multiple \$500.00 and \$700.00 cash withdrawals within short intervals from the Appellant's [REDACTED] account in [REDACTED] 2019 and [REDACTED] 2019 are inconsistent with the Appellant's banking activity for the same account in other months. (Department Exhibit 7) (Appellant Exhibit F)
15. The Appellant's witnesses do not know what the Appellant did with the money he withdrew from his bank account in [REDACTED] 2019 and [REDACTED] 2019; they did not discuss the Appellant's withdrawals with the Appellant. ([REDACTED] Testimony) ([REDACTED] Testimony)
16. From [REDACTED] 2019 through [REDACTED] 2019, the Appellant received in-patient care at [REDACTED]. (Department Exhibit 14)
17. From [REDACTED] 2019 through [REDACTED], 2019, the Appellant received in-patient care at [REDACTED]. (Department Exhibit 14)
18. When the eldest grandson graduated from high school, the Appellant promised to pay off the eldest grandson's undergraduate student loans if he completed a bachelor's degree and enrolled into a master's degree program. ([REDACTED] Testimony)
19. In [REDACTED] 2019, the Appellant's eldest grandson graduated from [REDACTED]. ([REDACTED] Testimony)
20. In [REDACTED] or [REDACTED] 2019, the Appellant's eldest grandson enrolled in a master's degree program. ([REDACTED] Testimony)
21. The Appellant's eldest grandson had federal student loans serviced by two companies: [REDACTED] and [REDACTED]. (Appellant Exhibit L) ([REDACTED] Testimony)
22. As of [REDACTED] 2019, the eldest grandson's student loans under [REDACTED] had a balance of \$38,616.74. (Appellant Exhibit L)
23. On [REDACTED] 2019, the Appellant withdrew \$38,655.02 (the "\$38,655.02 transfer") from his [REDACTED] and used the funds for a cashier's check to [REDACTED]. (Department Exhibits 7, 8, and 9) (Appellant Exhibit I)
24. The Appellant insisted on paying the student loan servicers directly. ([REDACTED] Testimony)

25. On [REDACTED] 2019, the Appellant closed his [REDACTED] and used the funds for a \$6,552.56 (the "\$6,552.56 transfer") a cashier's check to [REDACTED] [REDACTED] (Department Exhibit 16) (Appellant Exhibit I)
26. From [REDACTED] 2019 through [REDACTED] 2019, the Appellant received in-patient care at [REDACTED], a skilled nursing facility. (Department Exhibit 14)
27. On or around [REDACTED] 2019, the Appellant filed an application for Medicaid coverage of his long-term care services at [REDACTED]. (Department Exhibit 1) (Appellant Exhibit A)
28. From [REDACTED] 2019 through [REDACTED] 2020, the Appellant received in-patient care at [REDACTED]. (Department Exhibit 14)
29. On [REDACTED] 2020, [REDACTED] readmitted the patient. (Department Exhibit 4)
30. On [REDACTED] 2020, the Appellant hired [REDACTED] company, to help with his Medicaid application, on the advice of a [REDACTED] social worker. ([REDACTED] Testimony) (Department Exhibit 17)
31. With respect to reviewing long-term Medicaid applications, the Department has instructed its staff to request verification of any transactions in the amount of \$5,000.00 or more that are not part of a normal pattern of spending. The Department has also instructed workers to identify any withdrawals that are not part of the normal pattern or practice that appear questionable, regardless of the amounts involved. (Department Exhibit 2)
32. On [REDACTED] 2020, the Department issued a *Transfer of Assets/Preliminary Decision Notice* to the Appellant, alleging that he had made a total of \$50,207.58 in transfers in order to become eligible for assistance. (Department Exhibit 4)
33. On [REDACTED] 2020, the Department issued a revised *Transfer of Assets/Preliminary Decision Notice* to the Appellant, alleging that he had made a total of \$67,907.58 in transfers in order to become eligible for assistance. (Department Exhibit 5) (Appellant Exhibit A)
34. On [REDACTED] 2020, the Department issued a *Notice of Action* approving the Appellant for Medicaid coverage effective [REDACTED] 2019, with a penalty for improper transfers of assets to run from [REDACTED] 2019 through [REDACTED] 2020. (Department Exhibit 1)
35. On [REDACTED] 2020, the Department issued a *Transfer of Assets/Final Decision Notice* to the Appellant, assigning a penalty period of ineligibility for transfers totaling \$67,907.58, with the penalty period to run from [REDACTED] 2019 through [REDACTED] 2020. (Department Exhibit 6) (Appellant Exhibit A)
36. On [REDACTED] 2020, the [REDACTED] Probate Court appointed [REDACTED] as the Appellant's conservator of estate, effective [REDACTED] 2020. (Department Exhibit 18)

37. The Medicaid program does not pay for room and board at a nursing home and long-term care facility during a penalty period. (Department Exhibit 1)
38. The Appellant owes ██████████ \$60,680.40 for his care from ██████████ 2019 through ██████████ 2020. (██████████ Testimony)
39. As of ██████████ 2020, the date of this hearing, the Appellant continues to reside at ██████████. (██████████ Testimony)
40. Connecticut General Statutes § 17b-61 (a), as amended on passage by Section 309 of *Public Act No. 19-117 (January Session)*, provides the deadline for the rendering of a hearing decision.

Executive Order 7M, Section 3, dated March 25, 2020, extends the period for rendering a hearing decision. Executive Order 7DDD, Section 2, dated June 29, 2020 in part authorizes a further extension to the time frames provided by Executive Order 7M, Section 3, dated March 25, 2020 that would have lapsed on June 28, 2020.

ORDER, (Commissioner Deidre S. Gifford, 4/13/2020) provides in part: "Section 17b-61(a)'s timeframe for the commissioner or commissioner's designated hearing officer to render a final decision is extended from 90 to 'not later than 120 days' after the date the commissioner receives a request for a fair hearing pursuant to Section 17b-60...."

On ██████████, 2020, the OLCRAH received the Appellant's hearing request. This final decision initially would have become with the extended deadlines due to the COVID-19 pandemic by ██████████ 2020. However, the Appellant requested multiple postponements of the initial hearing date of ██████████ 2020. This postponement to ██████████ 2020 of 35 days and an additional extension of nine days to the close of the hearing record further extended the deadline for the rendering of a final decision through ██████████ 2020. This final decision is timely.

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes in part designates the Department as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.

"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).

"The Commissioner of Social Services may make such regulations as are necessary to administer the medical assistance program...." Conn. Gen. Stat. § 17b-262.

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

In Connecticut, the Department has the authority to administer the Medicaid program and make regulations governing the same.

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

The Appellant is an institutionalized individual.

3. Section 17b-261 (a) of the Connecticut General Statutes, as revised in the 2020 SUPPLEMENT TO THE GENERAL STATUTES OF CONNECTICUT (revised to 1/1/20), provides in part:

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....

Conn. Gen. Stat. § 17b-261 (a).

"There is a period established, subject to the conditions described in this chapter, during which institutionalized individuals are not eligible for certain Medicaid services when they or their spouses dispose of assets for less than fair market value on or after the look-back date specified in 3029.05 C. This period is called the penalty period, or period of ineligibility." UPM § 3029.05 A.

"Look-Back Date for Transfers. 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.

The Appellant's "look-back" period as related to his [REDACTED] 2019 Medicaid application for long-term care coverage ran from [REDACTED] 2014 through [REDACTED] 2019.

The Department acted within its authority to administer the Medicaid program when it reviewed the Appellant's financial activity for transfers of assets within the 60-month "look-back" period of [REDACTED] 2014 to [REDACTED] 2019.

4. "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). (emphasis added).

"Transfers Made Exclusively for Reasons Other than Qualifying. An otherwise eligible institutionalized individual is not ineligible for Medicaid payment of LTC [Long-Term Care] services if the individual, or his or her spouse, provides clear and convincing evidence that the transfer was made exclusively for a purpose other than qualifying for assistance." UPM § 3029.10 E.

The Appellant provided clear and convincing evidence that the \$5,000.00 transfer was made exclusively for a purpose other than qualifying for assistance, as it was withdrawn in proximity of the Appellant's [REDACTED] 2017 through [REDACTED], 2017 visit to [REDACTED]

The Appellant provided clear and convincing evidence that the \$1,779.00 transfer was made exclusively for a purpose other than qualifying for assistance, as it was a payment made directly to [REDACTED] to pay for a grandchild's tuition.

The Appellant provided clear and convincing evidence that the \$38,655.02 transfer to [REDACTED] was made exclusively for a purpose other than qualifying for assistance, as the payment was in fulfillment of the Appellant's long-standing promise to his eldest grandson involving the payment of that grandson's undergraduate loans.

The Appellant provided clear and convincing evidence that the \$6,552.56 transfer to [REDACTED] was made exclusively for a purpose other than qualifying for assistance, as the payment was in fulfillment of a long-standing promise to his eldest grandson involving the payment of that grandson's undergraduate loans.

The Appellant did not establish by clear and convincing evidence that the \$15,300.00 transfers were made exclusively for a purpose other than qualifying for medical assistance.

5. "During the penalty period, the following Medicaid services are not covered: a. LTCF [long-term care facility] services; and b. services provided by a medical institution which are equivalent to those provided in a long-term care facility; and c. home and community-based services under a Medicaid waiver." UPM § 3029.05 G.1.

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

Section 3029.05 E. of the Uniform Policy Manual provides:

The penalty period begins as of the later of the following dates: 1. the first day of the month during which assets are transferred for less than fair market value, if this month is not part of any other period of ineligibility caused by a transfer of assets; or 2. the date on which the individual is eligible for Medicaid under

Connecticut's State Plan and would otherwise be eligible for Medicaid payment of the LTC services described in 3029.05 B based on an approved application for such care but for the application of the penalty period, and which is not part of any other period of ineligibility caused by a transfer of assets.

UPM § 3029.05 E.

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

6. "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." UPM § 3029.05 F.2.

"The length of the penalty period consists of the number of whole and/or partial months resulting from the computation described in 3029.05 F. 2." UPM § 3029.95 F.1.

"Uncompensated values of multiple transfers are added together and the transfers are treated as a single transfer. A single penalty period is then calculated, and begins on the date applicable to the earliest transfer." UPM § 3029.05 F.3.

"For applicants, the average monthly cost for LTCF services is based on the figure as of the month of application." UPM § 3029.05 F. 2. a.

As of January 1, 2019, the average monthly cost for LTCF services in Connecticut equaled \$12,851.00.

The Appellant's penalty period of ineligibility of Medicaid payment for long-term care services in a skilled nursing facility equals 36 days. [(\$15,300.00 (transfers) divided by \$12,851.00 (average monthly cost of LTCF services in Connecticut) multiplied by 30 days in the application month of ██████████ 2019, rounded up to nearest day]

The Appellant is ineligible for Medicaid payment of long-term care services from ██████████ 2019 through ██████████ 2019.

DISCUSSION

During the ██████████ 2020 hearing, Counsel for ██████████ asserted that the Department failed to prove that the large transfers of the Appellant's assets that occurred within the five years immediate preceding the Appellant's ██████████ 2019 Medicaid application were made so as to facilitate the Appellant becoming eligible for Medicaid coverage. This argument ignores the plain and unambiguous language¹ of Conn. Gen. Stat. § 17b-261a (a).

¹ **"Plain meaning rule.** The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable

Section 17b-261a (a) of the Connecticut General Statutes establishes the presumption that all transfers of an applicant's assets by the applicant or on his behalf by his agents are made for the purpose of qualifying for Medicaid coverage. The burden is *on the applicant* to rebut that presumption with "clear and convincing evidence" that those transfers were made for a different reason.

The undersigned hearing officer finds that the Appellant met this burden with respect to the following transfers: \$5,000.00 (██████████), \$1,779.00 (██████████), \$38,655.02 (██████████), and \$6,552.56 (██████████).

However, the Appellant did not meet his burden with respect to the \$15,300.00 in cash withdrawals he made in ██████████ 2019 through ██████████ 2019 from his personal bank account.

For context: Two days after he was discharged from ██████████ (a skilled nursing facility) on ██████████ 2019, the Appellant began making frequent \$500.00 and \$700.00 cash withdrawals from ██████████. The withdrawals questioned by the Department spanned from ██████████ 2019 through ██████████ 2019. Some of these withdrawals occurred a day or two apart. This pattern of financial activity was highly inconsistent with the Appellant's cash withdrawals from that same account in other months, as demonstrated by bank statements provided for the hearing record. Approximately six weeks after his ██████████ 2019 withdrawal, ██████████ readmitted the Appellant.

The Appellant's witnesses testified that they did not know what the Appellant did with these cash withdrawals, as they did not discuss these transactions with the Appellant. The fond, vague recollections by the Appellant's witnesses of the Appellant's habit of treating his friends to meals and his fondness for casinos do not rise to the level of clear and convincing evidence that the \$15,300.00 in cash transfers over a seven-week period that occurred between intermittent periods of institutionalization in a skilled nursing facility were made for a purpose other than to work toward becoming eligible for Medicaid.

Speculation by family members as to the disposition of the \$15,300.00 in cash withdrawals is not proof. Assertions by Counsel for ██████████ that the transfers were made by the Appellant "for his personal enjoyment" are not evidence.

In the alternative, Counsel for ██████████ argues that the imposition of a Medicaid penalty period of ineligibility for payment of long-term care causes the Appellant, who is now indigent, undue hardship. This argument is flawed.

On ██████████, 2020, the Department granted the Appellant's ██████████ 2019 Medicaid application, with an effective date of Medicaid payment for the Appellant's long-term care services of ██████████ 2020. The exception for undue hardship as contemplated by Conn. Gen. Stat. § 17b-261o applies to *Medicaid applicants* who are at risk of discharge from a skilled nursing facility *while they are within a penalty period* and is not applicable to the Appellant, a Medicaid recipient, whose penalty period had since expired at the time of

results, extratextual evidence of the meaning of the statute shall not be considered." Conn. Gen. Stat. § 1-2z.

grant—a penalty period that also will be shortened in accordance with the Order below. Further, it does not appear from the hearing record that [REDACTED] has instituted formal discharge proceedings of the Appellant in accordance with Conn. Gen. Stat. § 19a-535.

The Department is directed to adjust the penalty period of Medicaid ineligibility for long-term care to incorporate only the \$15,300.00 transfers, i.e., the suspicious cash withdrawals from the Appellant's [REDACTED] account from [REDACTED] 2019 through [REDACTED] 2019.

DECISION

The Appellant's appeal is **GRANTED in part**, in that the penalty period of ineligibility for Medicaid payment of the Appellant's long-term care services is reduced to incorporate only the \$15,300.00 transfers from [REDACTED] 2019 through [REDACTED] 2019.

ORDER

1. The Department will reduce the Appellant's penalty period of ineligibility for Medicaid long-term care services to incorporate only the \$15,300.00 transfers from [REDACTED] 2019 through [REDACTED] 2019.
2. The Department will impose a penalty period of ineligibility for Medicaid coverage of the Appellant's long-term services in a skilled nursing facility to run from [REDACTED] 2019 through [REDACTED] 2019.
3. Within 31 calendar days of the date of this decision, or [REDACTED] 2021, documentation of compliance with this Order is due to the undersigned.

Eva Tar-electronic signature
Eva Tar
Hearing Officer

Pc:

[REDACTED]
[REDACTED]
Ilirjana Sabani, DSS-Waterbury
Rachel Figueroa, DSS-Waterbury
Jamel Hilliard, DSS

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, 165 Capitol Avenue, 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.