

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

██████████ 2020
SIGNATURE CONFIRMATION

████████████████████
Request # 150493

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2019, the Department of Social Services (the "Department") sent ██████████ (the "Applicant"), a notice that she had transferred \$72,327.02 to become eligible for Medicaid, and that the Department was imposing a penalty period of ineligibility for Medicaid for Long Term Care Services ("LTC") effective ██████████ 2019 through ██████████ 2019.

On ██████████, 2019, ██████████, the Applicant's Power of Attorney ("POA"), requested an administrative hearing to contest the Department's penalty determination.

On ██████████ 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") scheduled an administrative hearing for ██████████ 2020.

On ██████████ 2020, the POA requested the hearing to be rescheduled.

On ██████████ 2020, OLCRAH rescheduled the administrative hearing for ██████████ 2020.

On ██████████, 2020, the Applicant's attorney requested the hearing to be rescheduled.

On ██████████ 2020, OLCRAH rescheduled the administrative hearing for ██████████

2020.

On [REDACTED] 2020, the Applicant's attorney requested the hearing to be rescheduled.

On [REDACTED] 2020, OLCRAH rescheduled the administrative hearing for [REDACTED] 2020.

On [REDACTED] 2020, the Applicant's attorney requested the administrative hearing to be rescheduled.

On [REDACTED] 2020, OLCRAH rescheduled the administrative hearing for [REDACTED], 2020.

On [REDACTED] 2020, in accordance with sections 17b-60, 17b-61, and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, OLCRAH held a telephonic administrative hearing. The following individuals participated in the hearing:

[REDACTED] Applicant's Power of Attorney ("POA")
[REDACTED], Director of Social Services, [REDACTED]
[REDACTED], Applicant's Attorney
Adam Silverman, Department's Representative
Carla Hardy, Hearing Officer

The Applicant did not participate in the hearing due to her institutionalization.

The hearing record remained open in order to give the Hearing Officer additional time to review the evidence submitted on behalf of the Applicant. On [REDACTED], 2020, the hearing record closed.

STATEMENT OF THE ISSUE

The issue is whether the Department correctly imposed a penalty period beginning on [REDACTED] 2019, and ending on [REDACTED] 2019, due to a \$72,327.02 transfer of asset penalty for the Medicaid for Long Term Care Services program.

FINDINGS OF FACT

1. The Applicant is 75 years old (DOB [REDACTED]/45). (Applicant's Exhibit 5: Medical Documentation from Hartford Hospital)
2. On [REDACTED], 2018, the Applicant had a seizure while visiting her spouse, [REDACTED], ("the spouse") at [REDACTED]. (Exhibit 5; Attorney's Testimony)
3. The Applicant and her spouse have been married for four years. (POA's Testimony)

4. On [REDACTED] 2018, the Applicant was admitted to [REDACTED]. (Exhibit 5)
5. The Applicant's diagnoses are Epilepsy; Myocardial infarction type 2; secondary and unspecified malignant neoplasms of lymph node; Cachexia; Takotsubo syndrome; Hypotension, unspecified; Rheumatic disorders of both mitral and tricuspid valves; Long QT Syndrome; Malignant neoplasm of unspecified site of right female breast; Essential (primary) hypertension; and dysphagia. The Applicant has a history of non-Hodgkin lymphomas, irradiation and antineoplastic chemotherapy. (Exhibit 5)
6. The Applicant has a history of Alcoholism. She quit in 1983. (Exhibit 5)
7. The Applicant has a history of seizures since the 1980's. (Exhibit 5)
8. While in [REDACTED], the Applicant experienced extreme agitation. Psychiatry was consulted. Her delirium quickly improved. Due to her improvement, the hospital deferred further psychiatry follow up and medication. (Exhibit 5)
9. On [REDACTED] 2018, the Applicant's spouse was discharged from [REDACTED] to the home of his daughter, [REDACTED] (the "step-daughter"), who is the Applicant's step-daughter. (Exhibit 7: Acknowledgement of Emergency Estate Planning Waiver and Release; Attorney's Testimony)
10. On [REDACTED] 2018, the Applicant was diagnosed with encephalopathy. (Exhibit 5)
11. Encephalopathy is the swelling of the brain. [REDACTED] Testimony)
12. [REDACTED] (the "Director of Social Services") is the Director of Social Services at [REDACTED] nursing facility. (Hearing Record)
13. On [REDACTED] 2018, the Applicant's spouse and her step-daughter signed an Acknowledgement of Emergency Estate Planning Waiver and Release document with Attorney [REDACTED]. (Exhibit 7)
14. On [REDACTED] 2018, the Applicant and her step-daughter were granted joint statutory Power of Attorney ("POA") of the Applicant's spouse. (Exhibit 16: POA document)
15. Attorney [REDACTED] advised the Applicant's spouse and his daughter that she only represents the spouse and not the Applicant. She also advised that since all of the spouse's assets are jointly held with the Applicant, that he open a separate joint account with his daughter and to fund that account with the money that he wants to give to his daughter prior to his death. (Exhibit 7)
16. On [REDACTED] 2018, the Applicant's spouse executed his Last Will and Testament. He appointed his daughter as Executrix and the Applicant as Successor Executrix. He bequeathed to the Applicant the amount which is equal to the Connecticut statutory

share election amount, plus one hundred dollars. He bequeathed the remainder of his property except for the Toyota pick-up truck to his daughter. (Exhibit 18: the Spouse's Last Will and Testament)

17. On [REDACTED] 2018, [REDACTED], MD interviewed/examined the Applicant. Dr. [REDACTED] noted that the Applicant had previously developed an acute agitated delirium after her cardiac SPECT study and that today she was alert, oriented and cooperating. (Exhibit 5)
18. On [REDACTED] 2018, the Applicant was discharged from [REDACTED] to a skilled nursing facility. (Exhibit 5)
19. The Applicant's nursing facility admission was a short-term placement. (Hearing Record)
20. On [REDACTED] 2018, the Applicant's spouse, [REDACTED] expired. (Applicant's Exhibit 8: [REDACTED] Obituary; Exhibit 9: [REDACTED] Certificate of Death)
21. On [REDACTED] 2018, the step-daughter added her name as POA to the Applicant's and spouse's [REDACTED] account # xxx4424. (Exhibit 14: [REDACTED] Retail Account Title Change Request)
22. On [REDACTED] 2018, the step-daughter changed the address on the Applicant's and spouse's [REDACTED] account # xxx4424 from [REDACTED] to [REDACTED] (Exhibit 15: [REDACTED] Address Change Form)
23. On [REDACTED] 2018, the Applicant and the step-daughter went to the bank and withdrew the \$72,327.02 balance from the [REDACTED] account # xxx4424. (Exhibit 13: [REDACTED] statement and withdrawal slip)
24. The Applicant's spouse is listed as the only owner of the [REDACTED] account # xxx4424 on [REDACTED] 2015. (Exhibit 28: [REDACTED] statement, [REDACTED] 15)
25. The Applicant and her spouse are listed as joint owners of the [REDACTED] account # xxx4424 on [REDACTED] 2015. (Exhibit 29: [REDACTED] statement, [REDACTED] /15)
26. On [REDACTED] 2018, the Applicant was admitted to [REDACTED] Her neurologist, Dr. [REDACTED] recommended that she go to the emergency room due to decreased functioning over the past week. She was positive for confusion, decreased concentration and dysphoric mood. The Applicant presented with an acute change in her mental status. Previous to this admission, she was functioning independently. She was disoriented and unable to provide a history of the recent

events. She reported that something had recently happened to her husband but could not recall that he had passed away in [REDACTED] 2018. (Exhibit 5)

27. On [REDACTED] 2018, [REDACTED], MD, noted, "Patient's current presentation is not consistent with severe depression causing a change in functioning and neurocognitive decline. The timing and presentation is more consistent with an acute encephalopathy." (Exhibit 5)
28. The Applicant's altered mental status was rapid and first observed on [REDACTED] 2018, by the Applicant's POA and cousin, [REDACTED] [REDACTED] (Exhibit 5)
29. On [REDACTED] 2018, the Applicant was discharged from [REDACTED]. (Exhibit 5)
30. On [REDACTED], 2018, the Applicant was admitted to [REDACTED] (the "nursing facility"), a skilled nursing facility. (Hearing Summary; Director of Social Services' Testimony)
31. On the date of her admission to the facility, the Applicant's diagnoses were dementia with behavioral disturbances, encephalopathy, altered mental status, cognitive communication deficit and epilepsy. (Director of Social Services' Testimony)
32. On [REDACTED] 2019, the Department received an application for LTC on behalf of the Applicant. (Department's Exhibit B: Application; Hearing Summary)
33. [REDACTED] ("POA") is the Applicant's Power of Attorney. (Hearing Record)
34. [REDACTED] of Medicaid Done Right is the Applicant's Authorized Representative ("AREP"). (Exhibit B: Application, [REDACTED]/19)
35. [REDACTED] is a third-party company that was hired to file the Applicant's LTC application due to her cognitive difficulties and inability to obtain certain records. (Attorney's Testimony)
36. The Applicant receives \$1,847.00 monthly in Social Security ("SSA") and \$1,268.30 in a monthly pension. (Exhibit B: Application [REDACTED]/19)
37. On [REDACTED] 2019, the Department issued the initial request for additional information which was due by [REDACTED] 2019. (Hearing Summary)
38. On [REDACTED] 2019, the Department received an email from the Applicant's AREP notifying them that the facility was willing to move forward with getting the Applicant's case granted with the penalty. (Exhibit C: Emails between the Department and the AREP)

39. On [REDACTED] 2019, The Department determined through its examination of the Applicant's documentation that the Appellant made \$72,327.02 in a cash transfer in order to be eligible for assistance and issued a notice proposing to apply a penalty resulting from the alleged improper transfer of assets. (Exhibit D: Transfer of Assets Preliminary Decision Notice ("W-495A"), [REDACTED] 19)
40. The Department spoke to the Applicant's AREP about the proposed penalty. She acknowledged that there was an improper transfer. (Department's Testimony)
41. On [REDACTED] 2019, the Department notified the Applicant's AREP that \$72,327.02 was transferred to become eligible for Medicaid. A penalty would be assessed from [REDACTED] 2019, through [REDACTED], 2019. (Exhibit E: Final Decision Notice ("W-495C"), [REDACTED]/19)
42. On [REDACTED] 2019, the AREP notified the Department that she forwarded the W-495A to her field representative and asked that they contact the facility to verify if they were in agreement with it. (Exhibit C)
43. On [REDACTED] 2019, the Department reminded the AREP that [REDACTED] 2019 was the due date for the response to the W-495A. (Exhibit C)
44. On [REDACTED], 2019, the Department notified the Applicant's AREP that they spoke to [REDACTED] at the nursing facility and informed them of the penalty that ends on [REDACTED] 2019. (Exhibit C)
45. There was no evidence provided showing that anyone tried to retrieve the \$72,327.02 from the step-daughter on the Applicant's behalf. (Hearing Record)
46. There was no evidence provided showing that anyone filed any charges against the step-daughter on the Applicant's behalf. (Hearing Record)
47. 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. Per Commissioner Gifford of the Department of Social Services order dated [REDACTED] 2020; this time frame has been extended to 120 days, pursuant to Governor Lamont's Executive Order 7M issued March 25, 2020. This hearing decision is due [REDACTED], 2020. However, this hearing has been rescheduled at the request of the Applicant's representative causing a 117-day delay. Therefore this decision is due no later than [REDACTED], 2020. (Hearing Record)

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. Connecticut General Statutes ("Conn. Gen. Stat.") § 17b-2; Conn. Gen. Stat. § 17b-262

2. The Department is the sole agency to determine eligibility for assistance and services under the programs it operates and administers. Conn. Gen. Stat. § 17b-261b(a)
3. Conn. Gen. Stat. § 17b-261a(d)(1) provides for purposes of this subsection, an "institutionalized individual" means an individual who has applied for or is receiving (A) services from a long-term care facility, (B) services from a medical institution that are equivalent to those services provided in a long-term care facility, or (C) home and community-based services under a Medicaid waiver.
4. The Department correctly determined that the Applicant is an institutionalized individual of a long term care facility who has applied for Medicaid coverage with the Department.
5. Subsection (a) of section 17b-261a of the Conn. Gen. Stat. provides that 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.
6. "The department's Uniform Policy Manual ("UPM") is the equivalent of 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)).
7. Uniform Policy Manual ("UPM") Section 1500.01 provides that an applicant is the individual or individuals for whom assistance is requested.
8. UPM § 4010.10(A)(2) provides that an assistance unit member and spouse who hold a bank account or similar asset jointly are each considered legal owners of the asset except as described below:
 - a. If the spouse became a joint holder of the account within 24 months prior to the date of the assistance unit's application, or subsequently, the spouse is considered the record owner only, and not a legal owner.
9. The Department correctly determined that the Applicant is the legal owner of the [REDACTED] account # xxx4424.

10. UPM § 3029.03 provides that the Department uses the policy contained in this chapter to evaluate asset 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.
11. UPM 3029.05(A) provides 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.
12. 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.
13. The look-back date is [REDACTED] 2014.
14. UPM § 3029.10(E) provides that 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.
15. An institutionalized individual or the individual's spouse is considered to have transferred assets exclusively for a purpose other than qualifying for assistance under circumstances, which include, but not limited to undue influence; foreseeable needs met; transfer to or by legal owner; or that a transferred asset would not affect eligibility if retained. UPM § 3029.15(A-D)
16. The POA has not provided evidence that the Applicant was incompetent at the time of the transfer.
17. The POA did not establish with clear and convincing evidence that the Applicant was unduly influenced when she transferred the \$72,327.02 to the step-daughter.
18. UPM § 3029.05(E) provides that 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; 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.

19. UPM § 3029.05(F) provides in part that 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). 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.
20. The average monthly cost of LTCF services in Connecticut as of [REDACTED] 2019, the month of the Applicant's application is \$12,851.00.
21. The \$72,327.02 is subject to a transfer of asset penalty.
22. The Applicant is subject to a penalty of 5.63 months after dividing the uncompensated value of the transferred asset by the average monthly cost of LTC facility services ($\$72,327.02/\$12,851.00 = 5.63$)
23. The Department correctly determined that the Applicant is subject to a penalty of 5.63 months, ending on [REDACTED] 2019.

DISCUSSION

The POA gave testimony that the Applicant had a stroke on [REDACTED] 2018 and was impaired when she closed out her bank account and gave the \$72,327.02 closing balance to the step-daughter. The Applicant's attorney's argued that the Applicant was unduly influence when the transfer was made due to the Applicant's cognitive decline and the recent loss of her spouse. The medical documentation shows that the Applicant was confused and that her mental status was altered while she was admitted to the hospital from [REDACTED] through [REDACTED]. The evidence also shows that the Applicant was confused and that her mental status was altered in [REDACTED] 2018. The evidence presented does not show that the Applicant's mental status was altered at the time of the transfer.

It is not clear as to when the Applicant was diagnosed with dementia. The Applicant had a diagnosis of dementia when she was admitted to the nursing facility on [REDACTED], 2018. However, dementia is not documented in the medical notes that were submitted as evidence.

The attorney also argued that the money that was placed in the account belonged to the Applicant's spouse. He acquired this money when he sold his mother's home and deposited the funds in the [REDACTED] # xxx4424, a joint account with the Applicant.

It may have been the spouse's intention to provide for his adult daughter. However, his

primary responsibility was to his aging spouse, the Applicant. The Department correctly determined that the Applicant is subject to a penalty of 5.63 months for the Medicaid payment of long-term care service.

DECISION

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

Carla Hardy
Hearing Officer

Pc: [REDACTED], POA
[REDACTED], Counsel for the Applicant
Alejandro Arbelaez, Adam Silverman, Department of Social Services, Torrington Office

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.