

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

██████████, 2021  
Signature Confirmation

████████████████████  
████████████████████  
Request # 158178

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

██████████, 2020, the Department of Social Services (the “Department”) sent ██████████ (the “Applicant”) imposing a penalty period for improper transfer of assets on her Medicaid for Long Term Care benefits. The notice stated that her penalty period starts on █████ 2020 and ends on █████/2020.

██████████ 2020, ██████████ (the “Appellant”), the Applicant’s son and conservator, requested an administrative hearing to contest the Department’s decision.

██████████, 2020, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for █████ 2020. The hearing was scheduled to be held telephonically due to the COVID-19 pandemic.

██████████, 2020, the Appellant’s Attorney requested a reschedule.

██████████ 2020, OLCRAH issued a notice rescheduling the hearing for █████ 2020.

██████████, 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 hearing was held telephonically with no objection from any of the parties. The following individuals were present at the hearing:

██████████, the Appellant, and Applicant's conservator  
██████████, Appellant's sister in law  
██████████ Esq., Appellant's Attorney  
Janice Scricca, Department's Representative  
Veronica King, Hearing Officer

██████████, 2020, the Appellant's Attorney requested the hearing be reconvened. The undersigned granted the Attorney's request.

██████████, 2020, the OLCRAH issued a notice stating that the hearing would be reconvened on ██████████, 2020. The undersigned hearing officer received additional documents from both parties.

██████████, 2020, the Appellant's Attorney requested a reschedule.

██████████, 2020, the OLCRAH issued a notice stating that the hearing would be reconvened on ██████████ 2020.

██████████ 2020, the Appellant's Attorney requested a reschedule.

██████████ 2020, the OLCRAH issued a notice stating that the hearing would be reconvened on ██████████ 2020.

██████████, 2020, the undersigned hearing officer reconvened the ██████████ 2020 Hearing #158178. The following individuals were present at the reconvened hearing.

██████████, the Appellant, and Applicant's conservator  
██████████, MD, Geriatric and Family Physician, Medical Director at ██████████  
██████████, Expert Witness for the Appellant.  
██████████ Esq., Appellant's Attorney  
Janice Scricca, Department's Representative  
Veronica King, Hearing Officer

The hearing remained open for the admission of additional evidence from the Appellant's Attorney. ██████████, 2020, the record closed.

## **STATEMENT OF THE ISSUE**

The issue is whether the Department's decision to impose a Transfer of Assets ("TOA") penalty on the Applicant's Medicaid for Long Term Care benefits beginning in [REDACTED] 2020 and ending on [REDACTED], 2020 for total transfers of \$100,000.00 was correct.

## **FINDINGS OF FACT**

1. The Applicant's date of birth is [REDACTED]. (Department's Exhibit 1: W-1 LTC, [REDACTED]/20)
2. The Applicant has an extensive and documented history of mental illness including Bipolar disorder, Depression, Paranoia, Psychosis, and cognitive deficit through her life. Exhibit D: Emerson Hospital Medical Records, Exhibit H: Medical records and Bank Statements and Appellant's Testimony)
3. In 2001, the Appellant was living with his mother. The Applicant was demonstrating extreme paranoia about money and fear of the government. She would often express that the government was after her money and that she was going to jail because she owed money to the IRS. (Appellant's Testimony)
4. In 2003, the Applicant had an attempted suicide episode and was admitted to a psychiatric hospital in Hartford, CT, because of her altered mental status. She received over 40 Electroconvulsive Therapy ("ECT") and after a few months she was discharged back to her residence in CT. After her discharge she did not follow through with any regular psychiatric treatment. (Exhibit D, Exhibit H, and Appellant's Testimony)
5. Between 2004 and 2005, the Applicant sold her house in CT. She lived in Florida ("FL") for a few years and eventually moved to Massachusetts ("MA") to live with her brother. It is uncertain when the Applicant started to demonstrated the longstanding signs of peculiar thoughts and paranoia. The Appellant testified that he kept in contact with his mother but was not involved with her care and matters while she lived with her brother in MA. (Exhibit D and Appellant's Testimony)
6. In early 2015, the Applicant's mental health started worsening and her brother took her for an appointment with Dr. [REDACTED] a psychiatrist. On [REDACTED] 2015, the Applicant reported; "difficulty in remember things, and that she forgets conversation with minutes even when they are important for her. She continued to be preoccupied with being tracked by the FBI." After test results and an assessment of the Applicant's medical history, Dr.

- █████ suggested that the Applicant be treated in an inpatient setting. (Exhibit H)
7. █████, 2015, the Applicant was admitted to █████ Hospital for psychiatric treatment and was discharged on █████ 2015. The Applicant's tests results showed signs of subcortical dementia and she was noted to have impaired judgment. She was discharged with a plan to remain compliant with medications long-term and continue with outpatient treatment with her psychiatrist. (Dr. █████ Testimony and Exhibit D)
  8. Between █████, 2015 and █████ 2016, the Applicant continued meeting with her psychiatrist and continued to clearly show delusional thoughts regarding defrauding the government and going to jail. She also exhibited signs of paranoia of being watched through cameras inside her walls. During this time her brother took her to an IRS office to alleviate her paranoia without success. (Exhibit H and Appellant's Testimony)
  9. █████ of 2016, the Applicant moved to █████, CT. She lived alone and was often confused, forgetful and would get lost. Her brother took her for a few appointments with her psychiatrist in MA, however, at some point she stopped going. (Appellant's Testimony)
  10. █████ 2016, the Applicant withdrew \$100,000.00 from her █████ Bank account x0521. She purchased a NGL single pay whole life insurance Policy █████. The Life Insurance policy had █████ as a beneficiary. (Exhibit 15: NGL letter dated █████/16 and copy of policy and application)
  11. The Applicant's medical mental illness continued to worsen. She started collecting and hiding flammable items at her apartment and was found at a parking garage looking for "flammables items" by the police. The Applicant started receiving home services help from "visiting angels" agency. The Certified Nurse Assistants helped the Applicant with the activities of daily living. (Appellant's Testimony)
  12. █████ 2019, the Applicant was admitted to the █████ Center, █████, with a diagnosis of Dementia in Alzheimer's Disease with Behavioral Disturbance and Paranoid Schizophrenia. (Exhibit H)
  13. █████, 2019, the Applicant was admitted to █████, a skilled nurse facility, for long term stay from the █████. She required 24 hours care and supervision and resides on a secure dementia unit. (Exhibit H and Hearing Record)

14. [REDACTED], 2019, the Appellant became the Applicant's conservator of the estate and conservator of the person. (Exhibit A: Hearing Request and Court of Probate Appointment of Conservator)
15. [REDACTED] 2020, the Department received an application for Medicaid Long Term Care Services Program. The Application was signed by [REDACTED] [REDACTED] of Senior Planning Services with authorization from the Appellant. (Exhibit 1)
16. Between [REDACTED] of 2019 and [REDACTED] of 2020, the Appellant became aware that the Applicant had purchased a NGL Life insurance Policy and he was the beneficiary. He contacted the NGL company and requested information regarding the Applicant's Life Insurance policy. (Appellant's Testimony)
17. The Department received a letter from NGL dated [REDACTED] 2020, with information for the NGL Policy [REDACTED]. The policy is irrevocably assigned to the NGL Estate Planning Trust and cannot be surrendered for the cash value. (Exhibit 4: Copy of NGL Policy, [REDACTED] 20)
18. [REDACTED], 2020, the Department emailed [REDACTED] and stated that per DSS Policy Consultants the Department would not accept making the state beneficiary. The Department also attached an information from NGL website stating that when the Applicant purchased the NGL Irrevocable Life Insurance Policy, she was made aware that she needed to wait 5 years to apply for the Medicaid program. (Exhibit 9: emails correspondences from [REDACTED] 2020- [REDACTED] 2020)
19. The Applicant was asset eligible on [REDACTED] 2020. (Hearing Record and Department's Representative's Testimony)
20. [REDACTED] [REDACTED], 2020, the Department sent [REDACTED] a W-495A Preliminary Decision Notice, advising her that the Department had determined that the \$100,000.00 transfer from the Applicant's [REDACTED] Bank account # [REDACTED] to NGL was subject to a transfer of asset penalty. (Exhibit 5: W-495A [REDACTED]/20)
21. [REDACTED] [REDACTED] continued to work with the Department to assign the Department as a beneficiary of the irrevocable NGL Life Insurance. (Exhibit 9)
22. [REDACTED], 2020, the Department sent the Applicant a Notice of Action advising her that the value of her assets she transferred which is subject to penalty is \$100,000.00. The notice further stated that she is eligible to receive certain Medicaid benefits starting [REDACTED]/20 and the penalty period will be set up from [REDACTED]/2020 and ends on [REDACTED] 2020; once the penalty

- period ends Medicaid will pay for her long term care services. (Exhibit 12: NOA, [REDACTED]/20)
23. [REDACTED], 2020, the Department sent [REDACTED] a W-495C Final Decision Notice, stating that the \$100,000.00 withdrawal from [REDACTED] Bank to purchased NGL Life Ins. on [REDACTED]/2016 was transferred to become eligible for Medicaid. The Notice further stated that she is eligible to receive certain Medicaid benefits starting [REDACTED]/20 and the penalty period will be set up from [REDACTED]/2020 and ends on [REDACTED]/2020; once the penalty period ends Medicaid will pay for her long-term care services. (Exhibit 13: W-495C Transfer of Assets Final Decision Notice)
  24. [REDACTED], 2020, the Department received a hearing request from the Appellant's Attorney. (Hearing Record)
  25. [REDACTED] 2020, a hearing was held, and the record was left open for submission of additional documents from both parties. The Appellant's Attorney requested the hearing be reconvened. The undersigned granted the Attorney's request. (Hearing Record)
  26. The Appellant's Attorney submitted the Applicant's extensive medical records for the Department review. (Exhibit D and Exhibit H)
  27. The Appellant's Attorney submitted a copy of the NGL original Policy, the date that it was irrevocably assigned to the NGL Estate Planning Trust and the cash value of the policy at the time it was irrevocable assigned for the Department' Policy Consultant and Legal Division review. (Exhibit 14: Email correspondences from [REDACTED]/20 through [REDACTED]/20, Exhibit 15, Exhibit 16: NGL Estate Planning Trust)
  28. The Appellant's Attorney offered the Department to work together with NGL company about an assignment of the beneficial interest in the trust to the Department. (Exhibit 14 and Appellant's Attorney's Testimony)
  29. [REDACTED], 2020, the hearing #158178 was reconvened. (Hearing Record)
  30. At the administrative hearing on [REDACTED] 2020, the Applicant's attorney waived the Right to a Timely Hearing Decision under Section 17b-61(a) of the Connecticut General Statutes waiving the requirement that a final decision be issued by the Hearing Officer within 90 days of the date the hearing was requested. (Hearing Record)

## **CONCLUSIONS OF LAW**

1. Section §17b-260 of the Connecticut General Statutes provides that the Department will administer Title XIX of the Social Security Act (“Medicaid”) in the State of Connecticut.
2. Section §17b-261b(a) of the Connecticut General Statutes provides that the Department “shall be the sole agency to determine eligibility for assistance and services under programs operated and administered by said department.”
3. Federal law provides that the “single State agency is responsible for determining eligibility for all individuals applying for or receiving benefits” in the Medicaid program. 42 C.F.R. 431.10(b)(3)
4. Section § 17b-261a(d)(1) of the Conn. Gen. Stat. 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.
5. “The Department’s uniform policy manual 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)).
6. Uniform Policy Manual (“UPM”) Section 1500.01 provides that an applicant is the individual or individuals for whom assistance is requested.
7. 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.
8. UPM § 3029.03 provides: 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.
9. UPM § 3029.05 (A) provides that 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.
10. UPM § 3029.05 (B) provides that the policy contained in the chapter on transfers of assets pertains to institutionalized individuals and to their

spouses.

11. UPM § 3029.05 (D) (1) provides that 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.
12. UPM § 3029.05(C) provides that 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 Department correctly determined that the [REDACTED]/16 \$100,000.00 withdrawal from the Appellant's [REDACTED] account [REDACTED] was within the look-back date for transfers of assets.
14. 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 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."
15. 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.
16. UPM § 3029.15 provides that an institutionalized individual or the individual's spouse is considered to transferred assets exclusively for a purpose other than qualifying for assistance under circumstances, which include, but not limited to, the following:
  - (A) Undue Influence
    1. If the transferor is competent at the time the Department is dealing with the transfer, the individual must provide detailed information about the circumstances to the Department's satisfaction.
    2. 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 information.
    3. The Department may pursue a legal action against the transferee if the Department determines that undue influence caused the transfer to occur.



- (B) Foreseeable Needs Met
- (C) Transfer to or by Legal Owner
- (D) Transferred Asset Would Not Affect Eligibility if Retained
- (E) Post Eligibility Transfers Made by the Institutionalized Individual's Spouse

17. The Appellant's Attorney provided evidence that the Applicant was in cognitive decline since [REDACTED] 2015.
18. The Appellant's Attorney established with clear and convincing evidence that the Applicant was not competent when she withdrew the \$100,000.00 and purchased the NGL Irrevocable Whole Life Insurance Policy# [REDACTED] on [REDACTED] 2016.
19. [REDACTED] 2020, the Department incorrectly determined that the [REDACTED]/16 \$100,000.00 withdrawal was not made exclusively for a purpose other than qualifying for assistance.
20. [REDACTED] 2020, the Department incorrectly imposed a transfer of assets penalty for the period from [REDACTED] 2020, through [REDACTED], 2020 when granting the Applicant's Medicaid for Long Term Care benefits.

### DISCUSSION

In considering whether transfers were made for the purpose of eligibility for Medicaid, the Department considers the intention of the transfer, whether the purpose of the transfer is to enable an Applicant to obtain or maintain eligibility for the Medicaid program.

The Department argues that on [REDACTED], 2016, the Applicant withdrew \$100,000.00 from her accessible asset [REDACTED] account [REDACTED] to purchase a NGL whole life insurance policy# [REDACTED], and that the said policy is irrevocably assigned to the NGL Estate Planning Trust and cannot be surrendered for the cash value; therefore, the Applicant's action is considered an improper transfer of assets and subjected to the penalty. In addition, the Department argues that the Applicant was made aware of the implication of purchasing the NGL policy because "the NGL website indicates that a person needs to wait 5 years to apply for Medicaid program when purchase such policy".

Counsel for the Appellant had several arguments, however; the issue of this hearing revolves on whether the Applicant was competent at the time of the transfer. The Applicant's Attorney provided evidence as to the Applicant's cognitive decline dating back to her hospitalization in [REDACTED] 2015. The records and the Expert Witness's Testimony presented that the Applicant showed signs of subcortical dementia and she was noted to have impaired judgment at that time. She had an extensive and documented history of paranoia and mental illness.

Upon review of the facts of the case a I concluded that in [REDACTED] 2016, the Applicant did not withdrew the \$100,000.00 from her bank account to purchase an irrevocable whole life insurance policy with the intent to qualify for Long Term Care services under the Medicaid program. Her cognitive judgment was impaired. She did not have help from the Appellant in setting this policy; In fact, the Department's argument that the information regarding Medicaid application eligibility facts were at the NGL website, shows that the Applicant was not competent at the time of the transfer.

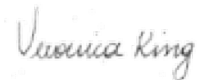
The Department incorrectly imposed a TOA penalty on the Applicant's Medicaid for Long Term Care benefits beginning in [REDACTED] 2020 and ending on [REDACTED], 2020 for total transfers of \$100,000.00.

### **DECISION**

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

### **ORDER**

1. The Department shall rescind the \$100,000.00 TOA penalty and process eligibility
2. Compliance with this order is due back to the undersigned by [REDACTED] 2021.



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Veronica King  
Hearing Officer

CC: Musa Mohamud, Judy Williams, Jessica Carol, Operations Managers  
DSS R.O. #10, Hartford  
Janice Scricca, DSS Hearing Liaison, R.O. #60 Waterbury

### **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.