

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

██████████, 2022
SIGNATURE CONFIRMATION

Case # ██████████
Client ID #: ██████████
Hearing Request #: 194339

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████, 2022, the Department of Social Services (the “Department”) sent ██████████ (the “Applicant”) and his case manager, ██████████, as his Authorized Representative (“AREP”) from ██████████ (“██████”) a Transfer of Assets Final Decision Notice (“W-495C”), because ██████████ (the “Spouse”) transferred \$94,000 in assets for him to become eligible for Long Term Care (“LTC”) Medicaid benefits and the Department was imposing a penalty period of Medicaid ineligibility effective ██████████ 2021, through ██████████ 2021.

On ██████████ 2022, ██████████ of ██████████ (the “Attorney”) representing ██████████ (the “Facility”) contacted the OLCRAH by email to advise that the Facility had filed an application with Probate Court to become executor of the decedent’s estate for the purpose of requesting an Administrative Hearing on behalf on the Applicant.

From [REDACTED] 2022 through [REDACTED] 2022 the Attorney and the OLCRAH corresponded by email concerning the matter.

On [REDACTED] 2022, the Applicant's Spouse requested an Administrative Hearing to contest the Department's decision to impose a transfer of asset penalty.

On [REDACTED] 2022, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the Administrative Hearing for [REDACTED] 2022.

On [REDACTED] 2022, in accordance with sections 17b-60, 17b-61 and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, OLCRAH held an Administrative Hearing telephonically.

The following individuals participated in the Hearing by phone:

[REDACTED] Applicant's Spouse
[REDACTED] Esq.
[REDACTED] Esq., Expert Witness
Angela A. Querette, Department's Representative
Jessica Gulianello, Hearing Officer

The Applicant, [REDACTED], is deceased.

The Hearing Record remained open until [REDACTED], 2022, for the submission of additional evidence from the Department. Additional documents were received, and on [REDACTED] 2022, the Record closed accordingly.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department was correct when it determined that assets in the amount of \$94,000 were improperly transferred resulting in the imposition of an LTC Medicaid penalty period of ineligibility beginning on [REDACTED] 2021, and ending on [REDACTED] 2021.

FINDINGS OF FACT

1. The Applicant was born on [REDACTED]. (Exhibit 8: W1LTC Application, [REDACTED]/2021)
2. In 2012, the Applicant's [REDACTED] health began to decline. He had [REDACTED] and [REDACTED]. However, the progression [REDACTED] was slow, and he remained at home with his Spouse as his primary caregiver. (Spouse's Testimony)
3. In 2016, the Applicant's [REDACTED] health further deteriorated. The Spouse's [REDACTED] children started assisting with the Applicant's care as needed, primarily on the weekends. (Spouse's Testimony)

4. On [REDACTED] 2017, the Applicant was admitted to [REDACTED] Hospital [REDACTED] (“[REDACTED]”). (Exhibit 11: Case Notes, [REDACTED]/2021)
5. On [REDACTED], 2017, the Applicant was transferred from [REDACTED] Hospital to [REDACTED] Facility [REDACTED] for a [REDACTED] stay. (Exhibit 11: Case Notes, [REDACTED]/2021)
6. On [REDACTED] 2017, the Applicant was discharged back to [REDACTED] the community in the state of [REDACTED]. (Exhibit 11: Case Notes, [REDACTED]/2021)
7. In [REDACTED] 2017, the Spouse suffered [REDACTED]. The Spouse’s [REDACTED] conditions impacted her ability to remain the Applicant’s primary caregiver. (Spouse’s Testimony)
8. On [REDACTED] 2017, the Spouse issued a [REDACTED] in the amount of \$20,000 made payable to [REDACTED] College on behalf of [REDACTED] (Spouse’s “Granddaughter”) as a gift towards her [REDACTED] tuition expenses. (Attorney’s Testimony, Spouse’s Testimony, Department’s Testimony, Hearing Record)
9. The Spouse has a total of [REDACTED] grandchildren. (Spouse’s Testimony)
10. The Spouse did not gift money for [REDACTED] tuition expenses to any of her other grandchildren. (Spouse’s Testimony)
11. In [REDACTED] 2017, the Spouse’s [REDACTED] son, [REDACTED] (“[REDACTED]”) assumed the responsibility as the Applicant’s primary caregiver. (Spouse’s Testimony)
12. [REDACTED] acted as the Applicant’s primary caregiver from [REDACTED] 2017 through [REDACTED] 2020. (Spouse’s Testimony)
13. [REDACTED], his [REDACTED], and their [REDACTED] children maintained their own home in the state of [REDACTED]. (Spouse’s Testimony)
14. The Spouse’s [REDACTED] daughter [REDACTED] occasionally stepped in as a caregiver to assist the Applicant in [REDACTED] absence. A professional visiting nurse, home health aide, homemaker, and or companion was not present to provide care or services to the Applicant. (Spouse’s testimony)
15. [REDACTED] was employed [REDACTED] by a [REDACTED] company that allowed him to work remotely. (Spouse’s Testimony)
16. At some point [REDACTED] reduced his employment hours and he later even stopped working. (Spouse’s Testimony)
17. The Spouse could not recall when [REDACTED] stopped working and testified that she didn’t find out that he was no longer working until 2019 or 2020. (Spouse’s Testimony)
18. No evidence was provided to verify the details of [REDACTED] separation from his employer. (Hearing Record)

19. No medical records were submitted to substantiate the onset dates of the Applicant's medical conditions, his diagnoses, the progression of his illness, or the level of care that he required prior to his admission to the Facility. (Hearing Record)
20. No records were kept to confirm the types of care, the services that were provided, the number of hours, or the period that ██████ assisted the Applicant. (Hearing Record)
21. Beginning ██████ 2019, through ██████ 2019, the Spouse issued ██████ ██████ from the Bank ██████ to ██████ totaling \$74,000. (Exhibit 5: ██████, Department's Testimony, Hearing Record)

Date:	██████	Amount:
██████/2019	██████	\$15,000.00
██████/2019	██████	\$10,000.00
██████/2019	██████	\$10,000.00
██████/2019	██████	\$12,000.00
██████/2019	██████	\$12,000.00
██████/2019	██████	\$15,000.00

22. In ██████ 2020, the Applicant's ██████ issues become more prevalent. (Spouse's Testimony)
23. On ██████ 2020, the Applicant was admitted to the Facility. (Exhibit 6: W-1LTC Application, Hearing Record)
24. The Applicant's assets were not spent down within the Medicaid asset limits at the time that the Applicant was admitted to the Facility. (Attorney's Testimony)
25. In ██████ 2021, the Spouse hired ██████ to assist with the LTC Medicaid application process. (Spouse's Testimony)
26. On ██████ 2021, the Department received an LTC application requesting Medicaid benefits on behalf of the Applicant. The LTC application was signed by the Spouse and dated ██████ 2021. The spouse appointed ██████ as the Applicant's AREP. (Exhibit 8: W1LTC Application, ██████/2021)
27. On ██████ 2021, the Department received a correspondence from the AREP dated ██████ 2021, requesting the following, "For questions regarding the application, please feel free to contact me; preferably not my client as I would like to avoid bothering them if I am able to answer any questions you have on my own." (Exhibit 7A: ██████ Correspondence, dated: ██████/2021, received: ██████/2021)
28. As part of the application process, the Department reviewed the Applicant's asset balances and transfers during the 60-month look-back period to determine whether resources were improperly transferred. (Department's Testimony, Hearing Record)
29. The Department issued the AREP ██████ Verification We Need ("W-1348LTC") requests ██████ 2021, ██████ 2021, ██████ 2021, and ██████

████ 2021, for additional information including but not limited to: income, assets, expenses, general information, and █████ payments etc. (Exhibit 6A: W-1348LTC, █████/2021; Exhibit 6B: W-1348LTC, █████ 2021; Exhibit 6C: W-1348LTC, █████ 2021; Exhibit 6D: W-1348LTC, █████ 2021; Hearing Record)

30. On █████ 2021, the Applicant passed. He was █████ years old. (Hearing Record)

31. On █████ 2021, the Department received a correspondence dated █████ 2021, from the AREP stating the following, “*Reason for check payments to █████ – As per my conversation with █████ on █████/2021, █████ is █████ and had been paying bills on her behalf. The checks to him were reimbursements for the bills he had paid.” (Exhibit 7F: █████ Correspondence, dated: █████/2021, received █████/2021)

32. On █████ 2021, █████, █████ Supervisor for █████ provided an Affidavit from the Spouse attesting to █████ running the household, including acting as a caregiver for the Applicant, administering his medication, assisting with bathing/dressing and assuming responsible for the financial management of the household. (Exhibit 7I: Affidavit from █████)

33. On █████ 2022, the Department issued the AREP a Transfer of Assets Preliminary Decision Notice (“W-495A”) proposing to apply a penalty resulting from the alleged improper transfer of assets, specifically the █████ issued to █████ (\$74,000) and the █████ paid on behalf of the Granddaughter (\$20,000) totaling \$94,000. The W-495A requested a response no later than █████ 2022. (Exhibit 3: W-495A, █████ 2022, Department’s Testimony, Hearing Summary)

34. The AREP did not provide a rebuttal or contact the Department to request more time to obtain information. (Department’s Testimony, Hearing Summary)

35. On █████ 2022, the Department issued the Applicant a Transfer of Assets Final Decision Notice (“W-496C”) with a CC to the AREP advising that the Department determined that the █████ transfers totaling \$94,000 during the look back period were made for the purpose of qualifying for Medicaid, and set up a period of ineligibility beginning █████ 2021, and ending █████ 2021, during which time the Department would not pay for his LTC services. (Exhibit 4: W-496C, █████ 2022; Exhibit 2: NOA, █████ 2022, Department’s Testimony, Hearing Summary)

36. The Department calculated the penalty period as follows: penalty amount of \$94,000 / \$13,512 (average cost of care effective █████ 2021)= 6.95 months. .95 days x █████ days in █████ = 29.45 or the end date of the penalty as █████ 2022. (Exhibit 9: Long Term Services and Supports Amounts & the email dated █████ 2022 from the Department)

37. No documentation or bills were provided to verify that █████ paid expenses out-of-pocket on behalf of the Applicant that would warrant reimbursement by the Spouse. (Hearing Record)

38. The issuance of this decision is timely under Connecticut General Statutes § 17b-61(a), which requires that a decision be issued within 90 days of the request for an administrative hearing. The Spouse requested an Administrative Hearing on [REDACTED] 2022; therefore, this decision is due no later than [REDACTED] 2022. (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. Title 42 Section § 431.10(b)(3) of the Code of Federal Regulations (“CFR”) provides that the “single State agency is responsible for determining eligibility for all individuals applying for or receiving benefits” in the Medicaid program.

The Department has the authority to administer Medicaid.

4. Subsection (a) of section § 17b-261 of the Connecticut General Statutes provides that any disposition of property made on behalf of an applicant or 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.
5. Subsection (a) of section § 17b-261a of the Connecticut General Statutes 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.”
6. “The Department’s Uniform Policy Manual (“UPM”) is the equivalent of a state regulation and, as such, carries the force of law.” *Bucchere v Rowe*; 43 Conn Supp. 175 178 (194) (citing Conn. Gen. Stat. § 17b-10; *Richard V. Commissioner of Income Maintenance*, 214 Conn. 601, 573 A.2d712 (1990)).
7. 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.
8. 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.

9. UPM § 3029.05(C) provides the look-back date for transfers of assets is the 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.

The look-back date for the Applicant is [REDACTED] 2016.

The Spouse transferred assets valued at \$94,000 during the look-back period.

10. UPM § 3025.30(A) provides that notification:

1. Prior to denial or discontinuance an individual is notified of the Department's decision that a transfer of an asset was for the purpose of qualifying for assistance.
2. The notification includes a clear explanation of both:
 - a. the reason for the decision; and
 - b. the right of the individual to rebut the issue within the time limit established by the Department.

The Department correctly issued the AREP the W-495A requesting a response no later than [REDACTED] 2022.

11. UPM § 3025.30(B) provides that rebuttal:

1. An individual who is notified of the Department's determination that an asset was for the purpose of qualifying for assistance may rebut this determination prior to the implementation of the negative action.
2. Rebuttal must include:
 - a. the individual's statement as to the reason for the transfer; and
 - b. objective evidence, which is:
 - (1) that evidence which rational people agree is real or valid; and
 - (2) documentary or non-documentary
3. A successful rebuttal clears that eligibility requirement.

The Department did not receive a rebuttal from the AREP.

12. UPM § 3029.35(C)(1) provides that if the individual does not rebut the Department's preliminary decision to impose a penalty period, the Department sends the individual a final decision notice regarding the penalty period at the time of the disposition of the Medicaid application. This notice contains all the elements of the preliminary notice, and a description of the individual's appeal rights.

The Department correctly issued a W-496C on [REDACTED] 2022.

13. 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 other than qualifying for assistance.

Counsel argued that the transfers totaling \$94,000 were made for purposes other than qualifying for assistance.

The Department did not receive clear and convincing evidence to validate that the transfers in question were not made for purposes other than qualifying for assistance.

14. UPM § 3029.10(F) provides that an institutionalized individual, or his or her spouse, may transfer an asset without penalty if the individual provides clear and convincing evidence that he or she intended to dispose of the asset at fair market value.

The Department did not receive medical records to verify the Applicant's diagnoses, the onset date(s) of the condition(s), or the types of care and services that he required.

The Department did not receive records to corroborate the types of care, services, number of hours, or the period of time that [REDACTED] assisted the Applicant.

The Department did not receive proof of expenses that [REDACTED] paid out of pocket on behalf of the Applicant or the Spouse.

In the absence of evidence, fair market value cannot be established.

15. UPM § 3029.10(G) provides that an institutionalized individual, or his or her spouse, may transfer an asset without penalty if the individual provides clear and convincing evidence that he or she intended to dispose of the asset in return for other valuable consideration. The value of the other valuable consideration must be equal to or greater than the value of the transferred asset in order for the asset to be transferred without penalty. (Cross Reference: 3029.20)

16. UPM § 3029.20 provides that other valuable consideration must be in the form of services or payment for services which meet all of the following conditions:

1. the services rendered are of the type provided by a homemaker or a home health

aide; and

2. the services are essential to avoid institutionalization of the transferor for a period of at least two years; and

3. the services are either:

a. provided by the transferee while sharing the home of the transferor; or

b. paid for by the transferee.

The Department correctly determined that the transfers were not made in accordance with other valuable consideration because there is no evidence that [REDACTED] provided services which prevented the institutionalization of the Applicant for a period of at least two years.

The Department was correct to find that the Spouse transferred \$94,000 for the purpose of qualifying for Long Term Care Medicaid.

17. UPM § 17b-261a(d)(1) of the Connecticut General Statutes provides 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.

18. UPM § 3029.05(F) provides 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 by the average monthly cost to a private patient for long-term care services in Connecticut. Uncompensated values of multiple transfers are added together and the transfers are treated as a single transfer.

19. UPM § 3029.05 (E)(2) provides that the penalty period begins as of the later of the following dates: 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.

20. 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.

The average monthly cost of LTCF services [REDACTED] as of [REDACTED] 2021, [REDACTED] months prior to the Applicant's application date was \$13,512.

The Appellant is subject to a penalty period of 6.95 months after dividing the uncompensated value of the transferred asset by the average monthly cost of LTCF services (\$94,000 divided by \$13,512).

DISCUSSION

The AREP acting on behalf of the Applicant requested that the Department send all communication to her directly. The Department complied with the AREP's request. The Department did not receive a rebuttal from the AREP and correctly imposed a penalty.

Counsel argued that the transfers in question were made exclusively for reasons other than qualifying for Medicaid, the transferor intended to transfer at fair market value, and the transfers made for other valuable consideration.

Counsel provided a Payor/Fee Agreement for agency rate services and a cost ledger to provide an example of the cost of home care and related services for an unknown individual. However, Counsel failed to provide clear and convincing evidence specific to this Applicant.

The Spouse testified that the Applicant's [REDACTED] health further deteriorated in 2016. The Department's records confirm the Applicant was hospitalized in [REDACTED] 2017 and he was admitted to a [REDACTED] facility in [REDACTED] 2017 for a [REDACTED] stay. The Spouse testified that the onset of [REDACTED] was [REDACTED] 2017. It is likely that basic living expenses including medical costs and foreseeable needs increased at this time. Despite the downswing in [REDACTED] health, the Spouse gifted \$20,000 towards [REDACTED] tuition expenses for her granddaughter. There is no pattern of the Spouse gifting money for [REDACTED] tuition to any of her other [REDACTED] grandchildren.

Furthermore, there is no clear and convincing evidence that the \$74,000 in transfers to [REDACTED] were made for a purpose other than qualifying for assistance therefore the Department's action to assign a penalty is upheld.

DECISION

The Appellant's appeal is **DENIED**

Jessica Gulianello

Jessica Gulianello
Hearing Officer

cc: Angela Querette, ESW, [REDACTED]
Tim Latifi, SSOM, [REDACTED]
Robert Stewart, SSOM, [REDACTED]
Jill Sweeney, SSOM, [REDACTED]

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.