

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINTON AVENUE
HARTFORD, CT 06105-3730

██████████ 2022
Signature Confirmation

Case ID # ██████████
Client ID # ██████████
Request # 196685

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2022, the Department of Social Services (the “Department”) sent ██████████ (the “Appellant”) a Notice of Improper Transfer of Assets imposing a transfer of assets penalty under the Connecticut Home Care Program for the Elderly (“CHCPE”) state funded services.

On ██████████, 2022, the Appellant’s authorized representative (“AREP”) and Power of Attorney (“POA”) requested an administrative hearing to contest the Department’s decision to impose a penalty period on her homecare services.

On ██████████, 2022, the Department sent the Appellant a Notice of Action (“NOA”) imposing a transfer of assets penalty under the CHCPE state funded services for the period from ██████████ 2022 through ██████████ 2023.

On ██████████, 2022, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ 2022.

On ██████████ 2022, the Appellant’s AREP requested the administrative hearing be rescheduled.

On ██████████, 2022, OLCRAH issued a notice rescheduling the administrative hearing for ██████████ 2022.

On ██████████ 2022, the Appellant’s AREP requested the administrative hearing be rescheduled.

On [REDACTED] 2022, OLCRAH issued a notice rescheduling the administrative hearing for [REDACTED], 2022.

On [REDACTED] 2022, the Appellant's AREP requested the administrative hearing be rescheduled.

On [REDACTED] 2022, OLCRAH issued a notice rescheduling the administrative hearing for [REDACTED], 2022.

On [REDACTED], 2022, in accordance with sections 17b-60, 17-61 and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing. The following individuals were present at the hearing:

[REDACTED], the Appellant's Power of Attorney and AREP
 [REDACTED] the Appellant's Power of Attorney and AREP
 Jessica Conrod, Department's representative
 Scott Zuckerman, Hearing Officer

The Appellant was not present at the administrative hearing.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department was correct in its determination of the effective date of the Applicant's state funded home care services through the CHCPE based on a Transfer of Assets ("TOA") penalty.

FINDINGS OF FACT

1. On [REDACTED] 2003, the Appellant entered into a mortgage with [REDACTED], LLC, for the original principal amount of \$89,550.90 for property located at [REDACTED]. (Exhibit 4: Notice of Hearing on Foreclosure of Deed of Trust, [REDACTED] 2022)
2. On [REDACTED] 2020, the Appellant was noted to have significant cognitive deficits. She has a history of CVA and has vascular dementia. (Exhibit 3: Geriatric follow – up note from Dr. [REDACTED], [REDACTED], 2022)
3. In [REDACTED] 2021, the Appellant fell and was admitted to [REDACTED]. She suffered a cognitive decline during the hospitalization. The Appellant was transferred to [REDACTED] where she underwent acute rehab. She was discharged home and received 24/7 care until [REDACTED] 2021. (Exhibit 3: Geriatric Follow – up Note from Dr. [REDACTED], [REDACTED] 2022)

4. On [REDACTED] 2021, the Appellant submitted her application for the state funded home care program. (Exhibit 1: Application, [REDACTED], 2021)
5. Sometime in [REDACTED] 2021, the Appellant was assessed and approved for the state funded home care program (Department's Testimony)
6. The [REDACTED] years old (DOB: [REDACTED]/1984). (Hearing Record)
7. On [REDACTED] 2022, the Department processed the application and initiated a resource referral. The results of the referral determined the Appellant as the sole owner of the property located in [REDACTED]. The Department notified the Appellant that the property needs to be listed for sale for program eligibility. (Department's testimony)
8. On [REDACTED], 2022, the Appellant transferred the property to [REDACTED] her nephew, for no consideration. (Department's testimony)
9. On [REDACTED], 2022, the Quit Claim deed was recorded at the [REDACTED] land records and listed the value of the property as \$188,100.00. (Exhibit 8: Case Notes)
10. On [REDACTED], 2022, the Appellant had a follow up appointment with her doctor. The Appellant receives a home health aide for six hours, five days weekly. She has a diagnosis of Vascular dementia, severe. The Appellant's Montreal Cognitive Assessment ("MOCA") score of 11/30 is lower than her prior score of 15/20 from [REDACTED] 2020. Her history of memory loss and functional decline indicates she has dementia. The MOCA score of 11/30 indicates she has severe dementia. She requires assistance with most of her IADLs and ADLs. (Exhibit 3)
11. On [REDACTED] 2022, [REDACTED], [REDACTED] sent the Appellant a Statement of Debt. The statement indicated that as of April 18, 2022, the Appellant owed [REDACTED] \$296,137.83 in principal and interest due for the property located at [REDACTED]. (Exhibit 4: Statement of Debt, [REDACTED] 2022)
12. On [REDACTED] 2022, the Appellant and her nephew, [REDACTED], were sent a Notice of Hearing on Foreclosure of Deed of Trust. The Appellant and [REDACTED] are listed as parties to the foreclosure because the Appellant is the mortgage holder and [REDACTED] is the owner. The notice informed the Appellant and her nephew that the foreclosure hearing will be held on [REDACTED] 2022. (Exhibit 4: Notice of Hearing on Foreclosure dated [REDACTED] 2022)

13. On [REDACTED] 2022, the Department's resource unit determined that the owner of the property as [REDACTED] and that the Appellant transferred the property for no consideration on [REDACTED], 2022. (Exhibit 8)
14. On [REDACTED] 2022, the Department sent the Appellant a W-495A, Notice of Improper Transfer of Assets. The notice stated that based on the information received by the Department, if you become eligible for Medicaid, we plan to impose a penalty period because you improperly transferred the following asset on the following day: Real Property, [REDACTED], 2022, with an Improper Transfer Amount of \$188,100.00. The Appellant's AREP was given the opportunity to dispute the decision. The due date was fifteen days from the date of the notice or [REDACTED] 2022. (Exhibit 5: W-0495A, [REDACTED] 2022)
15. The Department did not receive a response from the Appellant's representative. (Exhibit 8: Case note [REDACTED] 2022)
16. On [REDACTED] 2022, the Appellant's POA requested a hearing regarding the proposed penalty period. (Hearing Record)
17. The Appellant's nephew executed a quit claim deed when he discovered that the Appellant would have to sell her home. Another family member had the Appellant sign the quit claim deed transferring the NC property to her nephew. The Appellant was unaware what she was signing when it was presented to her. She is unaware that she executed any legal document and did not intend to transfer any property to make herself eligible for benefits. (POA testimony and Exhibit 2: Letter from [REDACTED], POA)
18. On [REDACTED] 2022, the Department sent the Appellant a Notice of Action. The notice denied the Appellant's State funded Home Care program for the elderly for the reason, "you gave away assets without getting full value in return in order to get benefits." The Department further imposed a penalty period for the improper transfer of assets. The penalty period begins [REDACTED], 2022 and ends [REDACTED] 2023. (Exhibit 6: Notice of Action, [REDACTED] 2022)
19. On [REDACTED], 2022, [REDACTED] in [REDACTED] executed a Substitute Trustee's Notice of Foreclosure Sale of Real Property filed with the [REDACTED] Court. The notice stated that as a result of a default in the obligations contained within the holder of the indebtedness secured by said Deed of Trust made demand to have the default cured, which was not met. The notice further stated the property located at [REDACTED], [REDACTED] would be sold at public auction to the highest bidder on [REDACTED] 2022. (Appellant's Exhibit A: Substitute Trustee's Notice of Foreclosure Sale of Real Property)
20. As of the day of the hearing the Appellant owed \$296,137.83 to [REDACTED]. The Appraised value of the property is \$188,100.00. The

property is in foreclosure, the Appellant has no equity in the property and neither the Appellant nor her nephew will not receive proceeds from the sale. (Appellant's AREP testimony and Hearing Record)

21. 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 Appellant requested an administrative hearing on [REDACTED] 2022. Therefore, this decision is due not later than [REDACTED], 2022. However, the hearing, which was originally scheduled for [REDACTED] 2022, was rescheduled for [REDACTED], 2022, and then for [REDACTED] 2022, all at the request of the Appellant. The rescheduling of the hearings caused a 70 – day delay. Because this 70- day delay resulted from the Appellant's request, this decision is not due until [REDACTED], 2022, and is therefore timely. (Hearing Record)

CONCLUSIONS OF LAW

1. Section 17b-342 of the Connecticut General Statutes authorizes the Commissioner of Social Services to administer the Connecticut home-care program for the elderly state wide in order to prevent the institutionalization of elderly persons (1) who are recipients of medical assistance, (2) who are eligible for such assistance, (3) who would be eligible for medical assistance if residing in a nursing facility, or (4) who meet the criteria for the state-funded portion of the program under subsection (i) of this section.
2. Section 17b-80(a) of the Connecticut General Statute states that the Department shall grant aid only if the applicant is eligible for that aid.
3. "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 Maintenance*, 214 Conn. 601, 573 A.2d (1990)).
4. "For an individual, assets may not exceed 150% of the minimum Community Spouse Protected Amount (cross ref. 4022.05) Uniform Policy Manual ("UPM") § 8040.35 (B)(1)
5. "All aspects of the policy used in the Medicaid program concerning transfers of assets apply to the Connecticut Home Care Program for Elders clients except for those individuals identified in C, above. UPM § 8040.35 (D)
6. Uniform Policy Manual ("UPM") § 3029.05 provides the transfer of assets basic provisions.

A. General Statement

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.

B. Individuals Affected

1. The policy contained in this chapter pertains to institutionalized individuals and to their spouses.
 2. An individual is considered institutionalized if he or she is receiving:
 - a. LTCF services; or
 - b. services provided by a medical institution which are equivalent to those provided in a long-term care facility; or
 - c. home and community-based services under a Medicaid waiver (cross references: 2540.64 and 2540.92).
7. UPM § 3029.05(A) provides 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.
8. "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: the individual is institutionalized and the individual is either applying for or receiving Medicaid. UPM § 3029.05 (C) (1)(2)

The Appellant is an institutionalized individual who applied for benefits on [REDACTED] 2021. Assets that the Appellant transferred after [REDACTED] 2021, impact her eligibility for Medicaid.

9. UPM § 3029.05 D (1) (2) provides the Department considers transfers of assets made within the time limits described in 3029.05 C, on behalf of an institutionalized individual or his or her spouse by a guardian, conservator, person having power of attorney or other person or entity so authorized by law, to have been made by the individual or spouse. In the case of an asset that the individual holds in common with another person or persons in joint tenancy, tenancy in common or similar arrangement, the Department considers the asset (or affected portion of such asset) to have been transferred by the individual when the individual or any other person takes an action to reduce or eliminate the individual's ownership or control of the asset.

The Department correctly determined that the uncompensated value of the property is within the look back period and subject for review.

10. UPM § 0500 Glossary of Terms defines “Fair Market Value” (“FMV”) as the amount at which an asset can be sold on the open market in the geographic area involved at the time of the sale or the amount actually obtained as a result of bona fide efforts to gain the highest possible price.

11. State Statute provides as follows:

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(b)

12. State Statute provides as follows:

The Commissioner of Social Services may waive the imposition of a penalty period when the transferor (1) in accordance with the provisions of section 3025.25 of the department's Uniform Policy Manual, suffers from dementia at the time of application for medical assistance and cannot explain transfers that would otherwise result in the imposition of a penalty period; or (2) suffered from dementia at the time of the transfer; or (3) was exploited into making such a transfer due to dementia. Waiver of the imposition of a penalty period does not prohibit the establishment of a debt in accordance with subsection (b) of this section.

Conn. Gen. Stat. § 17b-261a(c)

13. “Transfer of an asset which would otherwise be considered to be for the purpose of qualifying for assistance does not cause ineligibility under certain circumstances. When the individual is incompetent at the time of the transfer, the transfer does not cause ineligibility.” UPM § 3025.25(B)

14. “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. UPM § 3029.10(E)

15. “An institutionalized individual or his or her spouse may transfer an asset

without penalty if the individual demonstrates with clear and convincing evidence that he or she intended to dispose of the asset at fair market value.” UPM § 3029.10(F)

16. “A transfer of an asset is considered to be for the purpose of establishing or maintaining eligibility if all of the following circumstances apply: (A) Fair market value is not received, and (B) There is no convincing evidence that the transfer is for another purpose; and (C) The transferor does not retain sufficient funds for foreseeable needs.” UPM 3025.10

17. UPM §3025.15 provides for Transfer Not for the Purpose of Qualifying

A. Fair Market Value Received

If fair market value is received, the transfer of the asset is not considered to be for the purpose of establishing or maintaining eligibility.

B. Assets Within Limits

If the total of the uncompensated fair market value of a transferred asset plus all other countable assets does not exceed program limits, the transfer of the asset is not considered to be for the purpose of establishing or maintaining eligibility. In the case of multiple transfers involving one asset, this includes the total uncompensated value of all transfers.

C. Transfer for Another Purpose

If there is convincing evidence that the transfer is exclusively for another purpose, the transfer of the asset is not considered to be for the purpose of establishing or maintaining eligibility.

The Appellant’s POA provided clear and convincing testimony and evidence of medical documentation from the Appellant’s physician. The Appellant is diagnosed with severe dementia and at the time of the transfer the Appellant was unaware that she was signing a quit claim deed transferring ownership of the [REDACTED] property to her nephew who resided in the home.

The Appellant’s POA provided clear and convincing evidence that the purported transfer of \$188,100.00, was not made for a purpose other than qualifying for Medicaid.

The Appellant’s POA provided clear and convincing evidence of the actions taken by [REDACTED] and its counsel for nonpayment of the mortgage. The [REDACTED] property entered foreclosure proceedings. The Appellant had no equity in the property and the debt

to [REDACTED] of \$296,000.00 exceeds the fair market value of \$188,100.00.

Based on the testimony and evidence, the Department's imposition of a Transfer of Asset penalty period is incorrect.

DISCUSSION

The Appellant's POA credibly testified and provided evidence of the Appellant's medical and cognitive deficiencies in having severe dementia. When the Appellant's nephew learned that the Appellant had to list her home as part of the application process, he had her unknowingly sign a Quit Claim deed. The deed was recorded at the [REDACTED], public registry in [REDACTED]. The Appellant has a debt to [REDACTED] and was responsible for a mortgage which she had defaulted on. The Appellant had not been making payments to [REDACTED] for some time and foreclosure proceedings had begun. The sale of the property from such foreclosure proceedings was scheduled to occur on [REDACTED], 2022. The sale of the property to the highest bidder through foreclosure provides no proceeds to the Appellant or her nephew.

DECISION

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

ORDER

1. The Department must reopen the Appellant's [REDACTED] 2021, application for state funded home care.
2. The Department must remove the penalty period imposed against the Appellant.
3. Verification of compliance with this order is due to the undersigned no later than 14 days from the date of this decision.

Scott Zuckerman
Scott Zuckerman
Hearing Officer

CC: Community Options Unit – Central 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.

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.