

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

██████████ 2023  
SIGNATURE CONFIRMATION

Case ID # ██████████  
Client ID ██████████  
Hearing Request #177362

NOTICE OF DECISION

PARTY

████████████████████  
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PROCEDURAL BACKGROUND

On ██████████, 2021, the Department of Social Services (the “Department”) sent ██████████ (the “Applicant”), and ██████████; Applicant’s Authorized Representative (“AREP”) a Notice of Action (“NOA”) imposing a transfer of assets penalty on the Medicaid for Long Term Care benefits in the amount of \$872,360.25.

On ██████████, 2021, Attorney ██████████ (the “Applicant’s Attorney”) requested an administrative hearing on behalf of the Applicant to contest the Department’s decision to impose a penalty.

On ██████████, 2021, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ 2021.

On ██████████ 2021, Attorney ██████████ requested a reschedule on behalf of the Applicant.

On ██████████ 2021, OLCRAH issued a notice rescheduling the hearing for ██████████ 2021.

On [REDACTED] 2021, Attorney [REDACTED], (“AREP’s Attorney”) requested a reschedule.

On [REDACTED], 2021, OLCRAH issued a notice rescheduling the hearing for [REDACTED], 2021.

On [REDACTED], 2021, Attorney [REDACTED] requested a reschedule.

On [REDACTED], 2021, Attorney [REDACTED] was retained to represent the Applicant.

On [REDACTED] 2021, OLCRAH issued a notice rescheduling the administrative hearing for [REDACTED] 2022.

On [REDACTED] 2021, Attorney [REDACTED] requested a reschedule.

On [REDACTED], 2022, OLCRAH issued a notice rescheduling 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.

The following individuals were present at the hearing:

[REDACTED], Appellant, Applicant’s Authorized Representative and Power of Attorney

[REDACTED], [REDACTED]’ Companion

[REDACTED], Esq., Applicant’s Attorney

[REDACTED] Esq., Attorney for [REDACTED]

[REDACTED], Licensed Clinical Social Worker, Witness

Judge C. Ian McLachlan, Observer

Daniel Butler, Esq., Department’s Attorney

Jennifer Zakrzewski, Department’s Paralegal

Angela Querette, Eligibility Services Worker

Swati Sehgal, Hearing Officer

The Applicant was not present at the administrative hearing due to his institutionalization at a skilled nursing facility.

The Applicant’s attorney requested to reconvene the administrative hearing.

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

The following individuals were present at the reconvened hearing:

██████████, Appellant, Applicant's Authorized Representative and Power of Attorney

██████████, ██████████' Companion

██████████, Esq., Applicant's Attorney

██████████, Esq., Attorney for ██████████

Judge C. Ian McLachlan, Observer

Rebecca Rigdon, Department's Attorney

Jennifer Zakrzewski, Department's Paralegal

Angela Querette, Eligibility Services Worker

Swati Sehgal, Hearing Officer

On ██████ ██████, 2022, the Applicant's attorney requested to reconvene the administrative hearing for two additional days.

On ██████ 2022, OLCRAH issued a notice to reconvene the administrative hearing for ██████ 2022, and ██████ 2022.

On ██████ 2022, the following individuals were present at the reconvened hearing:

██████████, Appellant, Applicant's Authorized Representative and Power of Attorney

██████████, ██████████' Companion

██████████, Esq., Applicant's Attorney

██████████, Esq., Attorney for ██████████

Judge C. Ian McLachlan, Observer

Constance Rokicki, Pension Actuary, Greer benefit Consultant Inc.

Rebecca Rigdon, Department's Attorney

Jennifer Zakrzewski, Department's paralegal

Angela Querette, Eligibility Services Worker

Swati Sehgal, Hearing Officer

On ██████, 2022, the following individuals were present at the reconvened hearing:

██████████, Appellant, Applicant's Authorized Representative and Power of Attorney

██████████, ██████████' Companion

██████████, Esq., Applicant's Attorney

██████████, Esq., Attorney for ██████████

██████████, Observer

██████████, Esq., Attorney for ██████████ via zoom

██████████, Office Manager, ██████████ via zoom

Rebecca Rigdon, Department's Attorney

Jennifer Zakrzewski, Department's paralegal

Angela Querette, Eligibility Services Worker

Swati Sehgal, Hearing Officer

The hearing record remained open until [REDACTED], 2022, for the submission of briefs from the Appellant and the Department. The Applicant passed away on or about [REDACTED] 2022. On [REDACTED] 2022, Attorney [REDACTED] requested additional time to get the appointment of Executor or Administrator of the Applicant's estate. Extension of thirty day was granted, to expire on [REDACTED], 2022. On [REDACTED] 2022, Attorney [REDACTED] was engaged by [REDACTED] to probate [REDACTED]' estate. On [REDACTED], 2022, Attorney [REDACTED] requested another thirty-day extension to submit the final briefs and to probate [REDACTED]' estate. The thirty-day extension was granted to expire on [REDACTED] 2022. On [REDACTED] [REDACTED] 2022, Ms. [REDACTED] motion to intervene in the administrative hearing for the Applicant in her individual capacity was granted. On [REDACTED] 2022, Attorney [REDACTED] submitted another request for extension of time to file post hearing brief and to get the appointment of Executor or Administrator of the Applicant's estate. Another thirty-day extension was granted to expire on [REDACTED] 2022. On [REDACTED] 2022, the Probate court appointed [REDACTED] as Administrator of [REDACTED]' estate. Attorney [REDACTED] requested another extension to file the post hearing briefs. A thirty-day extension was granted to expire on [REDACTED] 2023, for all parties to submit their briefs. Post hearing briefs were received from all parties on [REDACTED] [REDACTED] 2023, and the record closed.

### **STATEMENT OF THE ISSUE**

The issue to be determined is whether the Department correctly imposed a transfer of asset penalty in the amount of \$872, 360. 25 for Long Term Care Services under Medicaid.

### **FINDINGS OF FACT**

1. The Applicant's date of birth is [REDACTED] (Department's Exhibit: W1 LTC Application [REDACTED]/2018)
2. The Applicant was married to [REDACTED] in [REDACTED]. (Exhibit 8: Dissolution of Marriage)
3. The Applicant and Ms. [REDACTED] resided together at [REDACTED], O[REDACTED], CT until the Applicant could no longer live at home. (Ms. [REDACTED] Testimony)
4. Throughout the marriage, Ms. [REDACTED] was subjected to physical, financial, and emotional abuse. She was not allowed to have access to family finances. The Applicant controlled all the finances. (Ms. [REDACTED] Testimony, [REDACTED]; Ms. [REDACTED] Testimony, [REDACTED])

██████████ Therapist's Testimony)

5. In or around █████ 2000, the Applicant established a Long-Term Care Insurance through ██████████ Life Insurance Company for the lifetime benefit of \$492,750.00 from the joint marital assets. (Attorney ██████ Exhibit 30: Benefit Statement from ██████████ Life Insurance Company, Attorney P█████ Exhibit 21: Financial Disclosure Form for ██████████, Exhibit 1: W-1 LTC)
6. In 2006, the Applicant and Ms. ██████ established the '██████████ Family Trust'. (Exhibit 17: ██████████ Trust Fund)
7. In 2009 the Applicant was diagnosed with Parkinson's Disease. (Ms. ██████' Testimony)
8. In 2010, the Applicant's physical condition started to decline, and Ms. ██████ started providing care for him, she dressed him, changed his diapers, drove him around for errands. (Ms. ██████ Testimony)
9. In █████ 2013, Ms. ██████ started receiving therapy from Ms. ██████ ("therapist"), a licensed clinical social worker with a private practice established in 1978. Ms. ██████ also worked for Yale, Department of Psychiatry and for Connecticut Mental Health Center from 1978 to 1998. During the therapy, years of abuse surfaced, and Ms. ██████ was advised to seek a divorce. Ms. ██████ did not adhere to the advice due to her beliefs and continued to remain in the marriage and provide continuous care for the Applicant. (Ms. ██████' and Ms. ██████'s Testimony)
10. Due to the Applicant's declining health, Ms. ██████ took over the finances and discovered that joint saving and checking accounts she had with the Applicant where her paycheck from teaching job was deposited every week, had a balance of \$.01 and \$1.82 respectively. (Ms. ██████' Testimony)
11. In or around 2015, Ms. ██████ had a back surgery, and physically was not able to provide care for the Applicant. Ms. ██████ started hiring caregivers for the Applicant once it became physically unmanageable for her to care for him on her own. (Ms. ██████' Testimony)
12. In 2015 Ms. ██████ began treatment with prescribed antidepressants to help manage her stress and anxiety. (Ms. ██████' Testimony)
13. On █████ 2015, the Applicant signed an application with ██████████ for Elderly to be on their waiting list for admission to the Facility. (Attorney ██████ Exhibit 20: Admission Application, █████/2015)
14. On █████, 2015, the Applicant purchased a qualified insurance plan with ██████████ Company. (DSS Exhibit 19: Annuity Policy)

15. To meet his foreseeable medical needs, the Applicant transferred a total of \$341,000 to the annuity in return for monthly payments of \$5,019.06 for a period of 5 years and 8 months, with the first payment made on [REDACTED] 2016, and the last annuity payment made on [REDACTED], 2021. (DSS Exhibit 19, Hearing Summary)
16. On [REDACTED] 2016, the Applicant appointed Ms. [REDACTED] as his Power of Attorney ("POA"). (Attorney [REDACTED]'s Exhibit 1: Power of Attorney-Statutory Form)
17. On [REDACTED] 2016, the Applicant and Ms. [REDACTED] transferred the title of [REDACTED] and [REDACTED] from [REDACTED]'s Family Trust to Ms. [REDACTED]. (DSS Exhibit 18: Deeds transferring properties from [REDACTED] Family Trust to Ms. [REDACTED])
18. On [REDACTED], 2016, Ms. [REDACTED] filed for divorce per her therapist's advice. (DSS Exhibit 4: Divorce Complaint)
19. Ms. [REDACTED] paid \$95,021.25 for care of the Applicant between 2015 and 2017 from joint marital assets, and the Applicant's Annuity. (Hearing Summary)
20. The Applicant and Ms. [REDACTED] completed financial affidavits for divorce proceedings, but they did not account for all assets as the divorce was uncontested. (DSS Exhibit 9 and Exhibit 10: Financial Affidavits for the Applicant and Ms. [REDACTED])
21. The Applicant listed his checking account with [REDACTED] [REDACTED]-\$52,469.00, [REDACTED] annuity-\$50,000.00 on his financial affidavit. (DSS Exhibit 9)
22. A total of \$833,750.00 was transferred from joint marital assets to establish Applicant's Long-Term Care Insurance [REDACTED] Life Insurance Company, and to purchase annuity from [REDACTED] Insurance Company. (Attorney [REDACTED] Exhibit 30: Benefit Statement from [REDACTED] Life Insurance Company, DSS Exhibit 19: Annuity Policy)
23. The Applicant failed to include his [REDACTED] Annuity and [REDACTED] Long Term Care insurance on his financial affidavit. (DSS Exhibit 9)
24. Ms. [REDACTED] listed the [REDACTED] Lane property-\$350,000.00, [REDACTED] [REDACTED]e property-\$175,000.00, vehicle-\$8,000.00, Checking account, Saving account and Money Market account with [REDACTED] Bank with total net value of \$111,760.00 on her financial affidavit. She also included the [REDACTED] National IRA with total net value of \$254,238.00. (DSS Exhibit 10)
25. Ms. [REDACTED] listed her pension from [REDACTED] as an asset on her financial affidavit, but no value was assigned. (DSS Exhibit 10)

26. The Applicant listed \$480 a week from Social Security and \$1,158 a week from the [REDACTED]d Annuity as his income on his financial affidavit. (DSS Exhibit 10)
27. Ms. [REDACTED]s listed \$240 a week in Social Security, \$1857 a week in earnings, and \$1331 a week in pension on her financial affidavit. (DSS Exhibit 10)
28. The Applicant and Ms. [REDACTED] each waived their right to receive alimony. (DSS Exhibit 12: Judgement Decree, Hearing Summary)
29. On [REDACTED], 2017, the Divorce was granted based on the complaint that this marriage has broken down irretrievably. The Court found that the agreement between the parties was fair and equitable. (DSS Exhibit 12: Dissolution of Marriage)
30. Ms. [REDACTED] remained the Applicant's POA because the Applicant's siblings did not want to be involved and her children did not have a relationship with their father and did not want to be involved. (Ms. [REDACTED] Testimony)
31. The Applicant resided at the same address as Ms. [REDACTED] after the divorce and Ms. [REDACTED] continued to take care of him because she felt that it was her duty to care for him as no one else did. (Ms. [REDACTED] Testimony)
32. On [REDACTED] 2017, Ms. [REDACTED] retired, and started receiving \$6,147.64 a month in pension. (Attorney [REDACTED] Exhibit 29: Summary of Account from [REDACTED])
33. In [REDACTED] 2017, Ms. [REDACTED] was seriously injured in a car accident. She connected the accident with the stress she was going through in caring for the Applicant. Both of her arms were broken in that accident, she knew that she could no longer care for the Applicant, and it was necessary for her survival and his own best interest, to put him in the nursing home. The Applicant's siblings also encouraged Ms. [REDACTED] to put him in the nursing home. (Ms. [REDACTED] Testimony, Attorney [REDACTED] Exhibit 20: Admission Application for [REDACTED])
34. On [REDACTED], 2017, the Applicant was admitted to [REDACTED] for the Elderly (Hearing Summary)
35. In [REDACTED] 2017, the Applicant paid the [REDACTED] for the Elderly sum of \$30,000 for his care. Ms. [REDACTED] paid \$20,525 to the [REDACTED] for the Elderly for the Applicant's care. (Department's Testimony, DSS File 168)
36. In [REDACTED] 2017, Ms. [REDACTED] withdrew \$15,000 from the Applicant's account for a partial reimbursement of payment she made towards the facility in [REDACTED] 2017. (Department's Testimony, DSS File 168)

37. In [REDACTED] 2018, Ms. [REDACTED] assigned the Applicant's interest in three life insurance policies insuring the life of his son, daughter, and himself to herself, as a partial reimbursement of payment she made to facility, with total cash surrender value of \$6,592.49. (Hearing Summary, DSS File 168)
38. In [REDACTED] 2018, Ms. [REDACTED] was steered by the facility to apply for Medicaid and provided help to file a Medicaid application for care in facility. (Ms. [REDACTED]' Testimony, Attorney [REDACTED] Exhibit 35: W-1LTC, [REDACTED]/2018, [REDACTED] Testimony; Office Manager for the Facility)
39. On [REDACTED] 2018, the Department received an application for Long Term Care assistance. Ms. [REDACTED] signed the application as POA for the Applicant as no one else would do that for him. (DSS Exhibit 1: W-1LTC)
40. The Applicant privately paid for his stay at the [REDACTED] for Elderly from [REDACTED] through [REDACTED] 2021. The Applicant paid a total of \$750,501.00 from [REDACTED]/2018 thru [REDACTED]/2021. (Attorney [REDACTED]'s Exhibit 35: Resident Statement from [REDACTED]/2015-[REDACTED]/2021)
41. Constance Rokicki, a member of the Academy of Actuaries who assisted the Department's Consultant, determined the present value of Ms. [REDACTED] pension to be \$785,000. (DSS Exhibit 22: Email correspondence from Constance Rokicki, Pension Actuary)
42. On [REDACTED] 2020, the Department sent the Applicant a Preliminary Decision Notice stating that the Applicant transferred \$871,529.75 for Inequitable Divorce to be eligible for assistance. The Department determined that the Appellant transferred these assets for less than fair market value through the Separation Agreement. The amount was calculated as follows: Applicant's assets listed on financial affidavit \$102,469-\$50,000(face value of life insurance policy) = \$52,469+\$898,998 (Ms. [REDACTED]' assets listed on financial affidavit) + \$785,000 (Ms. [REDACTED]' pension) + \$6,592.49 (Cash surrender of life insurance policies) = \$1,743,059.49/2= \$871,529.75. (DSS Exhibit 25: W-495A)
43. On [REDACTED] 2020, the Department received a rebuttal to the proposed transfer of assets from Attorney [REDACTED], on the behalf of the Applicant. The rebuttal challenged the Department's conclusion that the transfer of assets was done for purpose of Medicaid Eligibility. It further stated that the divorce agreement was reviewed and approved by a Judge of Superior Court taking into the account all statutory factors relevant for any divorce. It also stated that the Applicant's retained income and assets were more than sufficient to meet his reasonably foreseeable needs. (DSS Exhibit 26: Rebuttal, [REDACTED]/20)
44. On [REDACTED] 2020, the Department received an updated Actuarial Valuation of pension benefits for Ms. [REDACTED] attributable to the Marriage which ended on [REDACTED]/2017 equals to \$891,599. (DSS Exhibit 23: Actuarial Valuation of benefits



for Ms. [REDACTED] under [REDACTED] )

45. On [REDACTED] 2020, the Department issued a revised preliminary Decision Notice with an updated transfer penalty amount of \$924,829 for inequitable divorce based on the revised pension calculation. (DSS Exhibit 28: Preliminary Decision Notice, [REDACTED]5/2020, Hearing Summary, Exhibit 23)
46. On [REDACTED] [REDACTED], 2020, Attorney [REDACTED] submitted a rebuttal to the Department's proposed transfer of asset penalty and requested an undue hardship exemption to the transfer penalty. (DSS Exhibit 32: Rebuttal, [REDACTED]/2020)
47. On [REDACTED] 2020, the Department sent the Applicant Response to Your Transfer of Asset Explanation and revised the transfer amount to \$872, 360.25. (Attorney [REDACTED] Exhibit 12: W-0495B, [REDACTED]/2020)
48. On [REDACTED], 2020, the Department denied the Undue Hardship claim on the basis that proposed discharge notice from the facility was defective because it failed to comply with requirements of Section 19a-535 (c) of the Connecticut General Statutes. (DSS Exhibit 33: Denial of Undue Hardship Claim, [REDACTED]/2020)
49. On [REDACTED] 2021, the Department issued a Final Decision notice informing the Applicant that he transferred \$872,360.25 on [REDACTED], 2017, in order to become eligible for Medicaid. The Department was imposing a Long-Term Care Services penalty from [REDACTED] 2021, through on [REDACTED], 2026. (DSS Exhibit 29: W-495C, [REDACTED]/2021)
50. On [REDACTED] 2021, the Department issued a revised Final Decision Notice informing the Applicant that he transferred \$872,360.25 on [REDACTED], 2017, to become eligible for Medicaid. The Department was imposing a Long-Term Care Services penalty from [REDACTED] 2021, through December 2026. (DSS Exhibit 30: W-495C, [REDACTED]/2021)
51. On [REDACTED] 2021, Attorney [REDACTED] requested a fair hearing to dispute the imposition of any penalty arising out of divorce settlement. (DSS Exhibit 31: letter from Attorney [REDACTED], [REDACTED]/2021)

### **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.
4. 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.”
5. “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)).
6. 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

**The record explicitly provides clear and convincing evidence that the Applicant’s eligibility or potential eligibility for medical assistance was not a basis for the transfer or assignment of the marital assets.**

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.

10. The look-back date for the Applicant is [REDACTED] 2013.
11. UPM § 3029.15(B) provides the Department considers a transferor to have met his or her foreseeable needs if, at the time of the transfer, he or she retained other income and assets to cover basic living expenses and medical costs as they could have reasonably been expected to exist based on the transferor's health and financial situation at the time of the transfer.

**At the time of divorce, the Applicant was 79 years old with advanced stage of Parkinson's disease and had limited life expectancy. In order to financially provide for the Applicant, there were Annuities and Long-Term Care insurance along with bank accounts, he was also receiving \$2,501.50 a month in social security benefits. He and Ms. [REDACTED] paid for homecare to be able to live in the community from 2015 through his institutionalization and paid for his stay in the facility from 2017 through 2021. He retained sufficient income and assets to meet his foreseeable needs.**

### DISCUSSION

The Department's determination that the Applicant transferred assets to qualify for assistance is not supported in federal or state law. Counsel for the Applicant disputed the imposition of the penalty based on two main arguments. Counsel argued that the transfer was not done with the intent to qualify for Medicaid as outlined in § 17b-261a of the Connecticut General Statutes. Additionally, Counsel argued that at the time of the transfer, the Applicant retained enough assets and income to meet his foreseeable need as outlined in UPM § 3029.15. Attorneys for the Applicant and Ms. [REDACTED] provided clear and convincing evidence that the transfers were made for a purpose other than qualifying for long term care medical assistance. The evidence clearly indicates that the Appellant and her spouse entered into a separation agreement for reasons other than qualifying for long term care medical assistance.

Ms. [REDACTED] and her Therapist testified how difficult, and appalling it was for Ms. [REDACTED] to be married to the Applicant. She stayed in that marriage for 50 years because she felt trapped, she felt she had no other options, and later in the marriage she also felt sorry for the Applicant due to his medical condition. During the marriage she was subjected to physical and emotional abuse; she was gainfully employed but had no access to family finances, her finances were limited because they were controlled by the Applicant. She was not allowed to spend money over a dollar, she was not allowed to buy her clothes on her own, her car mileage was monitored, she was restricted from entering portions of her own house. After years of therapy, Ms. [REDACTED] understood she needed to leave the marriage, she felt that if she didn't end the marriage, she would end her life. In 2016 she filed

for divorce and received the judgement in 2017.

The Applicant purchased a Long-Term Care Insurance policy through [REDACTED] Life Insurance Company for the lifetime benefit of \$492,750.00. The Applicant also purchased a qualified insurance policy with [REDACTED] Insurance Company and transferred total of \$341,000 to the annuity in return for monthly payments of \$5,019.06 for a period of 5 years and 8 months, with the first annuity payment made on [REDACTED], 2016, and the last annuity payment made on [REDACTED] 2021. The Applicant had a bank account with \$52,000, and [REDACTED] Annuity with \$50,000 in it. He also was receiving \$2501.50 a month in Social Security benefits. It is evident that the Applicant retained sufficient assets and income to meet his foreseeable needs given his advanced condition and limited life expectancy.

Ms. [REDACTED] paid \$95,021.25 for care of the Applicant between 2015 and 2017 for him to stay at home. The Applicant was admitted to the Facility on [REDACTED] 2017, and privately paid total of \$750,501.00 from [REDACTED]/2018 through [REDACTED]/2021 for his stay at the Facility.

The Department argued that the Applicant did not retain sufficient income and asset to meet his foreseeable needs for five years. UPM 3029.15 does not support that argument or specify a defined time frame. Foreseeable need is very subjective. A 79-year-old individual with advanced stage of Parkinson's disease has a limited life expectancy. An individual with a constant stream of income from Social Security, annuities and long-term care insurance which paid \$750,501.00 for long-term care services for more than three and half years meets his foreseeable needs.

The Department's attorney referenced the court's decision in Husband vs DSS, SD 57104-2471. Where Husband was 62 years old entered into Nursing Home on August 12, 2009. After 23 years of marriage the wife filed a divorce complaint alleging irrevocable differences between the parties. On December 17, 2009, Husband and wife entered into Stipulation and Agreement. The Stipulation Agreement provided that each party would receive the personal property owned solely in their respective names and that each party would receive personal property and financial accounts owned solely in their respective names. The Stipulation did not place any value on either the real property or the financial accounts. The divorce was filed on December 30, 2009. Ultimately the wife received approximately \$300,000 in marital assets and Husband received approximately \$11,000 in marital assets.

Approximately a week after the divorce was finalized, DSS received a Medicaid long-term care application on behalf of the Husband. DSS notified Husband in April 2010 that a resource assessment would need to be completed since Husband was still married during the month of December 2009, the month he asked the assistance to begin. Ultimately DSS concluded that Husband transferred assets for less than fair market value because he failed to avail himself of assets he could

have obtained through divorce. DSS imposed a Medicaid transfer penalty in the amount of \$125,0841. Husband appealed. The Court affirmed the transfer penalty assessed by DSS. Husband transferred the assets for less than fair market value because he failed to avail himself of assets he could have obtained through divorce.

This case is not relevant at all, in the present case, the divorce was a result of the enduring abuse Ms. ██████ faced during her 50 years of marriage. Ms. ██████ filed for divorce to escape from the terrible marriage and start a new life. Sufficient income and assets were retained by the Applicant to meet his foreseeable needs.

The Department's attorney referenced Perlstein v Dimas 2019 IL App (1<sup>st</sup>) 181538-U, in this case Perlstein had Parkinson's disease and resided in full time nursing care facility. About four months after entering the facility, he received a divorce from his wife of 50 years. The dissolution judgement entered on March 15, 2015, incorporated a marital settlement agreement (MSA) which asserted that it "was entered into freely and voluntarily between the parties" and set forth their agreed upon distribution of marital property. Pursuant to the MSA plaintiff was to retain sole interest in his pension benefit of \$2,911 per month and social security of \$939 per month, as well as \$123,000 in cash, investments, annuities and life insurance. Wife was to retain her sole interest in her social security benefits of \$419 per month, \$88,000 in cash and annuities, 2000 Toyota Camry, and the parties' house, valued at \$325,000, as well non-marital property worth about \$766,000. On June 26, 2015, about three months after the divorce plaintiff applied for long-term care services under Medicaid. The Department of Health care Family Services approved the application subject to a Medicaid penalty, specifically, a 60-month waiting period due to the non-allowable transfer of assets within the look back period. The Plaintiff filed a complaint for administrative hearing and the Circuit Court affirmed the Secretary's decision.

In the Perlstein case the divorce was filed four months after Perlstein was admitted to the nursing facility. No evidence was provided to the fact that divorce settlements were for purposes other than establishing eligibility for long-term care services under Medicaid. The testimonies provided in the present case clearly and convincingly established that divorce settlements were for the purposes other than establishing eligibility for long-term care services.

The Department's attorney referenced Bender v Bender 258 Conn. 733(2001). In this case the husband appealed the decision of the Superior Court, Judicial District of New Haven awarding to the wife unvested pension benefits held by the husband. The Appellate Court affirmed. Husband filed a petition for certification to appeal, which was granted. The Supreme Court, Borden, J, held that, and found: (1) Husband's unvested pension benefits were not too speculative to be considered property subject to equitable distribution; and (2) when valuing unvested pension benefits for equitable distribution purposes, it is within the trial court's discretion, as it is in the context of vested benefits, to choose on a case-by-

case basis, among the present value method, the present division of deferred distribution, and any other valuation method that it deems appropriate. Sharon Bender and Mark Bender were married in 1976, have four children, two of them were minor at the time of trial. In July 1997, Plaintiff brought this dissolution action, claiming custody of the minor children, child support, alimony, and a property distribution.

This is not similar to the present case as this dissolution action involved custody of minor children, child support, alimony. In present case both parties waived their right to alimony and the divorce was uncontested.

The Department's attorney referenced *Kent v Dipaola*, 178 Conn.App.424 (2017). In this case the Trial Court divided the combine assets of the parties, totaling \$4,619,655, awarding 33% to husband and 67% to wife and, to effectuate this division court ordered a distribution from wife to husband in the amount of \$300,000. Husband appealed. The Appellate court held that and found that Trial Court did not abuse its discretion when it awarded all the income from wife's pension to wife, and in exchange ordered that husband would not pay child support, and Trial Court did not abuse its discretion in awarding husband 33% as opposed to 50% of marital home.

I don't find any relevancy, in the present case although the asset distribution was not 50-50, but the Applicant retained sufficient asset and income to meet his foreseeable needs.

The Department's attorney referenced *Rosato v Rosato*, 77 Conn.App.9(2003). Where the former wife filed motion for clarification of judgement rendered in dissolution of marriage proceedings, providing that wife was to retain any benefits in former husband's pension plan. The Superior Court required husband to pay 55% of his pension benefits to wife.

This again is not relevant to the present case, in the present case the court did not require the wife to pay her pension benefits to the husband.

The Department's attorney referenced *Krafick v Krafick*, 234 Conn. 783 (1995) where the wife petitioned for martial dissolution. The Superior Court dissolved the marriage but refused to state basis of property distribution or to articulate value of husband's pension. Former wife appealed. The Appellate Court affirmed. Certification was granted. The Supreme Court held that: 1) vested pension benefits are "property" to be distributed upon marital dissolution; (2) trial court has discretion to choose method of valuation and distribution; and (3) trial court may not reject present value or any value for vested pension merely because asset is nonliquid.

Again, I don't find it applicable to the ██████ Case as it was an uncontested divorce, and the divorce judgement was not followed by an appeal.

The Applicant's Attorney cited *Lopes v DSS*, 696 F.3d 180 (2012), where Medicaid Applicant brought action challenging the government's determination that the applicant was ineligible for benefits because she was the payee of a six-year

annuity contract that provided her with fixed monthly payment of \$2,340.83. The United States District Court for District of Connecticut, Janet C. Hall, J., 2010 WL 3210793, granted summary judgement to wife.

The Applicant's Attorney also referenced Smith v Smith, 2002 WL 323524, in this case following trial of a marriage dissolution action, the Superior Court, Terence A. Sullivan, J., held that (1) wife's contributions to the husband, the children and the family during the almost 20 years of marriage were as significant and important to the accumulation and preservation of marital assets as were the contributions of the husband, and (2) wife would be awarded alimony.

While the attorneys for both parties cited case laws to this type of transfer and circumstances surrounding the Medicaid application, I did not find them comparable or relevant. I found that the statutes and regulations provided clear guidance on the merits of this case, and I relied more heavily on those statutes and regulations than on any of the cases reviewed for this decision.

There is clear and convincing evidence that the transfers were made for a purpose other than qualifying for assistance therefore the Department's action to assign a penalty is not correct.

### **DECISION**

The Applicant's appeal is **GRANTED**

### **ORDER**

1. The Department must reopen the Appellant's [REDACTED] 2018, application for long-term care service under Medicaid.
2. The Department must remove the penalty period imposed against the Applicant.
3. Verification of compliance with this order is due to the undersigned no later than 14 days from the date of this decision.

Swati Sehgal  
Swati Sehgal  
Hearing Officer

cc: Tim Latifi, SSOM, Bridgeport  
Robert Stewart, SSOM, Bridgeport  
Angella Querette, Eligibility Service Worker, Bridgeport  
Rebecca Rigdon, Department of Social Services Attorney  
[REDACTED] Esq, Attorney for [REDACTED] Estate  
[REDACTED], Intervenor  
[REDACTED] Esq., Attorney for Intervenor



### **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.

