

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 # ██████████
Client ID # ██████████
Hearing Request # 207718

NOTICE OF DECISION

PARTY

██████████
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PROCEDURAL BACKGROUND

On ██████████ 2022, the Department of Social Services (the “Department”) sent ██████████ ██████████ (the “Applicant”) a Transfer of Assets Final Decision Notice (“W-495C”), alleging that he transferred \$76,000 in assets to become eligible for Long Term Care (“LTC”) Medicaid benefits and the Department was imposing a penalty period of Medicaid ineligibility effective ██████████ 2022, through ██████████ 2023.

On ██████████ 2022, the Applicant and his daughter, ██████████ who is also his power of attorney (“POA”), requested an Administrative Hearing to contest the Department’s decision to impose a transfer of asset penalty.

On ██████████ 2022, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the Administrative Hearing for ██████████ ██████████ 2023.

On ██████████ 2023, 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 participated in the hearing in-person at the [REDACTED] Regional Office:

[REDACTED] Applicant's son-in-law / POA
[REDACTED] Applicant's daughter / POA
Lori Brennan, Department's Representative
Jessica Gulianello, Hearing Officer

The Applicant, [REDACTED] Jr. is institutionalized at [REDACTED] and was therefore not present for the hearing.

The hearing record remained open until [REDACTED] 2023, for the submission of additional evidence from the Department. The hearing record was extended until [REDACTED] 2023, for a rebuttal from the Applicant's POA. Additional documents were received from both parties, and on [REDACTED] 2023, the hearing 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 \$76,000 were improperly transferred resulting in the imposition of an LTC Medicaid penalty period of ineligibility beginning on [REDACTED] 2022, and ending on [REDACTED] 2023.

FINDINGS OF FACT

1. The Applicant is [REDACTED] ([REDACTED]) years old (DOB [REDACTED]). (*Exhibit 1: W-1LTC received [REDACTED]/2022, signed [REDACTED]/2022*)
2. The Applicant is [REDACTED]d. His [REDACTED] on [REDACTED]. (*Exhibit 1: W-1LTC received [REDACTED]/2022, signed [REDACTED]/2022*)
3. On [REDACTED], 2018, the Applicant appointed his daughter, [REDACTED] as POA and his son-in-law, [REDACTED], as the successor agent. (*Exhibit 2: [REDACTED] POA designation documents, signed [REDACTED]/2018*)
4. The Applicant's POAs reside in [REDACTED] ("[REDACTED]"). (*Exhibit 2: [REDACTED] POA designation documents, signed [REDACTED]/2018, POA Testimony*)
5. The Applicant was the sole owner of the residential property address of [REDACTED] [REDACTED] ("The Property"). (*Exhibit 2: AVS Property Details, Hearing Record*)
6. On [REDACTED] 2018, The Property was placed into a revocable living trust. (*Exhibit 4: [REDACTED] Land Records Deed Assignment*)
7. On [REDACTED] 2019, the Applicant was seen by Dr. [REDACTED] of [REDACTED] [REDACTED] ("[REDACTED]"). The Applicant reported forgetfulness and difficulty remembering

- recent events. Dr. ██████ referred the Applicant to a ██████. (*Exhibit C: ██████ ██████, Healthcare Practitioner Physical Assessment Form*)
8. In ██████ 2020, the Applicant was involved in a motor vehicle accident; ██████. The Applicant was unable to recall the details that preceded the collision. (*POA Testimony*)
 9. On ██████ 2020, the Applicant was again seen by Dr. ██████. The Applicant presented with symptoms of increased forgetfulness, misplacement of objects, and weight loss. Dr. ██████ noted that the Applicant required daily medication management, weekly monitoring of his weight, and that he was at risk of fall / injury due to confusion. Dr. ██████ further noted that the Applicant could no longer effectively participate in any kind of health care decision-making. (*Exhibit C: ██████ Primary Care Physical Assessment Form*).
 10. On ██████ 2020, the Applicant's cognitive and behavioral status was evaluated. The Appellant was subsequently diagnosed with ██████. (*Exhibit C: ██████ Primary Care Physical Assessment Form*).
 11. It is not clear if the Appellant had been diagnosed at an earlier date. (*Hearing Record*)
 12. On or about said time the Applicant's POAs became more closely involved in his care due to the rapid progression of his ██████. (*POA Testimony*)
 13. The Applicant's medical history includes but is not limited to the following chronic conditions: ██████. (*Exhibit C: ██████ Primary Care Physical Assessment Form*)
 14. The Applicant was a lifelong resident of The Property. (*POA Testimony*)
 15. The Applicant has been a lifelong hoarder. (*POA Testimony*)
 16. The POAs discovered that the Applicant's hoarding had amplified causing grave deterioration to The Property. The interior of The Property was severely neglected, heavily damaged, and essentially destroyed. The Appellant was living in squalor. The bathrooms were semi-functional, and the dwelling was infested with bugs. (*Exhibit B: POA Brief / Photographs, POA Testimony*)
 17. In ██████ 2020, the Applicant was admitted to ██████, an assisted living facility that had experience working with residents diagnosed with ██████. (*POA Testimony*)
 18. The Applicant's income included ██████ benefits from the Social Security Administration and two ██████. (*Hearing Record*)
 19. The Applicant privately paid for his care at the above-noted facility. (*POA Testimony*)
 20. The Applicant had a ██████ with an estimated ██████ on The Property. (*POA Testimony*)

21. The Applicant's POAs discovered that he was approximately six months behind in paying his bills and expenses. *(POA Testimony)*
22. The Applicant was on a fixed income with limited resources. He did not have the financial means to incur the cost of repairs and/or upgrades to The Property to make it habitable. *(POA Testimony)*
23. ██████████, is a real estate investment company that purchases properties, fixes them up, and resells them with the intention of making a profit "flipping". *(POA Testimony)*
24. ██████████ flips an average of 35-50 properties annually. *(Exhibit B: ██████████ ██████████ email correspondence, ██████████/2022)*
25. ██████████ completed a deal analysis of the Applicant's property as follows:

After Report Value:	\$162,000.00
Purchase Price:	\$32,000.00
Estimated Repair Costs:	\$79,176.05
Total Financing Costs:	\$5,091.16
Total Holding Costs:	\$3,500.44
Total Buying Transaction Costs:	\$3,797.60
Total Selling Transaction Costs:	\$10,015.00

(Exhibit B: Flip/Deal Analysis)

26. ██████████ proclaimed that nothing was usable inside The Property. The estimated repair costs of \$79,176.05 included demolition, heating ventilation, and air conditioning ("HVAC"), plumbing, electricity, paint, and new windows on the interior as well as a new roof on the exterior of the property. *(Exhibit B: Email Correspondence, ██████████/2022)*
27. A certified market analysis / licensed appraisal of the property was not completed. *(Hearing Record)*
28. The POAs assisted the Applicant with the sale of ██████████ with the intent for him to pay off his debts and remain financially self-sustaining at ██████████, assisted living facility. *(POA Testimony)*
29. On ██████████, 2020, the sale of The Property to ██████████ was finalized in the purchase amount of \$32,000.00. *(Exhibit 5: Real Property Data Search)*
30. The Applicant remained a resident of ██████████, assisted living facility through of ██████████ 2022. *(POA Testimony)*

31. The Applicant privately paid for his room and board services at the above-noted assisted living facility for more than two years. *(POA Testimony)*
32. In 2022, the Applicant's health further declined. The assisted living facility informed the POAs that the Applicant had been refusing ██████████ and other residents made complaints. The POAs were unable to find another assisted living facility that could accommodate the Applicant's increased level of care needs. *(POA Testimony)*
33. On ██████████ 2022, the Applicant was transferred from ██████████ assisted living facility to ██████████ Skilled Nursing Facility. *(POA Testimony)*
34. On ██████████ 2022, the Applicant's POAs submitted a Long-Term Care Application ("W-1LTC") form to the Department requesting medical assistance on his behalf. *(Exhibit 1: W-1LTC, signed ██████████/2022, Hearing Record)*
35. On ██████████ 2022, the Department reviewed the Applicant's request for benefits and registered the application in the Department's eligibility management system, ("ImpaCT"). *(Exhibit 9: Case Notes – Details, ██████████2022)*
36. The look-back period for LTC Medicaid is 60 months. *(Department's Testimony)*
37. On ██████████, 2022, the Department discovered that The Property the Appellant sold in ██████████ 2020 for \$32,000.00 was subsequently resold in ██████████ 2021 for \$169,000.00. The Department sent a referral to resources for further investigation. *(Exhibit 6: Resources Referral dated ██████████2022, Exhibit 9: Case Notes – Details, ██████████/2020, Hearing Summary, Department's Testimony)*
38. The requested Medicaid start date ("pick-up date") is ██████████, 2022. *(Exhibit 12: Department email correspondence dated ██████████/2023)*
39. The Department issued the POAs several Requests for Proofs ("W-1348's") requesting additional documentation to which the POA promptly responded. *(Exhibit 9: Case Notes, Exhibit 13: Email Correspondence, Department's Testimony)*
40. The Tax Assessor Manager, ██████████, of the Real Property Division Department of Assessments and Taxation of ██████████ determined the value of The Property to be \$108,500 at the time of the sale (█████████ 2020). *(Exhibit 9: Case Notes – Details, ██████████2022, Hearing Summary, Department's testimony)*
41. On ██████████ 2022, the Department issued the Applicant a Transfer of Asset Preliminary Decision Notice ("W-495A"). The W-495A alleged that the Applicant transferred \$76,000 in ██████████ 2020 in order to be eligible for assistance. The W-495A requested a rebuttal no later than ██████████ 2022. *(Exhibit 7A: W-495A, ██████████/2022)*
42. On ██████████ 2022, the POA provided a response via email. The POA requested for the Applicant's case to be escalated to a supervisor. *It is not clear if the attachment*

that was provided in the email was submitted to the hearing record. (Exhibit 13: Email Correspondence, ██████ 1022, ██████)

43. The Department did not issue a Transfer of Assets Notice of Response to Rebuttal/Hardship Claim (“W-495B”). (*Department’s Testimony*)
44. On ██████ 2022, the Department issued the Applicant a Transfer of Assets Final Decision Notice (“W-495”). The W-495C advised that the Department determined the Applicant transferred \$76,000 to become eligible for Medicaid. Furthermore, the Department was imposing a penalty for the period beginning ██████ 2022, through ██████ 2023. (*Exhibit 7B: W-495C*)
45. On ██████ 2022, the Department issued the POA a NOA. The NOA informed the POA that the Applicant was determined to be ineligible for LTC Medicaid and eligible for LTC Medicaid in a Spend-down with a begin date of ██████ 2022, citing the following reasons, “The value of your asset(s) is more than the amount allowed by this program” and “Does not meet program requirements”. (*Exhibit 7C: NOA, ██████/2022*)
46. The Department provided the Long-Term Services and Support Amounts chart following the hearing proceedings to confirm the average cost of care effective ██████ 2022, was \$14,060.00. (*Exhibit 10: Monthly Cost of Care*)
47. The Department did not provide clarification of the calculation that was used to determine the proposed penalty period as requested during the proceedings. (*Hearing Record*)
48. 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 POA requested an administrative hearing on ██████ 2022. This decision, therefore, was due no later than ██████ 2023. However, the hearing record, which had been anticipated to close on ██████ 2023, did not close for the admission of evidence until ██████ 2023, at the POA’s request. Because this █-day delay in the close of the hearing record arose from the POA’s request, this final decision is not due until ██████ 2023, and is therefore timely. (*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. Section § 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.
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 § 3029.03 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.
7. 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 Applicant is an institutionalized individual who applied for LTC Medicaid on [REDACTED], 2022. The Department correctly reviewed the Applicant’s assets that were transferred during the 60-month look-back period.

8. 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 a W-495A requesting a response no later than [REDACTED] 2022.

9. 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 POA responded to the W-495A via email on [REDACTED] 2022. The Department incorrectly did not issue a W-495B.

10. 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 incorrectly issued a W-495C on [REDACTED] 2022, that stated the Applicant transferred \$76,000 in [REDACTED] 2022 to become eligible for Medicaid.

The Property transfer in question occurred in 2020.

11. 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.

12. 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."

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.

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.

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.

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 Applicant’s POA provided clear and convincing evidence to substantiate that the FMV of The Property was well below the estimate of \$108,500 as quoted by the [REDACTED] Tax Assessors office due largely to its dilapidated condition corroborated by the photographs as well as the correspondence from the buyer of The Property.

1. UPM § 3029.10 provides for transfers not resulting in a penalty. The transfers described in 3029.10 do not render an individual ineligible for Medicaid payment of long-term care services.

UPM § 3029.10(E) provides for transfers made exclusively for reasons other than qualifying. 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 § 3029.15 provides for transfers made exclusively for reasons other than qualifying. An institutionalized individual or the individual's spouse is considered to have transferred an asset exclusively for a purpose other than qualifying for assistance under circumstances which include, but are not limited to, the following:

B. Foreseeable Needs Met

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.

The Department incorrectly imposed a penalty period alleging the Applicant sold The Property for less than FMV to qualify for LTC Medicaid. The testimony

and evidence provided by the Applicant's POA reflect the contrary. The sale of The Property was made exclusively for a purpose other than qualifying for LTC Medicaid. The Property was sold with the intent for the Applicant to meet his foreseeable needs. The Applicant used the proceeds of the sale to pay his debts and remain self-sustaining. Furthermore, the Applicant privately paid for his own care at an assisted living facility for more than two years until he required a higher level of care resulting in his institutionalization and subsequent application for LTC Medicaid.

DISCUSSION

The Department argued that The Property sale at \$32,000 was \$8,000 below the tax-assessed land value of \$40,000. While the Department's position is mathematically correct it failed to consider the mitigating circumstances presented by the Applicant's POA. Both POAs resided in a separate [REDACTED] from the Applicant at the time of the sale of The Property in question. As such, they were undoubtedly confronted with the multifaceted challenge of securing safe, appropriate, and affordable housing for the Applicant who had a fixed income, debts, and declining health in a time-sensitive manner while simultaneously arranging the sale of The Property in a devastated condition. Furthermore, and perhaps most significantly the POAs were navigating the unprecedented circumstances of the Public Health Emergency due to Covid-19 drastically impacting almost all systems. The testimony and evidence do not support that The Property was sold to qualify for LTC Medicaid. Moreover, the Property was not improperly transferred; it was sold to an investment company to prevent the Applicant from incurring further debt with the intent for him to remain self-sustaining and to meet his foreseeable needs. Because of the previously noted circumstances, I find the Applicant should not be subject to the penalty as proposed by the Department.

DECISION

The Applicant's appeal is GRANTED.

ORDER

1. The Department shall remove the penalty imposed against the Applicant.
2. Verification of compliance with this order is due to the undersigned no later than [REDACTED] 2023.

Jessica Gulianello

Jessica Gulianello
Hearing Officer

cc: Lori Brennan, ESW, [REDACTED]
Annjerry Garcia, Jamel Hillard, Robert Stewart, SSOM's, [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.