



## **STATEMENT OF THE ISSUE**

The issue to be decided is whether the Department correctly determined that the Appellant was subject to a Transfer of Assets penalty.

## **FINDINGS OF FACT**

1. On [REDACTED], 2017, the Appellant and her spouse signed an agreement with their son [REDACTED]. The agreement stipulated that they would provide [REDACTED] with \$145,000 to purchase a home at [REDACTED]. The stated purpose of this agreement was so [REDACTED] could live in the home, thereby residing closer to the Appellant and her spouse to provide care and prevent the need for nursing home care. (Conservator's Testimony, Exhibit B: Power of Attorney Documents)
2. On [REDACTED] 2017, the Appellant appointed her son, [REDACTED], as her Power of Attorney ("POA"). (Conservator's Testimony, Exhibit B)
3. On [REDACTED] 2017, the home at [REDACTED] was purchased in the name of the Appellant and her son, [REDACTED] [REDACTED]. (Conservator's Testimony, Exhibit J: [REDACTED] Land Records)
4. On [REDACTED], 2018, the Appellant transferred the home at [REDACTED] in [REDACTED] to her son, [REDACTED], by way of a quit claim deed. (Conservator's Testimony, Exhibit C: Quit Claims)
5. The Appellant did not receive any compensation when the home was transferred to her son. (Conservator's Testimony)
6. [REDACTED] was residing in the home at [REDACTED] until his death on [REDACTED] 2023. (Conservator's Testimony)
7. On [REDACTED], 2022, the Appellant and her spouse were admitted to a long-term care facility. (Conservator's Testimony)
8. On [REDACTED] 2022, the Department received an application for LTSS for the Appellant and her spouse from their Conservator of Estate. (Exhibit 1: W-1LTC Long Term Care application)
9. On [REDACTED], 2023, the Department noted that the home at [REDACTED] [REDACTED] was sold on [REDACTED], 2018, and the fair market value at the time, per Department of Social Services Resources Department, was \$194,125.00. (Department's Testimony, Exhibit 2: Case Notes)

10. On [REDACTED] 2023, the Department sent the Appellant a Transfer of Assets Preliminary Decision Notice (“W-495A”) indicating that the transfer of home property at [REDACTED] on [REDACTED], 2018, was made to qualify for assistance. (Exhibit 6: W-495A)
11. On [REDACTED], 2023, the Department sent the Appellant a NOA granting LTSS coverage with a transfer of assets penalty from [REDACTED], 2022, through [REDACTED], 2024. (Exhibit 5: NOA).
12. On [REDACTED], 2023, the Department received the Appellant’s hearing request. (Hearing Record)
13. The Appellant’s conservator, on the Appellant’s behalf, has stated that [REDACTED] used his influence as the Appellant’s son to convince the Appellant to purchase the home for him at [REDACTED]. The conservator also stated that [REDACTED] used his authority as POA to subsequently transfer the home into his name only. The conservator stated that [REDACTED] had a history of legal and financial difficulties stemming from substance abuse issues. (Conservator’s Testimony, Exhibit B, Exhibit C, Exhibit D: [REDACTED] Malpractice documents, Exhibit E: [REDACTED] Criminal Convictions, Exhibit F: [REDACTED] Grievance, Exhibit G: [REDACTED] Judicial Disciplinary Documents, Exhibit M: Audio File of Probate Hearing, Exhibit O: Foreclosure Documents)
14. The issuance of this decision is timely under Connecticut General Statutes 17b-61(a), which requires that a decision be rendered within 90 days of the request for an administrative hearing. The Appellant requested an administrative hearing on [REDACTED], 2023. The hearing record was left open until [REDACTED] 2023, for the submission of additional documents, at the Appellant’s request. Documents were received from both parties and the hearing record closed on [REDACTED] 2023, resulting in a delay of 22 days. Therefore, this decision is due no later than [REDACTED], 2023. (Hearing Record)

### CONCLUSIONS OF LAW

1. Connecticut General Statutes (“Conn. Gen. Stat.”) § 17b-2(6) provides that the Department of Social Services is designated as the state agency for the administration of the Medicaid program pursuant to the Title XIX of the Social Security Act.
2. Conn. Gen. Stat. § 17b-261b(a) provides that the Department is the sole agency to determine eligibility for assistance and services under the programs it operates and administers.

**The Department has the authority to administer and determine eligibility for the Medicaid program.**

3. "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 (1994) (citing Conn. Gen. Stat. § 17b-10; *Richard v. Commissioner of Income Maintenance*, 214 Conn. 601, 573 A.2d 712 (1990)).
4. Uniform Policy Manual ("UPM") § 1500.01 provides that an applicant is the individual or individuals for whom assistance is requested.

**The Appellant is the applicant in this matter.**

5. UPM § 3029.03 provides that 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.
6. Conn. Gen. Stat. §17b-261a(d)(1)(A)-(C) provides that, for the purposes of this subsection, an "institutionalized individual" means an individual who has applied for or is receiving services from a long-term care facility, services from a medical institution that are equivalent to those services provided in a long-term care facility, or home and community-based services under a Medicaid waiver.

**The Appellant was admitted to the Long-Term Care Facility on [REDACTED], 2022.**

7. UPM § 3029.05(A) provides that 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 spouse 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.
8. UPM § 3029.05(C) provides that 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 exists (1) the individual is institutionalized; and (2) the individual is either applying for or receiving Medicaid.

**The Department correctly determined that the look-back date for the Appellant is [REDACTED], 2017. The property was transferred on [REDACTED], 2018, which was less than sixty months prior to the submission of the application.**

9. UPM § 3029.15 provides that an institutionalized individual 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: (A) Undue Influence; (B) Foreseeable Needs Met; (C) Transfer to or by Legal Owner;

(D) Transferred Asset Would Not Affect Eligibility if Retained; (E) Post Eligibility Transfers Made by the Institutionalized Individual's Spouse.

10. UPM § 3029.15(A) provides the following regarding Undue Influence: (1) If the transferor is competent at the time the Department is dealing with the transfer, the individual must provide detailed information about the circumstances to the Department's satisfaction; (2) If the transferor has become incompetent since the transfer and is incompetent at the time the Department is dealing with the transfer, the transferor's conservator must provide the information; (3) The Department may pursue a legal action against the transferee if the Department determines that undue influence caused the transfer to occur.

**The Appellant's Conservator of Person and Conservator of Estate have provided documentation and testimony indicating that the Appellant's son, [REDACTED], used his influence as her son, and subsequently as her Power of Attorney, to convince the Appellant to make decisions that would be financially beneficial to him. The Appellant's conservators have also provided testimony and records documenting the Appellant's progressive cognitive decline, which made her susceptible to [REDACTED] influence.**

11. UPM 3029.15(C) provides the following regarding Transfer to or by Legal Owner: The Department considers a transfer to have been made to return the asset to its legal owner if: (1) the individual proves with clear and convincing evidence that the transferee had entrusted the asset to him or her with the intent of retaining beneficial interest; or (2) the individual who receives the asset or who actually makes the transfer (a) holds the asset jointly with the assistance unit at the time of the transfer; and (b) is a legal owner of the asset.

**At the time of the transfer of the property on [REDACTED], 2018, it was jointly owned by the Appellant and her son [REDACTED]. [REDACTED] was a legal owner of the property. As such, this transfer constitutes a transfer for the purpose of returning the asset to its legal owner.**

### **DECISION**

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

### **ORDER**

1. The Department shall remove the asset transfer penalty from the Appellant's case.
2. The Department shall issue a Notice of Action confirming the removal of the asset transfer penalty.
3. Compliance is due to the undersigned no later than [REDACTED], 2023.

*Melissa Prisavage*

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**Melissa Prisavage**  
**Fair Hearing Officer**

**CC:** Josie Savastra, Lindsey Collins, Mathew Kalarickal, David Mazzone, Operations Manager, Hartford Regional Office  
Carrie Eichman, Department's Representative, Hartford Regional 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.