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SUPERIOR COURT

2016 OCT 3 PM 4 02

JUDICIAL DISTRICT OF  
NEW BRITAIN

DOCKET NO. CV 15 6028687

ANTOINETTE SOCCI : SUPERIOR COURT

v. : JUDICIAL DISTRICT OF NEW BRITAIN

RODERICK BREMBY,  
COMMISSIONER : October 3, 2016

MEMORANDUM OF DECISION

Two years before Antoinette Socci applied for Medicaid to cover the cost of her care in a long term care facility she had sold to her daughter and son-in-law Nancy and Anthony Sweeney her one-half interest in a property her daughter and she had owned as tenants in common. The Department of Social Services (department) concluded that Mrs. Socci's sale to the Sweeneys was a transfer of assets made in order to render her eligible for Medicaid. Therefore, the department applied a "transfer of assets" penalty of \$315,682.55 that delayed for twenty-seven months, until June 2016, any Medicaid payments for long term care services.

On January 13, 2015 an administrative hearing officer of the department denied Mrs. Socci's appeal from the department's imposition of the transfer of assets penalty. Mrs. Socci's request for reconsideration of the hearing officer's decision was likewise denied.

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I

This appeal followed the department's denial of reconsideration, pursuant to General Statutes § 4-183:

(a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision may appeal to the Superior Court as provided in this section.

(j) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court shall affirm the decision of the agency unless the court finds that substantial rights of the person appealing have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) In violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. If the court finds such prejudice, it shall sustain the appeal and, if appropriate, may render a judgment under subsection (k) of this section or remand the case for further proceedings. For purposes of this section, a remand is a final judgment.

Repeated decisions of the Supreme Court have emphasized the restrictive nature of judicial review of an administrative agency's decision. For example, in *Pet v. Department of Health Services*, 228 Conn. 651, 667-68 (1994), the Court said:

Judicial review of an administrative agency decision requires a court to determine whether there is substantial evidence in the administrative record to support

the agency's findings of basic fact and whether the conclusions drawn from those facts are reasonable.... The substantial evidence standard is satisfied if the record provides a substantial basis of fact from which the fact in issue can be reasonably inferred. In determining whether an administrative finding is supported by "substantial evidence," the reviewing court must defer to the agency's assessment of the credibility of witnesses. The reviewing court must take into account contradictory evidence in the record ... but the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence.... (Citations omitted; internal quotation marks omitted.)

The question is not "whether the trial court would have reached the same conclusion but . . . whether the record before the commission supports the action taken." *All-Brand Importers, Inc. v. Department of Liquor Control*, 213 Conn. 184, 192 (1989). The appellant has the burden of proving that the department acted contrary to law and in abuse of its discretion. *Murphy v. Commissioner of Motor Vehicles*, 254 Conn. 333, 343 (2000).

## II

In 1965 the Congress, at the urging of President Lyndon B. Johnson, established the Medicaid program, "a joint federal-state venture providing financial assistance to persons whose income and resources are inadequate to meet the costs of, among other things, medically necessary nursing facility care. The federal government

shares the costs of Medicaid with those states that elect to participate in the program, and, in return, the states are required to comply with requirements imposed by the Medicaid act and by the Secretary of the Department of Health and Human Services...." (Internal quotation marks and citations omitted.) *Pikula v. Department of Social Services*, 321 Conn. 259, 264-65 (2016). In this case the eligibility requirement at issue is established by 42 U.S.C. § 1396p (c), which requires that the state plan for implementing Medicaid consider a person ineligible for assistance if she disposes of assets for less than fair market value within sixty months before applying for medical assistance under Medicaid.

In order to conform Connecticut's plan for implementing Medicaid to this federal eligibility requirement the General Assembly provided in General Statutes § 17b-261 that "(m)edical assistance shall be provided for any otherwise eligible person . . . if such person . . . has not made an assignment or transfer or other disposition of property for less than fair market value for the purpose of establishing eligibility for benefits or assistance under [the Medicaid program]." Further, General Statutes § 17b-261a (a) provides that any transfer of assets

within sixty months before applying for medical assistance "shall be presumed to be made with the intent . . . to enable the transferor to obtain or maintain eligibility for medical assistance." (Emphasis added.) And, 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." (Emphasis added.)

Lastly, 42 U.S.C. § 1396p (c) (2) (C) provides that a person who transfers an asset within the sixty month period "shall not be ineligible for medical assistance" if she makes a "satisfactory showing" to the state that "the assets were transferred exclusively for a purpose other than to qualify for medical assistance."

The department has adopted regulations in its uniform policy manual (UPM) to implement the asset transfer penalty provisions of Medicaid. Section 3029.10 identifies transfers that will not render an individual ineligible for Medicaid payment of long-term care services. For example, "an institutionalized individual . . . may transfer an asset without penalty if the individual provides clear and convincing evidence that . . . she intended to dispose of the asset at fair market value." UPM § 3029.10F. Moreover, UPM

§ 3029.10E renders an individual eligible if she "provides clear and convincing evidence that the transfer [of property within sixty months of her application] was made exclusively for a purpose other than qualifying for assistance."

Finally, in UPM § 3029.15 the department provides that it will consider that an asset transfer was made exclusively for a purpose other than qualifying for assistance if the transferor has met her foreseeable needs, i.e., "if, at the time of the transfer, 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."

These statutory and regulatory provisions represent the legal landscape in which the facts surrounding Mrs. Socci's transfer of her interest in the property she owned with Mrs. Sweeney must be considered. Specifically, Mrs. Socci claimed before the hearing officer that she intended to and did transfer her interest in the property for its fair market value, and then some. Furthermore, she argued that, at the time of the transfer, she retained assets and income sufficient to meet her foreseeable needs for basic living expenses and medical assistance, demonstrating, in

accordance with UPM § 3029.15, that she transferred her interest in the property exclusively for a purpose other than qualifying for assistance. Both of these claims were rejected by the hearing officer.

### III

In 1990 Mrs. Socci and Mrs. Sweeney purchased a house in Darien, taking title as tenants in common. The purchase price of the house was \$302,000.00. The purchase was financed via a cash payment of \$160,000.00 and a note and mortgage in the amount of \$159,340.05.<sup>1</sup> Both signed the note and mortgage; so, both were liable for payment of the principal and interest on the loan, real estate taxes and any other charges associated with the mortgage.

Mrs. Socci occupied a basement apartment constructed for her by Mrs. Sweeney and her husband. The rest of the house was occupied by the Sweeneys and their two daughters.

In 1994 Mrs. Socci and Mrs. Sweeney executed a written agreement by which the latter assumed the obligation Mrs. Socci had to pay one-half of the expenses related to the house,

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<sup>1</sup> The court assumes that the difference between the purchase price and the total of the cash payments and the mortgage is accounted for, as is usual, by various charges at settlement; e.g., prorated property taxes.

including the mortgage, utilities, real estate taxes, homeowner's insurance and "any other expenses related to the upkeep of the house." The consideration for Mrs. Sweeney's agreement to pay all these expenses was Mrs. Socci's promise, if the house was sold before her death, to limit her return out of the proceeds of sale to \$160,000.00, after payment of the mortgage and other costs associated with the sale, and to leave \$80,000 to her daughter upon her death.

If the house had not been sold by the time Mrs. Socci died, the agreement provided that Mrs. Sweeney could purchase Mrs. Socci's one-half interest in the house for \$80,000.00, which amount would be satisfied by Mrs. Sweeney's payment of \$40,000.00 to each of her brothers, Thomas and Cary.<sup>2</sup>

This agreement explicitly provided that, if either Mrs. Socci or Mrs. Sweeney did not live up to her obligations, the other party could enforce those obligations in court.

This arrangement continued for eighteen years. During that period Mrs. Sweeney paid \$638,123.55 in mortgage payments and

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<sup>2</sup> Apparently the agreement was intended to "resolve amicably . . . differences and problems" that had arisen within the family, in particular with Mrs. Socci's sons.



water taxes paid outside the mortgage.<sup>3</sup> Because she had signed the note and mortgage, Mrs. Socci would have been liable for 50% of those charges, \$319,061.77, but for Mrs. Sweeney's agreement in 1994 to be responsible for them.

In 2012 Mrs. Socci and Mrs. Sweeney entered into another agreement by which Mrs. Socci conveyed title to her one-half interest in the property to Mr. and Mrs. Sweeney for \$80,000.00 in return for a life interest in the property. Deeds were executed by the parties to carry out the terms of the agreement. From the \$80,000 she received for her interest in the property Mrs. Socci disbursed a total of \$77,500 to her sons Thomas and Cary in July 2012.

At the time of this agreement the appraised value of the property in question was \$817,600.00. Thus, Mrs. Socci's one-half interest had an appraised value of \$408,800.00. Her life estate in the property had an appraised value of \$89,817.45.<sup>4</sup>

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<sup>3</sup> These amounts are taken from the appellant's brief; Brief of Appellant Estate of Antoinette Socci, p. 6 (Dec. 7, 2015); and are supported by documents in the record. They have not been challenged by the department.

<sup>4</sup> The department's "resources unit" determined the value of the property and the life interest. The appellant has not challenged those amounts.

In 2012 Mrs. Socci was ninety-one years old. There is no evidence in the record of any medical diagnoses that might portend a need for institutional long term care. There is in the record a letter from her treating physician stating that "there was no warning nor could patient have foreseen that she was to have a [cerebrovascular accident]."

Mrs. Socci worked at least eight hours a week at the Darien YMCA, caring for small children. She drove herself to and from work. She received a monthly income of \$1541.64 from social security and pension payments, i.e., a yearly income of almost \$18,500, plus as much as \$205 biweekly for her day care duties. After she made the payments of \$77,500 to her sons, Mrs. Socci had savings of \$50,000 available to her.

Though Mrs. Socci drove herself to work, Mrs. Sweeney drove her for trips of distances longer than to and from work and shopping. She helped her mother carry into the house heavy grocery loads and assisted her in and out of the bathtub. Sometimes mother and daughter shared meals together.

In September 2013 Mrs. Socci suffered a stroke and was admitted to the hospital. Soon thereafter she was transferred to a rehabilitation facility. In November 2013 she was admitted to

a long term care residential facility. Mrs. Socci died on July 3, 2015.

#### IV

Did Mrs. Socci present clear and convincing evidence, as required by UPM § 3029.10(F), that she intended to convey her one-half interest in the property she owned in common with Mrs. Sweeney at fair market value in 2012? If so, her transfer of that interest is not one that should subject her to the asset transfer penalty. In considering this questions the court will apply the "clear and convincing" standard of proof as defined by the Connecticut Supreme Court in *Miller v. Commissioner*, 242 Conn. 745, 794 (1997): "the clear and convincing standard of proof . . . is sustained if the evidence induces in the mind of the trier a reasonable belief that the facts asserted are *highly probably* true, that the probability that they are true or exist is *substantially greater* than the probability that they are false or do not exist."<sup>5</sup>

The best evidence of Mrs. Socci's intent is the terms of the sale, itself, and the circumstances surrounding the sale.

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<sup>5</sup> It is not possible to determine from the hearing officer's decision how she defined the "clear and convincing" standard in reaching her conclusions.

By virtue of the 1994 agreement Mrs. Sweeney assumed the legal obligation to pay all expenses related to the property she owned in common with her mother. Over the next eighteen years, in fulfillment of her duty under the agreement, she expended \$638,123.55 in payments on the mortgage and for water taxes paid outside the mortgage. Half of that amount, \$319,061.77, would have been Mrs. Socci's to pay but for the 1994 agreement.

The department argues, and the hearing officer found, that the legal effect of the 1994 agreement was to relieve Mrs. Socci from any financial obligations on the note and mortgage; therefore, according to the hearing officer, "(s)ince the appellant had no obligation to pay expenses relating to the property, then the payments made by her daughter for the mortgage, taxes, home maintenance and repairs cannot be used as a form of compensation from the penalty amount." Record, p. 25.

The hearing officer's conclusion stems from a misinterpretation of the 1994 contract. "Although ordinarily the question of contract interpretation, being a question of the parties' intent, is a question of fact . . . where there is definitive contract language, the determination of what the parties intended by their contractual commitments becomes a question of law." (Internal

citations and quotation marks omitted.) *Tallmadge Bros., Inc. v. Iroquois Gas Transmission System, L.P.*, 252 Conn. 479, 495 (2000). Accord: *Short v. Conn. Bank & Trust Co.*, 60 Conn. App. 362, 367 (2000). "(C)onclusions of law reached by the administrative agency must stand if the court determines that they resulted from a correct application of the law to the facts found and could reasonably and logically follow from such facts." (Internal citations and quotation marks omitted.) *Pikula v. Department of Social Services*, supra, 321 Conn. 264.

The terms of the 1994 contract are unambiguous. The only reason Mrs. Socci had no obligation to pay the mortgage and related expenses after the 1994 agreement is because Mrs. Sweeney had assumed that obligation via the agreement. In other words, for the eighteen years between 1994 and 2012 Mrs. Sweeney conferred on her mother the benefit of the former's payment of expenses that the latter would have otherwise had to pay.

The hearing officer's application of this incorrect interpretation of the contract terms to the facts of the property transfer in 2012 resulted in an arbitrary and capricious exclusion of the value of Mrs. Sweeney's payment of these expenses for Mrs.

Socci's benefit from the calculation of what Mrs. Socci received in exchange for her one-half interest in the property.

The hearing officer's interpretation of the 2012 transaction also flies in the face of UPM § 3029.30 (A), which provides that "(c)ompensation received prior to the time of the transfer is counted if it was received in accordance with a legally enforceable agreement." Mrs. Sweeney's undertaking via the 1994 agreement to relieve Mrs. Socci of her obligation to pay the mortgage-related expenses was explicitly made enforceable by that agreement when it provided that, "(i)n the event that Nancy J. Sweeney does not abide by and carry through on the rights and obligations set forth in this agreement, then Antoinette Socci shall be free to pursue any remedies she may have in any court of appropriate jurisdiction." Record, p. 145.

The 1994 agreement is "legally enforceable" as that term is defined in the department's regulations: "a binding and credible arrangement, either oral or written, wherein two or more parties agree to an arrangement in consideration of the receipt of money, property, or services and in which all parties can be reasonably expected to fulfill their parts of the agreement." See UPM 3000.01.

The court concludes as a matter of law that the compensation Mrs. Socci received for her one-half interest in the property in 2012 includes the mortgage and tax payments made by Mrs. Sweeney over the eighteen year period between 1994 and 2012 as well as the cash payment of \$80,000 and the cash value of the life expectancy of \$89,817.45 in 2012. Thus, the compensation received by Mrs. Socci in 2012 totaled \$488,879.22, well in excess of the fair market value of her one-half interest in the property, as appraised by the department.

Mrs. Socci established by clear and convincing evidence that it was her intent in 2012 to dispose of her asset at fair market value and that, in fact, she did so.<sup>6</sup>

Mrs. Socci's transfer of her one-half interest in the subject property for more than its fair market value is sufficient in itself, pursuant to UPM § 3029.10F, to exempt her from the asset transfer penalty imposed by the department. The court, however, will address the second finding of the hearing officer; namely, that Mrs. Socci did not retain sufficient assets and income after

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<sup>6</sup> The court is aware that it must defer to the hearing officer's assessment of the credibility of witnesses. The material facts on which the court bases its conclusion that Mrs. Socci intended to and did transfer her one-half interest in the subject property at fair market value are undisputed. Credibility assessments, thus, have played no part in the court's decision.

the transfer to meet her reasonably foreseeable basic living expenses and medical costs, so as to make a complete record for a potential appeal.

V

When Mrs. Socci transferred her interest in the Darien property to Mrs. Sweeney, did she retain "other income and assets to cover basic living expenses and medical costs as they could have reasonably been expected to exist based on [her] health and financial situation at the time of the transfer?" If so, pursuant to UPM § 3029.15, she "is considered to have transferred an asset exclusively for a purpose other than qualifying for assistance."

In considering this question the court will again apply the clear and convincing evidentiary standard, as seems to be required by UPM § 3029.10E.<sup>7</sup>

In conveying her interest in the Darien property Mrs. Socci had assured herself of a place to live for the rest of her life. Thus, her only out-of-pocket expenses would be for food, clothing, incidentals and medical care. She had Parts A & B of Medicare to cover any hospitalization or medical costs. The department argues,

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<sup>7</sup> UPM § 3029.15 does not explicitly incorporate the clear and convincing standard of proof. Reading the regulations as a whole, however, persuades the court to apply that standard in evaluating all of the factual issues present in the case.



and the hearing officer agreed, that she should reasonably have foreseen that her medical care would necessarily involve residential long-term care. But, this would only be true if there was evidence in the record that Mrs. Socci, as a "reasonably prudent individual"; UPM § 3000.01; was aware of medical conditions that presaged such a need. There is no such evidence, and there were no such conditions.

Mrs. Socci continued to work, albeit for only a few hours a week,<sup>8</sup> and she drove herself to and from work. She did her own shopping. As would any person at 91, she needed help carrying heavy loads and driving longer distances. Her daughter testified before the hearing officer that Mrs. Socci could get in and out of the bathtub by herself but that she waited for her daughter to assist "just as a safety precaution." Record, pp. 472-73. Her daughter brought her meals two or three times a week. Id., pp. 473-74. She took care of her own finances. There was no evidence before the hearing officer of cognitive or emotional difficulties.

In its brief on this appeal the department lists several "risk factors" that serve as "warning signs" of an impending

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<sup>8</sup> There is no evidence in the record, however, that she "need[ed] to work to supplement her pension", as claimed by the department. See Brief, p. 23.

stroke: "hypertension, diabetes, cigarette smoking and atrial fibrillation." Brief, p. 21 (Feb. 19, 2016). The record is devoid of evidence that any of these factors was present in Mrs. Socci's life.

At bottom, the department's position rests on a presumption that any reasonable person of Mrs. Socci's age should foresee that she will suffer a catastrophic illness or injury that will require long-term care. There is nothing in the record to support such a presumption. The court takes judicial notice that, at 91, Mrs. Socci had exceeded the average life expectancy of a white female in the United States by ten years.<sup>9</sup> *Nelson v. Branford Water & Lighting Co.*, 75 Conn. 548, 54 Atl. 303, 305 (1903). Thus, if presumptions are to be entertained, it was just as likely if not more likely that she would die without requiring long-term care.

With social security and pension payments totaling \$18,500 and payment for her day care services of as much as \$5,000 a year<sup>10</sup>, Mrs. Socci certainly had enough income to cover her basic

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<sup>9</sup> npr.org (Apr. 20, 2016), reporting on study released by the National Center for Health Statistics of the CDC.

<sup>10</sup> In its brief on this appeal the department states that Mrs. Socci was paid at an hourly rate of \$13.49 and netted \$205.56 for the two-week period ending August 15, 2013. Brief, p. 20 (Feb. 19, 2016).

necessities for the rest of her life, as well as a place to live. Her \$50,000 in retained savings would cover medical costs not covered by Medicare and her private health insurance. She was living in the same house as her daughter, who had already demonstrated her willingness to provide what care Mrs. Socci needed as she aged.

Considering the uncontroverted evidence of Mrs. Socci's health and financial situation at the time she transferred her interest in the Darien property, the court concludes that there is not in the record substantial evidence to support the hearing officer's findings of fact or evidence from which those findings could be reasonably inferred. Therefore, the hearing officer's decision that she did not retain sufficient assets and income to meet her foreseeable needs is "clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record." General Statutes § 4-183 (j).


#### VI

This court concludes that Mrs. Socci's transfer of ownership of her one-half interest in the Danbury property was made for fair market value, and that she retained sufficient resources for her reasonably foreseeable needs. The hearing officer's conclusions

to the contrary were based on a misinterpretation of the 1994 contract and were not based on substantial evidence in the record.

The court finds that "substantial rights" of the appellant have been prejudiced because the hearing officer's decision "(4) [is] affected by [an] error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; [and] (6) arbitrary . . . capricious [and] characterized by abuse of discretion [and a] clearly unwarranted exercise of discretion." § 4-183 (j).

Accordingly, the appeal is SUSTAINED. The department is ORDERED to eliminate the penalty period previously imposed.

BY THE COURT  
  
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Joseph M. Shortall  
Judge Trial Referee