

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
25 SIGOURNEY STREET
HARTFORD, CT 06106-5033

██████████ 2013
Signature Confirmation

Client ID # ██████████
Request #537324

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On, ██████████ 2013, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA) denying her request for Long Term Care Medicaid effective ██████████ 2012.

On ██████████ 2013, ██████████ (the "Appellant's Daughter") and Power of Attorney ("POA") requested an administrative hearing to contest the Department's decision to deny such benefits.

On ██████████ 2013, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ██████████ 2013.

The Appellant requested a continuance of the hearing which OLCRAH granted.

On ██████████ 2013, OLCRAH issued a notice scheduling the administrative hearing for ██████████ 2013.

The Department requested a continuance of the hearing which OLCRAH granted.

On [REDACTED] 2013, OLCRAH issued a notice scheduling the administrative hearing for [REDACTED] 2013.

The Appellant requested a continuance of the hearing which OLCRAH granted.

On [REDACTED] 2013, the OLCRAH issued a notice scheduling the administrative hearing for [REDACTED] 2013.

On [REDACTED] 2013, in accordance with sections 17b-60, 17-61 and 4-176e to 4-189 inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing.

The following individuals were present at the hearing:

[REDACTED], Appellant

[REDACTED], Appellant's Daughter

[REDACTED], Appellant's Grandson

Susan Debevec, Genesis Healthcare Representative

Thomas Russo, Administrator, Kimberly Hall North

Kathy Pelligrinelli, Business Office Manager, Kimberly Hall North

Jaimie LaChapelle, Department's Representative

Lisa Nyren, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to deny the Appellant's application for Long Term Care Medicaid was correct.

The secondary issue to be decided is whether the Department's decision to impose a penalty period of 5.10 months due to a transfer of assets is correct.

FINDINGS OF FACT

1. The Appellant is eighty-eight years old, born on [REDACTED] [REDACTED]. (Appellant's Daughter's Testimony)
2. The Appellant has dementia. (Appellant's Daughter's Testimony)
3. On [REDACTED] 2005, the Appellant's Daughter received her appointment as Power of Attorney for the Appellant. (Exhibit B: Durable Power of Attorney)

4. The Appellant maintained a joint checking account at Webster Bank (the "bank") with the Appellant's Daughter. (Appellant's Daughter Testimony and Exhibit T: Bank Statement)
5. In 2009, the Appellant owned two homes located at [REDACTED] [REDACTED] (the "non-home property") and [REDACTED] [REDACTED] (the "home property"). (Hearing Record)
6. The Appellant resided at the home property with her son [REDACTED] (Appellant's Son") prior to her admission to the nursing home. (Appellant's Daughter Testimony)
7. The Appellant's Son helped to care for the Appellant while residing at the home property. (Appellant's Daughter Testimony)
8. On [REDACTED] 2009, the Appellant sold the non-home property for a sale price of \$165,000.00 and received \$156,373.55 after settlement charges. (Exhibit P: Settlement Statement)
9. On [REDACTED] 2009, the Appellant deposited the proceeds from the sale of non-home property of \$156,373.55 into a savings account at the bank. (Exhibit 10: Explanation of Deposits and Withdrawals and Exhibit 28: Case Narrative)
10. On [REDACTED] 2009, the Appellant gifted \$13,000.00 to the Appellant's Daughter. (Appellant's Daughter Testimony, Hearing Summary, and Exhibit 10: Explanation of Deposits and Withdrawals)
11. On [REDACTED] 2010, the Appellant gifted \$13,000.00 to [REDACTED] (the "Appellant's Other Son"). The bank check reads annual gift. (Appellant's Daughter Testimony and Exhibit 10: Explanation of Deposits and Withdrawals)
12. The Appellant's Other Son is disabled. (Exhibit 15: Social Security Verification and Birth Certificate)
13. On [REDACTED] 2010, the Appellant gifted \$13,000.00 to [REDACTED] (the "Appellant's Grandson"). The bank check reads annual gift. (Appellant's Daughter Testimony and Exhibit 10: Explanation of Deposits and Withdrawals)
14. The Appellant's Grandson is the son of the Appellant's Daughter. (Appellant's Daughter Testimony)

15. On [REDACTED] 2010, the Appellant gifted \$13,000.00 to the Appellant's Daughter. The bank check reads annual gift. (Appellant's Daughter Testimony and Exhibit 10: Explanation of Deposits and Withdrawals)
16. On [REDACTED] 2011, the Appellant gifted \$13,000.00 to the Appellant's Daughter. The bank check reads annual gift. (Appellant's Daughter Testimony and Exhibit 10: Explanation of Deposits and Withdrawals)
17. On [REDACTED] 2012, the Appellant entered Kimberly Hall North, a skilled nursing facility. (Exhibit 31: EMS Institution Screenprint)
18. On [REDACTED] 2012, the Appellant gifted \$5,000.00 to the Appellant's Grandson. The personal check reads gift. (Appellant's Daughter Testimony and Exhibit 10: Explanation of Deposits and Withdrawals)
19. After being admitted to the facility, the Appellant transferred ownership of the home property to the Appellant's Other Son. (Appellant's Daughter's Testimony, Exhibit A: Letter of Explanation, and Hearing Summary)
20. On [REDACTED] 2013, the Appellant transferred \$8,494.03, the remaining balance in the savings account at the bank to her checking account at the bank. (Exhibit 10: Explanation of Deposits and Withdrawals)
21. As of [REDACTED] 2012, the balance in the joint checking account at the bank was \$11,834.42. (Exhibit T: Bank Statement)
22. On [REDACTED], 2012, the Appellant owned a life insurance policy (the "policy") with a face value/death benefit of \$5,000.00 and a cash surrender value of \$2,976.99 with Baltimore Life Companies (the "life insurance company"). The beneficiary of the policy is the Appellant's Daughter and the contingent beneficiary is the Appellant's grandson. (Exhibit E: Baltimore Life Letter [REDACTED]/12 and Exhibit 8: Baltimore Life Letter [REDACTED]/12)
23. The policy is an accessible asset. (Hearing Record)
24. The Medicaid asset limit is \$1,600.00. (Hearing Record)
25. On [REDACTED] 2012, the Department received an application for Long Term Care Medicaid for the Appellant. (Hearing Summary and Exhibit 29: Notice of Action [REDACTED]/13)
26. As of [REDACTED] 2012, the balance in the joint checking account at the bank was \$6,878.42. The Appellant reduced the checking account balance by making payments to the nursing facility paid on [REDACTED] 2012, [REDACTED], 2012, and [REDACTED], 2012. (Exhibit T: Bank Statement)

27. On [REDACTED] 2012, Carmon Community Funeral Homes, Inc. (the "funeral home") accepted assignment of the policy's death benefit of \$5,000.00 as credit for non-guaranteed pre-need funeral good and services for an irrevocable trust valued at \$5,400.00. (Exhibit F: Carmon Funeral Home Assignment and Exhibit G: Funeral Trust Contract)
28. On [REDACTED] 2012, the funeral home and the Appellant's Daughter, acting as POA for the Appellant, signed an Irrevocable Assignment Agreement for the Funding of Prearranged Funeral Services contract (the "agreement"). The agreement assigns the right to collect the net proceeds of the policy to the extent of the cost of the funeral goods and services and any proceeds in excess of the amount due for funeral goods and services shall be paid to the beneficiary of the policy. (Exhibit F: Carmon Funeral Home Assignment and Exhibit G: Funeral Trust Contract)
29. As of [REDACTED] 2012, the balance in the joint bank account was \$810.42 after the Appellant made two payments totaling \$6,770.00 to the funeral home. (Exhibit t: Bank Statement)
30. On [REDACTED] 2012, the life insurance company processed a change in the policy and the funeral home became the assignee. The Appellant remained the owner of the policy and the Appellant's daughter remained the beneficiary of the policy. (Exhibit 8: Letter of Assignment)
31. On [REDACTED] 2013, the Appellant's Daughter reduced the Appellant's assets by assigning the Appellant's life insurance policy to the funeral home, changing the policy's beneficiary to the funeral home, and making the funeral home the custodian of the policy. (Hearing Summary and Exhibit 20: Letter of Beneficiary Change [REDACTED]/13)
32. On [REDACTED] 2013, the Department determined the Appellant's cash value in her life insurance policy as exempt effective [REDACTED] 2013. (Hearing Summary and Exhibit 20: Letter of Beneficiary Change [REDACTED]/13)
33. On [REDACTED] 2013, the Department determined that the Appellant had reduced her assets to under \$1,600.00 effective [REDACTED] [REDACTED] 2013. (Checking account balance \$788.69) (Hearing Summary and Exhibit 20: Letter of Beneficiary Change [REDACTED]/13)
34. The Department determined the Appellant transferred \$57,000.00 for less than fair market value between [REDACTED] 2009 and [REDACTED] 2012. (\$13,000.00 gift [REDACTED]/09 + \$13,000.00 annual gift [REDACTED]/10 + \$13,000.00 annual gift [REDACTED]/10 + \$13,000.00 annual gift [REDACTED]/11 + \$5,000.00 gift [REDACTED]/12) (Exhibit 22: W495A Transfer of Assets Notice)

35. The Department determined the Appellant transferred \$57,000.00 between [REDACTED] 2009 and [REDACTED] 2012 for the purpose of becoming eligible for Medicaid. (Hearing Record)
36. On [REDACTED] 2013, the Department mailed a notice, *Form W495A Transfer of Assets Preliminary Decision*, to the Appellant. The Notice stated that the Department determined the Appellant transferred \$57,000.00 to family members for the purpose of becoming eligible for Medicaid and allowed the Appellant an opportunity to dispute the Department's determination. The Department noted the rebuttal due date as [REDACTED] 2013. (Exhibit 22: *Form W495A Transfer of Assets Preliminary Decision* [REDACTED]/13)
37. On [REDACTED] 2013, the Department mailed a notice, *Form W495C Transfer of Assets Final Decision Notice* to the Appellant regarding the transfer of assets. The notice stated the Appellant qualified for certain Medicaid benefits except long-term care services beginning [REDACTED] 2013 and imposed a penalty period beginning [REDACTED] 2013 and ending [REDACTED] 2013. (Exhibit 25: *Transfer of Assets Final Decision Notice* [REDACTED]/13 and Hearing Summary)
38. On [REDACTED] 2013, the Department issued a notice of denial to the Appellant. The notice stated the Department denied the Appellant's application for Long Term Care Medicaid for the period [REDACTED] 2012 through [REDACTED] 2013 because the value of your assets is more than the amount we allow you to have. Medicaid eligibility begins [REDACTED] 2013, excluding long term care services. (Exhibit 29: *Notice of Denial* [REDACTED]/13, Exhibit 30: *Notice of Denial* [REDACTED]/13 and Exhibit 25: *Transfer of Assets Final Decision Notice* [REDACTED]/13)

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes, authorizes the Commissioner of the Department of Social Services to administer the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Statute provides that the Commissioner of the Department of Social Services may make such regulations as are necessary to administer the medical assistance program. [Conn. Gen. Stat. § 17b-262]
3. Statute provides that the Department of Social Services shall be the sole agency to determine eligibility for assistance and services under programs operated and administered by said department. [Conn. Gen. Stat. § 17b-261b(a)]

4. Statute provides that for the purposes of determining eligibility for the Medicaid program, an available asset is one that is actually available to the applicant or one that the applicant has the legal right, authority or power to obtain or to have applied for the applicant's general or medical support. If the terms of a trust provide for the support of an applicant, the refusal of a trustee to make a distribution from the trust does not render the trust an unavailable asset. Notwithstanding the provisions of this subsection, the availability of funds in a trust or similar instrument funded in whole or in part by the applicant or the applicant's spouse shall be determined pursuant to the omnibus Budget Reconciliation Act of 1993, 42 USC 1396p. The provisions of this subsection shall not apply to a special needs trust, as defined in 42 USC 1396p(d)(4)(A). For purposes of determining whether a beneficiary under a special needs trust, who has not received a disability determination from the Social Security Administration, is disabled, as defined in 42 USC 1382c(a)(3), the Commissioner of Social Services, or the commissioner's designee, shall independently make such determination. The commissioner shall not require such beneficiary to apply for Social Security disability benefits or obtain a disability determination from the Social Security Administration for purposes of determining whether the beneficiary is disabled. [Conn. Gen. Stats. 17b-261(c), amended by Public Act 13-234]
5. Effective October 1, 2013, statute provides that to the extent permissible under federal law, an institutionalized individual, as defined in Section 1917 of the Social Security Act, 42 USC 1396p(h)(3), shall not be determined ineligible for Medicaid solely on the basis of the cash value of life insurance policy worth less than ten thousand dollars provided (1) the individual is pursuing the surrender of the policy, and (2) upon surrendering such policy all proceeds of the policy are used to pay for the institutionalized individual's long term care. [Conn. Gen. Stats. 17b-261(h), amended by Public Act 13-234]
6. Statute provides that for the purposes of this section and sections 42-201 to 42-207, inclusive, "funeral service contract" means a contract which requires the payment of money, the delivery of securities or the assignment of a death benefit payable under an individual or group life insurance policy in exchange for the final disposition of a dead human body, including funeral, burial or other services, or the furnishing of personal property or funeral merchandise in connection with any such disposition, wherein the use or delivery of such services, property or merchandise is not required immediately, "beneficiary" means the person for whom the goods or services purchased in a funeral service contract are to be provided, and "purchaser" means the person who signs the funeral service contract. [Conn. Gen. Stats. 42-200(a)]

7. Uniform Policy Manual (“UPM”) § 4030 provides that the Department evaluates all types of assets available to the assistance unit when determining the unit’s eligibility for benefits.
8. UPM § 4030.30(C)(1) provides that if the total of the face value of all life insurance policies owned by the individual does not exceed \$1,500.00, the cash surrender value of such policies is excluded. In computing the face value of life insurance, the Department does not count insurance such as term insurance, which has no cash surrender value.
9. UPM § 4030.30(C)(2) provides that except as provided above, the cash surrender value of life insurance policies owned by the individual is counted toward the asset limit.
10. For the period [REDACTED] 2012 through [REDACTED] 2013, the Department correctly determined the Appellant owns the life insurance policy.
11. For the period [REDACTED] 2012 through [REDACTED] 2013, the Department correctly included the Appellant’s life insurance cash surrender value of \$2,976.99 as an available asset.
12. Effective [REDACTED] 2013, the Department correctly determined the Appellant assigned the policy’s death benefit to the funeral home and correctly excluded the Appellant’s life insurance cash surrender value as an available asset.
13. UPM § 4005.10(A)(2)(a) provides that the asset limit for Medicaid under the Medical Aid for the Aged, Blind, and Disabled program (“MAABD”) for a needs group of one is \$1,600.00.
14. UPM § 4005.05(B) speaks to asset limits and states in part:
 1. The Department counts the assistance unit’s equity in an asset toward the asset limit if the asset is not excluded by state or federal law and is either:
 - a. Available to the unit; or
 - b. Deemed available to the unit.
 2. Under all programs except Food Stamps, the Department considers an asset available when actually available to the individual, or when the individual has the legal right, authority, power to obtain the asset, or to have it applied for, his or her general medical support.
15. For the period [REDACTED] 2012 to [REDACTED] 2013, the Department correctly determined the Appellant’s total assets of \$3,787.41 exceeded the Medicaid asset limit of \$1,600.00. (\$2,976.99 life insurance cash surrender value + \$810.42 checking account = \$3,787.41)

16. UPM § 4005.15(A)(2) provides that in the Medicaid program at the time of application, the assistance unit is ineligible until the first day of the month in which it reduces its equity in counted assets to within the asset limit.
17. The Department correctly determined the Appellant had assets totaling \$3,787.41 which exceeded the Medicaid asset limit of \$1,600.00 for the period of [REDACTED] 2012 through [REDACTED] 2013.
18. The Department correctly determined the Appellant's total assets of \$810.42 are under the Medicaid asset limit of \$1,600.00 beginning [REDACTED] 2013. (\$810.42 checking account)
19. The Department correctly denied the Appellant's application for Medicaid under the Long Term Care program for the period [REDACTED] 2012 through [REDACTED] 2013 because the Appellant had assets which exceeded the Medicaid asset limit of \$1,600.00.
20. Statute provides medical assistance shall be provided for any otherwise eligible person who income, including any available support from legally liable relatives and the income of the person's spouse or dependent child, is not more than one hundred forty-three percent, pending approval of a federal waiver applied for pursuant to subsection (e) of this section, of the benefit amount paid to a person with no income under the temporary family assistance program in the appropriate region of residence and if such person is an institutionalized individual as defined in Section [1917 (c)] 1917 of the Social Security Act, 42 USC [1396p(c)] 1396p(h)(3), and 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 this section. Any such disposition shall be treated in accordance with Section 1917(c) of the Social Security Act, 42 USC 1396p(c). Any disposition of property made on behalf of an applicant or recipient or the spouse of an applicant or recipient by a guardian, conservator, 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, recipient or spouse. A disposition of property ordered by a court shall be evaluated in accordance with the standards applied to any other such disposition for the purpose of determine eligibility. The commissioner shall establish the standards for eligibility for medical assistance at one hundred forty-three percent of the benefit amount paid to a family unit of equal size with no income under the temporary family assistance program in the appropriate region of residence. In determining eligibility, the commissioner shall not consider as income Aid and Attendance pension benefits granted to a veteran, as defined in section 27-103, or the surviving spouse of such veteran. Except as provided in section 17b-277, the medical assistance program shall provide coverage

to persons under the age of nineteen with family income up to one hundred eighty-five percent of the federal poverty level without an asset limit and to persons under the age of nineteen and their parents and needy caretaker relatives, who qualify for coverage under Section 1931 of the Social Security Act, with family income up to one hundred eighty-five percent of the federal poverty level without an asset limit. Such levels shall be based on the regional differences in such benefit amount, if applicable, unless such levels based on regional differences are not in conformance with federal law. Any income in excess of the applicable amounts shall be applied as may be required by said federal law, and assistance. The Commissioner of Social Services shall provide applicants for assistance under this section, at the time of application, with a written statement advising them of (1) the effect of an assignment or transfer or other disposition of property on eligibility for benefits or assistance, (2) the effect that having income that exceeds the limits prescribed in this subsection will have with respect to program eligibility, and (3) the availability of, and eligibility for, services provided by the Nurturing Families Network established pursuant to section 17b-751b. Persons who are determined ineligible assistance pursuant to this section shall be provided with a written statement notifying such persons of their ineligibility and advising such persons of availability of HUSKY Plan, Part B hearing insurance benefits. [Conn. Gen. Stat. § 17b-261(a), amended by Public Act 13-234, Sec. 127]

21. Statute provides for any transfer or assignment of assets resulting in the establishment or imposition of a penalty period shall create a debt, as defined in section 36a-645, that shall be due and owing the transferor or transferee to the Department of Social Services in an amount equal to the amount of medical assistance provided to or on behalf of the transferor on or after the date of the transfer of assets, but said amount shall not exceed the fair market value of the assets at the time of the transfer. The Commissioner of Social Services, the Commissioner of Administrative Services, and the Attorney General shall have the power or authority to seek administrative, legal or reputable relief as provided by other statutes or by common law. [Conn. Gen. Stat. § 17b-261(b)]
22. UPM § 3029 provides that this chapter describes the technical eligibility requirement in the Medicaid program pertaining to the transfer of an asset for less than fair market value. The policy material in this chapter pertains to transfers that occur on or after February 8, 2006.
23. UPM § 3029.05 provides that there is a period established subject to the conditions described in this chapter, during which institutionalized individuals are not eligible for certain Medicaid services when they or their spouses dispose of assets for less than fair market value on or after the

look back date specified in UPM § 3029.05(C). This period is called the penalty period or period of ineligibility.

24. UPM 3029.05(D)(1) provides that the Department considers transfers of assets made within the time limits described in 3029.05(C), on behalf of an institutionalized individual or his or her spouse by a guardian, conservator, person having power of attorney or other person or entity so authorized by law, to have been made by the individual or spouse.
25. UPM § 3029.05(B) provides for the institutionalized individual affected.
 1. The policy contained in this chapter pertains to institutionalized individual and to their spouses.
 2. An individual is considered institutionalized if he or she is receiving:
 - a. LTCF services; or
 - b. Services provided by a medical institution which are equivalent to those provided in a long-term care facility; or
 - c. Home and community based services under a Medicaid waiver (cross references: 2540.64 and 2540.92)
26. UPM § 3029.05(C) provides for the look back date for transfers of assets is a date that is 60 months before the first date on which both the following conditions exist:
 1. The individual is institutionalized; and
 2. The individual is either applying for or receiving Medicaid.
27. The Department properly determined the 60 month look back period as [REDACTED] 2007 through [REDACTED] 2012.
28. UPM § 4000.01 defines equity value as the fair market value of an asset minus encumbrances.
29. UPM § 4000.01 defines fair market value 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 as a result of reasonable, bona fide efforts to gain the highest possible price in an arm's-length transaction.
30. UPM § 3029.10(A)(1)(c) provides that the transfers described in 3029.10 do not render an individual ineligible for Medicaid payment of long term care services. An individual or his or her spouse may transfer his or her home without penalty to his or her: child of any age if the child is considered to be blind or disabled under criteria for SSI eligibility.
31. The Department correctly excluded the transfer of the home property to the Appellant's other son as a transfer of asset.

32. UPM § 3029.10(C)(1) provides that an institutionalized individual, or his or her spouse, may transfer assets of any type without penalty to: his or her child who is considered to be blind or disabled under the criteria for SSI eligibility.
33. The Department correctly excluded the transfer of \$13,000.00 on [REDACTED] 2010 to the Appellant's other son as a transfer of asset.
34. UPM § 3029.15 provides that 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:
- A. 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 determined that undue influence caused the transfer to occur.
 - B. 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.
35. The Department correctly determined the Appellant did not retain income or assets to cover basic living expenses and medical costs to meet her foreseeable needs.
36. 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.
37. 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.

38. The Appellant's Daughter failed to provide clear and convincing evidence that the reason for the transfers totaling \$57,000.00 was not for qualifying for assistance.
39. The Department correctly determined that the Appellant transferred assets totaling \$57,000.00.
40. The Department correctly imposed a transfer of assets penalty against the Appellant due to the transfer of assets for the period [REDACTED] 2009 through [REDACTED] 2012. The Applicant is subject to a transfer of asset penalty.
41. UPM § 3029.05(F)(1) provides that the length of the penalty period consists of the number of whole and/or partial months resulting from the computation described in § 3029.05(F)(2).
42. UPM § 3029.05(F)(2) provides that the length of the penalty period is determined by dividing the total uncompensated value of all assets transferred on or after the look-back date described in 3029.05(C) by the average monthly cost to a private patient for LTCF services in Connecticut.
43. UPM § P-3029.30 provides for calculating and imposing the penalty period.
44. The average monthly cost of care to a private patient for LTCF services in Connecticut is \$11,183.00 effective [REDACTED] 2012.
45. The Department correctly determined the penalty period as 5 months and 4 days.
46. The Department correctly determined the Appellant is subject to a transfer of asset penalty.

DISCUSSION

The Appellant's Daughter testified she contacted the life insurance company to assign the Appellant's life insurance policy to the funeral home to fund an irrevocable burial fund and reduce the Appellant's assets to within the Medicaid asset limit. On [REDACTED] 2012, the life insurance company assigned the policy to the funeral home, however, the Appellant remained the owner and the Appellant's Daughter remained the beneficiary. State statute allows funeral

service contracts to be funded by life insurance policies; however it is the assignment of a death benefit payable under the policy that funds the funeral service contract. The funeral service contract signed by the Appellant's Daughter acting as POA is an agreement between the Appellant and the funeral home stipulating that the beneficiary or owner of the life insurance policy will release the life insurance funds as payment for funeral services. However, these funds are still available to the owner, or beneficiary of the policy making the life insurance an accessible and available asset under Medicaid. It was not until [REDACTED] 2013 that the life insurance policy listed the funeral home as the trustee, beneficiary, and assignee. Until that time, any monies distributed under the policy would be distributed to the owner, the Appellant, or beneficiary, the Appellant's Daughter. Effective [REDACTED] 2013, the Department excluded the life insurance policy as an accessible asset and the Appellant's assets were reduced to under the \$1,600.00 Medicaid asset limit.

Prior to [REDACTED] 2013, state statute and departmental regulations do not allow for good cause for the issue of excess assets while pursuing the surrender of a life insurance policy. The life insurance policy was an available asset or deemed available to the Appellant and is not an excluded asset. The Appellant's assets remained over the \$1,600.00 Medicaid asset limit through [REDACTED] 2013.

The Department correctly denied the application for Long Term Care Medicaid for excess assets for the period [REDACTED] 2012 through [REDACTED] 2013. The Department determined the Appellant ineligible for Medicaid due to a transfer of asset penalty and issued a Notice of Transfer of Assets to the Appellant indicating a denial of benefits due to a penalty period. The Department properly determined the Appellant transferred assets totaling \$57,000.00 and is subject to a penalty period.

It is noted the Transfer of Assets Final Decision Notice issued on [REDACTED] 2013 listed the penalty end date as [REDACTED], 2013. The Department submitted a corrected penalty end date of [REDACTED] 2013 at the administrative hearing.

DECISION

The Appellant's appeal with respect to the denial of the Appellant's Long Term Care Medicaid application due to excess assets is denied.

The Appellant's appeal with respect to the amount of the transfer and the penalty period is denied.

Lisa A Nyren

Lisa A. Nyren
Hearing Officer

CC: Lisa Wells, Field Operations Manager

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 Legal Counsel, Regulations, and Administrative Hearings, 25 Sigourney Street, Hartford, CT 06106.

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, 25 Sigourney Street, Hartford, CT 06106. 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 his 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.