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

2014 Signature Confirmation

Client ID #

NOTICE OF DECISION

PARTY



PROCEDURAL BACKGROUND

On 2013, the Department of Social Services (the "Department" sent (the "Appellant") a Notice of Action ("NOA") denying he Long Term Care Medicaid benefits from 2013 through, 2013 due to a Transfer of Assets penalty.
On, 2013, the Appellant requested an administrative hearing to contest the Department's decision to deny Medicaid assistance from 2013 through 2013.
On 2013, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice scheduling the administrative hearing for 2013.
On 2013, in accordance with sections 17b-60, 17b-61 and 4-1766 to 4-189, inclusive, of the Connecticut General Statutes, OLCRAH held are administrative hearing. The following individuals were present at the hearing:
, Appellant's Representative Appellant's Son, Power of Attorney ("POA")

, Appellant's Daughter, Power of Attorney ("POA")

The Appellant was not present.

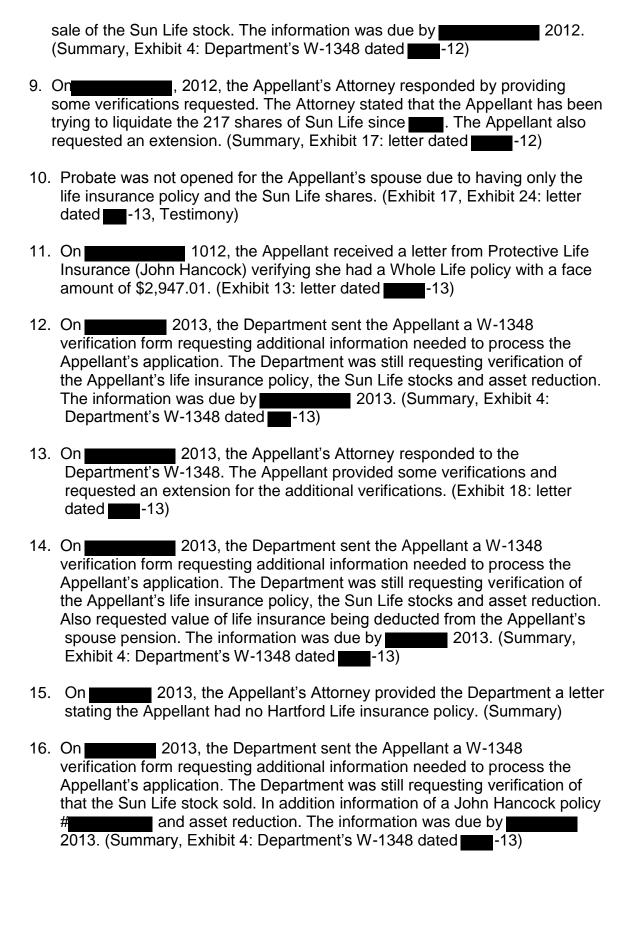
Miklos Mencseli, Hearing Officer

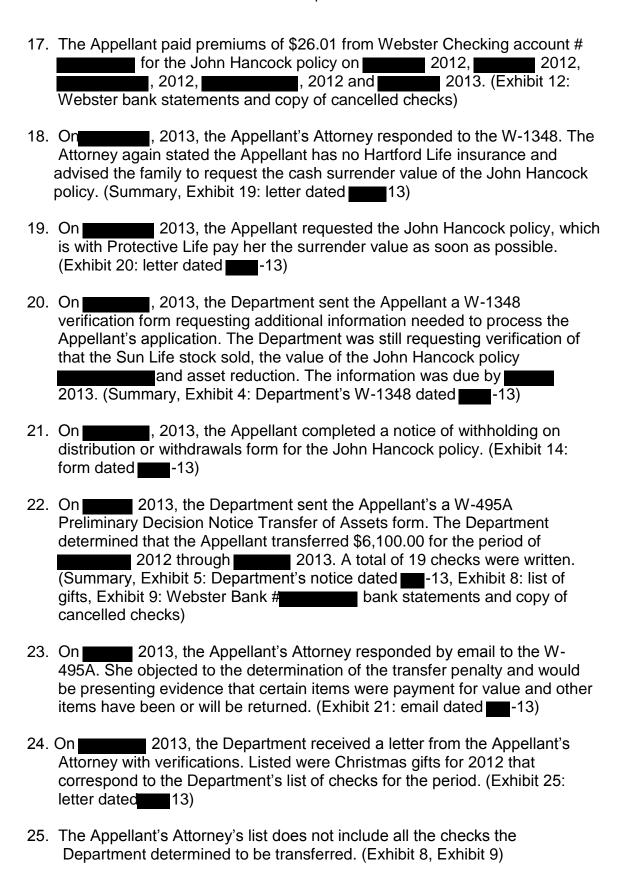
Laura Cantarino, Department's Representative

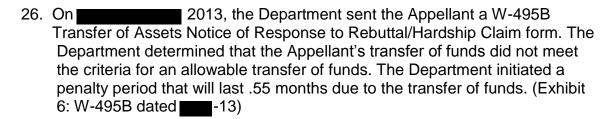
A separate decision will be issued regarding the effective date of Long Term Medicaid benefits.

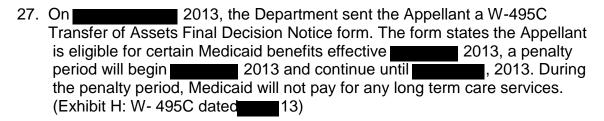
STATEMENT OF THE ISSUE

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The issue is to determine if the Department correctly imposed a Transfer of Assets penalty for the period of 2013 through 2013 on the Appellant's Long Term Care Medicaid benefits.		
FINDINGS OF FACT		
1.	On 2012, the Appellant's son, sent an email to the Appellant's Attorney. The Appellant's son stated the Appellant has an insurance policy with the Hartford and the spouse had 217 shares of Sun Life Assurance Co Canada stock plus a Sun Life insurance policy. (Exhibit 2: email dated 12)	
2.	On 2012, the Appellant and her spouse, application for long term care assistance was received by the Department. (Summary, Exhibit 1: Appellant's W-1F application)	
3.	The Application does not list any insurance policies. (Summary, Exhibit 1)	
4.	On 2012, the Department sent the Appellant a W-1348 verification form requesting the assets for the Appellant and her spouse be reduced below \$1600.00, provide the policy number, face value and cash value for the Hartford life policy and the value of the 217 shares of Sun Life stock for the Appellant's spouse. The information was due by 2012. (Summary, Exhibit 4: Department's W-1348 dated -12)	
5.	On 2012, the Department received an extension request from the Appellant's Attorney. The Attorney provided some of the requested verifications to the Department. (Summary, Exhibit 15: letter dated 12)	
6.	On 2012, the Appellant's spouse, expired. (Exhibit 10: Sun Life Financial documentation, copy of death certificate included)	
7.	On 2012, having not received any additional verifications, the Department sent an email to the Appellant's Attorney inquiring whether the Appellant still required long term care assistance. (Summary, Exhibit 16: email dated 12)	
8.	On 2012, the Department sent the Appellant a W-1348 verification form requesting additional information needed to process the Appellant's application. Items requested included the policy number, face and cash value of the Appellant's insurance policy and the documentation of the	









- 28. The Department upon further review subtracted \$1700.00 from the penalty amount giving credit for expenses and payment to a care giver. (Exhibit 26: email dated -13)
- 28. The new penalty period is 2013 through 2013. (Exhibit 26)

CONCLUSIONS OF LAW

- Section 17b-2 of the Connecticut General Statutes, authorizes the Department of Social Services to administer the Medicaid program pursuant to Title XIX of the Social Security Act.
- 2. UPM § 4005.10 provides that the Medicaid asset limit for a needs group of one is \$1,600.00 per month.
- 3. UPM § 3025.10 provides that a transfer of an asset is considered to be for the purpose of qualifying for Medicaid if all of the following circumstances apply: A. Fair market value is not received; and B. There is no convincing evidence that the transfer is for another purpose; and C. The transferor does not retain sufficient funds for foreseeable needs.
- 4. UPM § 3029.03 provides the transfer of assets policy for transfers that occurred on or after February 8, 2006.
- 5. UPM § 3029.05 states 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 section C of this policy. This period is called the penalty period, or period of ineligibility.

B. Individuals Affected

- 1. The policy contained in this chapter pertains to institutionalized individuals 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).

C. Look-Back Date for Transfers

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
- The Department correctly determined that the transfers in 2012 and 2013 occurred within the 60 month look back period.
- 7. UPM § 3029.05 D (1) (2) provides 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. In the case of an asset that the individual holds in common with another person or persons in joint tenancy, tenancy in common or similar arrangement, the Department considers the asset (or affected portion of such asset) to have been transferred by the individual when the individual or any other person takes an action to reduce or eliminate the individual's ownership or control of the asset.
- 8. UPM § 3029.10 (E) provides 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.
- 9. UPM § 3029.10 (F) provides 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.

- 10. UPM § 3029.10 (G) provides 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 in return for other valuable consideration. The value of the other valuable consideration must be equal to or greater than the value of the transferred asset in order for the asset to be transferred without penalty. (Cross Reference: 3029.20)
- 11. The Appellant and her Representatives did not provide clear and convincing evidence that the transfer was made exclusively for a purpose other than to qualify for assistance.
- 12. UPM § 3029.05 (E) (1) (2) provides the penalty period begins as of the later of the following dates: the first day of the month during which assets are transferred for less than fair market value, if this month is not part of any other period of ineligibility caused by a transfer of assets; or the date on which the individual is eligible for Medicaid under Connecticut's State Plan and would otherwise be eligible for Medicaid payment of the LTC services described in 3029.05 B based on an approved application for such care but for the application of the penalty period, and which is not part of any other period of ineligibility caused by a transfer of assets.
- 13. UPM § 3029.05 (F) (1) (2) (a) (b) (1) (2) (3) (4) provides 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. 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. For applicants, the average monthly cost for LTCF services is based on the figure as of the month of application. For recipients, the average monthly cost for LTCF services is based on the figure as of: the month of institutionalization; or the month of the transfer, if the transfer involves the home, or the proceeds from a home equity loan, reverse mortgage or similar instrument improperly transferred by the spouse while the institutionalized individual is receiving Medicaid, or if a transfer is made by an institutionalized individual while receiving Medicaid (Cross Reference: 3029.15). Uncompensated values of multiple transfers are added together and the transfers are treated as a single transfer. A single penalty period is then calculated, and begins on the date applicable to the earliest transfer. Once the Department imposes a penalty period, the penalty runs without interruption, regardless of any changes to the individual's institutional status.
- 14. UPM § 3029.05 (G) (1) (a) (b) (c) (2) provides that during the penalty period, the following Medicaid services are not covered: LTCF services; and services provided by a medical institution which are equivalent to those provided in a long-term care facility; and home and community-based services under a

Medicaid waiver. Payment is made for all other Medicaid services during a penalty period if the individual is otherwise eligible for Medicaid.

- 15. The Department incorrectly determined that the \$6,100.00 transfer of assets was done for the purpose of qualifying for assistance.
- 16. The Department reduced the Appellant's penalty amount by \$1,700.00.
- 17. The Department revised its determination that \$4,400.00 transfer of assets occurred.
- 18. The Department incorrectly calculated a .55 months penalty period (\$6100.00 / 11,183.00 average cost of care equals .55 months.)

DISCUSSION

The Department on its own merit reduced the penalty amount. At the hearing the Appellant's Representatives clarified payments made for the Appellant's expenses and care giver. This reduced the penalty amount and reduces the penalty period. The Department is to apply the new penalty period in conjunction with the new effective date of Medicaid eligibility as determined by the hearing decision issued regarding the Appellant's effective date.

DECISION

The Appellant's appeal is granted.

ORDER

- The Department shall recalculate the Appellant's penalty period based on the \$4,400.00 transfer amount.
- The Department shall grant Long Term Care Medicaid benefits for room and board based on the new penalty period.
- 3. No later than 2013, the Department will provide to the undersigned proof of compliance with this order.

Miklos Mencseli Hearing Officer

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 <u>specific</u> grounds for the request: for example, indicate <u>what</u> error of fact or law, <u>what</u> new evidence, or <u>what</u> 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.