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

[REDACTED] 2014
Signature confirmation

Client: [REDACTED]
Request: 582129

NOTICE OF DECISION

PARTY

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

PROCEDURAL BACKGROUND

On [REDACTED] 2013, the Department of Social Services (the "Department") issued [REDACTED] (the "Appellant") a notice that she had transferred $340,000.00 to become eligible for Medicaid, and the Department was imposing a penalty period of ineligibility for Medicaid payment related to long term care services to run [REDACTED], 2013 through [REDACTED] 2015.

On [REDACTED] 2013, the Appellant died.

On [REDACTED] 2013, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") received an unsigned hearing request referencing the Appellant's Medicaid case. On [REDACTED] 2013, the OLCRAH issued a notice for request for signature or authorization.

On [REDACTED] 2014, [REDACTED], the Appellant's daughter, filed a signed request for an administrative hearing with the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") to contest the Department's determination of a penalty period of ineligibility for Medicaid payment of long term care services.

On [REDACTED] 2014, the OLCRAH issued a notice scheduling an administrative hearing for [REDACTED] 2014.

On [REDACTED] 2014, in accordance with sections 17b-60, 17b-61, and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, the OLCRAH held an administrative hearing. [REDACTED] represented the Appellant's interests at the administrative hearing. The following individuals participated in the hearing:

█████████, Appellant's representative (daughter)
███████████, Appellant's witness (grandson)
Diane Wood, Department's representative
Eva Tar, Hearing Officer

The hearing record remained open for the submission of evidence. On ██████, 2014, the hearing record closed.

STATEMENT OF ISSUE

The issue to be decided is whether the Department correctly determined that the Appellant is subject to a penalty period of ineligibility for Medicaid payment related to long term care services, based on $340,000.00 in transfers during the look-back period.

FINDINGS OF FACT

1. The Appellant was born █████████. (Appellant's Exhibit A: VHA Fax Transmittal, ███14)

2. The Appellant's daughters are ██████ and ██████ (Appellant's representative's testimony)(Appellant's witness's testimony)

3. ██████ is the Appellant's representative. (Hearing record)

4. The Appellant's grandchildren are ███████ and ██████ they are ██████s children. (Appellant's witness's testimony)

5. On █████ 2008, the Appellant gifted ███████ $20,000.00. (Department's Exhibit 2: *Notice of Response to Rebuttal/Hardship Claim,* ███/13)(Department's Exhibit 7: Fax, ███/14)

6. On █████████, 2008, the Appellant gifted █████ $20,000.00. (Department's Exhibit 2)(Department's Exhibit 7)

7. In the period from 2006 through ██████ 2009, the Appellant was unable to walk long distances, cook, grocery shop, clean, drive, or maintain the outside of her residence. (Appellant's Exhibit A)(Appellant's witness's testimony)

8. The Appellant's medical records from ██████ 2009 indicated that she was very functional and mobile. (Department's Exhibit 4)

9. In ███ 2009, the Appellant was hospitalized with a fractured shoulder arising from injuries sustained in a fall. (Department's Exhibit 4: Memo, ███13)(Appellant's Exhibit A)

10. Subsequent to her ███ 2009 injuries, the Appellant needed help bathing and dressing herself. (Appellant's Exhibit A)(Appellant's witness's testimony)

11. On 2009, the Appellant transferred $60,000.00 to (Department's Exhibit 2)

12. In the period from 1996 through , 2010, the Appellant owned a 50 percent interest in real property located at (the " property"). (Department's Exhibit 7)

13. On 2010, the Appellant quit claimed her 50 percent interest in the property to (Department's Exhibit 7)

14. The fair market value of the property equaled $209,000.00 as of 2010, based on the sale prices of three comparable properties in . (Department's Exhibit 7)

15. The Appellant never resided at the property. (Appellant's representative's testimony)(Appellant's witness's testimony)

16. In the period from 1997 through 2013, the Appellant owned a 50 percent interest in real property located at ("the property"). (Department's Exhibit 7)

17. The Appellant resided at the property with from the time they purchased the property together in 1997 through 2010. (Department's Exhibit 4)(Appellant's witness's testimony)

18. From 2010 through 2013, the Appellant resided at an assisted living facility, in , Connecticut. (Appellant's representative's testimony)

19. On 2013, Hospital admitted the Appellant for treatment of a stroke. (Appellant's representative's testimony)

20. On 2013, Rehabilitation of Connecticut admitted the Appellant. (Department's Exhibit 7)

21. e Rehabilitation of , Connecticut is a skilled nursing facility. (Department's representative's testimony)

22. On 2013, the Appellant quit claimed her 50 percent interest in the property to (Department's Exhibit 7)

23. The fair market value of the property equaled $271,000.00 as of 2013, based on the sale prices of three comparable properties in (Department's Exhibit 7)

24. On 2013, the Department received an application that had been submitted on behalf of the Appellant, requesting Medicaid long term care coverage at Rehabilitation of l. (Department's representative's testimony)(Department's Exhibit 5: Assistance Status-STAT, as of /14)

25. During the pendency of the 2013 application, represented to the Department that $30,000.00 of the 2009 transfer of $60,000.00 from the Appellant to was a repayment of a debt owed by the Appellant to and the remaining $30,000.00 was a gift from the Appellant to (Department's Exhibit 7)

26. On 2013, the Department issued a *Preliminary Decision Notice* to the Appellant stating that the agency had made the preliminary decision that the Appellant had $340,000.00 to become eligible for assistance, as made up of the following transfers: $60,000.00, $20,000.00, $20,000.00, $104,500.00, and $135,500.00. (Department's Exhibit 1: *Preliminary Decision Notice,* /13)

27. On , 2013, the Department issued a *Notice of Response to Rebuttal/Hardship Claim* to the Appellant, stating that the Department did not agree with her rebuttal/claim of undue hardship and that if she became eligible for Medicaid, she would be subject to a penalty period of 27 months, during which time the Department would not pay for her long term care medical services. (Department's Exhibit 2)

28. On 2013, the Department issued a supplemental correspondence to the Appellant that stated that the Department agreed with her rebuttal for the following transfers and would not incorporate them into any penalty period: $20,000.00 gift to on 2008 and $20,000.00 gift to on 2008. (Department's Exhibit 2)

29. The Department's 2013 supplemental correspondence to the Appellant stated that the Department did not agree with her rebuttal for the following transfers and would set up a penalty period: $60,000.00 gift to on 2009; $104,500.00 representing 50 percent of the fair market value of the property quitclaimed on 2010; and $135,000.00 representing 50 percent of the fair market value of the property quitclaimed on 2013. (Department's Exhibit 2)

30. The Department's 2013 supplemental correspondence to the Appellant stated that the Department's imposition of a penalty period was based on transfers equaling $299,500.00, and the penalty period would last for 27 months. (Department's Exhibit 2)

31. On , 2013, the Department issued a *Final Decision Notice* to the Appellant that stated that although she was eligible for certain Medicaid benefits beginning 2013, the Department was setting up a penalty period to run from 2013 through 2015, based on her having transferred $340,000.00 to become eligible for Medicaid. (Department's Exhibit 3: *Final Decision Notice,* /13)

32. On , 2013, the Department granted the Appellant Medicaid coverage to pay for services unrelated to long term care, effective 2013. (Department's Exhibit 7)

33. Rehabilitation of Connecticut is seeking Medicaid to pay for the Appellant's long term care services effective 2013. (Department's Exhibit 7)

34. On 2013, the Appellant died. (Appellant's representative's testimony)

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes designates the Department as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.

2. The beginning date of a continuous period of institutionalization is: a. for those in medical institutions or long term care facilities, the initial date of admission; b. for those applying for home and community based services (CBS) under a Medicaid waiver, the date that the Department determines the applicant to be in medical need of the services. Uniform Policy Manual ("UPM") § 1507.05 (A)(2).

3. A "continuous period of institutionalization" is defined as "a period of 30 or more consecutive days of residence in a medical institution or long term care facility, or receipt of home and community based services (CBS) under a Medicaid waiver." UPM § 1500.01.

4. For the purposes of the Medicaid program, the Appellant's admission to [redacted] of [redacted] an assisted living facility, does not meet the definition of a "continuous period of institutionalization" as it did not occur in a medical institution or long term care facility or while the Appellant was in receipt of home and community based services under a Medicaid waiver.

5. For the purposes of the Medicaid program, the Appellant's beginning date of a continuous period of institutionalization in a long term care facility was [redacted] 2013, the date she was admitted to [redacted] Rehabilitation in [redacted].

6. 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. Conn. Gen. Stat. § 17b-261 (c).

7. "Available Asset: An available asset is cash or any item of value which is actually available to the individual or which the individual has the legal right, authority or power to obtain, or to have applied for, his or her general or medical support." UPM § 4000.01.

8. Subject to the limitations described below, personal property such as a bank account held jointly by the assistance unit and by another person is counted in full toward the asset limit. UPM § 4010.10 (A)(1).

9. An individual other than the spouse of an assistance unit member is considered merely the record owner of an account or similar asset held jointly with the unit member. a. This is true regardless of the time period the individual has been joint holder of the

asset. b. The assistance unit may rebut the Department's finding by providing clear and convincing evidence that the individual is legal owner of the asset. UPM § 4010.10 (A)(3).

10. If the assistance unit proves that it is merely the record owner of part or all of the asset, the Department counts only the portion of the asset legally owned by the assistance unit. UPM § 4010.10 (A)(4).

11. 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. UPM § 3029.

12. 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 3029.05 C. This period is called the penalty period, or period of ineligibility. UPM § 3029.05 (A).

13. The policy contained in this chapter pertains to institutionalized individuals and to their spouses. 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). UPM § 3029.05 (B).

14. 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. UPM § 3029.05 (C).

15. The Appellant's look-back period ran from 60 months prior to and up to [redacted] 2013, or from [redacted] 2008 through [redacted] 2013.

16. The Department correctly determined that transfers of assets completed by the Appellant in the period from [redacted] 2008 through [redacted] 2013 were subject to review to determine whether they were made for the purpose of qualifying for Medicaid or potentially qualifying for Medicaid.

17. Improper Transfer of Assets - Jointly Held Assets. The Department investigates whether an improper transfer of assets has occurred if, within the time limits described in Section 3025: 1. the assistance unit removes its name from a jointly held asset; or 2. the spouse of an assistance unit member becomes a joint holder of an asset previously held solely by the assistance unit, and the spouse subsequently liquidates the asset; or 3. a joint holder, other than the spouse, liquidates an asset of which the assistance unit is also a joint holder. This is true regardless of the length of time the joint holder has held the asset jointly with the assistance unit. UPM § 4010.10 (C).

18. The Appellant's [redacted] 2009 transfer of $60,000.00 to [redacted] occurred within the Appellant's look-back period of [redacted] 2008 through [redacted] 2013.

19. The Appellant's [redacted] 2009 transfer of $60,000.00 to [redacted] liquidated the Appellant's interest in that $60,000.00.

20. The Appellant's ██████ 2009 transfer of $60,000.00 to ██████ is fully attributable to the Appellant; the amount is not pro-rated by the number of joint owners listed on an account.

21. The Appellant did not establish with clear and convincing evidence that her ██████ 2009 transfer of $60,000.00 to ██████ was for a purpose other than to qualify or potentially qualify for assistance.

22. The Appellant's transfer of $60,000.00 to ██████ on ██████ 2009 subjects the Appellant to a penalty period of disqualification.

23. Medical assistance shall be provided for any otherwise eligible person whose 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 per cent, 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) of the Social Security Act, 42 USC 1396p(c), 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 determining eligibility. The commissioner shall establish the standards for eligibility for medical assistance at one hundred forty-three per cent 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 per cent 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 per cent 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 shall be granted for the balance of the cost of authorized medical 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 for assistance pursuant to this section shall be provided a written statement notifying such persons of their ineligibility and advising such persons of the availability of HUSKY Plan, Part B health insurance benefits. Conn. Gen. Stat. § 17b-261 (a).

24. 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. UPM § 3029.05 (D)(1).

25. 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. UPM § 3029.05 (D)(2).

26. If the assistance unit is the record owner of an asset, the unit is considered the legal owner unless it establishes otherwise, with clear and convincing evidence. UPM § 4010.05 (A)(1).

27. If it is established to the Department's satisfaction that the legal owner and the record owner of an asset are two different persons, the Department considers the asset the property of the legal owner. UPM § 4010.05 (A)(2).

28. The assistance unit, as record owner of an asset, must transfer title to the legal owner as a condition of eligibility if: 1. the record owner has established to the Department's satisfaction that he or she is not the legal owner; and 2. the legal owner is not a member of the assistance unit; and 3. the asset is a counted asset; and 4. ownership of the asset would cause the assistance unit's equity in counted assets to exceed the asset limit. UPM § 4010.05 (B).

29. Legal ownership of jointly held real property is considered to be shared equally on a pro-rata basis by the owners of record unless the deed specifies otherwise. UPM § 4010.10 (A)(5).

30. The Appellant was the legal owner of a 50 percent interest in the [redacted] property prior to her [redacted] 2010 transfer of that interest to [redacted]

31. The Appellant failed to establish with clear and convincing evidence that she was the "record owner" and not the "legal owner" of a 50 percent interest in the [redacted] property prior to her [redacted], 2010 transfer of that interest to [redacted]

32. The Appellant's [redacted] 2010 transfer of her 50 percent interest in the [redacted] property to [redacted] did not meet the criteria set for being a proper transfer of an asset by a "record owner" to the "legal owner" of the asset.

33. 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 the 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. Conn. Gen. Stat. § 17b-261a (a).

34. 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 by the transferor or transferee to the Department of Social Services in an amount equal to the amount of the 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 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 equitable relief as provided by other statutes or by common law. Conn. Gen. Stat. § 17b-261a (b).

35. Transfers that do not result in a penalty include, but are not limited to, transfers of a home to certain individuals; transfers made to or for the benefit of spouses, subject to limitations; transfers to a disabled child; transfers to certain trusts established for the sole benefit of an individual under the age of 65 who is considered disabled under criteria for SSI eligibility; transfers made exclusively for reasons other than qualifying; transferor intended to transfer the asset for fair market value; and transfers made for other valuable consideration. UPM § 3029.10.

36. 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 § 3029.10 (E).

37. The Appellant did not establish with clear and convincing evidence that her transfer of her 50 percent interest in the [redacted] property on [redacted] 2010 to [redacted] was for a purpose other than to qualify or potentially qualify for assistance.

38. The Appellant's transfer of her 50 percent interest in the [redacted] property on [redacted] [redacted] 2010 [redacted] subjects the Appellant to a penalty period of disqualification.

39. The fair market value of the Appellant's 50 percent interest in the [redacted] property equaled $104,500.00 on [redacted], 2014.

40. An individual or his or her spouse may transfer his or her home without penalty to his or her: a. spouse; or b. child under age 21; or c. child of any age if the child is considered to be blind or disabled under criteria for SSI eligibility; or d. sibling, if the sibling: (1) has an equity interest in the home; and (2) was residing there for a period of at least one year before the date the individual is institutionalized; or e. son or daughter, other than one described in 3029.10 A. 1. b and 3029.10 A. 1 c, who: (1) was residing in the home for a period of at least two years immediately before the date the individual is institutionalized; and (2) provided care to the individual which avoided the need of institutionalizing him or her during those two years. UPM § 3029.10 (A)(1).

41. For purposes of this chapter, the word "home" refers to: a. the real property used as principal residence by an institutionalized individual immediately prior to his or her institutionalization; or b. the real property used as principal residence by the spouse of the institutionalized individual; or c. the real property used as principal residence by an

individual receiving home and community-based services under a Medicaid waiver. UPM § 3029.10 (A)(2).

42. The Appellant had not resided at the [redacted] property since [redacted] 2010.

43. The Appellant resided at [redacted], an assisted living facility, in [redacted], Connecticut in the period from [redacted] 2010 through her [redacted] 2013 institutionalization at [redacted] Rehabilitation in [redacted].

44. The [redacted] property was not the Appellant's "home" immediately prior to her [redacted], 2013 institutionalization at [redacted] Rehabilitation in [redacted]

45. Transfers Made in Return for Other Valuable Consideration: General Principles. Other valuable consideration may be received either prior to or subsequent to the transfer. UPM § 3029.20 (A)(1).

46. The value of the other valuable consideration, computed as described in 3029.20 A. 3, must be equal to or greater than the value of the transferred asset in order for the asset to be transferred without penalty. UPM § 3029.20 (A)(2).

47. The value of the other valuable consideration, as described in 3029.20 B, is equal to the average monthly cost to a private patient for long-term care services in Connecticut, multiplied by the number of months the transferee avoided the need for the transferor to be institutionalized. UPM § 3029.20 (A)(3).

48. Criteria for Other Valuable Consideration: Other valuable consideration must be in the form of services or payment for services which meet all of the following conditions: 1. The services rendered are of the type provided by a homemaker or a home health aide; and 2. the services are essential to avoid institutionalization of the transferor for a period of at least two years; and 3. the services are either: a. provided by the transferee while sharing the home of the transferor; or b. paid for by the transferee. UPM § 3029.20 (B).

49. In the period from 2006 through [redacted], 2009, the Appellant's limitations of being unable to walk long distances, cook, grocery shop, clean, drive, or maintain the outside of her residence were not medical limitations of such severity that would require an individual to be institutionalized.

50. [redacted] provided services to the Appellant in the period from [redacted] 2009 (subsequent to the Appellant's injuries from a fall) through [redacted] 2010 that were similar to those provided by a homemaker or a home health aide.

51. The period from [redacted] 2009 through [redacted] 2010 equals 20 months.

52. The Appellant did not establish that [redacted] provided services of a type provided by a homemaker or a home health aide to the Appellant that were essential to avoid institutionalization of the transferor for a period of at least two years.

53. The Appellant did not establish that her transfer of her 50 percent interest in the property on , 2013 to met the criteria for "other valuable consideration," as defined by UPM 3029.20 (B).

54. The Appellant did not establish with clear and convincing evidence that her transfer of her 50 percent interest in the property on 2013 to was for a purpose other than to qualify or potentially qualify for assistance.

55. The Appellant's transfer of her 50 percent interest in the property on 2013 to subjects the Appellant to a penalty period of disqualification.

56. The fair market value of the Appellant's 50 percent interest in the property equaled $135,500.00 as of 2013.

57. The Appellant transferred a total of $300,000.00 in assets to family members during the look-back period which subjected her to a penalty period of ineligibility for Medicaid payment related to long term care services.

58. The Department incorrectly determined that the Appellant is subject to a penalty period of ineligibility for Medicaid payment related to long term care services, based on $340,000.00 in transfers during the look-back period; the penalty period should be calculated based on $300,000.00 in transfers during the look-back period.

DISCUSSION

Section 17b-261a (a) 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 the 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.

The "clear and convincing" standard is a high threshold to be met; the statute acts to dissuade people from transferring money and real property that could otherwise be liquidated or used to privately pay their medical bills.

In 2013, the Department initially determined that the Appellant had transferred $340,000.00 that could have otherwise have been liquidated or used to privately pay her medical bills. The $340,000.00 figure was calculated as follows: $104,500.00 (50 percent share of the fair market value of the property transferred in 2010 to $135,500.00 (50 percent share of the fair market value of the property in 2013 to and cash transfers of $60.000.00 to in 2009 and $20,000.00 each to the Appellant's two grandchildren, and in 2008.

In 2013, the Department reduced its $340,000.00 calculation by writing off the 2008 transfers of $20,000.00 each made to the Appellant's two grandchildren. The hearing officer affirms the Department's decision to write off these two $20,000.00 transfers.

The hearing officer addresses the remaining transfers individually.

The $60,000.00 transfer:

During the pendency of the Medicaid application process, the Appellant's representative told the Department that the $60,000.00 transfer was made up of a $30,000.00 gift, with the remaining $30,000.00 being the repayment of a debt owed by the Appellant to the Appellant's representative. At the time of these hearing proceedings, however, the Appellant's representative argues in her [redacted] 2014 affidavit that the $60,000.00 should not be considered a transfer, as it was from a joint account held in common by the Appellant and the Appellant's representative to which they both contributed. The Appellant's argument is without merit.

The Medicaid program treats a jointly held asset as owned by the Medicaid applicant in full; it does not pro-rate the asset by the number of joint owners of the asset or permit a Medicaid applicant to transfer ownership of an asset to a joint holder without incurring a penalty. The exception to this rule is that if the Medicaid applicant is able to establish to the Department's satisfaction that he is merely the record owner of part or all of the asset, the Department counts only the portion of the asset legally owned by the assistance unit.[1]

The Appellant's representative did not establish with clear and convincing evidence that the Appellant was "merely the record owner of part or all of the asset." The $60,000.00 transfer subjects the Appellant to a penalty period of ineligibility for Medicaid payment of long term care services.

The [redacted] property (50 percent ownership) transfer:

At the [redacted] 2013 administrative hearing, the Appellant's representative testified that she purchased the [redacted] property in 1996 with a mortgage for which she was the sole borrower. The representative stated that she had placed the Appellant's name on the title of the [redacted] property years later, so that if something happened to the representative, the property would transfer through survivorship to the Appellant. On [redacted] 2010, the Appellant transferred her interest in the [redacted] property to her representative, for no consideration.

The Appellant's representative's testimony as to her initial sole ownership of the [redacted] property is inconsistent with the Department's submission of an [redacted], 2013 printout of on-line property records of the Town of [redacted]. The printout indicates that the Appellant's representative and the Appellant were the co-purchasers of the [redacted] property on [redacted] 1996.

The hearing officer extended the close of the record to allow the Appellant's representative the opportunity to submit a copy of the 1996 mortgage that was used to purchase the property as well as verification, such as bank statements showing the direct payments or cancelled checks, that the representative's funds solely were used to pay that initial mortgage.

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[1] UPM § 4010.10 (A)(4).

The Appellant's representative submitted copies of unsigned loan documents from 2003 which include the Appellant's name and the Appellant's representative's name throughout the documents, a computer printout of the representative's bank statements from 2008, as well as the Appellant's representative's personal affidavit. The unsigned loan documents referencing a 2003 mortgage and computer printout as to a 2008 bank account do not substantiate the Appellant's representative's claim that she purchased the property in 1996 with her own funds, that she placed the Appellant's name on the title years after the initial purchase, and that the Appellant's subsequent relinquishing of the property to the representative was a case where a "record owner" of a property was returning a property to its "legal owner."

The hearing officer found that the Appellant's representative's testimony with respect to her sole ownership of the property in 1996 was not supported by the evidence submitted for the hearing record and not credible.

The property (50 percent ownership) transfer subjects the Appellant to a penalty period of ineligibility for Medicaid payment of long term care services.

The property (50 percent ownership) transfer:

The Appellant and purchased the property together. They resided at the property from 1997 through 2010, when the Appellant began to reside at in , an assisted living facility.

On 2013, less than a week prior to the filing of the Appellant's 2013 Medicaid application, the Appellant transferred her 50 percent interest in the property to

Prior to an 2009 fall in which she sustained injuries that required hospitalization, the Appellant had difficulty walking long distances, grocery shopping, maintaining the outside of the real property, and similar tasks that typically limit elderly individuals. Having difficulty with performing these and similar tasks do not necessitate the institutionalization of an individual. An individual will require institutionalization (or substantial hands-on intervention with skilled services to remain in his home) when his physical or medical limitations are significantly more severe, such as requiring daily help with bathing, dressing, transferring from a wheelchair to a bed, intervention with continence care, and administration of medication.

The hearing record reflects that after the Appellant's 2009 medical records indicated that she was "functional and mobile."

After 2009, the Appellant required some help with bathing and dressing, and occasionally needed to be carried up a set of stairs in her home. provided the hands on care; her son, took care of maintaining the outside of the property and carried the Appellant up the stairs.

The hearing officer finds that provided services of a type provided by a homemaker or home health aide to the Appellant in the period from 2009 through 2010, while the Appellant and lived at the property. The Appellant did not

continue to require those services from [redacted] when she began living at [redacted] an assisted living facility.

[redacted] provided her services at the level of a homemaker or home health aide to the Appellant for a period of roughly 20 months after the Appellant's [redacted] 2009 injury. [redacted]s period of providing this level of hands-on services to the Appellant fell short of the two years, or 24 months, required by the Medicaid program to allow for the transfer of a home property to another individual for "other valuable consideration."

The Appellant's transfer of her 50 percent interest in the [redacted] property transfer subjects the Appellant to a penalty period of ineligibility for Medicaid payment of long term care services.

In conclusion, the hearing officer finds that the evidence submitted does not rise to the standard of "clear and convincing" that the Appellant's $300,00.00[2] in transfers during the look-back period were for a purpose other than to qualify or potentially qualify for Medicaid.

DECISION

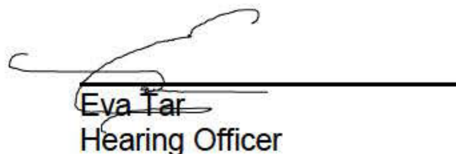
The issue of this hearing is REMANDED to the Department for further action.

ORDER

1. The Department will recalculate the Appellant's penalty period of Medicaid ineligibility, based on improper transfers totaling $300,000.00.

2. The Department will notify the Appellant and her representatives in writing of the penalty period of ineligibility as related to $300,000.00 in transfers that occurred during the look-back period.

3. Within 21 calendar days of the date of this decision, or [redacted] 2014, documentation of compliance with this order is due to the undersigned.



Eva Tar
Hearing Officer

Pc: Albert Williams, Field Operations Manager, DSS-Hartford (10)
Musa Mohamud, Field Operations Manager, DSS-Hartford (10)

[2] The hearing officer arrived at the figure of $300,000.00 by totaling the following transfers: $60,000.00 in liquid assets to [redacted] $104,500.00 (equal to 50 percent interest in the $209,000.00 fair market value of the [redacted] property) and $135,500.00 (50 percent interest in the $217,000.00 fair market value of the [redacted] property).

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.