STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06105

[redacted] 2015
Signature confirmation

Client: [redacted]
Request: 676251

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2015, the Department of Social Services issued [redacted] (the "Appellant") a notice that she had transferred $58,600.00 to become eligible for Medicaid, and that the Department was imposing a penalty period of ineligibility for Medicaid payment of long-term care services to run from [redacted] 2014 through [redacted] 2014.

On [redacted] 2015, the Appellant filed a 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] 2015, the OLCRAH issued a notice scheduling an administrative hearing for [redacted] 2015.

On [redacted] 2015, 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. The following individuals participated in the hearing:

[redacted], Appellant's representative (attorney-in-fact and counsel)
Paula Wilzynski, Department's representative
Eva Tar, Hearing Officer

The hearing record remained open for the submission of additional evidence. On [redacted] 2015, 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 of long-term care services, based on $58,600.00 in transfers during the look-back period.

FINDINGS OF FACT

1. On [redacted] 2010, Hamden Health Care Center admitted the Appellant as a long-term care patient. (Department's Exhibit 1: *Admission Notice,* undated)

2. On [redacted] 2010, the Appellant and the Appellant's representative entered into a new client relationship. (Appellant's Exhibit A: Correspondence, signed [redacted]10)

3. The Appellant's representative is an attorney admitted to the practice of law in Connecticut. (Appellant's testimony)(Appellant's Exhibit A)

4. The Appellant's representative is sole practitioner. (Appellant's representative's testimony)

5. On [redacted] 2010, the Appellant assigned her power of attorney to the Appellant's representative. (Appellant's Exhibit B: *Power of Attorney,* signed [redacted]/10)

6. On [redacted] 2014, the Appellant withdrew $143,155.60 from E-Trade Bank account (-[redacted]). (Department's Exhibit 3: Statement, [redacted]/14 through [redacted]/14)

7. On [redacted]2015, the Appellant deposited $143,589.23 to First Niagara account (-[redacted]). (Department's Exhibit 4: Statement and records, [redacted]/14)

8. First Niagara account (-[redacted]) lists the Appellant as the primary account holder. (Department's Exhibit 4)

9. On [redacted] 2014, the Appellant's representative deposited $66,000.00 of the Appellant's funds from First Niagara account (-[redacted]) by means of check [redacted] into his firm's general account. (Department's Exhibit 4)

10. On [redacted] 2014, the Department received an application for Medicaid coverage of her long-term care services. (Department's Exhibit 5: *Long-term Care/Waiver Application,* marked as received [redacted]/14)

11. The Appellant's representative charges $200.00 per hour for legal services performed. (Appellant's Exhibit A)

12. Area attorneys charge $200.00 or more per hour for legal services. (Appellant's representative's testimony)

13. On [redacted] 2014, the Department issued a *Preliminary Decision Notice* to the Appellant stating that the Appellant had transferred $66,000.00 on [redacted] 2014 to

become eligible for assistance. (Department's Exhibit 8: *Preliminary Decision Notice,* [redacted]14)

14. On [redacted] 2014, the Department received a written rebuttal, signed by the Appellant's representative. (Department's Exhibit 9: Correspondence, [redacted]/14)

15. In the period from [redacted] 2013 through [redacted] 2014, the Appellant's representative charged the Appellant $200.00 per hour for: reviewing mail, paying bills, visiting the Appellant at the facility to see how she was doing, meeting with facility staff over the Appellant's concerns as to people walking in on her in the bathroom, purchasing the Appellant's winter clothes, and working on the Appellant's Medicaid application. (Department's Exhibit 7: Invoices, varying dates)(Appellant's representative's testimony)

16. The Appellant's representative did not establish with the facility's visitor logs, meeting notes, or other third party collateral verification that his personal monthly invoices accurately accounted for the frequency and length of time of the representative's visits with the Appellant. (Department's representative's testimony)

17. In assessing the Appellant's representative's invoices from [redacted] 2013 through [redacted] 2014, the Department calculated that the Appellant's representative had received $7,400.00 of compensation at fair market value of $200.00 per hour for preparing mail, paying bills, and working on the Appellant's Medicaid application. (Department's representative's testimony)(Department's Exhibit 7)

18. On [redacted] 2014, the Department issued a *Preliminary Decision Notice* to the Appellant stating that the Appellant had transferred $58,600.00 on [redacted] 2014 to become eligible for assistance. (Department's Exhibit 10: *Preliminary Decision Notice,* [redacted]14)

19. On [redacted] 2015, the Department issued a *Final Decision Notice,* stating that the agency had found that the Appellant had transferred $58,600.00 to become eligible for Medicaid benefits, and that she was subject to a penalty period of ineligibility for payment of long-term care services from [redacted] 2014 through [redacted] 2014. (Department's Exhibit 11: *Final Decision Notice,* [redacted]/15)

20. On [redacted] 2014, the Department issued a *Notice of Approval for Long-Term Care Medicaid,* stating that she was eligible for Medicaid as of [redacted]2014, but that Medicaid would begin paying for her nursing home costs effective [redacted] 2014. (Department's Exhibit 12: *Notice of Approval for Long-Term Care Medicaid,* [redacted]/15)

CONCLUSIONS OF LAW

1. The Department of Social Services is designated as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act. Conn. Gen. Stat. § 17b-2.

2. Section 3000.01 of the Uniform Policy Manual ("UPM") provides definitions.

3. 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.

4. 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).

5. 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).

6. The Appellant is an institutionalized individual.

7. 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).

8. The Appellant's look-back period ran from 60 months prior to and up to [redacted] 2014.

9. 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 of the Social Security Act, 42 USC 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 determining eligibility. Conn. Gen. Stat. § 17b-261 (a).

10. 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).

11. 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. Conn. Gen. Stat. § 17b-261 (c).

12. The transfer of an asset in exchange for other valuable consideration shall be allowable to the extent the value of the other valuable consideration is equal to or greater than the value of the asset transferred. Conn. Gen. Stat. § 17b-261 (d).

13. 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).

14. 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).

15. 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.

16. It is reasonable to conclude that fair market value for compensation of professional services is governed by: 1) the specific service provided; 2) the level of specialized knowledge required by the employee or contractor to perform that specific service, and 3) the competitive market rate for completion of the specific service by a competent professional skilled in completing that type of service.

17. It is reasonable to conclude that services that require the legal knowledge, advanced education, and professional judgment of an individual admitted to the practice of law to complete those services are "legal services."

18. Two hundred dollars per hour is reasonable compensation to an attorney admitted to the practice of law for performing "legal services."

19. Visiting an individual at a facility to discuss her personal complaints, meeting with facility staff to mediate those complaints, and purchasing that individual's winter clothes are not services that require the legal knowledge, advanced education, and professional judgment of an individual admitted to the practice of law.

20. Two hundred dollars per hour is in excess of fair market value compensation for visiting an individual at a facility to discuss her personal complaints, meeting with facility staff to mediate those complaints, and purchasing that individual's winter clothes.

21. 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).

22. During the penalty period, the following Medicaid services are not covered: a. LTCF services; and b. services provided by a medical institution which are equivalent to those provided in a long-term care facility; and c. home and community-based services under a Medicaid waiver. UPM § 3029.05 (G)(1).

23. The Appellant did not establish by clear and convincing evidence that she transferred $58,600.00 to the Appellant's representative on [redacted] 2014 for a purpose other than to qualify or potentially qualify for Medicaid.

24. The Appellant's $58,600.00 transfer to the Appellant's representative on [redacted] 2014 subjects the Appellant to a transfer penalty of ineligibility for the Medicaid program.

25. The Department correctly determined that the Appellant is subject to a penalty period of ineligibility for Medicaid payment of long-term care services, based on $58,600.00 in transfers during the look-back period.

DECISION

The Appellant's appeal is DENIED.

Eva Tar
Hearing Officer

Pc: Atty. [redacted]
Lisa Wells, DSS-New Haven (20)
Bonnie Shizume, DSS-New Haven (20)
Rachel Anderson, DSS-New Haven (20)
Brian Sexton, DSS-New Haven (20)

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, 55 Farmington Avenue, Hartford, CT 06105.

RIGHT TO APPEAL

The Appellant has the right to appeal this decision to Superior Court within 45 days of the mailing of this decision or 45 days after the Agency denies a petition for reconsideration of this decision, provided that the petition for reconsideration was filed timely with the Department. The right to appeal is based on § 4-183 of the Connecticut General Statutes. To appeal, a petition must be filed at Superior Court. A copy of the petition must be served upon the Office of the Attorney General, 55 Elm Street, Hartford, CT 06106 or the Commissioner of the Department of Social Services, 55 Farmington Avenue, Hartford, CT 06105. A copy of the petition must also be served on all parties to the hearing.

The 45 day appeal period may be extended in certain instances if there is good cause. The extension request must be filed with the Commissioner of the Department of Social Services in writing no later than 90 days from the mailing of the decision. Good cause circumstances are evaluated by the Commissioner or 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.