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

2015 SIGNATURE CONFIRMATION

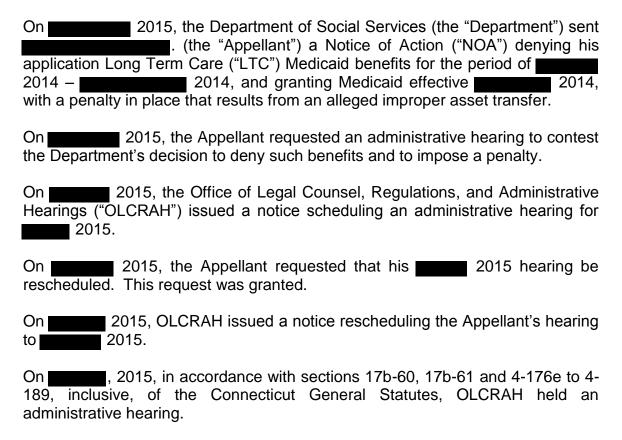
CLIENT ID #: HEARING ID #: 680256

NOTICE OF DECISION

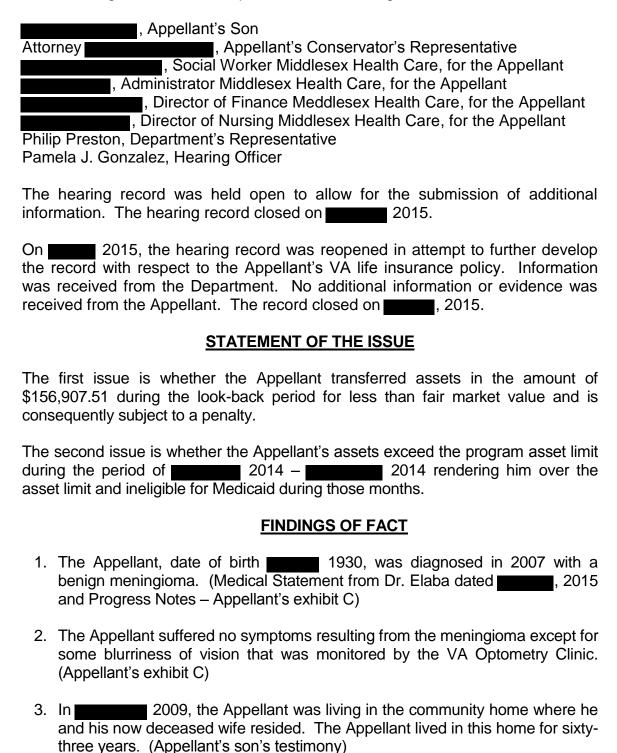
PARTY



PROCEDURAL BACKGROUND

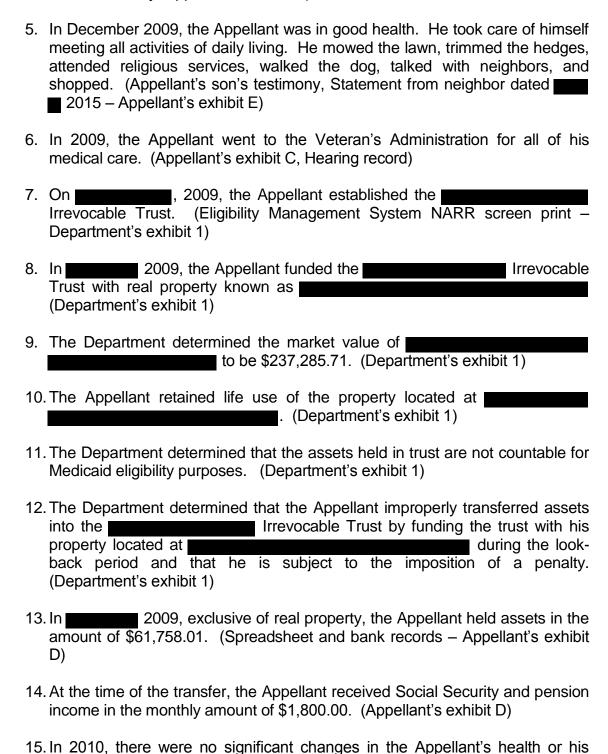


The following individuals were present at the hearing:



4. In 2009, there was no evidence that the Appellant's life was in jeopardy, the Appellant was not disabled, the Appellant was fully ambulatory. (Appellant's

son's testimony, Appellant's exhibit C)



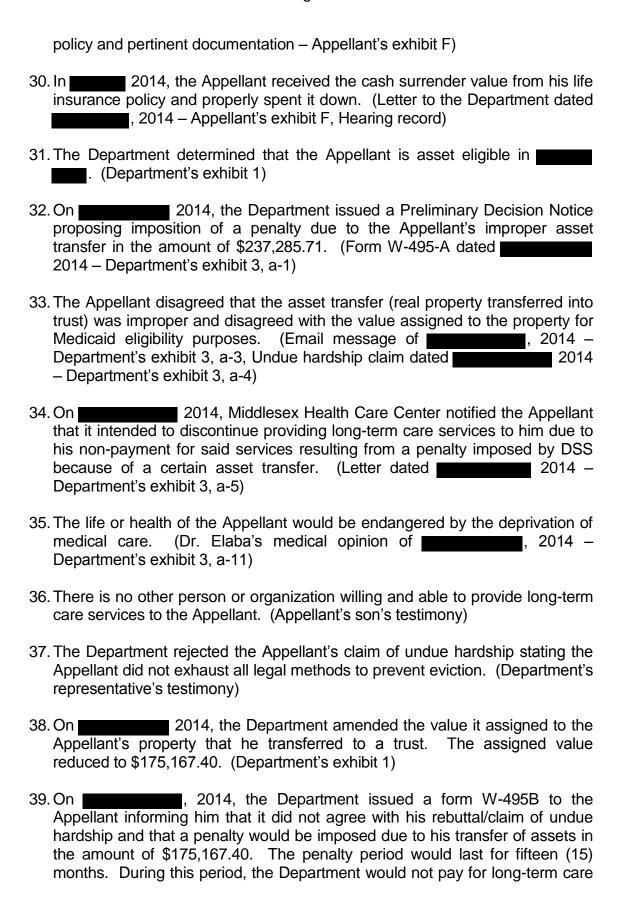
16. In 2010, the Appellant held assets in the amount of \$58,777.59. (Appellant's exhibit D)

living arrangement. (Appellant's son's testimony)

- 17. In 2011, there were no significant changes in the Appellant's health or his living arrangement. (Appellant's son's testimony) 18. In 2011, the Appellant held assets in the amount of \$55,918.20. (Appellant's exhibit D) 19. In 2012, there were no significant changes in the Appellant's health or his living arrangement. (Appellant's son's testimony) 2012, the Appellant held assets in the approximate amount of \$51,921.91. (Appellant's exhibit D) 21. In 2013, the Appellant was displaced by a fire in his home and moved to a hotel. He subsequently moved to a second hotel and then he moved in temporarily with his son. (Appellant's son's testimony) 22. In 2013, the Appellant's son began to notice changes in the Appellant's mental health. He began to become forgetful, he paid less attention to his hygiene, he would go to the store for two hours when the store was ten minutes from home, he would drive around on a flat tire. (Appellant's son's testimony) 23. ln ■ 2013, the Appellant was diagnosed with Alzheimer's Dementia. (Appellant's exhibit C) ■ 2013, the Appellant held assets in the amount of \$53,593.48. (Appellant's exhibit D) 25. The Appellant was institutionalized on , 2014. (Medical Director Middlesex Health Care Center statement dated 2014 -Department's exhibit 3, a-5) 2014, the Appellant applied for Medicaid LTC assistance. 26. On (Eligibility Management System Notice dated 2015 – Department's exhibit 4) 27. The Appellant seeks a Medicaid LTC start date of 2014. (Hearing record) , the Appellant's counted assets included Veteran's 28. ln Administration life insurance policy . The 20 Payment LIFE Basic
- 29. In ______ 2014, the Appellant began the process to surrender his life insurance policy. (______, 2014 letter of intent to surrender insurance

Policy Statement – Appellant's exhibit F)

amount totaled \$1,000.00. (Department of Veteran's Affairs Annual Insurance



medical services. (Form W-495B – Department's exhibit 3, b-2) 2015, the Appellant submitted an appraisal of the real 40. On 1 property located at I 2009 according to the defined value of the property as of certified appraisal was \$200,000.00. (Appraisal – Department's exhibit 3, b-5) 41. The Department accepted the appraisal figure of \$200,000.00 presented by the Appellant and amended its proposal for penalty. (Email message from the Department's Resource unit dated 2015 – Department's exhibit 3. c-2) 42. After considering the encumbrance against the property and the value of life use, the Department determined that the uncompensated value of the transfer totaled \$156,907.51. (Department's exhibit 3, c-2) 43. On **■** , 2015, the Department issued a form W-495C Final Decision regarding his transfer of assets. The notice stated the Department's position eligible. Further, the notice stated that although eligible for certain Medicaid benefits beginning 2014, the Department would not pay for any long-term care services during the period of 2014 – 2015. (Form W-495C – Department's exhibit 3, c-3) ■ 2015, the Department granted the Appellant's application 44. On I ■ 2015 with a LTC services penalty in place beginning 2014 and ending 2015. (Department's exhibit 3, c-

CONCLUSIONS OF LAW

2)

- Section 17b-260 of the Connecticut General Statutes provides for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
- Section 17b-260 of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to take advantage of the medical assistance programs provided in Title XIX, entitled "Grants to States for Medical Assistance Programs", contained in the Social Security Amendments of 1965.
- 4. Subsection (a) of section 17b-261a 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 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."
- 5. The Department uses the policy contained in Chapter 3029 of the Uniform Policy Manual to evaluate asset transfers if the transfer occurred on or after February 8, 2006. UPM § 3029.03.
- 6. There is a period established, subject to the conditions described in chapter, 3029 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. UPM § 3029.05(A).
- 7. The look-back date for transfers of assets is the date that is sixty 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 look-back date for the Appellant is 2009.
- 10. The Appellant did not receive fair market value when he transferred his home and property valued at \$156,907.51 into the trust.
- 11.UPM Section 3029.10.E provides that an otherwise eligible institutionalized individual is not ineligible for Medicaid payment of LTC services if the individual provides clear and convincing evidence that the transfer was made exclusively for a purpose other than qualifying for assistance.
- 12. The Appellant provided clear and convincing evidence that he was in good health for his age and he was of sound mind when he transferred his home and property into a trust.
- 13. The Appellant met his needs for close to five years following the December 2009 asset transfer before applying for medical assistance in 2014.
- 14. The Appellant did not transfer his home and property for purposes of qualifying for medical assistance.
- 15. The Appellant's asset transfer was not improper.
- 16.UPM Section 4000.01 defines face value of a life insurance policy as the

basic amount of insurance purchased on the insured's life, as listed on the policy.

- 17. The Department of Veteran's Affairs Annual Insurance Policy Statement provides that the Appellant's Life Insurance 20 Payment Life BASIC plan totals \$1,000.00.
- 18. The face value of the Appellant's VA life insurance totals \$1,000.00.
- 19.UPM Section 4030.30 (C)(1) provides that if the total 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.
- 20. The cash surrender value of the Appellant's life insurance policy is exempt from asset eligibility consideration.
- 21. The Department incorrectly considered the cash surrender value of the Appellant's life insurance policy to be a counted asset for Medicaid eligibility purposes.
- 22. The Appellant is otherwise eligible for Medicaid payment of LTC services effective 2014, the date of request for coverage.

DISCUSSION

Based upon the testimony and the evidence presented and in light of pertinent regulations, I find that the Appellant did not improperly transfer his home and property into a trust. I further find that he was otherwise asset eligible in 2014.

Regulations state that if an individual provides clear and convincing evidence that the transfer was made for a purpose other than to qualify for medical assistance, then the transfer is not considered to be improper and a penalty is not imposed.

In this case, the Appellant has provided clear and convincing evidence that he was in good health at the time of the transfer, he retained sufficient income and assets to meet his foreseeable needs, and that he was not contemplating the need for long-term care at the time of the transfer.

I do not find this transfer of assets to be improper and do not uphold the Department's penalty imposition.

With respect to asset eligibility, the face value of the Appellant's only life insurance policy is less than \$1,500.00 therefore; the policy is excluded from asset eligibility consideration. When this policy is excluded from asset eligibility consideration, the Appellant is asset eligible effective 2014.

The Appellant additionally raised the argument that the imposition of a penalty creates for him an undue hardship. I did not have need to speak to this argument herein because I found that the Appellant transferred assets for reasons other than to qualify for assistance and that the Department was not correct to impose a penalty.

DECISION

The Appellant's is Upheld.

ORDER

The Department shall remove the penalty that it imposed.

The Department shall consider the Appellant to be otherwise eligible for Medicaid LTC payments effective the date of his request for coverage, 2014.

The Department shall reopen the Appellant's Medicaid application and process in accordance with the findings of this decision.

Compliance shall be shown by submission of verification that the penalty has been removed and is due by 2015.

Pamela J. Gonzalez Hearing Officer

Copy: Lisa Wells, Operations Manager, DSS Regional Office #20, New Haven

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 Administrative Hearings and Appeals, 55 Farmington Avenue, Hartford, CT 06105-3725.

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 the Commissioner's 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.