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

2016
SIGNATURE CONFIRMATION

CLIENT ID #:	
HEARING ID #: 73907	7

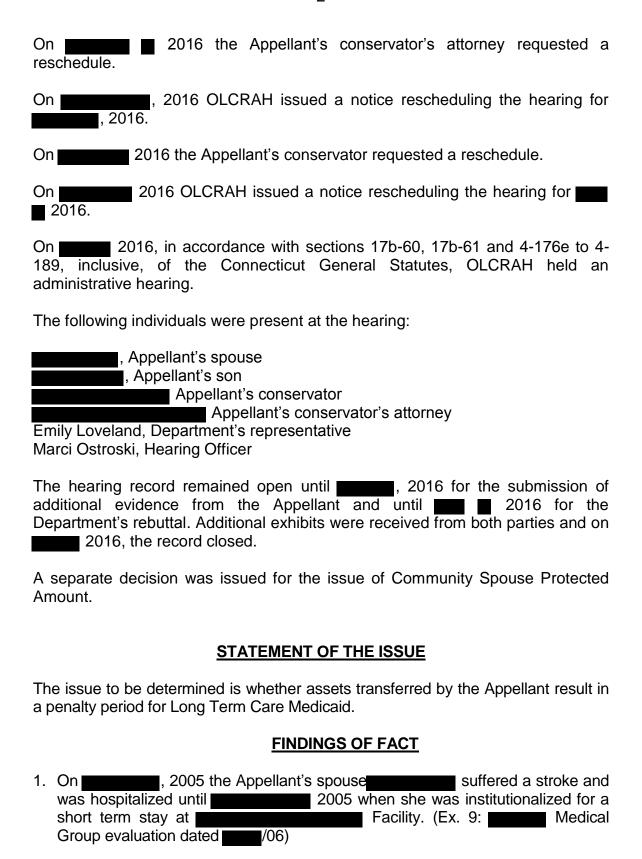
NOTICE OF DECISION

PARTY

C/O Attorney	

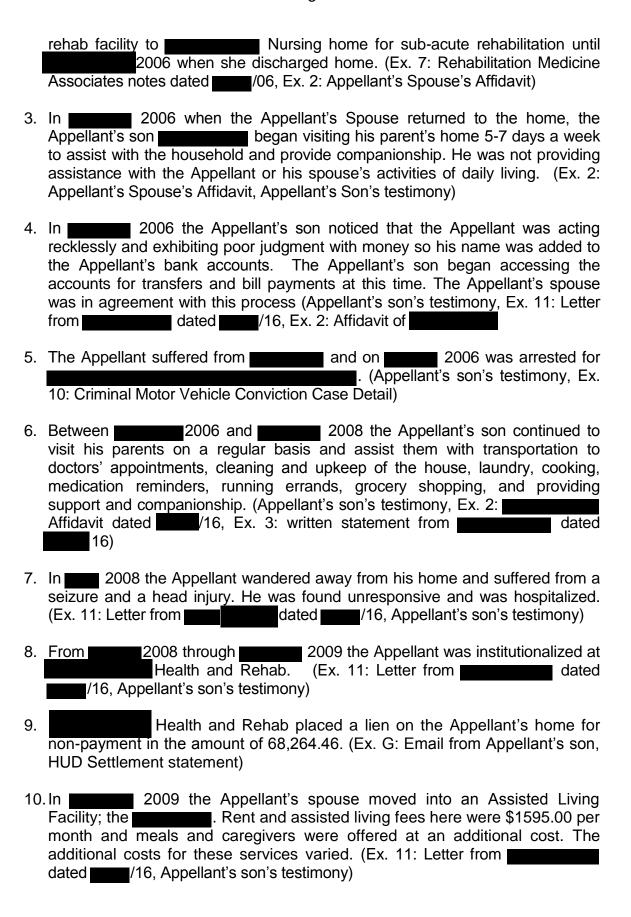
PROCEDURAL BACKGROUND

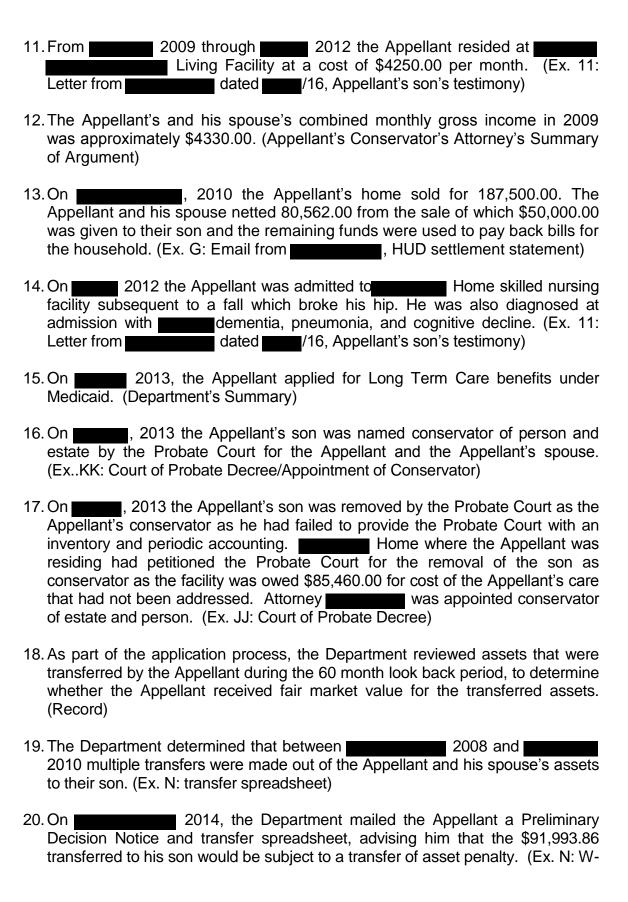
(th	015, the Department of Social Services (the "Department") sent ne Appellant), and his conservator a notice of its decision to against his application for Long Term Care Medicaid benefits
because he transf	ferred assets in order to become eligible for Medicaid.
	2015,, the Appellant's conservator requested an aring to contest the Department's decision to impose a penalty.
Administrative F	, 2015, the Office of Legal Counsel, Regulations, and Hearings ("OLCRAH") issued a notice scheduling the aring for
On	2015 the Appellant's conservator requested a reschedule.
On 2 2016.	2016 OLCRAH issued a notice rescheduling the hearing for
the hearing and	016 the Appellant's conservator requested to be excused from be represented by his attorney ("The rvator's attorney")



2005 the Appellant's spouse was discharged from the Mt. Sinai

2. In I







- 21. Counsel for the Appellant provided to the Department verification of payments made by the Appellant's son directly to the Appellant's assisted living facility. The Department discovered additional assets at this time owned by the Appellant and his spouse and requested additional information. (Ex. O: Ledger from Exercise Fig. Ex. P: W1348 14, Ex. S: W1348 15, Ex. T: W1348 15)
- 22. On 2015 the Appellant expired. (Ex. HH: Narrative)
- 23. The Department recalculated the penalty amount based on further withdrawals and deposits between the Appellant and his son through 2014. (Ex. W: Final spreadsheet of transfers)
- 24. On ______, 2015 the Department granted the Appellant's _____ 2013 Long Term Care Medicaid application retroactive to _____ 2013. (Ex. Y: Notice of Action _____ 15)
- 25. On 2015, the Department mailed the Appellant a Final Decision Notice advising him the portion of assets he transferred which is subject to penalty is \$92,415.95. (Ex. X: W-495C Transfer of Assets Final Decision Notice)
- 26. Counsel for the Appellant provided the Department with documentation of payments made by the son on the Appellant's behalf. The Department recalculated the penalty. (Department's testimony, Appellant's Conservator's Attorney's testimony)
- 27. On 2016 the Department issued a revised W495C with a new penalty amount of \$76,891.47 (Ex. 18: W-495C Transfer of Assets Final Decision Notice)

CONCLUSIONS OF LAW

- 1. Section 17b-260 of the Connecticut General Statutes provides that the Department will administer Title XIX of the Social Security Act ("Medicaid") in the State of Connecticut.
- 2. Section 17b-261b(a) of the Connecticut General Statutes provides that the Department "shall be the sole agency to determine eligibility for assistance and services under programs operated and administered by said department."
- 3. Federal law provides that the "single State agency is responsible for determining eligibility for all individuals applying for or receiving benefits" in

the Medicaid program. 42 C.F.R. 431.10(b)(3)

- 4. Subsection (a) of section 17b-261(a) of the Connecticut General Statutes provides that any disposition of property made on behalf of an applicant or recipient by a 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.
- 4. An applicant is "the individual or individuals for whom assistance is requested." Uniform Policy Manual ("UPM") 1500.01
- 5. The Appellant is the applicant in this matter. Disposition of property by the Appellant's powers of attorney are attributed to the Appellant.
- 6. 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."
- 7. 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.
- 8. 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).
- 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).
- 10. The look-back date for the Appellant is 2008.
- 11. Compensation in exchange for a transferred asset is counted in determining whether fair market value was received. UPM § 3029.30.
- 12. Compensation received prior to the time of the transfer is counted if it was received in accordance with a legally enforceable agreement. UPM § 3029.30 (A)(2)

- 13. The Appellant and his spouse did not possess a legally enforceable agreement with their son to compensate him for care received.
- 14. The Department correctly determined that the transfer was not made in accordance with compensation because it was not received in accordance with a legally enforceable agreement.
- 15.UPM 3029.20(B) addresses transfers made in return for other valuable consideration and provides 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
 - the services are either:
 - a. provided by the transferee while sharing the home of the transferor; or
 - b. paid for by the transferee.
- 16. The Department correctly determined that the transfer was not made in accordance with other valuable consideration because the Appellant's son did not live with the Appellant for a period of at least two years and there was no evidence provided that the son provided services which prevented institutionalization for a period of at least two years.
- 17.UPM 3029.10(F) provides for transfers not resulting in a penalty; 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.
- 18. The Department correctly determined that the Appellant did not receive fair market value for the transfer of \$76,891.47 to his son.
- 19. 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. UPM § 3029.15(B)
- 20. The Department correctly determined that the Appellant did not meet his foreseeable needs because at the time of the transfers the Appellant did not

- retain enough assets or income to cover his basic living expenses and medical costs.
- 21. The Appellant did not establish with clear and convincing evidence that he transferred \$76,891.47 for a purpose other than qualifying for assistance.
- 22. The Department was correct to find that the Appellant transferred \$76,891.47 for the purpose of qualifying for Long Term Care Medicaid.
- 23. 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 by the average monthly cost to a private patient for long-term care services in Connecticut. Uncompensated values of multiple transfers are added together and the transfers are treated as a single transfer. UPM § 3029.05(F).
- 24. UPM § 3029.05 (E)(2) provides that the penalty period begins as of the later of the following dates: 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.
- 25. UPM § 3029.05 (F) provides in part 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. 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.
- 26. The average monthly cost of LTCF services in Connecticut as of the month of the Appellant's application was \$11,183.00.
- 27. The Appellant is subject to a penalty period of 6.88 months after dividing the uncompensated value of the transferred asset by the average monthly cost of LTCF services (\$76,891.47 divided by \$11,183.00).

DISCUSSION

The Department's determination that the Appellant transferred assets to qualify for assistance is upheld. Counsel for the Appellant argued that the Appellant's son provided companionship and homemaker services for the Appellant's spouse and would be entitled to other valuable consideration for his time. While it is credible the son did provide companionship to his parents, there is no evidence from the Appellant's or his spouse's doctors that the Appellant's son, provided care that prevented institutionalization. The Appellant's son did not provide assistance with activities of daily living. The son did not reside with the Appellant or his spouse for a period of at least two years.

In terms of compensation there was no legally enforceable agreement either verbally or in writing that the Appellant's son would provide care for the Appellant or his spouse in exchange for payment. The transfer is not in accordance with the regulations that govern compensation or other valuable consideration and is therefore improper.

Counsel for the Appellant argued that the Appellant and his spouse met their foreseeable needs at the time of the bulk of the transfers to their son between the years of 2008-2009. Counsel argued that the Appellant had over \$70,000 in assets at that time plus income. However it was in 2008 when the Appellant was institutionalized for the first time in Health and Rehab and accrued a bill there of 68,264.46 which remained unpaid until the sale of the Appellant's home in 2010 when funds were again transferred to the son.

Both the Appellant and his spouse had a history of significant medical issues which resulted in multiple hospitalizations and institutionalizations for each of them as far back as 2005. Their financial foreseeable needs were significant at the time of the transfers to the son. At the time when their home was sold both the Appellant and his spouse were advanced in age and residing in assisted living with additional costs that their monthly income did not cover. The only equity they had left in their house upon its sale in 2010 was given to the son when both of them had current financial need. The evidence shows that there were not only liens placed against the home for previous unpaid medical bills but also back taxes and significant back household bills that had gone unpaid. Had the Appellant and his spouse been meeting their financial needs throughout their illnesses they would not have accrued such significant debts.

There is no clear and convincing evidence that the transfers were made for a purpose other than qualifying for assistance therefore the Department's action to assign a penalty is upheld.

DECISION

The Appellant's appeal is **DENIED**

Marci Ostroski Hearing Officer

cc: Musa Mohamud, SSOM, Hartford Judy Williams, SSOM, Hartford Tricia Morelli, SSPM, Hartford Emily Loveland, Eligibility Services Specialist, Hartford Appellant's Conservator's Attorney

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.