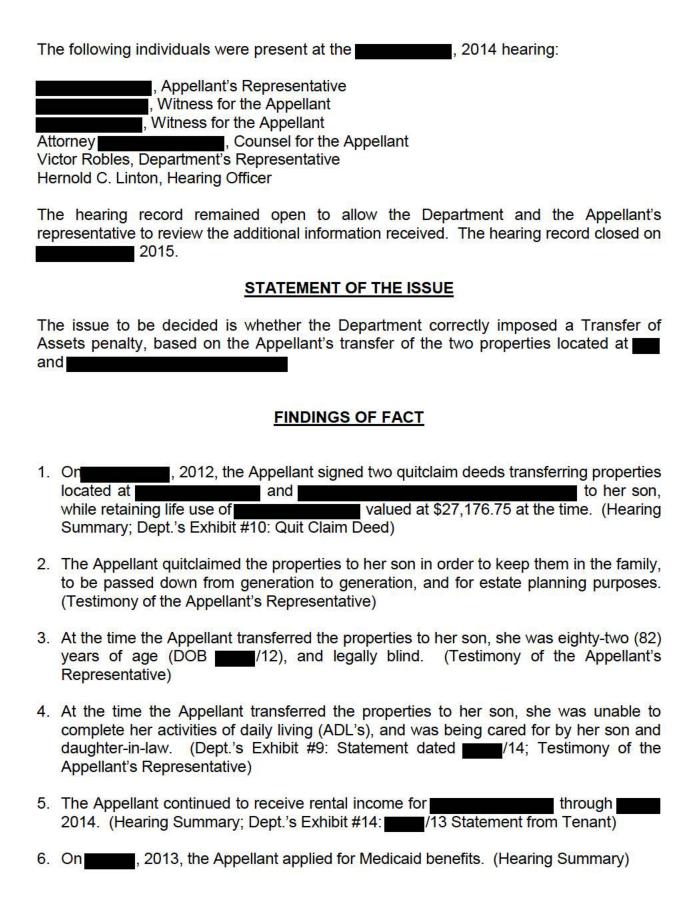
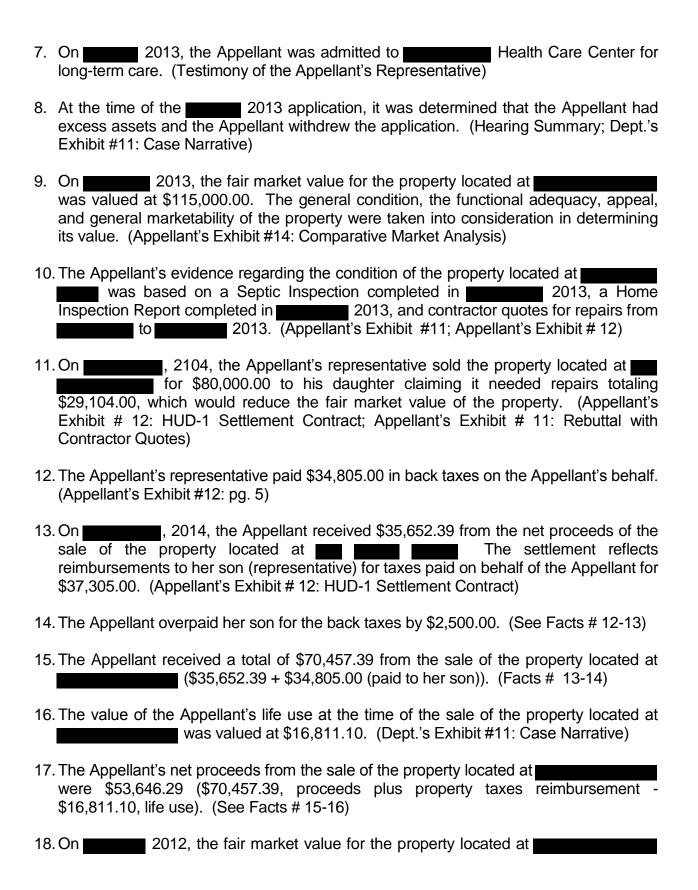
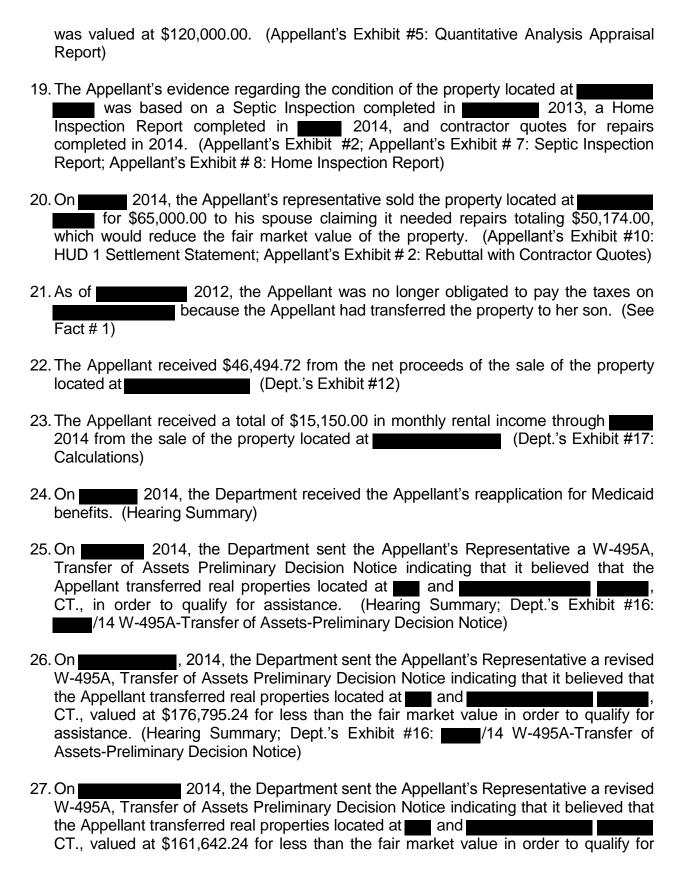
STATE OF CONNECTICUT DEPARTMENT OF SOCIAL SERVICES OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVEHEARINGS 55 FARMINGTON AVENUE HARTFORD, CT06105-3725

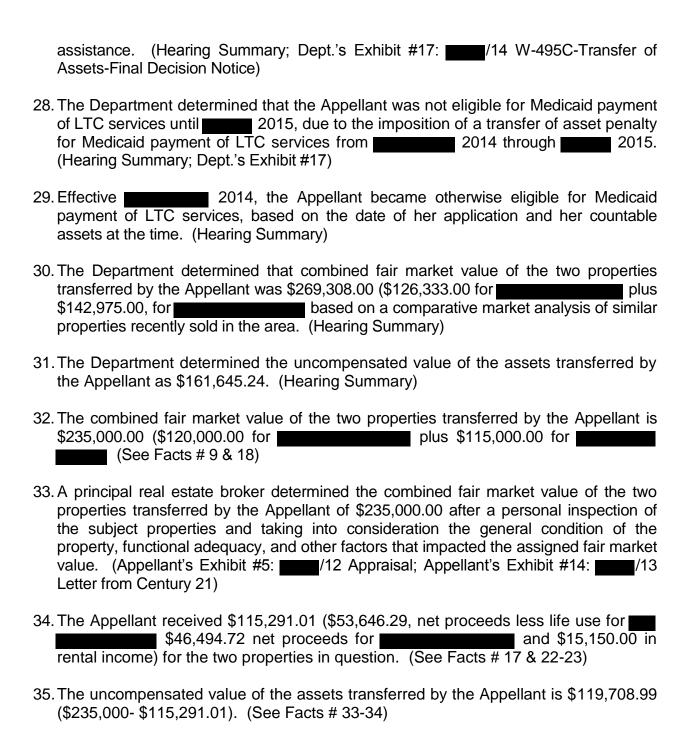
2016 SIGNATURE CONFIRMATION **REQUEST #741240** CLIENT ID # **NOTICE OF DECISION PARTY** PROCEDURAL BACKGROUND 2014, the Appellant's representative () requested an administrative hearing on behalf of the Appellant () to contest the Department's imposition of a penalty period on the Appellant's LTC Medicaid benefits. A hearing was held on _____, 2014 in accordance with Connecticut General Statutes § 17b-60, § 17b-61 and § 4-176e to § 4-184. On , 2015, this Hearing Officer rendered a decision (Request #640443) denying the Appellant's appeal of the Department's imposition of a penalty period on the Appellant's LTC Medicaid benefits. On 2015, the Appellant's representative appealed the decision to the Superior Court for the Judicial District of New Britain at New Britain. , 2015, the Superior Court for the Judicial District of New Britain On I remanded the 2015 hearing decision for further proceedings. The court ordered that the Hearing Officer should allow the Appellant's representative to present additional evidence that was not previously received by the Hearing Officer. The undersigned conducted a desk review under the authority of Section 17b-60, § 17b-61 and § 4-176e to § 4-184 of the Connecticut General Statutes. The evidence submitted for the _____, 2014 hearing and made part of the

2015 hearing decision is incorporated by reference as part of this decision.









CONCLUSIONS OF LAW

1. The Department is the state agency that administers the Medicaid program pursuant to Title XIX of the Social Security Act. The Department may make such regulations

- as are necessary to administer the medical assistance program. Conn. Gen. Stat. § 17b-2; Conn. Gen. Stat. § 17b-262
- 2. The Department is the sole agency to determine eligibility for assistance and services under the programs it operates and administers. Conn. Gen. Stat. § 17b-261b(a)
- 3. The Department shall grant aid only if the applicant is eligible for that aid. Conn. Gen. Stat. § 17b-80(a)
- 4. The Department uses the policy contained in this chapter to evaluate asset transfers, including the establishment of certain trusts and annuities, if the transfer occurred, or the trust was established, on or after February 8, 2006. Uniform Policy Manual ("UPM") § 3029.03
- 5. 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 UPM 3029.05(C). This period is called the penalty period, or period of ineligibility. UPM § 3029.05(A)
- 6. 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)
- 7. 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)
- 8. 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)
- 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. UPM § 3029.10(F)
- 10. Since the septic report from 2013, the home inspection reports from 2014, and the contractor quotes from late 2013 and from 2014, were not based on the properties

- values at the time the properties were quitclaimed in 2012, the Appellant has failed to provide clear and convincing evidence that any necessary repairs should have been considered in the fair market values provided by the 2012 and 2013 appraisals.
- 12. The Department incorrectly determined the combined fair market value of the two properties as \$296,308.00 as the Department's did not inspect the property and the Appellant provided an appraisal and market analysis done in 2012 and 2013, which included an inspection of the properties and took into consideration the general condition of the properties.
- 13. After making allowances for the general conditions of the property, the combined fair market value of the two properties transferred by the Appellant is \$235,000.00.
- 14. The Appellant received \$115,291.01 in returned assets from the sale of the two properties.
- 15. The uncompensated value of the assets transferred by the Appellant is \$119,708.99 (\$235,000.00, combined market value; minus \$115,291.01, compensation)
- 17. Federal Law provides that in the case of a transfer of an asset made on or after February 8, 2006, the date specified in this subparagraph [the start date of the penalty period] is the first day of a month during or after which assets have been transferred for less than fair market value, or the date on which the individual is eligible for medical assistance under the State plan and would otherwise be receiving institutional level care described in subparagraph (C) based on an approved application for such care but for the application of the penalty period, whichever is later, and which does not occur during any other period of ineligibility under this subsection, 42United States Code ("U.S.C.") § 1396p(c)(1)(D)(ii).
- 18. The penalty period begins as of 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. UPM § 3029.05(E)(2)

- 19. Because the Appellant became eligible for Medicaid payment of LTC services effective _______, 2014, the Department's determination of ________ 2014 as the start date of the period of ineligibility for Medicaid payment of LTC services for the Appellant is correct.
- 20. The Department's imposition of a penalty period for Medicaid payment of LTC services for the Appellant is correct.
- 21. The length of the Appellant's penalty period is determined by dividing \$119,708.99 by \$11,851.00, the average cost of LTC, which equals 10.10 months.
- 22. The Appellant is ineligible for Medicaid payment of LTC services for the period of 2014 through 2015 due to the imposition of the transfer of asset penalty of 10.10 months.
- 23. The Department's determination of 2015 as the end date for the penalty period for Medicaid payment of LTC services for the Appellant is incorrect.
- 24. The Department's determination of 2015 as the end date for the period of ineligibility for Medicaid payment of LTC services for the Appellant is incorrect.

DISCUSSION

The Appellant's representatives provided credible evidence to establish the fair market value for the properties based on the condition of the properties. Based on the evidence to rebut the Department's assigned value, the undersigned finds the Department's combined assigned value (\$269,308.00) for the properties in question to be unreasonable, as the Department did not take into consideration the general condition of the properties.

The Appellant's representatives testified that the properties in question were in need of repairs and provided estimates of the costs of the repairs to be taken into consideration against the fair market value assigned to the properties. The Appellant's representatives failed to provide clear and convincing evidence to establish the cost of repairs should have been considered in the appraisals and market analysis they provided as evidence of the properties' fair market value.

Additionally, the undersigned reduced the uncompensated value of the transfer by the property taxes paid by the Appellant's representative/son, which further reduced the penalty period.

The Department was correct in imposing a penalty period. However, the Department's length of the penalty is incorrect based on the uncompensated value used by the Department.

DECISION

The Appellant's appeal is **DENIED** in part, and **GRANTED** in part.

ORDER

- 1. The Department will establish a penalty period from 2014 to 2015, based on the transfer of asset penalty for \$119,708.99.
- 2. No later than fourteen (14) days from the date of this hearing decision, the Department will provide the undersigned with verification of the Department's compliance with this order.

Hernold C. Linton Hearing Officer

Hernold C. Linton

Pc: Musa Mohamud, Social Service Operations Manager, DSS, R.O. #10, Hartford

Elizabeth Thomas, Social Service Operations Manager, DSS, R.O. # 10, Hartford

Patricia Ostroski, Social Service Program Manager, DSS, R.O. # 10, Hartford

Tricia Morelli, Social Service Program Manager. DSS, R.O. # 10, Hartford

Fair Hearing Liaisons, DSS, R.O. # 10, Hartford

Attorney

Patrick B. Kwanashie, Assistant Attorney General, 55 Elm Street, P.O. Box 120, Hartford, CT 06141-0120

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.