STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVE.
HARTFORD, CT 06105-3725

[redacted] 2016
Signature Confirmation

Client ID # [redacted]
Request # 765261

NOTICE OF DECISION

PARTY

[redacted]
For: [redacted]
[redacted]
[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2016, the Department of Social Services (the "Department") sent [redacted] (the "POA") on behalf of [redacted] (the "Appellant") a notice that the Appellant had transferred $124,883.24 to become eligible for Medicaid, and the Department was imposing a period of ineligibility for Medicaid payment of long term care services effective [redacted] 2015 through [redacted] 2016.

On [redacted] 2016, the Appellant, through his great niece and Power of Attorney, [redacted] ("POA") requested an administrative hearing to contest the Department's penalty determination.

On [redacted] 2016, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for [redacted] 2016.

On [redacted] 2016, in accordance with sections 17b-60, 17-61 and 4-176e to 4-189 inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing.

The following individuals were present at the hearing:

[redacted] Power of Attorney for the Appellant
[redacted] Witness for the Appellant
Jodi Bissonnette, Social Worker, Branford Hills Health Care Center
Ellen Leslie, Director of Social Services, Branford Hills Health Care Center
Glenda Gonzalez, Department Representative
Lisa Nyren, Fair Hearing Officer

On [redacted] 2016, the Appellant requested the hearing record remain open for the submission of additional evidence. On [redacted] 2016, the hearing record closed.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly determined: 1) the Appellant transferred $124,883.24 to become eligible for Medicaid; and 2) the $124,883.24 transfer subjected the Appellant to a penalty period of ineligibility for Medicaid payment of long-term care services.

FINDINGS OF FACT

1. On [redacted] 2005, the Appellant appointed [redacted] ("POA") as his Power of Attorney. (Hearing Record)

2. On [redacted] 2015, Branford Hill Health Care Center (the "Facility"), a skilled nursing facility, admitted the Appellant to their facility from Lord Chamberlain Nursing and Rehabilitation Center. (Exhibit 1: Long-term Care/Waiver Application and POA's Testimony)

3. On [redacted] 2015, the Department received an application for Medicaid for Long Term Care ("LTC") from the POA on behalf of the Appellant. (Exhibit 1: Long-term Care/Waiver Application)

4. The Department determined the Appellant transferred $124,883.24 on various dates for the purpose of becoming eligible for Medicaid LTC Program. (Exhibit 6: Transfer of Assets Packet)

5. The Department determined the Appellant asset eligible for Medicaid effective [redacted] 2015 without eligibility for room and board under the LTC program due to the imposition of a $124,883.24 transfer of asset penalty starting [redacted] 2015 and ending [redacted] 2016. (Hearing Record)

6. On [redacted] 2016, the Department mailed a notice, Form W495C Transfer of Assets Final Decision Notice to the Appellant regarding the transfer of assets. The notice stated there was an improper transfer of assets totaling $124,883.24 in 2014 and 2015 for the purpose of qualifying for Medicaid. The Department will impose a penalty period of 11 months, [redacted] 2015 through [redacted] 2016 in which the Appellant will remain ineligible for Long Term Care benefits under Medicaid during the penalty period. (Exhibit 6: Transfer of Assets Packet)

7. On [redacted] 2016, the OLCRAH held an administrative hearing. (Hearing Record)

8. On [redacted] 2016, the OLCRAH received additional evidence from the Facility on behalf of the Appellant. The evidence included bank statements from Citizens Bank confirming a checking account [redacted] ("checking account [redacted]) owned by the Appellant and POA for the period [redacted] 2014 to [redacted] 2016. The bank statement included charges for a safe deposit box. The OLCRAH forwarded the evidence to the Department Representative. (Exhibit G: Bank Statements)

9. On [redacted] 2016, the OLCRAH received additional evidence from the Facility on behalf of the Appellant. The evidence included: an invoice totaling $7,965.00 for dental work completed between [redacted] 2014 and [redacted] 2014 in which payment made on [redacted] 2014 for services rendered, [redacted] 2015 statement from Justin Sousa and Nelson Rowe for landscaping services provided [redacted] 2014 through [redacted] 2014 totaling $1,984.00 to the Appellant, and checking account [redacted] withdrawal slips. The OLCRAH forwarded the evidence to the Department Representative. (Exhibit H: Invoices)

10. On [redacted] 2016, the OLCRAH received a copy of an email to [redacted] from [redacted]) who writes, "This is to confirm we attended [redacted] birthday celebration in CT at no expense to us. We traveled from Richmond, VA to attend this event." The OLCRAH forwarded the evidence to the Department Representative. (Exhibit J: Email/Statement)

11. On [redacted] 2016, the OLCRAH received a statement from [redacted]. [redacted] commented, "My family of four traveled to Connecticut from New Jersey to attend the [redacted] birthday party of my great-uncle, [redacted], on [redacted] 2014. We did not incur any expenses related to attending this party and staying over for the event." The OCLRAH forwarded the evidence to the Department Representative. (Exhibit J: Email/Statement)

12. On [redacted] 2016, the Department submitted a rebuttal to the OLCRAH. The Department determined the POA failed to disclose checking account [redacted] at time of application. The Department further reviewed evidence on file and discovered additional bank accounts previously overlooked and additional reviewable transactions. (Exhibit 16: Rebuttal)

CONCLUSIONS OF LAW

1. Section 17b-2(6) of the Connecticut General Statute ("Conn. Gen. Stats.") provides that 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.

2. Statute provides that the Department of Social Services shall be the sole agency to determine eligibility for assistance and services under programs operated and administered by said department. [Conn. Gen. Stats. § 17b-261b(a)]

3. Statute provides that 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. The provisions of this subsection shall not apply to a special needs trust, as defined in 42 USC 1396p(d)(4)(A). For purposes of determining whether a beneficiary under a special needs trust, who has not received a disability determination from the Social Security Administration, is disabled, as defined in 42 USC 1382c(a)(3), the Commissioner of Social Services, or the commissioner's designee, shall independently make such determination. The commissioner shall not require such beneficiary to apply for Social Security disability benefits or obtain a disability determination from the Social Security Administration for purposes of determining whether the beneficiary is disabled. [Conn. Gen. Stats. § 17b-261(c)]

4. Uniform Policy Manual ("UPM") § 4005 provides that for every program administered by the Department, there is a definite asset limit. This chapter outlines which assets are counted toward the asset limit and which assets are not counted. The Chapter also specifies the assets limits for the four major program which the Department administers, and describes how assets exceeding the program limit affect eligibility.

   UPM § 4005.05(A) provides that for every program administered by the Department, there is a definite asset limit.

5. UPM § 4005.05(B)(1) provides that the Department counts the assistance unit's equity in an asset toward the asset limit if the asset is not excluded by state or federal law and is either:

   a. Available to the unit; or
   b. Deemed available to the unit.

   UPM § 4005.05(B)(2) provides that under all programs except Food Stamps, the Department considers an asset available when actually available to the individual

or when the individual has the legal right, authority or power to obtain the asset, or to have it applied for, his or her general or medical support.

6. UPM § 4005.05(D)(10 provides that the Department compares the assistance unit's equity in counted assets with the program asset limit when determining whether the unit is eligible for benefits.

   UPM § 4005.10(A)(2)(a) provides the asset limit for Medicaid to the Aged, Blind, and Disabled as $1,600.00 for a needs group of one.

7. Based on the hearing record, the assistance unit's equity in counted assets cannot be determined due to new evidence provided by the Facility on behalf of the POA and the Appellant not previously considered by the Department.

8. Statute provides that 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. 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. Stats. 17b-261(a)]

9. Statute provides for 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. Stats. § 17b-261a(a)]

10. UPM § 3029.05(A) provides that 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.

11. UPM § 3029.05(C) provides that 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 exists:

    1. The individual is institutionalized; and
    2. The individual is either applying for or receiving Medicaid.

12. UPM § 3029.05(D)(1) provides the Department considers transfers of assets made within the time limits described in 3029.05C, 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.

13. 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 3029.05B 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.

14. UPM § 3029.05(F)(2) provides that 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 3029.05C by the average monthly cost to a private patient for LTCF services in Connecticut.

15. Based on the hearing record, the total transfer of assets cannot be determined due to new information provided by the Facility on behalf of the POA and the Appellant not previously considered by the Department.

16. Based on the hearing record, the period of ineligibility cannot be determined under the Medicaid LTC program due to new information provided by the Facility on behalf of the POA and the Appellant not previously considered by the Department.

17. UPM § 1000 states in part an assistance unit has certain responsibilities, such as supplying information the Department needs to determine the unit's eligibility, reporting changes in circumstances, and meeting certain procedural requirements.

18. UPM § 1525 provides that under certain conditions, an assistance unit may designate an authorized representative to act on the unit's behalf in dealings with the Department. In the Public Assistance programs, authorized representatives serve limited functions during the application process. However, in the FS program their role is extended into many aspects of the eligibility process. This chapter discusses the provisions for the use of authorized representatives and the duties which they may perform.

    UPM § 1525.05(A) provides that an assistance unit may be represented in various aspects of the eligibility process by a responsible individual who has been given prior authorization to act as the assistance unit's representative.

    UPM § 1525.05(B) provides that an authorized representative is qualified to perform specific functions which vary and are limited by the requirements of each specific program category.

    UPM § 1525.15(C)(1)(a) provides that residents of institutions may apply for assistance and be certified on their own behalf, or through the use of an authorized representative who may be an individual of the applicant's choice or an employee designated by the institution for this purpose. In the Food Stamp program, for residents of drug and alcohol treatment centers, the authorized representative must be an employee designated by the institution.

19. UPM § 1525.05(G) provides that the appointment of an authorized representative does not relieve the assistance unit of any responsibilities. Both the assistance unit and the representative may be held responsible for assistance improperly obtained through actions by the authorized representative.

20. The Department correctly recognized the POA as the Appellant authorized representative during the application process.

21. UPM § 1010 provides that the assistance unit, by the act of applying for or receiving benefits, assumes certain responsibilities in its relationship with the Department. This chapter describes those responsibilities which an assistance unit assumes when it applies for or receives benefits from the Department.

22. UPM § 1010.05(A)(1) provides that the assistance unit must supply the Department, in an accurate and timely manner as defined by the Department, all pertinent information and verification which the Department requires to determine eligibility and calculate the amount of benefits (cross reference 1555).

23. UPM § 1000 states in part that the Department has certain responsibilities, also, in its relationship with the assistance unit. The Department is responsible for determining the unit's eligibility objectively and in a timely manner. It must base its decision on state and federal law.

24. UPM § 1555.30(A)(1) provides that the Department acts promptly to determine the effect on eligibility or benefit level whenever changes become known to the Department.

    UPM § 1555.30(B)(2)(a) provides that the Department takes corrective action within a reasonable period of time from the date it becomes aware of the change.

25. Based on the hearing record, eligibility for Medicaid under the LTC program cannot be determined because the POA failed to provide all pertinent information and verification necessary for the Department to make a decision of eligibility. The POA provided new asset information on behalf of the Appellant not previously considered by the Department at time of application.

DECISION

The Appellant's appeal is remanded back for further review by the Department.

ORDER

The Department must reopen the application for Medicaid under the LTC program effective [redacted] 2015 and continue to process eligibility for Medicaid under the LTC program. Compliance is due [redacted] 2016.

Lisa A. Nyren
Fair Hearing Officer

CC: Glenda Gonzalez, Department of Social Services
Ellen Leslie, Director of Social Services, Branford Hills Health Care Center
189 Alps Rd. Branford, CT 06405

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 Administrative Hearings and Appeals, 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 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.