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

[redacted] 2016
Signature confirmation

Client: [redacted]
Request: 766614

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2016, the Department of Social Services (the "Department") issued [redacted] (the "Appellant") a *Notice of Approval for Long-Term Care Medicaid,* stating that the agency had determined that she was subject to a penalty period of ineligibility for Medicaid coverage of her long-term care services at Miller Memorial. The penalty period of ineligibility would run from [redacted] 2016 through [redacted] 2016.

On [redacted] 2016, the Appellant filed a request for an administrative hearing with the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") to dispute the imposition of a penalty period of ineligibility.

On [redacted] 2016 and [redacted] 2016, the OLCRAH issued a notice scheduling an administrative hearing for [redacted] 2016. On [redacted] 2016, the Appellant requested a postponement of the administrative hearing; the OLCRAH granted the request.

On [redacted] 2016, the OLCRAH issued a notice scheduling an administrative hearing for [redacted] 2016. On [redacted] 2016, the Appellant requested a postponement of the administrative hearing; the OLCRAH granted the request.

On [redacted] 2016, the OLCRAH issued a notice scheduling an administrative hearing for [redacted] 2016. On [redacted] 2016, 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 (daughter)
[redacted] Appellant's counsel
John Dileonardo, Department's representative
Eva Tar, Hearing Officer

The hearing record closed on [redacted] 2016.

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 due to $2,610.00 in transfers. The Department is assessing a penalty period of ineligibility to run from [redacted] 2016 through [redacted] 2016.

FINDINGS OF FACT

1. The Appellant is [redacted] years old. (Department's Exhibit 13: Ascend Connecticut printout, [redacted]16)

2. The Appellant's representative is the Appellant's daughter. (Appellant's representative's testimony)

3. On [redacted] 2005, the Appellant assigned her *Power of Attorney* to the Appellant's representative. (Department's Exhibit 3: *Power of Attorney* w/other docs, varying dates)

4. The [redacted] 2005 *Power of Attorney* notes in part that the Appellant "specifically authorize and encourage my attorney-in-fact to make gifts (outright, in trust or otherwise) of any assets owned by me, to my children, including any of my children who may be agents under this *Power of Attorney.* Such gifts are subject only to the limitation that gifts to my children must be equal." (Department's Exhibit 3)

5. The [redacted] 2005 *Power of Attorney* does not authorize the Appellant's representative to enter into contracts with the Appellant. (Department's Exhibit 3)

6. Miller Memorial (the "Facility") in [redacted] Connecticut is a skilled nursing facility. (Department's Exhibit 13)

7. On [redacted], 2015, the Facility admitted the Appellant as a long-term care patient. (Department's Exhibit 13)

8. The Facility had previously admitted the Appellant for short-term stays in [redacted] 2015 (20 days) and [redacted] 2015 (29 days). (Department's Exhibit 13)

9. Prior to her [redacted] 2015 admission to the Facility, the Appellant resided in an apartment in [redacted] Connecticut. (Department's Exhibit 13)(Department's Exhibit 1: *Long-Term Care/Waiver Application,* signed [redacted]15)(Appellant's representative's testimony)

10. The Appellant kept her apartment in the community until [redacted] 2015. (Appellant's representative's testimony)

11. On [redacted] 2015, the Appellant's representative signed a *Personal Services Agreement* in her capacity as the Appellant's attorney-in-fact ("THE PRINCIPAL [Appellant's Name]") and in her capacity as a contractor ("THE AGENT [Appellant's representative's name]"). (Department's Exhibit 3)

12. There are no other signatures on the [redacted] 2015 *Personal Services Agreement* besides that of the Appellant's representative. (Department's Exhibit 3)

13. The [redacted] 2015 *Personal Services Agreement* involves self-dealing[1] by the Appellant's representative. (Department's Exhibit 4: Email, [redacted]16)

14. The [redacted] 2015 *Personal Services Agreement* is not a legally enforceable contract. (Department's Exhibit 4)

15. The [redacted] 2015 *Personal Services Agreement* states that the Appellant will pay the Appellant's representative (the Agent) $30.00 per hour for the services of assisting the Appellant (the Principal) to review, manage and monitor her business, financial and personal affairs and to perform her activities of daily living, beginning [redacted] 2015. (Department's Exhibit 3)

16. Since [redacted] 2016, the Facility has provided the Appellant with daily aid with her activities of daily living.[2]

17. The Appellant's representative claims to have provided the following services to the Appellant personally, or in conjunction with other individuals, in the period from [redacted] 2015 through [redacted] 2016: laundry (44 hours), paperwork/paying bills (11.5 hours), telephone inquiries (3 hours), meeting a funeral director (2 hours), visiting the Appellant (3 hours), visiting an attorney (12.5 hours), moving furniture (9 hours), cleaning the Appellant's apartment (37 hours), shopping for the Appellant's clothing and snacks (3 hours), and transportation for medical visits (3 hours). (Department's Exhibit 3)

18. Laundry services are provided by the Facility to its residents. (Department's representative's testimony)

19. Private laundry services are not compensable services, as the Appellant receives those services for free from the Facility. (Department's representative's testimony)

20. The Appellant's representative's visits with the Appellant, her mother, are not services that merit compensation. (Department's Exhibit 4)

21. The Appellant pays her own attorney's fees. (Appellant's representative's testimony)

22. Visits to the Appellant's attorney are not compensable services.

23. The Appellant's authorized representative used relatives, a friend, the apartment owner with his trailer to move the Appellant's furniture from her apartment; one dresser was transported to the Appellant's room at the Facility; the Appellant's representative retained the Appellant's bedroom set. (Appellant's representative's testimony)

24. The Appellant's authorized representative used relatives and a friend to clean the Appellant's apartment. (Appellant's representative's testimony)

25. On [redacted] 2015, the Appellant's representative issued a $600.00 check (#[redacted]) to herself from the Appellant's Bank of America ([redacted]) account; "Personal Services Agreement" is noted in the memo section of the check. (Department's Exhibit 2: Transfer checks, varying dates)

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[1] **self-dealing.** *n*. Participation in a transaction that benefits oneself instead of another who is owed a fiduciary duty. • For example, a corporate director might engage in self-dealing by participating in a competing business to the corporation's detriment. – **self-deal,** *vb*. Cf. FAIR DEALING. Black's Law Dictionary 1364 (7th ed. 1999).

[2] "Activities of daily living" involve eating, bathing, dressing, toileting, transferring and continence.

26. On [redacted] 2015, the Department received the Appellant's Medicaid application, signed by the Appellant's representative on [redacted] 2015. (Department's Exhibit 11: Notice Content-NCON, [redacted]16)(Department's Exhibit 1)

27. On [redacted] 2016, the Appellant's representative issued three checks to herself from the Appellant's Bank of America (-[redacted]) account: a $600.00 check [redacted]), a $410.00 check (#[redacted]0), and a $600.00 check (#[redacted]). "Personal Services Agreement" is noted in the memo section of the three checks. (Department's Exhibit 2)

28. On [redacted] 2016, the Department issued a *Preliminary Decision Notice (W-495A)* to the Appellant stating that the Department had made an initial decision that the Appellant had transferred $2,610.00 in order to be eligible for assistance. (Department's Exhibit 6: *Preliminary Decision Notice,* [redacted]16)

29. In making the determination that the Appellant had improperly transferred $2,610.00, the Department considered the following: the [redacted] 2015 *Personal Services Agreement* was not-legally enforceable, the Appellant's representative having participated in self-dealing, the proximity in time between the Appellant's institutionalization and the date of the agreement, many of the services listed on the agreement had been provided by the Facility (or duplicated those provided by the Facility), visiting the Appellant was not a compensable service, and the proximity of receipt of previously unexpected funds from an insurance policy with issuances of checks to the Appellant's representative. (Department's representative's testimony)(Department's Exhibit 4)(Department's Exhibit 5: Email, [redacted]16)

30. The Department's [redacted] 2016 *Preliminary Decision Notice (W-495A)* stated that the agency made the initial decision because she was applying for or receiving medical help for long-term care services or home care services; and she or her spouse transferred assets that affect her eligibility; and she had not given the agency proof that the transfer was not made in order to be eligible for assistance. (Department's Exhibit 6)

31. The Department's [redacted] 2016 *Preliminary Decision Notice (W-495A)* stated that the purpose of the notices is to tell the Appellant about the preliminary decision and to give her a chance to contact the agency before the decision became final. (Department's Exhibit 6)

32. The Department's [redacted] 2016 *Preliminary Decision Notice (W-495A)* stated that if the agency did not hear from the Appellant by [redacted] 2016, the agency would act upon its decision about the transfer. (Department's Exhibit 6)

33. On [redacted] 2016, the Department received correspondence from Appellant's counsel, seeking to rebut the Department's preliminary decision. (Department's Exhibit 7)

34. The Appellant did not submit to the Department probative evidence as to the "actual cost" of the services allegedly provided by her representative or by the representative in conjunction with other individuals.

35. After receiving the [redacted] 2016 correspondence, the Department did not issue an interim form, W-495B,[3] to the Appellant. (Department's representative's testimony)

36. The information captured by the *W-495B* form was the same as that captured by the *W-495C* form. (Department's representative's testimony)

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[3] *Notice of Response to Rebuttal/Hardship Claim* (W-495B).

37. On [redacted] 2016, the Department issued a *Final Decision Notice (W-495C)* to the Appellant, stating that the agency had decided that the Appellant had transferred $2,610.00 to become eligible for Medicaid benefits, and that she was subject to a penalty period of ineligibility for payment of long-term care services effective [redacted] 2016. Her penalty period would end [redacted] 2016. (Department's Exhibit 8: *Final Decision Notice,* [redacted]16)

38. The Department's [redacted] 2016 *Final Decision Notice (W-495C)* noted that should the Appellant disagree with the decision, she may ask for a fair hearing. (Department's Exhibit 8)

39. On [redacted] 2016, the Department issued a *Notice of Approval for Long-Term Care Medicaid* to the Appellant, stating that she was eligible for Medicaid as of [redacted] but that Medicaid would begin paying for her long-term care services effective [redacted] 2016. (Department's Exhibit 9: *Notice of Approval for Long-Term Care Medicaid,* [redacted]16)

40. On [redacted] 2016, the Department issued an amended *Notice of Approval for Long-Term Care Medicaid* to the Appellant, stating that the Appellant was eligible for Medicaid as of [redacted] 2016, but that Medicaid would begin paying for her long-term care services effective [redacted] 2016. (Department's Exhibit 10: *Notice of Approval for Long-term Care Medicaid,* [redacted]16)

41. With the [redacted] 2016 *Notice of Approval for Long-Term Care Medicaid,* the Department provided written clarification as to the reason for the discrepancy between the end-dates of the penalty periods previously stated in the [redacted] 2016 mailing. (Department's representative's testimony) (Department's Exhibit 10)

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 17b-60 of the Connecticut General Statutes provides for fair hearings by the commissioner and any person authorized by him to conduct a hearing under this section.

3. Section 17b-61 of the Connecticut General Statutes addresses the decision, appeal, and extension for filing appeal. Subsection (a) of this section notes in part that the commissioner or his designated hearing officer shall render a final decision based upon all the evidence introduced before him and applying all pertinent provisions of law, regulations and departmental policy, and such final decision shall supersede the decision made without a hearing.

4. Section 4-180 (c) of the Connecticut General Statutes provides in part that a final decision in a contested case shall be in writing or orally stated on the record and, if adverse to a party, shall include the agency's findings of fact and conclusions of law necessary to its decision, including the specific provisions of the general statutes or of regulations adopted by the agency upon which the agency bases its decision. Findings of fact shall be based exclusively on the evidence in the record and on matters noticed.

5. With respect to administrative hearings conducted under the authority of Conn. Gen. Stat. § 17b-60, an administrative hearing officer's past ruling regarding one appellant does not bind another administrative hearing officer at a later date to issue a similar or identical ruling for a different appellant.

6. The Fair Hearing official determines the issue of the hearing. Uniform Policy Manual ("UPM") § 1570.25 (C)(2)(c).

7. The Medicaid asset limit for a single individual residing in a skilled nursing facility is $1,600.00. UPM § 4005.10 (A)(2)(a).

8. 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 [redacted] 2006. UPM § 3029.

9. 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).

10. 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).

11. Institution. An institution is an establishment that furnishes food, shelter and some treatment or services to four or more persons unrelated to the proprietor. UPM § 3000.01.

12. Skilled Nursing Facility. A skilled nursing facility is an institution which provides daily inpatient medical services ordered by and provided under the direction of a physician and 24-hour nursing services. UPM § 3000.01.

13. The Appellant has been an institutionalized individual since [redacted] 2015.

14. The Appellant's requirements for her activities of daily living are met by the staff of the skilled nursing facility in which she has resided since [redacted] 2015.

15. 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).

16. The Appellant's look-back period ran from 60 months prior to and up to [redacted] 2015.

17. 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. Stat. § 17b-261 (a).

18. Fiduciary Duty. Fiduciary duty is the duty of a person who stands in a special relationship of trust, confidence, or responsibility in his obligation to others. UPM § 3000.01.

19. As possessor of the Appellant's power of attorney, the Appellant's representative was in a position of fiduciary duty, as defined by UPM § 3000.01, to the Appellant.

20. Transfer of an Asset. A transfer of an asset is the conveyance of interest in property, the disposal of an asset in some other way or the failure to exercise one's right to property. UPM § 3000.01.

21. 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).

22. 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).

23. Prior to denial or discontinuance of LTC [Long-Term Care] Medicaid benefits, the Department notifies the individual and his or her spouse of its preliminary decision that a transfer of an asset is determined to have been improper. The notification includes a clear

explanation of both: a. the reason for the decision; and b. the right of the individual or his or her spouse to rebut the issue within 10 days. UPM § 3029.35 (A)(1) and (2).

24. The Department's [redacted] 2016 *Preliminary Decision Notice (W-495A)* provided a clear explanation for the Department's decision that the Appellant's transfer of assets had been determined to have been improper.

25. The Department's [redacted] 2016 *Preliminary Decision Notice (W-495A)* gave the Appellant in excess of 10 days to rebut the issue.

26. The Department's [redacted] 2016 *Preliminary Decision Notice (W-495A)* met or exceeded the minimal criteria required by UPM § 3029.35 (A).

27. An institutionalized individual, or his or her spouse, who is notified of the Department's determination that an asset transfer was improper, has 10 days from the date of the notice to rebut this determination prior to the implementation of the negative action. The Department may grant an extension if the individual so requests and the request is reasonable. UPM § 3029.35 (B)(1).

28. Rebuttal must include: a. a statement from the individual or his or her spouse as to the reason for the transfer; and b. objective evidence, which is (1) evidence which rational people agree is real or valid; and (2) documentary or non-documentary. UPM § 3029.35 (B)(2).

29. The Appellant had adequate opportunity to submit a rebuttal to the Department.

30. If the individual does not rebut the Department's preliminary decision to impose a penalty period, the Department sends the individual a final decision notice regarding the penalty period at the time of the disposition of the Medicaid application. The notice contains all the elements of the preliminary notice, and a description of the individual's appeal rights. UPM § 3029.35 (C)(1).

31. If the individual rebuts the Department's preliminary decision to impose a penalty period, the Department has 10 days from the receipt of the rebuttal to send an interim notice to the individual stating that it is either upholding or reversing its preliminary decision. UPM § 3029.35 (C)(2).

32. The notification described in UPM § 3029.35 (C)(2) informs the individual that: a. the Department is reversing its preliminary decision, and is not imposing a penalty period with respect to LTC [Long-Term Care] services; or b. the Department's preliminary decision is upheld and a penalty period is being established, during which Medicaid will not pay for LTC services. UPM § 3029.35 (C)(3).

33. The Department sends a final decision notice regarding the rebuttal issue at the time of the mailing of the notice regarding the disposition of the Medicaid application. UPM § 3029.35 (C)(4).

34. UPM § 3029.35 does not formally identify the notices or forms by number and/or header that the agency uses with respect to issuing a "preliminary decision," an "interim notice," or a "final decision notice" with respect to the Department's determination that a transfer of assets had been improper and the Department's proposed action regarding that determination.

35. Upon review of the plain language of UPM § 3029.35, it is reasonable to conclude that the function of the Department's issuing an "interim notice" is informational only: to notify an individual as to the Department's decision regarding the receipt of that individual's rebuttal and whether the Department was upholding or overturning its preliminary decision that an improper transfer of assets had occurred.

36. The Department committed procedural error when the agency failed to issue an "interim notice" to the Appellant within 10 days of its receipt of the Appellant's [redacted] 2016 rebuttal.

37. The Department's [redacted] 2016 *Final Decision Notice (W-495C)* provided the Appellant with the same information, as described in UPM § 3029.35 (C)(2), that would have been listed in a timely-issued "interim notice" associated with the Appellant's [redacted] 2015 Medicaid application: 1) that Department was upholding its preliminary decision; and 2) that the Department had established a penalty period during which Medicaid would not pay for the Appellant's long-term care services.

38. The Department's [redacted] 2016 *Final Decision Notice (W-495C)* provided the Appellant with adequate notice that the agency was upholding its preliminary decision; notified the Appellant that a penalty period was being established during which Medicaid would not provide for long-term care services; and instructed the Appellant on her right to appeal the Department's action through the fair hearing process.

39. The Department's procedural error in failing to issue an "interim notice" to the Appellant was harmless error, as the Appellant's rights were not adversely affected by the Department's oversight.

40. 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).

41. 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; transfers made exclusively for reasons other than qualifying; transferor intended to transfer the asset for fair market value; transfers made for other valuable consideration; the return of a transferred asset; transferor subject to undue hardship; and, with certain conditions, transfers "for the sole benefit of" an individual. UPM § 3029.10 (A) through (J).

42. An otherwise eligible institutionalized individual is not ineligible for Medicaid payment of LTC [long-term care 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).

43. 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).

44. Fair Market Value. Fair market value is the amount at which an asset can be sold on the open market in the geographic area involved at the time of the sale or the amount actually obtained as a result of bona fide efforts to gain the highest possible price. UPM § 3000.01.

45. Compensation. Compensation is all money, notes, real or personal property, food, shelter, or services received in exchange for something of value. UPM § 3000.01.

46. Value of Compensation. Each form of compensation is assigned a dollar value to compare with the fair market value of the transferred asset. UPM § 3029.30 (B).

47. Uncompensated Value. Uncompensated value is the difference between the fair market value of an asset and the compensation received. UPM § 3000.01.

48. Compensation in exchange for a transferred asset is counted in determining whether fair market value was received. UPM § 3029.30.

49. When an asset is transferred, compensation is counted when it is received at the time of the transfer or any time thereafter. UPM § 3029.30 (A)(1).

50. 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).

51. Legally-Enforceable Agreement. A legally-enforceable agreement is a binding and credible arrangement, either oral or written, wherein two or more parties agree to an arrangement in consideration of the receipt of money, property, or services and in which all parties can be reasonably expected to fulfill their parts of the agreement. UPM § 3000.01.

52. The Appellant's $2,610.00 transfer to her representative was not in accordance with a legally enforceable agreement.

53. In determining the dollar value of services rendered directly by the transferee, the Department uses the following amounts: a. for all services of the type normally rendered by a homemaker or home health aide, the current state minimum hourly wage for such services. b. for all other types of services, the actual cost. UPM § 3029.30 (B)(1).

54. It is reasonable to consider that fair market value assigned to "compensation" for services provided is governed by: 1) the type of services provided; 2) the level of specialized knowledge, skill, or professional certification required by the contractor to competently perform those types of services; and 3) the competitive market rate for completion of those types of services by a competent contractor in the geographic area, at the time the services would be provided.

55. It is reasonable to conclude that performing the services of: paperwork/paying bills, telephone inquiries, meeting a funeral director, moving furniture, cleaning an apartment and transportation for medical visits do not require a level of specialized knowledge, skill, or professional certification.

56. The performing of services associated with paperwork/paying bills, telephone inquiries, meeting a funeral director, moving furniture, cleaning an apartment and transportation for medical visits are reasonably similar to the range of services provided by a homemaker.

57. The hearing record is silent as to the current state minimum hourly wage for all services of the type normally rendered by a homemaker or home health aide.

58. Connecticut minimum wage equals $9.60 per hour, effective January 1, 2016.

59. It is reasonable to conclude that the Appellant's representative provided $628.80 worth of the types of services provided by a homemaker or home health aide in exchange for the $2,160.00. [$9.60 (Connecticut minimum wage) multiplied by 65.5 hours of the Appellant's authorized representative performing compensable services]

60. The uncompensated value of the Appellant's $2,610.00 in transfers to her representative equals $1,981.20. [$2,610.00 (total transfer) minus $628.80 (value of services provided, based on Connecticut minimum wage multiplied by hours of compensable services performed)]

61. The Appellant did not provide clear and convincing evidence that the $1,981.20 in transfers had been made exclusively for a purpose other than qualifying for assistance.

62. The Appellant did not establish by clear and convincing evidence that she transferred $1,981.20 to the Appellant's representative within the look-back period for a purpose other than to qualify or potentially qualify for Medicaid.

63. The Appellant's $1,981.20 in transfers to the Appellant's representative subjects the Appellant to a transfer penalty of ineligibility for the Medicaid program.

64. 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).

65. Payment is made for all other Medicaid services during a penalty period if the individual is otherwise eligible for Medicaid. UPM § 3029.05 (G)(2).

66. The penalty period begins as of the later of the following dates: 1. the first day of the month during which assets are transferred for less than fair market value, if this month is not part of any other period of ineligibility caused by a transfer of assets; or 2. 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).

67. The first date of the month in which the Appellant was otherwise eligible for Medicaid payment of the LTC services based on an approved application for such care but for the application of the penalty period is [redacted] 2016.

68. 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. UPM § 3029.05 (F)(1).

69. 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. UPM § 3029.05 (F)(2)(a).

70. Effective [redacted] 2015, the average cost of care equaled $12,170.00.

71. Uncompensated values of multiple transfers are added together and the transfers are treated as a single transfer. A single penalty period is then calculated, and begins on the date applicable to the earliest transfer. UPM § 3029.05 (F)(3).

72. Once the Department imposes a penalty period, the penalty runs without interruption, regardless of any changes to the individual's institutional status. UPM § 3029.05 (F)(4).

73. The Appellant's penalty period of ineligibility of Medicaid payment for long-term care service equals five days. [($1,981.20 divided by $12,170.00) multiplied by 31 days in [redacted] 2016]

74. The Appellant is subject to a penalty period of ineligibility for Medicaid payment of long-term care services for the period from [redacted] 2016 through [redacted] 2016.

75. The Department incorrectly determined that the Appellant is subject to a penalty period of ineligibility for Medicaid payment of long-term care services for the period from [redacted] 2016 through [redacted] 2016.

DECISION

The Appellant's appeal is GRANTED, in part.

The hearing officer finds that the Appellant's penalty period of ineligibility for Medicaid payment of long-term care services is equal to five days, not six days as had been previously determined by the Department.

ORDER

1. The Department is ordered to adjust the Appellant's penalty period of ineligibility for long-term care services to run from [redacted] 2016 through [redacted] 2016.

2. Within 14 calendar days of the date of this decision, or [redacted] 2016, documentation of compliance with this order is due to the undersigned.

Eva Tar-electronic signature
Eva Tar
Hearing Officer

Pc: [redacted], [redacted]
Attorney [redacted], [redacted]
John Dileonardo, DSS (LTSS)-New Haven (20)
Ellen Croll-Wisner, DSS (LTSS)-New Haven (20)
Tyler Nardine, DSS-Middletown (50)

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.