

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

██████████ 2017
Signature Confirmation

Client ID # ██████████
Request # 793620

NOTICE OF DECISION

PARTY

Attorney ██████████
For ██████████
██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2016, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA"). The notice stated you have transferred \$190,000.00 between the period ██████████ 2013 and ██████████ 2014 to become eligible for Medicaid. The Department imposed a period of ineligibility for Medicaid payment of long term care services effective ██████████ 2015 through ██████████ 2017 under the Medicaid Long Term Care Program.

On ██████████ 2016, Attorney ██████████, Conservator of the Estate, on behalf of the Appellant, requested an administrative hearing to contest the Department's decision to impose a penalty under the Medicaid Long Term Care Program.

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

On ██████████ 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 that reconvened on ██████████ 2016.

The following individuals were present at the hearing:

██████████, Attorney at Law, Conservator of the Estate for the Appellant
 ██████████, Attorney at Law, ██████████ & ██████████, Attorney for
 the Conservator
 ██████████, ██████████ Witness for the Appellant, Participated
 by Telephone
 ██████████ Witness for the Appellant, Participated by Telephone
 ██████████, Witness for the Appellant, Participated by Telephone
 ██████████ Medicaid Consultant, ██████████
 ██████████ Business Office Manager ██████████
 Pamela Corbin-Riddick, Department Representative
 Enkelejda Trifoni, Department Representative
 Lisa Nyren, Fair Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly determined the Appellant transferred \$190,000.00 to become eligible for Medicaid.

A secondary issue to be decided is whether the transfer subjected the Appellant to a penalty period of ineligibility for Medicaid payment of long-term care services.

FINDINGS OF FACT

1. The Appellant is divorced and has three adult children: two daughters residing in New York and Tennessee and ██████████ ("son"), her son who resides in Florida. (Hearing Record)
2. The Appellant's relationship with her children is estranged. (Son's Testimony)
3. On ██████████ 1998, the Appellant appointed her son as her durable springing power of attorney effective upon her incapacity as certified by her physician. (Exhibit B: Court of Probate and Exhibit 10: Power of Attorney)
4. The Appellant owned home property at ██████████ ██████████ home property") where she resided until 2010. (Appellant's Son Testimony)

5. In 2010, the Appellant fell and was admitted to a rehabilitation facility for four weeks where she begged her son to pick her up citing mistreatment at the facility. (Son's Testimony)
6. In 2010, the Appellant moved to Florida to live with her son, daughter-in-law, and granddaughter. (Son's Testimony)
7. The Appellant rented out the home property upon moving to Florida after the home property failed to sell. (Son's Testimony)
8. The son managed the Appellant's finances while residing in Florida and managed the home property on behalf of the Appellant. (Son's Testimony)
9. The Appellant was not compliant with medication while living in Florida. (Son's Testimony)
10. The Appellant accused her son and his family of stealing her money and personal items while living with him in Florida. (Son's Testimony)
11. The Appellant fixated on her bank account balance at a local Florida bank by calling the bank regularly to inquire on her account while living in Florida. (Son's Testimony)
12. The son revoked the Appellant's driving privileges after she failed to demonstrate safe driving skills in Florida. (Son's Testimony)
13. While in Florida, the Appellant was admitted to Flagler Hospital, [REDACTED] Florida on two separate occasions for psychological evaluations. (Son's Testimony)
14. The Appellant was admitted to Baptist Memorial Hospital after she called the police on her son and his family after an argument in their Florida home. (Son's Testimony)
15. On [REDACTED] 2011, Dr. [REDACTED], University [REDACTED], FL completed a neuropsychological consultation with the Appellant. A neuropsychological consultation is an in-depth neurological evaluation of a patient's cognitive and executive brain functioning in relationship to a physical or organic cause. The Appellant's test performance demonstrated deficits from perceptual impairments, short-term memory loss, perseveration, reasoning, and other cognitive difficulties. Test results were consistent with Alzheimer's type dementia or temporal lobe involvement. (Exhibit 1: [REDACTED] Records)

16. On [REDACTED] 2012, the son petitioned the Circuit Court of [REDACTED], Florida for an ex-parte order requiring an involuntary examination of the Appellant, which the court granted. The petition states the Appellant has presented behaviors which could cause harm to herself such as, clutching her chest and difficulty breathing when asked to dress for a doctor's appointment, banging her head on furniture, falling to the floor, and threatening to kill herself. The petition states the Appellant refuses prescribed medication, refuses to seek medical attention, and refuses care from family members, doctors and friends. (Exhibit 10: Ex Parte Order and Son's Testimony)
17. Mid-2012, the Appellant moved back to Connecticut after refusing to remain in Florida with her son. The Appellant moved in with a niece in Connecticut because renters remained in the home property. The arrangement did not work out and the Appellant became homeless. (Son's Testimony)
18. On [REDACTED] 2012, Protective Services for the Elderly ("PSE") met with the Appellant after receiving a report of possible elderly abuse from staff at a [REDACTED] where the Appellant temporarily resided. (Exhibit 12: PSE Notes)
19. On [REDACTED] 2012, the Appellant moved to the home property after renters moved out. (Exhibit 12: PSE Notes and Son's Testimony)
20. On [REDACTED] [REDACTED] 2012, [REDACTED] [REDACTED] [REDACTED] ("POA") and [REDACTED] [REDACTED] Severally, received power of attorney on behalf of the Appellant as signed by [REDACTED] (the "Attorney"), Attorney at Law. (Exhibit B: Court of Probate)
21. The POA is the ex-wife of the Appellant's nephew. (Son's Testimony)
22. On [REDACTED] 2012, the Appellant revoked any prior wills and created a new will leaving her estate, both real and personal to the POA. The Appellant made no provision for her three children in the revised will as signed by the Appellant and the Attorney. The will remains at the POA's home address. (Exhibit D: Rebuttal Packet)
23. The son was not aware of the will signed in 2012 by the Appellant leaving all real and personal property to the POA. (Son's Testimony)
24. The son's testimony is credible. (Hearing Record)
25. On [REDACTED] 2013, PSE received a report of possible elderly abuse from First Niagara Bank ("bank"). The bank reported the Appellant appeared at

the bank with the POA, naming her as the new POA. The bank reported a \$10,000.00 withdrawal in [REDACTED] to PSE. (Exhibit 12: PSE Notes)

26. On [REDACTED] 2013, the Appellant withdrew \$25,000.00 from her checking account at the bank. (Exhibit F: Transfer of Assets and Exhibit 11: DSS Records)
27. On [REDACTED] 2014, the Appellant sold the home property for \$225,000.00. (Exhibit: D: Rebuttal Packet and Exhibit 11: DSS Records Packet)
28. On [REDACTED] 2014, the Appellant wrote check # [REDACTED] from her checking account to Cash for \$10,000.00. (Exhibit 11: DSS Records Packet and Exhibit D: Rebuttal Packet)
29. On [REDACTED] 2014, the POA cashed check # [REDACTED] for \$10,000.00 at Webster Bank. (Exhibit 11: DSS Records Packet and Exhibit D: Rebuttal Packet)
30. The Appellant's bank statement cycle dates [REDACTED] [REDACTED] 2014 and [REDACTED] 2014 lists the following ATM withdrawals:

Date	Amount	Date	Amount	Date	Amount
[REDACTED]/14	\$600.00	[REDACTED]/14	\$800.00	[REDACTED]/14	\$800.00
[REDACTED]/14	\$600.00	[REDACTED]/14	\$800.00	[REDACTED]/14	\$800.00
[REDACTED]/14	\$600.00	[REDACTED]9/14	\$800.00	[REDACTED]/14	\$800.00
[REDACTED]/14	\$600.00	[REDACTED]/14	\$800.00	[REDACTED]/14	\$800.00
[REDACTED]/14	\$600.00	[REDACTED]/14	\$800.00	[REDACTED]/14	\$800.00
[REDACTED]/14	\$800.00	[REDACTED]/14	\$800.00	[REDACTED]/14	\$800.00
[REDACTED]/14	\$800.00	[REDACTED]/14	\$800.00		
[REDACTED]/14	\$800.00	[REDACTED]14	\$800.00	Total	\$16,600.00

(Exhibit 11: DSS Records Packet)

31. On [REDACTED] 2014, the Appellant was inpatient in a nursing facility. Exact admission date not known at time of the administrative hearing. The Appellant received short-term rehabilitation services while inpatient at nursing facility after a fall resulted in a fracture. The Appellant's diagnosis includes diminished cognition, deficits with executive function, visual perception, attention and orientation. The nursing facility notes safety concerns and risk of falling due to unsteady gait. (Exhibit 4: Rehabilitation Progress Notes)
32. On [REDACTED] 2014, bank records confirm a \$150,000.00 withdrawal from the Appellant's account at the bank. The POA received this money. (Exhibit 11: DSS Records Packet and Exhibit D: Rebuttal Packet)

33. On [REDACTED] 2014, the Appellant transferred \$5,000.00 to the POA. (Exhibit D: Rebuttal Packet and Exhibit G: Transfer of Asset [REDACTED]/16)
34. On [REDACTED] 2014, the nursing facility discharged the Appellant, at the Appellant's request, and recommended nursing services, home health aide, physical therapy, occupational therapy, and twenty-four hour care. (Exhibit 4: Rehabilitation Progress Notes)
35. [REDACTED] 2014, the physical therapist, VNA Healthcare, completed a home visit with Appellant. VNA observations included dressed in soiled clothes, unstable gait holding walls and furniture, unable to shower due to lack of durable medical equipment since discharge from nursing facility, confusion, anxiousness, and resistant to change. (Exhibit 5: Treatment Plan)
36. On [REDACTED] 2015, PSE received a report of possible elderly abuse from Connecticut Community Care, Inc. The report states the Appellant's short-term memory is horrible, she had limited food, and she had no knowledge of the sale of her home property. The report cites undiagnosed dementia. (Exhibit 12: PSE Notes)
37. On [REDACTED] 2015 [REDACTED] (the "nursing home"), a skilled nursing facility, admitted the Appellant to their facility. (Hearing Record)
38. The Appellant has a diagnosis of severe dementia. (Hearing Record)
39. Dementia is a cognitive disorder marked by memory disorders, personality changes, and impaired reasoning. Dementia affects a person's ability to complete activities of daily living and impairs executive functioning such as difficulty to communicate or lack of consequences for actions or inability to make personal and financial decision. Symptoms of dementia include confusion, forgetfulness, depression, impaired judgment, and short term and long-term memory loss. The progression of dementia varies in individuals. (Doctor's Testimony)
40. On [REDACTED] 2015, the Department received an online application for Long Term Care ("LTC") Medicaid from [REDACTED] on behalf of the Appellant. (Exhibit A: Online Application)
41. On [REDACTED] 2016, Probate Court of [REDACTED] appointed the POA as Conservator of Estate on behalf of the Appellant. (Exhibit B: Court of Probate)
42. The Department determined the Appellant transferred \$190,000.00 between [REDACTED] 2013 and [REDACTED] 2014 for the purpose of

becoming eligible for LTC Medicaid. (Exhibit E: Notice of Approval for LTC Medicaid and Exhibit F: Notice of Approval for LTC Medicaid)

43. The Department determined the Appellant asset eligible for Medicaid effective [REDACTED] 2015 without eligibility for room and board under the LTC Medicaid program due to the imposition of a \$190,000.00 transfer of asset penalty starting [REDACTED] 2015 and ending on [REDACTED] 2017. (Exhibit E: Notice of Approval for LTC Medicaid and Exhibit F: Notice of Approval for LTC Medicaid)
44. On [REDACTED] 2016, the Department issued a W495A Transfer of Assets Preliminary Decision Notice to the Appellant regarding the transfer of assets. The Department lists the following transfer of assets: [REDACTED] 2014 \$150,000.00 and [REDACTED] 2014 \$5,000.00. The notice stated you transferred assets totaling \$155,000.00 that affect eligibility and you have not given us proof that the transfer was not made for the purpose of qualifying for LTC Medicaid. The Department proposes to impose a penalty period beginning [REDACTED] 2015 ending [REDACTED] 2016. A response is due by [REDACTED] 2016. (Exhibit H: Transfer of Assets)
45. On [REDACTED] 2016, the nursing home on behalf of the Appellant submitted medical documentation to the Department attesting to diminished mental capacity and inability to handle her affairs. (Exhibit 14: Email Exchanges)
46. On [REDACTED] 2016, the Department received a copy of the ex-parte order. Refer to Finding Of Facts #16. (Exhibit 14: Email Exchanges)
47. On [REDACTED] 2016, the nursing home, on behalf of the Appellant, requested the Department waive any transfer of asset penalty due to the Appellant's mental status at the time of the transfer. The nursing home writes the Appellant is not capable of understanding the magnitude of the decision to transfer all of her money to her [REDACTED]. The nursing home submitted medical documentation along with their request. (Exhibit 14: Email Exchanges)
48. On [REDACTED] 2016, the Department issued a W495A Transfer of Assets Preliminary Decision Notice to the Appellant and POA regarding the transfer of assets. The Department lists the following transfer of assets: [REDACTED] 2013 \$25,000.00, [REDACTED] 2014 \$10,000.00, [REDACTED] 2014 \$150,000.00, and [REDACTED] 2014 \$5,000.00. The notice stated you transferred assets totaling \$190,000.00 that affect eligibility and you have not given us proof that the transfer was not made for the purpose of qualifying for LTC Medicaid. The Department proposed to impose a penalty period beginning [REDACTED] 2015 ending [REDACTED] 2017. A response is due by [REDACTED] 2016. (Exhibit G: Transfer of Assets)

49. The Department received a typed letter with the Appellant's signature. The letter stated the Appellant borrowed money from the POA over the years totaling \$150,000 and money will be repaid upon the sale of the home property or upon the Appellant's death, the home will go to the POA as per her will. The letter lists a date of 2010. (Exhibit D: Rebuttal Packet)
50. The Department received a letter from the POA. The letter states she loaned money to the Appellant over the years to meet the Appellant's household expenses such as house taxes. The POA accepted payment of \$150,000.00 and \$10,000.00 from the Appellant as payment for monies borrowed. (Exhibit D: Rebuttal Packet)
51. The POA submitted a handwritten ledger listing cash amounts of \$1,000.00 to \$5,000.00 paid to the Appellant for the period [REDACTED] 1987 through [REDACTED] 2013. (Exhibit D: Rebuttal Packet)
52. The POA submitted a rebuttal response to the Department. The POA writes, "gave proof for money I have borrowed" on the W495A Transfer of Assets form. For the [REDACTED] 2013 \$25,000.00 transfer, the POA writes, "Do not know what [REDACTED] did with this money, she did do repairs to the house." For [REDACTED] 2014 \$10,000.00 transfer and [REDACTED] 2014 transfer, the POA writes, "money she had borrowed from [REDACTED], this money was borrowed over the years, proof was sent to you." For the [REDACTED] 2014 \$5,000.00 transfer, the POA writes, "unknown to me." (Exhibit G: Transfer of Assets)
53. On [REDACTED] 2016, the nursing home, on behalf of the Appellant, submitted additional medical documentation to the Department. (Exhibit 14: Email Exchanges)
54. On [REDACTED] 2016, the nursing home, on behalf of the Appellant, submitted additional medical documentation to the Department. (Exhibit 14: Email Exchanges)
55. On [REDACTED] 2016, the nursing home requested an extension of time to submit additional medical records from the VNA to substantiate a claim of undue influence. The nursing home requested the Department delay their decision regarding the transfer of asset penalty until additional medical records are available from the VNA Healthcare. (Exhibit 14: Email Exchanges)
56. On [REDACTED] 2016, the Department issued a notice, Form W495C Transfer of Assets Final Decision Notice and Notice of Approval to the Appellant regarding the transfer of assets. The Department lists the

- following transfers: ██████████ 2013 \$25,000.00, ██████████ 2014 \$10,000.00, ██████████ 2014 \$150,000.00, and ██████████ 2014 \$5,000.00. The notices stated there was an improper transfer of assets totaling \$190,000.00 between ██████████ 2013 and ██████████ 2014 for the purpose of qualifying for Medicaid. The Department will impose a penalty period of 14.61 months, ██████████ 2015 through ██████████ 2017 in which the Appellant will remain ineligible for Long Term Care benefits under Medicaid during the penalty period. Medicaid will begin paying for nursing home costs beginning ██████████ 2017. (Exhibit F: Notice of Approval)
57. On ██████████ 2016, the nursing home issued a notice to the POA. The notice states that nursing home intends to discontinue long-term care services provided to the Appellant due to non-payment for such services provided as a resident of the nursing home as the direct result from the Medicaid penalty imposed by the Department. (Exhibit 8: Doctor's Letter and Attachments)
58. The nursing home contacted eight nursing facilities requesting placement for the Appellant at their facility without success. Each facility rejected placement due to transfer of penalty asset imposed by the Department. (Exhibit 8: Doctor's Letter and Attachments)
59. Loss of nursing home services for the Appellant could place the Appellant's life in danger. The Appellant requires assistance with eating, bathing, dressing, toileting, continence, and medication management. The Appellant's safety is at risk. (Exhibit 8: Doctor's Letter and Attachments)
60. On ██████████ 2016, the Department issued a notice, Form W495C Transfer of Assets Final Decision Notice and Revised Notice of Approval to the Appellant and POA regarding the transfer of assets. The Department lists the following transfers: ██████████ 2013 \$25,000.00, ██████████ 2014 \$10,000.00, ██████████ 2014 \$150,000.00, and ██████████ 2014 \$5,000.00. The notices stated there was an improper transfer of assets totaling \$190,000.00 between ██████████ 2013 and ██████████ 2014 for the purpose of qualifying for Medicaid. The Department will impose a penalty period of 14.61 months, ██████████ 2015 through ██████████ 2017 in which the Appellant will remain ineligible for Long Term Care benefits under Medicaid during the penalty period. Medicaid will begin paying for nursing home costs beginning ██████████ 2017. (Exhibit E: Notice of Approval)
61. On ██████████ 2016, the nursing home on behalf of the Appellant submitted additional medical documents from VNA Healthcare for review. (Exhibit 14: Email Exchanges)

62. On [REDACTED] 2016, the nursing home contacted the Department requesting a status update on their request for a review of transfer of assets due to undue influence. (Exhibit 14: Email Exchanges)
63. On [REDACTED] 2016, [REDACTED] Esquire ("Conservator") received her appointment as Conservator of the Estate on behalf of the Appellant.
64. On [REDACTED] [REDACTED] 2016, the Conservator on behalf of the Appellant requested an administrative hearing to contest the Department's decision to impose a transfer of asset penalty under the Medicaid Long Term Care Program. The hearing request lists reason for transfer other than qualifying: undue influence, incompetence, exploitation, undue hardship, representative not acting in the best interest, transfer at fair market value and loan. (Hearing Record)

CONCLUSIONS OF LAW

1. Section 17b-2(6) of the Connecticut General Statutes 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 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 household 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 and section 17b-292, the medical assistance program shall provide coverage to persons under the age of nineteen with household income up to one hundred ninety-six per cent of the federal poverty level without an asset limit and to persons under the age of nineteen, who qualify for coverage under Section 1931 of the Social Security Act, with household income not exceeding one hundred ninety-six per cent of the federal poverty level without an asset limit, and their parents and needy caretaker relatives, who qualify for coverage under Section 1931 of the Social Security Act, with household income not exceeding one hundred fifty 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. For coverage dates on or after January 1, 2014, the department shall use the modified adjusted gross income financial eligibility rules set forth in Section 1902(e)(14) of the Social Security Act and the implementing regulations to determine eligibility for HUSKY A, HUSKY B and HUSKY D applicants, as defined in section 17b-290. 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 their potential eligibility for one of the other insurance affordability programs as defined in 42 CFR 435.4. [Conn. Gen. Stats. 17b-261(a)]

4. 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)]
5. Statute provides that for purposes of this subsection, an "institutionalized individual" means an individual who has applied for or is receiving (A) services from a long-term care facility, (B) services from a medical institution that are equivalent to those services provided in a long-term care facility, or (C) home and community-based services under a Medicaid waiver. [Conn. Gen. Stats. § 17b-261a(d)(1)]
6. Uniform Policy Manual ("UPM") § 3029 provides that 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 February 8, 2006. The material contained in this chapter pertains only to the Medicaid program. Policy and procedures concerning transfers of assets in the cash and Food Stamp programs are contained elsewhere in this section, as are the Medicaid policy and procedures that pertain to transfers occurring prior to February 8, 2006.
7. UPM § 3029.05(B)(1) provides that the policy contained in this chapter pertains to institutionalized individuals and to their spouses.

UPM § 3029.05(B)(2)(a) provides that an individual is considered institutionalized if he or she is receiving: LTCF services.
8. The Department correctly determined the Appellant as an institutionalized individual.
9. UPM § 3029.05(A) provides that there is a period established, subject to the conditions described in this chapter, during which institutionalized individual 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.
10. 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.
11. UPM § 3029.05(D)(1) provides that 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 for authorized by law, to have been made by the individual or spouse.
12. UPM § 3029.35(A)(1) provides that prior to denial or discontinuance of LTC 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 improper.

UPM § 3029.35(A)(2) provides that 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 ten days.
13. UPM § 3029.35(B)(1) provides that an institutionalized individual, or his or her spouse, who is notified of the Department's determination that an asset transfer was improper, has ten days from the date of the notice to rebut this determination that an asset transfer was improper, has ten 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)(2) provides a 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 evidence.
14. On ██████████ 2016, the Department correctly issued the Appellant a Preliminary Decision Notice of Transfer of Assets. The notice stated the Appellant transferred \$190,000.00 to the POA in order to be eligible for assistance. The Department allowed at least ten days for rebuttal.
15. UPM § 3029.35(C)(2) provides that if the individual rebuts the Department's preliminary decision to impose a penalty period, the Department has ten 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.

16. UPM § 3029.35(C)(3) provides that the notification describe in 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 services;
- b. The Department's preliminary decision is upheld, and a penalty period is being established, during which Medicaid will not pay for LTC services.

17. UPM § 3029.35(C)(4) provides that 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.

18. Statute provides that the Commissioner of Social Services may waive the imposition of a penalty period when the transferor (1) in accordance with the provisions of section 3025.25 of the department's Uniform Policy Manual, suffers from dementia at the time of application for medical assistance and cannot explain transfers that would otherwise result in the imposition of a penalty period; or (2) suffered from dementia at the time of the transfer; or (3) was exploited into making such a transfer due to dementia. Waiver of the imposition of a penalty period does not prohibit the establishment of a debt in accordance with subsection (b) of this section. [Conn. Gen. Stats. § 17b-261a(c)]

19. UPM § 3000.01 defines undue influence as causing another party through misrepresentation, deceit, fraud, or any other improper means to do something that would otherwise not be done.

20. UPM § 3029.15 provides that an institutionalized individual or the individual's spouse is considered to have transferred an asset exclusively for a purpose other than qualifying for assistance under circumstances which include, but are not limited to the following:

A. Undue Influence

1. If the transferor is competent at the time the Department is dealing with the transfer, the individual must provide detailed information about the circumstances to the Department's satisfaction.
2. If the transferor has become incompetent since the transfer and is incompetent at the time the Department is dealing with the transfer, the transferor's conservator must provide the information.
3. The Department may pursue a legal action against the transferee if the Department determines that undue influence caused the transfer to occur.

21. The Appellant was incompetent at the time of the transfers and met the criteria of undue influence by submitting medical documents substantiating her claims of dementia at the time of the transfers.
22. The Department incorrectly determined the Appellant transferred \$190,000.00 for the purpose of qualifying for Medicaid under the Long Term Care Program.
23. The Department incorrectly imposed a transfer of asset penalty on the Appellant's Medicaid under the Long Term Care Program beginning [REDACTED] 2015 ending [REDACTED] 2017.

DECISION

The Appellant's appeal is granted.

ORDER

1. The Department must remove the transfer of asset penalty under the Medicaid Long Term Care program imposed for the period [REDACTED] 2015 ending [REDACTED] 2017.
2. Compliance is due [REDACTED] 2017.

Lisa A. Nyren

Lisa A. Nyren
Fair Hearing Officer

CC: Musa Mohamud, Social Services Operations Manager
Judy Williams, Social Services Operations Manager
Tricia Morelli, Social Services Program Manager
Pamela Cordin-Riddick, Eligibility Services Worker

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.