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

[redacted] 2017
Signature confirmation

Client: [redacted]
Request: 803508

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2016, the Department of Social Services (the "Department") issued [redacted] (the "Appellant") a *Transfer of Assets/Final Decision Notice* 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. 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, the OLCRAH issued a notice scheduling an administrative hearing for [redacted], 2017. The Appellant requested multiple postponements of the administrative hearing; the OLCRAH granted the requests.

On [redacted], 2017, 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 attended the hearing:

[redacted], Appellant's representative (husband)
[redacted] Appellant's witness
[redacted], Appellant's counsel
Emily Loveland, Department's representative
Eva Tar, Hearing Officer

The hearing record closed on [redacted], 2017.

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 a total of $20,131.59 in transfers. The Department is assessing a penalty period of ineligibility to run [redacted] 2016 through [redacted] 2016.

FINDINGS OF FACT

1. The Appellant and her representative are married. (Appellant's representative's testimony)

2. The Appellant is a patient at Meriden Center, a skilled nursing facility. (Hearing record)

3. The Appellant's date of institutionalization is [redacted], 2015. (Department's Exhibit L)

4. On [redacted] 2016, the Appellant filed an application with the Department for Medicaid coverage of her long-term care services. (Department's Exhibit N)

5. The Appellant and her husband's counted assets include, but are not limited to, the following three financial instruments: American Eagle credit union ([redacted]); American Eagle credit union ([redacted]); and United Technologies equity fund. (Department's Exhibit H)(Department's Exhibit I)(Department's Exhibit J)

6. On [redacted], 2015, $5,150.00 was withdrawn from the American Eagle credit union (-[redacted]). (Department's Exhibit I)

7. On [redacted] 2016, $2,981.59 was transferred from American Eagle credit union (-[redacted]) to an account ending in ([redacted]). (Department's Exhibit J)

8. In the period from [redacted], 2013 through [redacted] 2015, $12,500.00 was removed from the United Technologies equity fund. (Department's Exhibit H)

9. On [redacted], 2016, the Department notified the Appellant in writing by means of a *Verification We Need* form that it considered three transactions—$5,150.00 from American Eagle ([redacted]) on [redacted]/15; $2,981.59 into account ([redacted]) on [redacted]/16; and $12,000.00 from a 401K during the period of [redacted]/13 through [redacted]/15—to require clarification. (Department's Exhibit N)

10. The Department's [redacted], 2016 *Verification We Need* form gave a deadline of [redacted] 2016 for an explanation of the three identified transactions and the disposition of the monies from those transactions. (Department's Exhibit N)

11. In response to the Department's [redacted] 2016 *Verification We Need* form, the Appellant through counsel notified the Department in writing that she could not verify where the disposition of the $5,150.00 withdrawal, the $2,981.59 transfer, and the $12,000.00 withdrawn. The response stated that the transactions were for fair market value or gifts. (Department's Exhibit G)(Hearing record)

12. Twenty thousand, one hundred and thirty-one dollars and fifty nine cents ($20,131.59) is the sum of $5,150.00, $2,981.59, and $12,000.00.

13. On [redacted], 2016, the Department issued a *Transfer of Assets/Preliminary Decision Notice* to the Appellant, stating that the Department had reviewed the information the Appellant had given it regarding the transfer of $20,131.59 on "several dates" and had made the initial decision that she had made the transfer in order to be eligible for assistance. (Department's Exhibit D)(Appellant's Exhibit 2)

14. The Department's [redacted] 2016 *Transfer of Assets/Preliminary Decision Notice* stated that if the Appellant did not respond to the agency by [redacted] 2016, the Department would act upon its decision about the transfer; the notice included contact information. (Department's Exhibit D)(Appellant's Exhibit 2)

15. With the [redacted] 2016 *Transfer of Assets/Preliminary Decision Notice*, the Department provided the following additional note: "If you or your spouse decides to have a hearing, the requester of the hearing has the right to bring to the hearing witnesses and documentary evidence to support any claims. Either of you may represent yourself or may be represented at the hearing by legal counsel or by another spokesperson. The person who requests the hearing must attend the hearing." (Appellant's Exhibit 2)

16. As of [redacted] 2016, the Appellant had not responded to the Department's issuance of the *Transfer of Assets/Preliminary Decision Notice.* (Department's Exhibit L)

17. On [redacted] 2016, the Department issued a *Transfer of Assets/Notice of Response to Rebuttal/Hardship Claim* to the Appellant, stating that if the Appellant became eligible for Medicaid, the Department would set up a penalty period of ineligibility that would last for 1.18 months. (Department's Exhibit E)(Appellant's Exhibit E)

18. The [redacted], 2016 *Transfer of Assets/Notice of Response to Rebuttal/Hardship Claim* noted that if the Appellant had any additional questions, she could contact the worker issuing the notice; the notice contained that worker's contact information. (Department's Exhibit E)(Appellant's Exhibit E)

19. The Appellant did not contact the Department for clarification of the [redacted], 2016 *Transfer of Assets/Preliminary Decision Notice* or the [redacted] 2016 *Transfer of Assets/Notice of Response to Rebuttal/Hardship Claim.*

20. On [redacted] 2016, the Department issued a *Transfer of Assets/Final Decision Notice* to the Appellant, stating that although the Appellant was eligible for certain Medicaid benefits beginning [redacted] 2016, the Department was setting up a penalty period beginning [redacted] 2016 and ending [redacted], 2016, as the Department had decided that she had transferred $20,131.59 to become eligible for Medicaid. (Department's Exhibit F)(Appellant's Exhibit 5)

21. The Department's [redacted] 2016 *Transfer of Assets/Final Decision Notice* noted that should the Appellant disagree with the decision, she may ask for a fair hearing. (Department's Exhibit F)(Appellant's Exhibit 5)

22. On [redacted] 2016, the Department determined that the Appellant and her husband's assets had been reduced to within the Medicaid program limits effective [redacted] 2016. (Department's Exhibit N)

23. 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] 2016, but that Medicaid would begin paying for her long-term care services effective [redacted] 2016. (Department's Exhibit K)

24. Neither the Appellant's representative nor the Appellant's witness testified at the [redacted] 2017 administrative hearing as to the reasons for the transfers totaling $20,131.59 or for what purposes the monies were used.

25. The Appellant submitted no documentary evidence for the hearing record as to the reasons for the transfers totaling $20,131.59 or for what the monies were used.

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-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.

3. 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.

4. 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. Uniform Policy Manual ("UPM") § 3029.

5. There is a period established, subject to the conditions described in this chapter, during which institutionalized individuals are not eligible for certain Medicaid services when they or their spouses dispose of assets for less than fair market value on or after the look-back

date specified in 3029.05 C. This period is called the penalty period, or period of ineligibility. UPM § 3029.05 (A).

6. The policy contained in this chapter pertains to institutionalized individuals and to their spouses. UPM § 3029.05 (B)(1).

7. An individual is considered institutionalized if he or she is receiving: a. LTCF [long-term care facility] 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)(2).

8. The Appellant is institutionalized.

9. 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).

10. The Appellant's look-back period for transfers of assets ran from 60 months prior to and up to [redacted] 2016.

11. Section 17b-261 (a) of the Connecticut General Statutes provides in part 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.

12. 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).

13. The $5,150.00 withdrawal from American Eagle ( ) on June 8, 2015 was a transfer of assets occurring within the Appellant's look-back period.

14. The $2,981.59 transfer from American Eagle credit union ( ) on , 2016 to another individual's account, ending in ( ) was a transfer of assets occurring within the Appellant's look-back period.

15. The $12,000.00 removal from the United Technologies equity fund in the period from , 2013 through 2015 was a transfer of assets occurring within the Appellant's look-back period.

16. 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).

17. 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).

18. The Appellant failed to prove with clear and convincing evidence that $5,150.00 transfer on , 2015 was made exclusively for a purpose other than qualifying for assistance.

19. The Appellant failed to prove with clear and convincing evidence that $2,981.59 transfer on , 2016 was made exclusively for a purpose other than qualifying for assistance.

20. The Appellant failed to prove with clear and convincing evidence that a $12,000.00 removal from the United Technologies equity fund in the period from 2013 through 2015 was made exclusively for a purpose other than qualifying for assistance.

21. 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 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).

22. 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).

23. 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).

24. 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).

25. 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.

26. 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).

27. 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).

28. The Appellant did not provide clear and convincing evidence that a total of $20,131.59 in transfers made during the look-back period had been made exclusively for a purpose other than qualifying for assistance.

29. The Appellant's total of $20,131.59 in transfers during the look-back period subjects the Appellant to a transfer penalty of ineligibility for the Medicaid program.

30. 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 a total of $20,131.59 in transfers during the look-back period.

31. 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).

32. 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).

33. 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).

34. 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.

35. 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).

36. 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).

37. Effective [redacted] 2016, the average monthly cost of care for LTCF services in Connecticut equaled $12,388.00.

38. 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).

39. 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).

40. The Appellant's penalty period of ineligibility of Medicaid payment for long-term care service equals one month plus 18 days. [($20,131.59 divided by $12,388.00) equals 1.62 months. [redacted] has 30 days. (30 days multiplied by 1.62) equals 18 days.]

41. 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, or one month plus 18 days.

42. The Department correctly assessed a penalty period of ineligibility to run [redacted], 2016 through [redacted] 2016.

DISCUSSION

The Appellant opines that the Department was impermissibly vague on forms the agency issued to the Appellant that noted that $20,131.59 in assets had been transferred that were presumed to be for the purposes of establishing Medicaid eligibility. The Appellant argues that the appropriate remedy for the oversight is for the Department to waive the imposition

of a penalty period of ineligibility. The Appellant acknowledges that the argument is one of "process vs. substance." The Appellant's argument is unpersuasive.

The hearing officer was unable to locate a statute or regulation governing the administration of the Medicaid program that directs the Department to waive the imposition of a penalty period of ineligibility if the Department has issued a vaguely worded notice.

The statutes addressing transfers of assets with respect to the administration of the Medicaid program are unambiguous. 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.[1]

The Appellant did not provide clear and convincing evidence that $20,131.59 in transfers—or the sum of three individual transfers as identified by the Department and acknowledged by the Appellant to equal $5,150.00, $2,991.50, and $12,000.00—were for a purpose other than to potentially qualify for Medicaid. The Department's imposition of a penalty period of ineligibility for Medicaid coverage of the Appellant's long-term care services [redacted] 2016 through [redacted] 2016 is affirmed.

DECISION

The Appellant's appeal is DENIED.

Eva Tar-electronic signature
Eva Tar
Hearing Officer

Pc: Attorney [redacted]
[redacted]
Emily Loveland, DSS (LTSS)-Hartford (10)
Tyler Nardine, DSS-Middletown (50)

[1] *Emphasis added*. Conn. Gen. Stat. § 17b-261a (a).

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.