

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

██████████ 2017  
SIGNATURE CONFIRMATION

CL ID # ██████████  
Request # 809181

**NOTICE OF DECISION**

**PARTY**

██████████  
C/O ██████████  
██████████

**PROCEDURAL BACKGROUND**

On ██████████, 2017, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a notice that she had transferred \$92,500.00 to become eligible for Medicaid, and the Department was imposing a penalty period of ineligibility for Medicaid payment of Long Term Care Services effective ██████████ 2016 through ██████████, 2017.

On ██████████, 2017, ██████████ the Appellant's attorney requested an administrative hearing to contest the Department's penalty determination.

On ██████████ 2017, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") scheduled an administrative hearing for ██████████, 2017.

The Appellant's attorney requested a reschedule of the administrative hearing.

On ██████████ 2017, the OLCRAH rescheduled the administrative hearing for ██████████, 2017.

On ██████████, 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 were present at the hearing:

██████████, Appellant's Power of Attorney, ("POA") and son

[REDACTED], POA's spouse and Appellant's Witness  
 [REDACTED] Appellant's Attorney  
 Maren Walsh, Department's Representative via telephone  
 Lorraine Crow, Department's Representative, Observer  
 Carla Hardy, Hearing Officer

### STATEMENT OF THE ISSUE

The issue is whether the Department correctly imposed a penalty period beginning on [REDACTED], 2016 and ending on [REDACTED], 2017, due to a \$92,500.00 transfer of asset penalty for Long-Term Care Medicaid.

### FINDINGS OF FACT

1. The Appellant is 86 years old (DOB [REDACTED]/31). (Exhibit M: Long-Term Care Application, [REDACTED] 16)
2. [REDACTED] is the Appellant's son and Power of Attorney ("POA"). (Hearing Record)
3. The Appellant's son, [REDACTED] has been a resident of [REDACTED] Group home since 2007. [REDACTED] is disabled. (Exhibit 1: Proof of address letters, Appellant's Exhibit 2: Associated Neurologists, P.C. progress notes, [REDACTED] 12))
4. In [REDACTED] 2010, the Appellant's spouse became institutionalized. (Attorney's Brief)
5. On [REDACTED] 2010, the Appellant moved from her home located at [REDACTED] in [REDACTED] to her son's home in [REDACTED]. (Testimony)
6. The Appellant retained ownership of the [REDACTED] home until it was sold in [REDACTED] 2017. (Hearing Record)
7. [REDACTED] remained unoccupied from [REDACTED], 2010 until the Appellant sold it on [REDACTED] 2017 (Hearing Record)
8. The Appellant receives a gross monthly income from the Social Security Administration of \$1,290.00 and two pensions of \$264.83 and 386.18 per month. (Exhibit M)
9. From [REDACTED] 2010 through [REDACTED] 2012, the Appellant received \$1,103.48 per month in diverted income from her spouse who resided in skilled nursing home. (Exhibit P: Department's institution screen).



10. From [REDACTED] 2013 through [REDACTED] 2013, the Appellant received \$1,037.08 per month in diverted income from her spouse who resided in a skilled nursing home. (Exhibit P)
11. The Appellant was widowed in [REDACTED] 2013. (Hearing Record)
12. Just prior to [REDACTED] 2014, the Appellant submitted a change of address form with the United States Postal Service. She reported her address changed from [REDACTED] to [REDACTED]. (Appellant's Exhibit 18: USPS confirmation letter)
13. On [REDACTED] 2015, the Appellant was diagnosed with mild, mixed dementia. (Appellant's Exhibit 12: Associated Neurologists, P.C. Neuropsychological Re-Examination. [REDACTED] 15)
14. The Appellant had recently started attending Almost Home Adult Daycare two days per week in [REDACTED] 2015. (Exhibit 17: Home Instead Senior Care Assessment and Care Plan)
15. On [REDACTED], 2016 [REDACTED] transferred \$10,000.00 from the Appellant's Wells Fargo checking account. (Exhibit E pg 6: Copy of Wells Fargo check)
16. On [REDACTED] 2016, the Appellant was admitted to Filosa Conv., Inc. ("the facility") for what was supposed to be a short term stay of less than 30 days. (Exhibit H: Filosa Conv., Inc. Admission Notice)
17. On [REDACTED] 2017, the Appellant sold her home. She realized \$83,502.92 from the sale. (Exhibit B: Seller Closing Statement)
18. On [REDACTED], 2017, [REDACTED] transferred \$82,500.00 from the Appellant's Wells Fargo checking account. (Exhibit E pg 2: Wells Fargo checking statement)
19. On [REDACTED], 2017, the POA deposited \$6,338.00 into the Appellant's Wells Fargo checking account. (Exhibit E pg2)
20. On [REDACTED] 2017, the POA purchased a Revocable Burial Plot Contract for the Appellant in the amount of \$4,438.00. (Exhibit O: [REDACTED] Funeral Service burial plot contract)
21. On [REDACTED], 2017, the POA purchased an Irrevocable Funeral Service Contract for [REDACTED] in the amount of \$7,538.00. (Exhibit N: [REDACTED] Funeral Service funeral contract)

#### The Agreement

22. On [REDACTED] 2010, the Appellant, her son and his spouse signed a Contract for Personal Care Services. The POA and his spouse, [REDACTED] are listed as the Appellant's providers. (Exhibit C: Contract for Personal Care Services, [REDACTED]/10, Testimony)
23. The Contract for Personal Care Services provides in part that the Appellant agreed to pay the providers \$22.00 per hour for services provided. The providers agreed to furnish the Appellant with the following services: meal preparation; laundry; health monitoring; care providers; hospitalization; entertainment; purchases; travel; home maintenance; visits by others and communication services such as writing letters. (Exhibit C)
24. The Contract for Personal Care Services provides in part that the Appellant will pay the providers \$500.00 per month for household expenses which include heat, electricity, cable and water. (Exhibit C, POA's testimony)
25. The Contract for Personal Care Services provides in part that the Appellant agrees to reimburse the providers for expenses relating to traveling to provide care or services; expenses related to providing the above services at \$1.00 per mile; payments to caregivers and medical providers; payments for prescriptions, insurance premiums, postage and legal fees. (Exhibit C)

Services provided

26. In 2010, the providers reported they provided 240 hours of service providing meals for the Appellant at a cost of \$5,280.00 (\$22.00/hr x 240hrs). (Exhibit D: Personal Care Contract Summary, pg2).
27. In 2011, the providers reported 240 hours of service providing meals for the Appellant at a cost of \$5,280.00 (\$22.00 x 240). (Exhibit D, pg2)
28. In 2012, the providers reported 240 hours of service providing meals for the Appellant at a cost of \$5,280.00 (\$22.00 x 240). (Exhibit D, pg2)
29. In 2013, the providers reported 240 hours of service providing meals for the Appellant at a cost of \$5,280.00 (\$22.00 x 240). (Exhibit D, pg2)
30. In 2014, the providers reported 249 hours of service providing meals for the Appellant at a cost of \$5,478.00 (\$22.00 x 249). (Exhibit D, pg2)
31. In 2015, the providers reported 337.50 hours of service providing meals for the Appellant at a cost of \$7,425.00 (\$22.00 x 337.50). (Exhibit D, pg2)
32. In 2016, the providers reported 117.50 hours of service providing meals for the Appellant at a cost of \$2,585.00 (\$22.00 x 117.50)

33. In 2010, the providers reported spending 4 hours and traveling 36 miles to the Appellants home at a cost of \$124.00 [(\$22.00 x 4) + \$36.00 for mileage]. (Exhibit D, pgs 3-6)
34. In 2011, the providers reported spending 62 hours and traveling 342 miles to the Appellant's home at a cost of \$1,706.00 [(\$22.00 x 62) + \$342.00 for mileage]. (Exhibit D, pgs 3-6)
35. In 2012, the providers reported spending 64 hours and traveling 342 miles to the Appellant's home at a cost of \$1,750.00 [(\$22.00 x 64) + \$342.00 for mileage] (Exhibit D, pgs 3-6)
36. In 2013, the providers reported spending 37 hours and traveling 306 miles to the Appellant's home at a cost of \$1,120.00 [(\$22.00 x 37) + \$306.00 for mileage] (Exhibit D, pgs 3-6)
37. In 2014, the providers reported spending 71 and traveling 486 miles to the Appellant's home at a cost of \$2,048.00 [(\$22.00 x 71) + \$486.00 for mileage] (Exhibit D, pgs 3-6)
38. In 2015, the providers reported spending 68 hours and traveling 446 miles to the Appellant's home at a cost of \$1,942.00 [(\$22.00 x 68) + \$446.00 for mileage] (Exhibit D, pgs 3-6)
39. In 2016, the providers reported spending 84 hours and traveling 354 miles to the Appellant's home at a cost of \$2,202.00 [(\$22.00 x 84) + \$354.00 for mileage] (Exhibit D, pgs 3-6)
40. In 2010, the providers reported they charged the Appellant \$500.00 for household expenses (\$500.00/mo x 1 mo). (Exhibit D, pg10-11)
41. In 2011, the providers reported they charged the Appellant \$6,000.00 for household expenses (\$500.00/mo x 12 mo). (Exhibit D, pg10-11)
42. In 2012, the providers reported they charged the Appellant \$6,000.00 for household expenses (\$500.00/mo x 12 mo). (Exhibit D, pg10-11)
43. In 2013, the providers reported they charged the Appellant \$6,000.00 for household expenses (\$500.00/mo x 12 mo). (Exhibit D, pg10-11)
44. In 2014, the providers reported they charged the Appellant \$6,000.00 for household expenses (\$500.00/mo x 12 mo). (Exhibit D, pg10-11)



45. In 2015, the providers reported they charged the Appellant \$6,000.00 for household expenses (\$500.00/mo x 12 mo). (Exhibit D, pg10-11)
46. In 2016, the providers reported they charged the Appellant \$1,500.00 for household expenses (\$500.00/mo x 3 mo). (Exhibit D, pg10-11)
47. In 2010, the providers reported paying \$30.00 for the Appellant's cell phone bill at \$30.00 per month (\$30.00 x 1 mo). (Exhibit D, pg 26-27)
48. In 2011, the providers reported paying \$360.00 for the Appellant's cell phone bill at \$30.00 per month (\$30.00 x 12). (Exhibit D, pg 26-27)
49. In 2012, the providers reported paying \$360.00 for the Appellant's cell phone bill at \$30.00 per month (\$30.00 x 12). (Exhibit D, pg 26-27)
50. In 2013, the providers reported paying \$360.00 for the Appellant's cell phone bill at \$30.00 per month (\$30.00 x 12). (Exhibit D, pg 26-27)
51. In 2014, the providers reported paying \$360.00 for the Appellant's cell phone bill at \$30.00 per month (\$30.00 x 12). (Exhibit D, pg 26-27)
52. In 2015, the providers reported paying \$360.00 for the Appellant's cell phone bill at \$30.00 per month (\$30.00 x 12). (Exhibit D, pg 26-27)
53. In 2016, the providers reported paying \$210.00 for the Appellant's cell phone bill at \$30.00 per month (\$30.00 x 7). (Exhibit D, pg 26-27)
54. In 2010, the providers reported spending 7 hours and traveling 78 miles for visits with [REDACTED] at a cost of \$232.00 (\$22 x 7) + \$78.00 mileage. (Exhibit D, pgs 12-13)
55. In 2011, the providers reported spending 11 hours and traveling 78 miles for visits with [REDACTED] at a cost of \$320.00 (\$22 x 11) + \$78.00 mileage. (Exhibit D, pgs 12-13)
56. In 2012, the providers reported spending 13 hours and traveling 99 miles for visits with [REDACTED] at a cost of \$385.00 (\$22 x 13) + \$99.00 mileage. (Exhibit D, pgs 12-13)
57. In 2013, the providers reported spending 24 hours and traveling 207 miles for visits with [REDACTED] at a cost of \$735.00 (\$22 x 24) + \$207.00 mileage. (Exhibit D, pgs 12-13)
58. In 2014, the providers reported spending 52 hours and traveling 436 miles for visits with [REDACTED] at a cost of \$1,580.00 (\$22 x 52) + \$436.00 mileage. (Exhibit D, pgs 12-13)

59. In 2015, the providers reported spending 87 hours and traveling 742 miles for visits with [REDACTED] at a cost of \$2,656.00 ( $\$22 \times 87$ ) + \$742.00 mileage. (Exhibit D, pgs 12-13)
60. In 2016, the providers reported spending 30 hours and traveling 231 miles for visits with [REDACTED] at a cost of \$891.00 ( $\$22 \times 30$ ) + \$231.00 mileage. (Exhibit D, pgs 12-13)
61. In 2011, the providers reported spending 13 hours and traveling 150 miles shopping for the Appellant's car at a cost of \$436.00 ( $\$22.00 \times 13$ ) + \$150.00 mileage. (Exhibit D, pgs 28-29)
62. In 2013, the providers reported spending 6 hours filling out Christmas cards and paying the Appellant's bills at a cost of \$132.00 ( $\$22.00 \times 6$ ). (Exhibit D, pg 28-29)
63. In 2014, the providers reported spending 28.50 hours and traveling 29 miles for miscellaneous services that included paying bills and going to the post office at a cost of \$656.00 ( $\$22.00 \times 28.50$ ) + \$29 mileage. (Exhibit D, pgs 28-29)
64. In 2015, the providers reported spending 36 hours and traveling 153 miles for miscellaneous services that included paying bills and meeting with an attorney at a cost of \$945.00 ( $\$22.00 \times 36$ ) + \$153.00 mileage. (Exhibit D, pgs 28-29)
65. In 2016, the providers reported spending 17 hours and traveling 22 miles for miscellaneous services at a cost of \$396.00 ( $\$22.00 \times 17$ ) + \$22.00 mileage. (Exhibit D, pgs 28-29)
66. In 2013, the providers reported spending 56 hours and 605 miles providing entertainment for the Appellant at a cost of \$1,837.00 ( $\$22.00 \times 56$ ) + \$605.00 mileage. (Exhibit D, p 9)
67. In 2014, the providers reported spending 8 hours and traveling 50 miles for entertainment for the Appellant at a cost of \$226.00 ( $\$22.00 \times 8$ ) + \$50 mileage. (Exhibit D, pg 9)
68. In 2015, the providers reported spending 52 hours and traveling 454 miles entertaining the Appellant at a cost of \$1,598.00 ( $\$22.00 \times 52$ ) + 454 mileage. (Exhibit D, pg 9)
69. In 2016, the providers reported spending 17 hours and traveling 159 miles for entertaining the Appellant at a cost of \$533.00 ( $\$22.00 \times 17$ ) + \$159.00 mileage. (Exhibit D, pg 9)
70. In 2013, the providers reported spending 7.50 hours and traveling 40 miles shopping with/for the Appellant at a cost of \$205.00 ( $\$22.00 \times 7.50$ ) + \$40.00 mileage. (Exhibit D, pg 22)

71. In 2014, the providers reported spending 29.50 hours and traveling 168 miles shopping with/for the Appellant at a cost of \$817.00 ( $\$22.00 \times 7.50$ ) + \$168.00 mileage. (Exhibit D, pg 22)
72. In 2015, the providers reported spending 20.50 hours and traveling 163 miles shopping with/for the Appellant at a cost of \$614.00 ( $\$22.00 \times 20.50$ ) + \$163.00 mileage. (Exhibit D, pg 22)
73. In 2016, the providers reported spending 10.00 hours and traveling 77 miles shopping with/for the Appellant at a cost of \$297.00 ( $\$22.00 \times 7.50$ ) + \$77.00 mileage. (Exhibit D, pg 22)
74. In 2013, the providers reported spending 21.50 hours and traveling 167 miles bringing the Appellant to the doctor at a cost of \$640.00 ( $\$22.00 \times 21.50$ ) + \$167.00 mileage. (Exhibit D, pg 14-15)
75. In 2014, the providers reported spending 11.00 hours and traveling 98 miles bringing the Appellant to the doctor at a cost of \$340.00 ( $\$22.00 \times 11.00$ ) + \$98.00 mileage. (Exhibit D, pg 14-15)
76. In 2015, the providers reported spending 37.50 hours and traveling 295 miles bringing the Appellant to the doctor at a cost of \$1120.00 ( $\$22.00 \times 37.50$ ) + \$295.00 mileage. (Exhibit D, pg 14-15)
77. In 2016, the providers reported spending 8.50 hours and traveling 55 miles bringing the Appellant to the doctor at a cost of \$242.00 ( $\$22.00 \times 8.50$ ) + \$55.00 mileage. (Exhibit D, pg 14-15)
78. In 2013, the providers reported spending 35 hours and traveling 138 miles grocery shopping for the Appellant at a cost of \$908.00 ( $\$22.00 \times 35$ ) + \$138.00 mileage. (Exhibit D, pg 18-20)
79. In 2014, the providers reported spending 59.50 hours and traveling 252 miles grocery shopping for the Appellant at a cost of \$1,591.00 ( $\$22.00 \times 59.50$ ) + \$252.00 mileage. (Exhibit D, pg 18-20)
80. In 2015, the providers reported spending 48 hours and traveling 220 miles grocery shopping for the Appellant at a cost of \$1,276.00 ( $\$22.00 \times 48$ ) + \$220.00 mileage. (Exhibit D, pg 18-20)
81. In 2016, the providers reported spending 16.50 hours and traveling 85 miles grocery shopping for the Appellant at a cost of \$448.000 ( $\$22.00 \times 16.50$ ) + \$85.00 mileage. (Exhibit D, pg 18-20)



82. In 2013, the providers reported spending 7.50 hours laundering the Appellant's clothing at a cost of \$165.00 ( $\$22.00 \times 7.5$ ). (Exhibit D, pgs 7-8)
83. In 2014, the providers reported spending 29 hours laundering the Appellant's clothing at a cost of \$638.00 ( $\$22.00 \times 29$ ). (Exhibit D, pgs 7-8)
84. In 2015, the providers reported spending 28.50 hours laundering the Appellant's clothing at a cost of \$627.00 ( $\$22.00 \times 28.50$ ). (Exhibit D, pgs 7-8)
85. In 2016, the providers reported spending 9 hours laundering the Appellant's clothing at a cost of \$198.00 ( $\$22.00 \times 9$ ). (Exhibit D, pgs 7-8)
86. In 2014, the providers reported spending 16.50 hours and traveling 106 miles buying prescriptions for the Appellant at a cost of \$469.00 ( $\$22.00 \times 16.50$ ) + \$106.00 mileage (Exhibit D, pg 16-17)
87. In 2015, the providers reported spending 35 hours and traveling 245 miles buying prescriptions for the Appellant at a cost of \$1,015.00 ( $\$22.00 \times 35$ ) + \$245.00 mileage (Exhibit D, pg 16-17)
88. In 2016, the providers reported spending 15.00 hours and traveling 105 miles buying prescriptions for the Appellant at a cost of \$435.00 ( $\$22.00 \times 15.00$ ) + \$105.00 mileage (Exhibit D, pg 16-17)
89. In 2014, the providers reported spending 21 hours organizing the Appellant's meds at a cost of \$462.00 ( $\$22.00 \times 21$ ). (Exhibit D, pgs 23-25)
90. In 2015, the providers reported spending 25.5 hours organizing the Appellant's meds at a cost of \$561.00 ( $\$22.00 \times 25.5$ ). (Exhibit D, pgs 23-25)
91. In 2016, the providers reported spending 8 hours organizing the Appellant's meds at a cost of \$176.00 ( $\$22.00 \times 8$ ). (Exhibit D, pgs 23-25)
92. The Internal Revenue Service ("IRS") standard mileage rate for business purposes was \$.050 per mile in 2010. (Internal Revenue Bulletin ("IR")-2009-111)
93. The IRS standard mileage rate for business purposes was \$.51 per mile in 2011. (IR-2010-119)
94. The IRS standard mileage rate for business purposes was \$.555 per mile in 2012. (IR-2011-116)
95. The IRS standard mileage rate for business purposes was \$.565 per mile in 2013. (IR-2012-95)

96. The IRS standard mileage rate for business purposes was \$.56 per mile in 2014. (IR-2013-95)
97. The IRS standard mileage rate for business purposes was \$.575 per mile in 2015. (IR-2014-114)
98. The IRS standard mileage rate for business purposes was \$.54 per mile in 2016. (IR-2015-137)
99. The providers \$1.00 per mile charge for travel does not fall within what is permissible as business related mileage rates according to the IRS. (Facts 92 through 98)

### The Application

100. On [REDACTED], 2016, the Appellant was admitted to Filosa Conv., Inc. ("the facility") for what was supposed to be a short term stay of less than 30 days. (Exhibit H: Filosa Conv., Inc. Admission Notice)
101. On [REDACTED] 2016, the Appellant applied to the Department for Medicaid to cover the cost of long term care. (Exhibit M: Long-term care application, [REDACTED]/16)
102. On [REDACTED] 2016, the Department determined through its examination of the Appellant's documentation that the Appellant made \$92,500.00 in cash transfers in order to be eligible for assistance and issued a notice proposing to apply a penalty resulting from the alleged improper transfer of assets. (Exhibit G pgs 1-2: Transfer of Assets Preliminary Decision Notice ("W-495A"))
103. On [REDACTED] 2016, the Appellant's attorney sent the Department a rebuttal to its W-495A Preliminary Decision Notice claiming that the \$92,500.00 transfer was for services provided pursuant to the execution of the Personal Services Contract. (Exhibit F: Rebuttal to proposed penalty)
104. On [REDACTED] 2017, the Department issued a Transfer of Assets, Notice of Response to Rebuttal ("W-495B") and Final Decision Notice ("W-495C"), indicating that the Department decided that the transfer of \$92,500.00 was made for the purpose of qualifying for Medicaid, and set up a period of ineligibility beginning [REDACTED], 2017 and ending on [REDACTED] 2017, during which time the Department would not pay for her long-term care services. (Exhibit G pg 3: W-495B and Exhibit G pg4: W-495C)

### CONCLUSIONS OF LAW

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

regulations as are necessary to administer the medical assistance program. Connecticut General Statutes ("Conn. Gen. Stat.") § 17b-2; Conn. Gen. Stat. § 17b-262

2. The Department is the sole agency to determine eligibility for assistance and services under the programs it operates and administers. Conn. Gen. Stat. § 17b-261b(a)
3. Subsection (a) of section 17b-261(a) of the Connecticut General Statutes provides that any disposition of property made on behalf of an applicant for recipient by a 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.
4. Uniform Policy Manual ("UPM") Section 1500.01 provides that an applicant is "the individual or individuals for whom assistance is requested."
5. UPM § 3029.03 provides that the Department uses the policy contained in this chapter to evaluate asset transfers, including the establishment of certain trusts and annuities, if the transfer occurred, or the trust or annuity was established, on or after February 8, 2006.
6. UPM 3029.05(A) provides there is a period established, subject to the conditions described in chapter 3029, during which institutionalized individuals are not eligible for certain Medicaid services when they or their spouses dispose of assets for less than fair market value on or after the look-back date specified in UPM 3029.05(C). This period is called the penalty period or period of ineligibility.
7. UPM § 3029.05(C) provides the look-back date for transfers of assets is a date that is sixty 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.
8. The look-back date for the Appellant is [REDACTED] 2011.
9. UPM § 3029.05(D) provides that 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.
10. Conn. Gen. Stat. § 17b-261(a) provides that 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.

11. Compensation in exchange for a transferred asset is counted in determining whether fair market value was received. UPM § 3029.30
12. 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)
13. UPM § 3029.10(E) provides that an otherwise eligible institutionalized individual is not ineligible for Medicaid payment of LTC services if the individual, or his or her spouse, provides clear and convincing evidence that the transfer was made exclusively for a purpose other than qualifying for assistance.
14. UPM § 3029.15 provides that an institutionalized individual or the individual's spouse is considered to have transferred assets exclusively for a purpose other than qualifying for assistance under circumstances, which include, but 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.

B. Forseeable Needs Met

The Department considers a transferor to have met his or her foreseeable needs if, at the time of the transfer, he or she retained other income and assets to cover basic living expenses and medical costs as they could have reasonably been expected to exist based on the transferor's health and financial situation at the time of the transfer.

15. UPM § 3029.10(C)(1) provides that an institutionalized individual, or his or her spouse, may transfer assets of any type without penalty to his or her child who is considered to be blind or disabled under the criteria for SSI eligibility.



16. The Department incorrectly determined that the \$7,538.00 that was used to purchase the funeral contract for [REDACTED] was subject to a transfer of asset penalty.
17. The Department incorrectly determined that the \$4,438.00 that was used to purchase a burial plot for the Appellant was subject to a transfer of asset penalty.
18. Although the providers charged an hourly rate that met fair market standards, they did not provide clear and convincing evidence that they spent the number of hours reported making meals; shopping, laundering; visiting; entertaining; transporting and picking up prescriptions for the Appellant.
19. The providers did not provide any evidence showing that they paid for the Appellant's cell phone bill.
20. The providers did not provide clear and convincing evidence that the Appellant was charged and did not pay \$500.00 per month for household expenses when she had a source of income.
21. UPM § 3029.05(E)(2) provides that the penalty period begins as of the later of the following dates: the date on which the individual is eligible for Medicaid under Connecticut's State Plan and would otherwise be eligible for Medicaid payment of the LTC services described in 3029.05(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.
22. UPM § 3029.05(F) provides in part that 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). 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.
23. The average monthly cost of LTCF services in Connecticut as of [REDACTED] 2016, the month of the Appellant's application was \$12,388.00.
24. Exclusive of \$11,976.00 (\$4,438.00, Appellant's burial plot plus \$7,538.00, [REDACTED] funeral contract), the remaining \$80,524.00 (\$92,500.00 - \$11,976.00) is subject to a transfer of asset penalty.
25. The Appellant is subject to a penalty period of 6.50 months after dividing the uncompensated value of the transferred asset by the average monthly cost of LTCF services (\$80,524.00 (total transfer amount) / \$12,388.00 (average cost of LTCF services)=6.50)

26. The Department incorrectly determined the Appellant is subject to a penalty of 7.46 months and ending on [REDACTED], 2017.
27. The Appellant is subject to a penalty period of 6.50 months after dividing the uncompensated value of the transferred asset by the average monthly cost of LTCF services (\$80,524.00 (total transfer amount) / \$12,388.00 (average cost of LTCF services)).

### **DISCUSSION**

The Department's decision to count the entire \$92,500.00 for the transfer of asset penalty was incorrect. The Appellant's POA purchased \$11,976.00 in burial plots and funeral contracts for the Appellant and her disabled son, [REDACTED]

The Appellant resided with her son [REDACTED] in [REDACTED] from [REDACTED] 2010 until her admittance to the Filosa Conv., Inc. on [REDACTED] 2016. She retained her primary home in [REDACTED] until it was sold on [REDACTED]. There were no previous attempts to sell the home during the 5.50 years that it remained unoccupied.

During the time period of [REDACTED] 2010 through [REDACTED] 2012, the Appellant received \$1,103.48 and \$1,037.08 from [REDACTED] 2013 through [REDACTED] 2013 per month in diverted income from her spouse who resided in a nursing home. In addition to the diverted income, the Appellant received an income of her own that included Social Security and two pensions.

The POA did not provide clear and convincing evidence that the Appellant accrued charges for household expenses and a cell phone. No bills were provided. Nor did he provide clear and convincing evidence that he and his spouse performed employment services for the amount of hours reported.

### **DECISION**

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

**ORDER**

1. The Department shall reduce the transfer of asset penalty to \$80,524.00 and the penalty period to 6.50 months.
2. Compliance with this order shall be submitted to the undersigned no later than [REDACTED] 2017.

  
\_\_\_\_\_  
Carla Hardy  
Hearing Officer

Pc: Carol Sue Shannon, Operations Manager, Danbury  
[REDACTED], Appellant's and POA's Attorney  
Maren Walsh, Hearing Liaison, Danbury

### **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 06105-3725.

### **RIGHT TO APPEAL**

The appellant has the right to appeal this decision to Superior Court within 45 days of the mailing of this decision, or 45 days after the agency denies a petition for reconsideration of this decision, provided that the petition for reconsideration was filed timely with the Department. The right to appeal is based on §4-183 of the Connecticut General Statutes. To appeal, a petition must be filed at Superior Court. A copy of the petition must be served upon the Office of the Attorney General, 55 Elm Street, Hartford, CT 06106 or the Commissioner of the Department of Social Services, 55 Farmington Avenue Hartford, CT 06105. A copy of the petition must also be served on all parties to the hearing.

The 45 day appeal period may be extended in certain instances if there is good cause. The extension request must be filed with the Commissioner of the Department of Social Services in writing no later than 90 days from the mailing of the decision. Good cause circumstances are evaluated by the Commissioner or the Commissioner's designee in accordance with §17b-61 of the Connecticut General Statutes. The Agency's decision to grant an extension is final and is not subject to review or appeal.

The appeal should be filed with the clerk of the Superior Court in the Judicial District of New Britain or the Judicial District in which the appellant resides.