STATE OF CONNECTICUT DEPARTMENT OF SOCIAL SERVICES OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS 55 FARMINTON AVENUE HARTFORD, CT 06105-3730

2017 Signature Confirmation

Client ID #

NOTICE OF DECISION

PARTY



PROCEDURAL BACKGROUND

(the "Appellant") a Notice of Action ("NOA") granting Long Term Care Medicaid benefits effective 2017.
On 2017, the Appellant requested an administrative hearing to contest the effective date of the Long Term Care Medicaid benefits as determined by the Department.
On , 2017, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice scheduling the administrative hearing for , 2017.
On, 2017, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice rescheduling the administrative hearing for 2017.
On 2017 in accordance with sections 17b-60, 17-61 and 4-176e to 4-189 inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing. The following individuals were present at the hearing: Appellant's son, Power of Attorney ("POA") Attorney Attorney Appellant's Representative Jennifer Cox, Facility Business Office Manager Noah Cass, Department's Representative

Miklos Mencseli, Hearing Officer

The Appellant was not present.

The Appellant's Attorney requested a reconvene.

On 2017, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice to reconvene the administrative hearing for 2017.

The reconvene was granted to allow the Appellant's Attorney to provide additional testimony and evidence.

The following individuals appeared for the reconvene hearing:

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

Attorney , Appellant's Representative

Jennifer Cox, Facility Business Office Manager

CEO,

Karonesa Logan, Department's Representative

Karonesa Logan, Department's Representative Noah Cass, Department's Representative The Appellant was not present

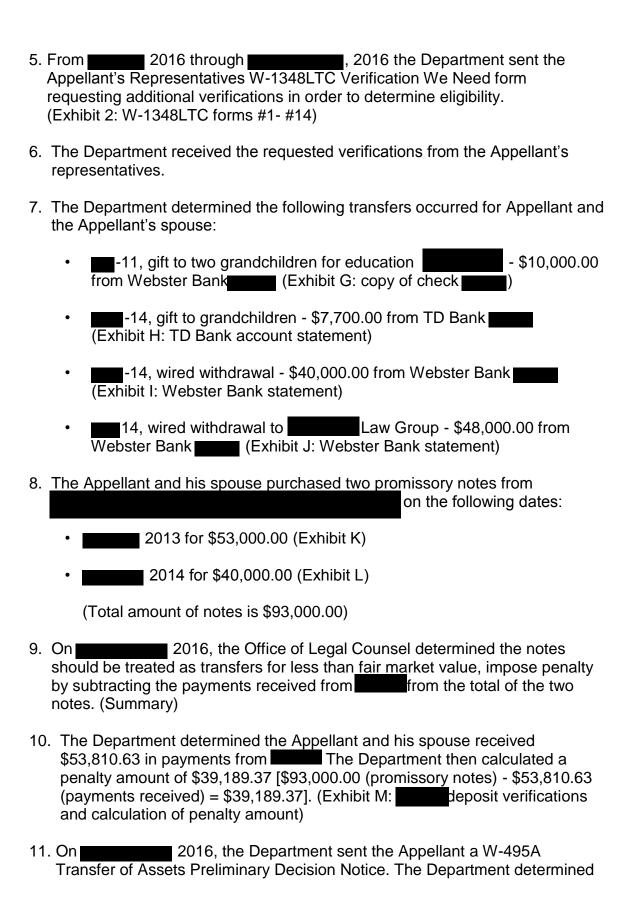
The hearing officer held the record open for the submission of additional evidence by the Appellant's representatives and for the Department to review the documentation. On 2017, the hearing officer closed the record.

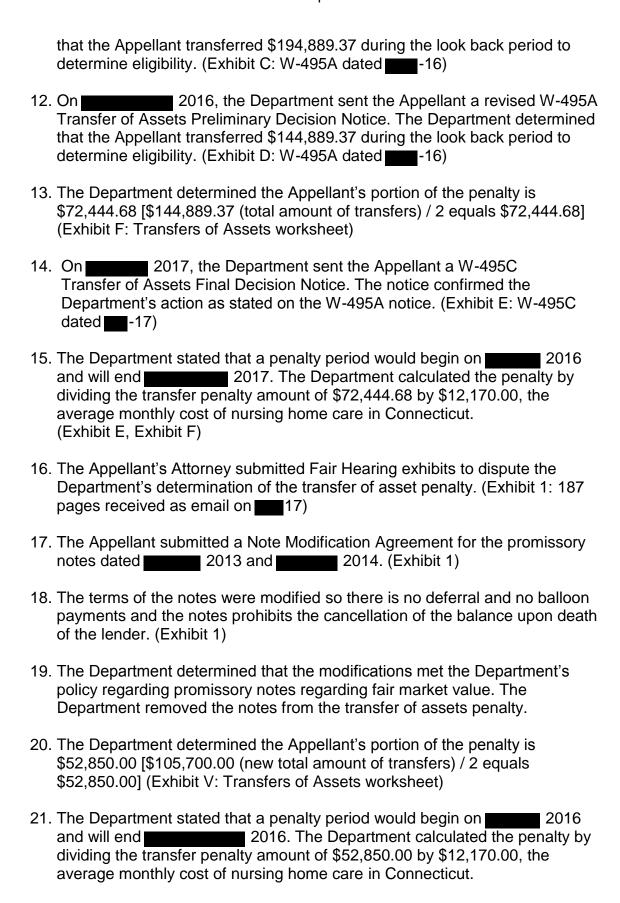
STATEMENT OF THE ISSUE

The issue to be decided is whether or not the Department was correct in its determination of the effective date of the Applicant's Long Term Care Medicaid benefits.

FINDINGS OF FACT

- On 2016, the Department received an application and verifications from the Appellant for Medicaid Home and Community based services (W01) assistance. (Summary, Exhibit A: Department's W-1LTC application)
- 2. The Appellant's spouse (also was applying for W01 assistance.
- 3. On 2016, the Appellant entered Rapid Recovery Rehab Center facility.
- 4. On Recovery Rehab Center facility.

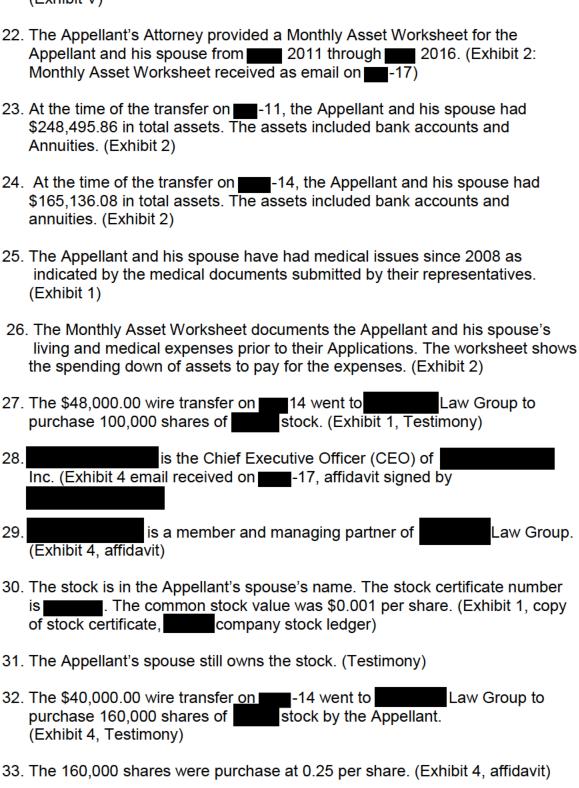




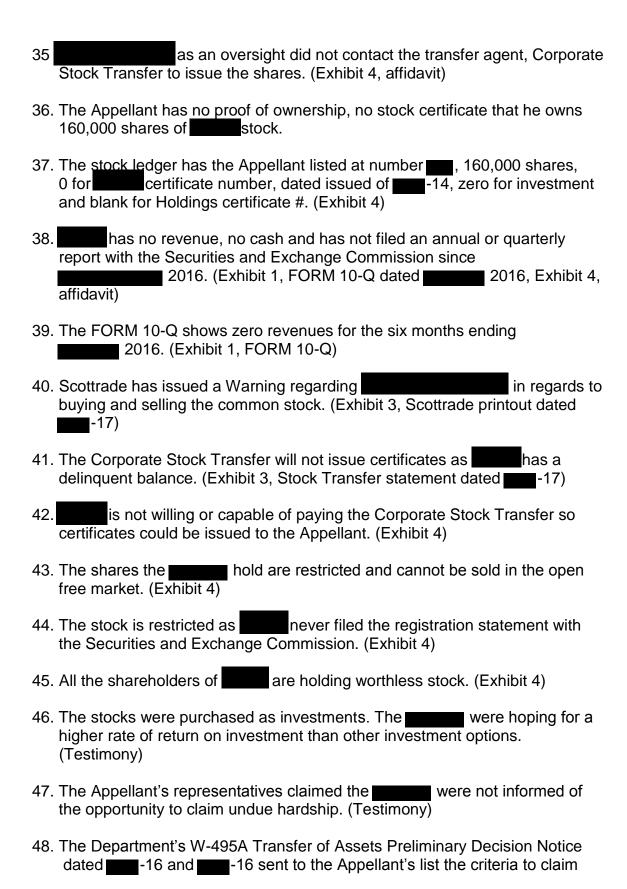
(Exhibit V)

34. The purchase came directly from

(Exhibit 4, affidavit)



block of shares.



undue hardship. (Exhibits C & D)

- 49. The Department received letters from Rapid Recovery Rehab Center dated 2017. The letter for the Appellant states the facility due to the transfer penalty will remain unpaid for care and services rendered. The facility intends to discontinue providing long term care services on account of the penalty .Attached was a billing statement, medical evaluation and affidavit. (Exhibit U: Undue hardship letters and attachments)
- 50. On 2017, the Department responded to the notices. The claim of undue hardship was denied as of the date of the letter the Appellant was active on Medicaid as the penalty period ended on 2017. (Exhibit U)

CONCLUSIONS OF LAW

- 1. Sections I7b-260 to 17b-264 of the Connecticut General Statutes authorizes the Commissioner of Social Services to administer the Title XIX Medical Assistance program to provide medical assistance to eligible persons in Connecticut.
- 2. Section 17b-2 of the Connecticut General Statue authorizes the Commissioner of the Department of Social Services to administer the Medicaid program.
- 3. Section 17b-80(a) of the Connecticut General Statute states that the Department shall grant aid only if the applicant is eligible for that aid.
- 4. Uniform Policy Manual ("UPM") § 3029.05 provides the transfer of assets basic provisions.

A. General Statement

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.

B. Individuals Affected

- 1. The policy contained in this chapter pertains to institutionalized individuals and to their spouses.
- 2. An individual is considered institutionalized if he or she is receiving:
 - a. LTCF services; or

- b. services provided by a medical institution which are equivalent to those provided in a long-term care facility; or
- c. home and community-based services under a Medicaid waiver (cross references: 2540.64 and 2540.92).
- 5. UPM § 3029.05 (C) (1)(2) 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 exist: the individual is institutionalized and the individual is either applying for or receiving Medicaid.
- 6. The Department correctly determined that the transfers on -11, -14, -14, -14 and -14 occurred within the 60 month look back period.
- 7. UPM § 3029.05 D (1) (2) provides 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. In the case of an asset that the individual holds in common with another person or persons in joint tenancy, tenancy in common or similar arrangement, the Department considers the asset (or affected portion of such asset) to have been transferred by the individual when the individual or any other person takes an action to reduce or eliminate the individual's ownership or control of the asset.
- 8. The Department correctly determined that the \$105,700.00 in transfers are within the look back period and subject for review.
- 9. Section 17b-261a(a) of the Connecticut General Statutes 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.
- 10. 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.
- 11. The transfers made on ——-11 for \$10,000.00 and ——-14 for \$7,700.00 were not made for the purpose of qualifying for assistance. The Appellant and his spouse had sufficient funds to remain in the community.
- 12. The Department is incorrect in counting the \$17,700.00 (\$10,000.00 +

\$7,700.00) as a transfer of asset penalty.

- 13. UPM § 3029.10(F) provides for transferor intended to transfer at fair market value. An institutionalized individual or his or her spouse may transfer an asset without penalty if the individual demonstrates with clear and convincing evidence that he or she intended to dispose of the asset at fair market value.
- 14. UPM § 3029.10(G) provides for transfer made for other valuable consideration An institutionalized individual or his or her spouse may transfer an asset without penalty if it is demonstrated with clear and convincing evidence that he or she intended to dispose of the asset in return for other valuable consideration. The value of the other valuable consideration must be equal to or greater than the value of the transferred asset in order for the asset to be transferred without penalty.
- 15. UPM §3025.15 provides for Transfer Not for the Purpose of Qualifying

A. Fair Market Value Received

If fair market value is received, the transfer of the asset is not considered to be for the purpose of establishing or maintaining eligibility.

B. Assets Within Limits

If the total of the uncompensated fair market value of a transferred asset plus all other countable assets does not exceed program limits, the transfer of the asset is not considered to be for the purpose of establishing or maintaining eligibility. In the case of multiple transfers involving one asset, this includes the total uncompensated value of all transfers.

C. Transfer for Another Purpose

If there is convincing evidence that the transfer is exclusively for another purpose, the transfer of the asset is not considered to be for the purpose of establishing or maintaining eligibility.

- 16. UPM § 3029.30(B)(1) provides that each form of compensation is assigned a dollar value to compare with the fair market value of the transferred asset. In determining the dollar value of services rendered directly by the transferee, the Department uses the following amounts; (a) for all services of the type normally rendered by a homemaker or home health aid, the current state minimum hourly wage for such services; (b) for all other types of services, the actual cost.
- 17. The Department incorrectly determined the Appellant's spouse did not receive fair market value for the \$48,000.00 used to purchase 100,000 shares of the on -14.
- 18. The Appellant's spouse has retained the shares as evident by the stock

certificate provided.

- 19. The 100,000 shares are countable assets in determining eligibility and are to be reviewed at each redetermination.
- 20. The Department is correct to determine the \$40,000.00 is a transfer.
- 21. The Appellant has no stock certificate to verify his purchase of 160,000 shares of stock. The company's stock ledger lists the Appellant but has zero as his investment.
- 22. The Appellant has no documentation that he received fair market value for the \$40,000.00.
- 23. Based on the transfer of \$40,000.00, the Appellant is subject to a Transfer of Asset penalty.
- 24. Section 17b-261o(c) of the Connecticut General Statutes provides that the commissioner shall impose a penalty period pursuant to subsection (a) of section 17b-261 or subsection (a) of section 17b-261a if the transfer or assignment of assets was made by the Applicant's legal representative or joint owner of the asset.
- 25. UPM § 3029.05 provides that there is a period established, subject to the conditions described in this chapter, during which institutionalized individuals are not eligible for certain Medicaid services when they or their spouses dispose of assets for less than fair market value on or after the look-back date specified in 3029.05 C. This period is called the penalty period, or period of ineligibility.
- 26. 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.
- 27. The Department incorrectly determined the amount and start period of the Appellant's penalty period.
- 28. UPM § 3029.25 (B)(1)(a)(b)(2)(3) provides the conditions for undue hardship. When an individual would be in danger of losing payment for LTCF or equivalent services described at 3029.05 B solely because of the imposition of a penalty period, the Department does not impose such penalty under the following conditions: the long-term care facility or medical institution has threatened the individual with eviction due to non-payment and the individual has exhausted all legal methods to prevent the eviction; or the medical

provider has threatened to terminate home and community-based services being provided under a Medicaid waiver; and the transferor establishes that the transferee is no longer in possession of the transferred asset and the transferee has no other assets of comparable value with which to pay the cost of care; and there is no family member or other individual or organization able and willing to provide care to the individual.

- 29. The Appellant does not meet the criteria for undue hardship:
 - 1. The facility did not issue an eviction notice due to non-payment.
 - 2. The facilities letter dated 2017 for non-payment is after the original penalty period had expired and they were receiving payments.

DISCUSSION

The Department is to count the 100,000 shares purchased by the Appellant's spouse as a countable asset. The \$40,000.00 is to be considered a transfer. The Appellant has no stock certificate and the company ledger does not show the \$40,000.00. It shows zero under investments. If the ledger is a record of the transaction as stated on the hearing record and by affidavit, why is the \$40,000.00 not listed by the Appellant's name on the ledger? The Appellant's spouse purchase of 100,000 shares which occurred after the Appellant's purchase is listed with the \$48,000.00 under investment. The Appellant's spouse also has stock certificates. It did not occur to anyone to question why no certificates were issued for the Appellant when the certificates for his spouse were received.

DECISION

The Appellant's appeal is **Granted.**

ORDER

- 1. The Department shall remove the \$65,700.00 as a transfer of asset penalty.
- 2. The Department shall calculate a penalty period based on the transfer of assets of \$40,000.00(\$40,000.00 / 2 = \$20,000.00 for each spouse) effective for 2016.
- 3. The Department shall send the Appellant's representatives a revised W-495C transfer of assets final decision notice.
- 4. Compliance shall be shown by submission of verification of the Department's compliance with this decision and is due by 2017.

Miklos Mencseli Hearing Officer

C: Musa Mohamud, Operations Manager, DSS R.O. #10 Hartford

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 <u>specific</u> grounds for the request: for example, indicate <u>what</u> error of fact or law, <u>what</u> new evidence, or <u>what</u> 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.