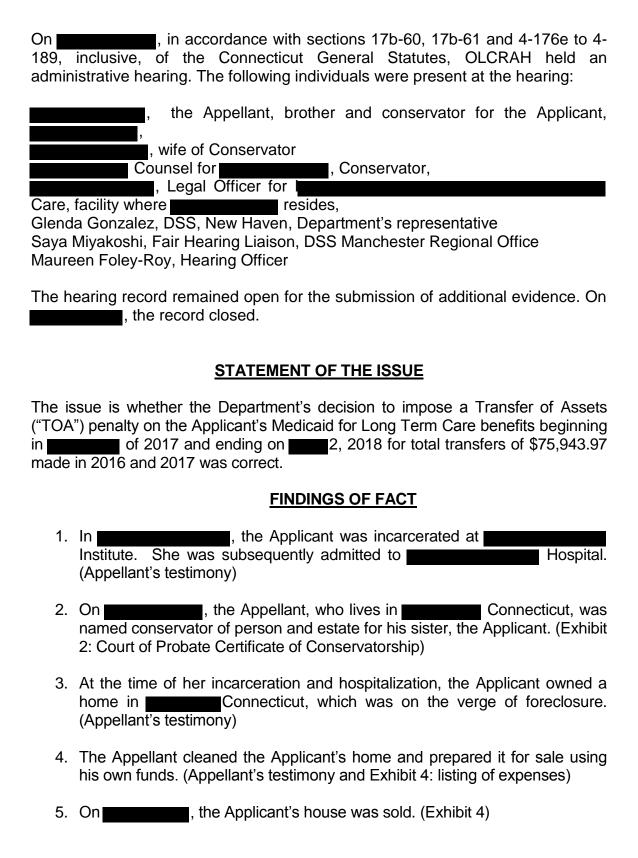
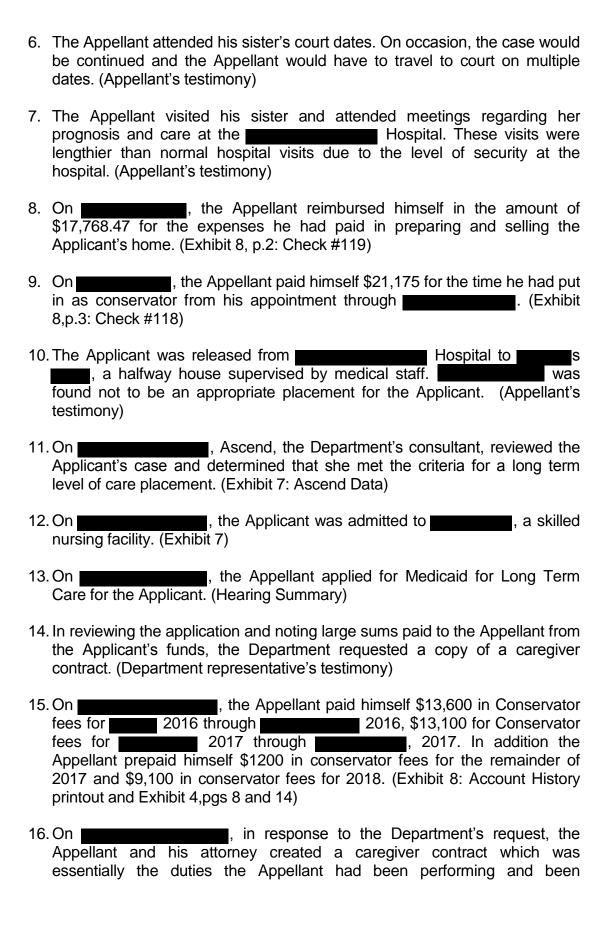
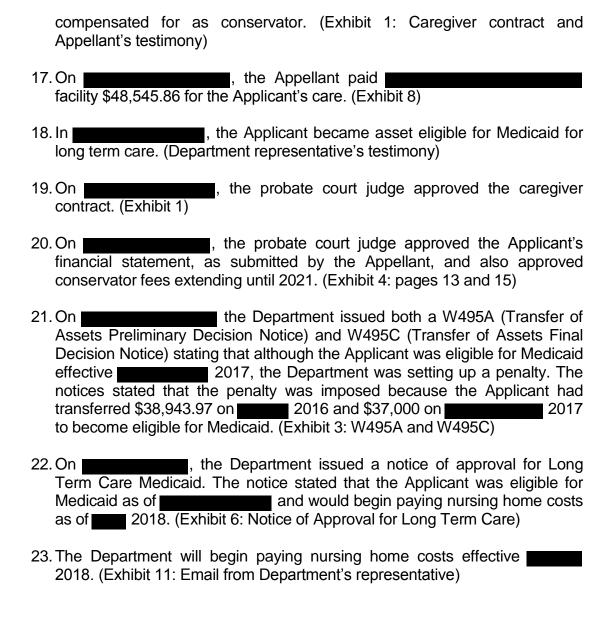
STATE OF CONNECTICUT DEPARTMENT OF SOCIAL SERVICES OFFICE OF LEGAL COUNSEL, REGULATIONS AND ADMINISTRATIVE HEARINGS 55 FARMINGTON AVENUE HARTFORD, CT 06105-3725

June 28, 2018 SIGNATURE CONFIRMATION

HEARING ID #: 116683
NOTICE OF DECISION
<u>PARTY</u>
Attorney
PROCEDURAL BACKGROUND
On, the Department of Social Services (the "Department") sent (the "Applicant") a Notice of Action ("NOA") imposing a transfer of assets penalty on her Medicaid for Long Term Care benefits for the period from
On the Applicant's Conservator, the "Appellant" (the "Appellant") through his attorney, requested an administrative hearing to contest the Department's decision to impose a penalty on the Applicant's Long Term Care Medicaid benefits.
On Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for 2018.
On, the Appellant's Counsel requested a continuance of the hearing, which OLCRAH granted.
On, OLCRAH issued a notice rescheduling the administrative hearing for



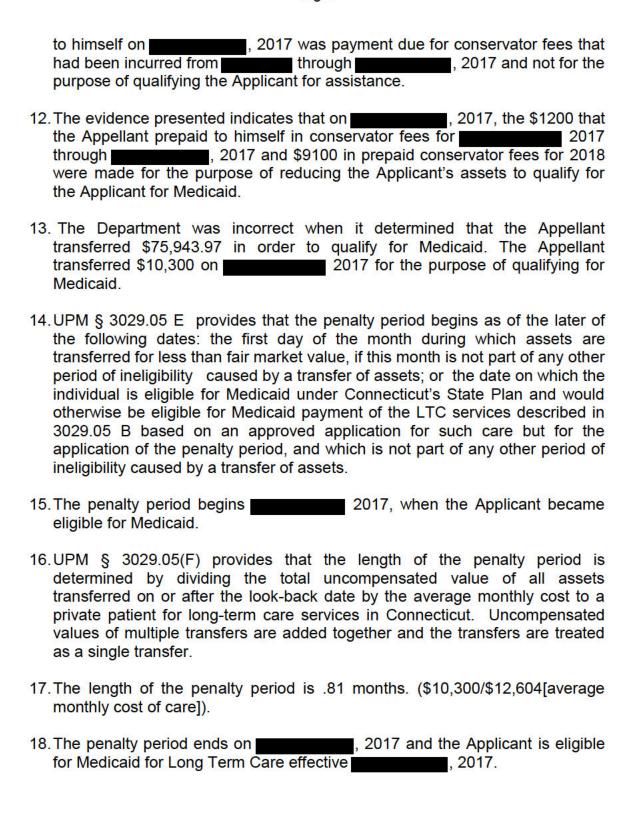




CONCLUSIONS OF LAW

- Section 17b-260 of the Connecticut General Statutes provides for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
- Section 17b-260 of the Connecticut General Statutes authorizes the Commissioner of Social Services to take advantage of the medical assistance programs provided in Title XIX, entitled "Grants to States for Medical Assistance Programs", contained in the Social Security Amendments of 1965.

- 3. UPM § 3029.05 A 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.
- 4. UPM § 3029.05 B provides that the policy contained in the chapter on transfers of assets pertains to institutionalized individuals and to their spouses.
- 5. UPM § 3029.05 D 1 provides that 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.
- 6. 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. UPM § 3029.05(C).
- 7. 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).
- 8. UPM Section 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.
- 9. The Appellant presented clear and convincing evidence that the \$21,175.00 paid to himself on 2016 was payment due for conservator fees that had been incurred from 2015 through 2016 and not for the purpose of qualifying the Applicant for assistance.
- 10. The Appellant presented clear and convincing evidence that the \$17,768.97 paid to himself on 2016 was reimbursement due for expenses incurred by the Appellant in preparing the Applicant's home for sale and not for the purpose of qualifying the Applicant for assistance.
- 11. The Appellant presented clear and convincing evidence that the \$13,100 paid



DISCUSSION

In this case, there were misunderstandings on all sides, which caused confusion regarding the Applicant's circumstances. The Appellant had been appointed Conservator for his sister and was entitled to receive payment for his duties. When eligibility staff saw such payments, they questioned the presence of a caregiver contract. As the Appellant was indeed taking care of his sister by virtue of his position of conservator, he and his attorney drew up a caregiver contract. But although the Appellant was being referred to as both Conservator and caregiver, he was performing the duties and being paid as Conservator. Due to his sister's illness, the situation regarded a great deal of time and work on the part of the Appellant. In addition, there was a considerable geographic distance involved. It also required the Appellant to expend significant amounts of time with bureaucracies, such as the court system and various other government agencies. For example, seeing his sister and her medical professionals at the I hospital required more time than would be spent at a community hospital. The costs incurred seemed excessive. But the Appellant was credible in that the situation warranted the costs and they were approved by the probate judge.

The Appellant clearly prepaid conservator fees in order to spenddown his sister's resources to the point where she would qualify for Medicaid. The Applicant's living situation had stabilized once she moved into the nursing facility and once she became eligible for Medicaid there would have been a change in the Appellant's duties as a conservator. The Appellant's future duties as Conservator and how long he would have to perform them could not be determined. It is concluded that the \$10,300 that the Appellant prepaid himself in conservator fees on \$\textstyle{\textst

DECISION

The Appellant's is granted in part and denied in part.

ORDER

- 1. The Department shall reduce the transfer of asset penalty to \$10,300 and the penalty period to .81 months, making the Applicant eligible for Medicaid Long Term care services on _________, 2017.
- 2. Compliance with this order shall be submitted to the undersigned no later than 2018.

Maureen Foley-Roy Hearing Officer

Maureen Foley. Roy

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 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.