

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

██████████ 2018  
Signature confirmation

Case: ██████████  
Client: ██████████  
Request: ██████████

**NOTICE OF DECISION**

**PARTY**

██████████  
██  
██████████  
████████████████████  
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**PROCEDURAL BACKGROUND**

On ██████████ 2018, the Department of Social Services (the “Department”) issued ██████████ (the “Appellant”) a *Transfer of Assets/Final Decision Notice* establishing a penalty period of ineligibility for Medicaid coverage of his long-term care services.

On ██████████, 2018, Attorney ██████████, the Appellant’s conservator, 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.

On ██████████ 2018, the OLCRAH issued a notice scheduling an administrative hearing for ██████████, 2018. The Appellant’s conservator requested a postponement of the administrative hearing; the OLCRAH granted the request.

On ██████████, 2018, in accordance with sections 17b-60, 17b-61, and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, the undersigned hearing officer held an administrative hearing at ██████████, located at ██████████ ██████████ ██████████ ██████████. The following individuals attended the hearing:

██████████, Appellant’s conservator  
██████████, Appellant’s conservator’s attorney  
██████████ administrator, Appellant’s witness

Michael Briggs, Department's representative  
Leigh Hunt, Department's observer  
Barbara Whetstone, Department's observer  
Eva Tar, Hearing Officer

By mutual agreement, the close of the hearing record was extended through [REDACTED] 2018 for the submission of additional evidence by the Appellant.

On [REDACTED] 2018, the Appellant's conservator requested an extension to the close of the hearing record through [REDACTED], 2018 to submit additional evidence. The hearing officer granted the request, extending the close of the hearing record through [REDACTED] 2018 for the Department's reply.

The Department provided written comment on [REDACTED] 2018, by email to the hearing officer and the Appellant's conservator's attorney.

The hearing record closed [REDACTED], 2018.

### **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 \$39,800.00 in transfers within the look-back period.

In the alternative, the Appellant seeks a waiver of the penalty period.

### **FINDINGS OF FACT**

1. The Appellant's legal name is [REDACTED]. (Department's Exhibit 13)
2. The Appellant is also known as [REDACTED] [REDACTED].<sup>1</sup> (Department's Exhibit 1)(Department's Exhibit 3)(Department's Exhibit 15)
3. The Appellant is the father of [REDACTED] (the "son"), also known as [REDACTED] [REDACTED] (Appellant's conservator's testimony)(Department's Exhibit 1)(Appellant's Exhibit G)
4. From [REDACTED] 2008 through [REDACTED] 2016, the Appellant owned [REDACTED] [REDACTED] (the "Florida property"). (Department's Exhibit 15)
5. The Appellant and his son were the joint owners of record of Wells Fargo checking account [REDACTED] (the "Wells Fargo checking account"). (Department's Exhibit 11)
6. On [REDACTED], 2015, the Wells Fargo checking account had a balance of \$1,006.00. (Department's Exhibit 11)

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<sup>1</sup> During the [REDACTED] 2018 administrative hearing, the Appellant was referred to as "Senior" to distinguish him from his son, "Junior."

7. On [REDACTED] 2016, the son, as the Appellant's attorney-in-fact, sold the Florida property for \$139,400.00 to a third party. (Department's Exhibit 10)(Department's Exhibit 15)
8. The [REDACTED] 2016 sale of the Florida property netted the Appellant \$44,813.40 after the discharge of a mortgage. (Department's Exhibit 10)(Department's Exhibit 15)
9. On [REDACTED] 2016, the Appellant resided at [REDACTED] [REDACTED] [REDACTED] (Department's Exhibit 11)(Department's Exhibit 10)(Department's Exhibit 15)
10. On [REDACTED] 2016, \$44,813.40 was deposited to the Wells Fargo checking account. (Department's Exhibit 11)
11. [REDACTED] and the son are joint owners of Wells Fargo Way2Save Checking [REDACTED] (the "Way2Save account"). The Appellant is not a co-owner of the Way2Save account. (Appellant's Exhibit I)
12. On [REDACTED] 2016, a \$9,900.00 wire transfer from Wells Fargo checking account to the Way2Save account was completed. (Department's Exhibit 11)
13. On [REDACTED] 2016, the son wrote and cashed a \$5,000.00 personal check ([REDACTED] made payable to himself from the Way2Save account. (Appellant's Exhibit I)
14. On [REDACTED] 2016, \$2,500.00 in cash was withdrawn from Wells Fargo checking account at the Wells Fargo branch located at [REDACTED] [REDACTED]. (Department's Exhibit 11)
15. On [REDACTED] 2016, \$2,500.00 in cash was withdrawn from Wells Fargo checking account at the Wells Fargo branch located at [REDACTED] [REDACTED]. (Department's Exhibit 11)
16. On [REDACTED] 2016, the son wrote and cashed a \$2,200.00 personal check [REDACTED] from the Way2Save account. (Appellant's Exhibit I)
17. On [REDACTED] 2016, \$2,500.00 in cash was withdrawn from Wells Fargo checking account at the Wells Fargo branch located at [REDACTED] [REDACTED] (Department's Exhibit 11)
18. On [REDACTED] 2016, \$2,500.00 in cash was withdrawn from Wells Fargo checking account at the Wells Fargo branch located at [REDACTED] [REDACTED] (Department's Exhibit 11)

19. On [REDACTED] 2016, the Republic of Cuba approved the Appellant's passport [REDACTED] for a visit through [REDACTED] 2017. (Department's Exhibit 13)
20. The hearing record does not contain conclusive evidence to establish the dates, if any, that the Appellant was in Cuba during the period from [REDACTED] 2016 through [REDACTED] 2016.
21. On [REDACTED] 2016, \$2,500.00 in cash was withdrawn from Wells Fargo checking account at the Wells Fargo branch located at [REDACTED] [REDACTED] (Department's Exhibit 11)
22. On [REDACTED] 2016, a \$9,900.00 wire transfer from the Wells Fargo checking account to the Way2Save account was completed. (Department's Exhibit 11)
23. On [REDACTED] 2016, the son wrote and cashed a \$3,000.00 personal check ([REDACTED] from the Way2Save account. (Appellant's Exhibit I)
24. On [REDACTED] 2016, the son self-issued and cashed a \$4,000.00 personal check [REDACTED] from the Way2Save account. (Appellant's Exhibit I)
25. On [REDACTED], 2016, \$2,500.00 in cash was withdrawn from the Wells Fargo checking account at the Wells Fargo branch located at [REDACTED] [REDACTED] (Department's Exhibit 11)
26. On [REDACTED] 2016, \$2,500.00 in cash was withdrawn from the Wells Fargo checking account at the Wells Fargo branch located at [REDACTED] [REDACTED] (Department's Exhibit 11)
27. On [REDACTED] 2016, \$2,500.00 in cash was withdrawn from the Wells Fargo checking account at the Wells Fargo branch located at [REDACTED] [REDACTED] (Department's Exhibit 11)
28. The individual (or individuals) who made the \$20,000.00 (total) in cash withdrawals from the Wells Fargo checking account in the period from [REDACTED] 2016 through [REDACTED] 2016 has not been conclusively identified: each cash withdrawal may have been completed by either the Appellant or his son, as joint owners of the Wells Fargo checking account.
29. The individual (or individuals) who made the \$19,800.00 (total) in wire transfers from the Wells Fargo checking account to the son's Way2Save account has not been conclusively identified: each wire transfer may have been completed by the Appellant or his son, as joint owners of the Wells Fargo checking account.
30. The hearing record lacks evidence that a physician prior to or in [REDACTED] 2016 or [REDACTED] 2016 had diagnosed the Appellant with dementia.

31. On or around [REDACTED] 2017, the Appellant was diagnosed with the following: unspecified dementia without behavioral disturbance; other reduced mobility; major depressive disorder, unspecified; hypertension; and syphilis, unspecified. (Appellant's Exhibit J)
32. From [REDACTED] 2017 through [REDACTED] 2017, the Appellant lived at [REDACTED] a skilled nursing facility. (Appellant's witness's testimony)
33. On [REDACTED] [REDACTED] 2017, the Appellant signed himself out of [REDACTED] [REDACTED]. (Appellant's witness's testimony)
34. From [REDACTED] 2017 through [REDACTED] 2017, the Appellant lived at [REDACTED] (Appellant's witness's testimony)
35. On [REDACTED] 2017, the Appellant was admitted to [REDACTED] [REDACTED] (Appellant's Exhibit A)
36. On [REDACTED] 2017, the [REDACTED] appointed [REDACTED] (the "conservator") as the Appellant's conservator of person and estate. (Department's Exhibit 3)
37. On [REDACTED], 2017, the Appellant's diagnoses included: major depressive disorder, recurrent; hypertension; and unspecified dementia without behavioral disturbance (mild cognitive decline). (Appellant's Exhibit A)
38. On [REDACTED], 2017, [REDACTED] discharged the Appellant to [REDACTED], a skilled nursing facility, for a length of stay expected to be at least 30 days but less than six months. (Appellant's Exhibit A)(Department's Exhibit 2)
39. Since [REDACTED], 2017, the Appellant has remained at [REDACTED] (Appellant's witness's testimony)
40. On [REDACTED], 2017, the Department received the Appellant's Medicaid application, signed by the Appellant's conservator on [REDACTED] 2017. (Department's Exhibit 1)
41. The Appellant's conservator crossed out **SECTION N: TRANSFER OF ASSETS** on the Appellant's [REDACTED] 2017 Medicaid application. (Department's Exhibit 1)
42. In [REDACTED] 2017, the Wells Fargo checking account was converted to a conservator account. (Department's Exhibit 12)
43. In the period from [REDACTED] [REDACTED] of and the purposes for the series of transfers from the Wells Fargo checking account. (Department's Exhibit 4)(Department's Exhibit 5)(Department's Exhibit 6)

44. On [REDACTED] 2017, the Appellant's conservator filed an initial inventory with the [REDACTED] identifying the Wells Fargo checking account to equal \$1,451.00 as of [REDACTED] 2017. (Appellant's Exhibit H)
45. On [REDACTED] 2017, the Department issued a *Notice of Possible Improper Transfer of Assets* to the Appellant, proposing a penalty period for the improper transfer of \$39,800.00 in assets from [REDACTED] 2016 through [REDACTED] 2016. (Department's Exhibit 7)
46. On [REDACTED] 2018, the Department issued a *Response to Your Transfer of Assets Explanation* to the Appellant, setting up a penalty period of ineligibility for long-term care medical services to run from [REDACTED] 2017 through [REDACTED] 2017. (Department's Exhibit 8)
47. On [REDACTED], 2018, the Department determined that the Appellant was eligible for Medicaid effective [REDACTED] 2017, but for the imposition of a penalty period of ineligibility for long-term care coverage. (Department's Exhibit 9)
48. On [REDACTED], 2018, the Department issued a *Notice of Action* to the Appellant, granting him HUSKY-C/Long-Term Care coverage effective [REDACTED] 2017. (Department's Exhibit 9)
49. On or around [REDACTED] 2018, the Appellant's conservator contacted detective [REDACTED] (the "detective") of the [REDACTED]. (Appellant's Exhibit G)
50. On [REDACTED] 2018, the detective questioned the son regarding the \$39,800.00 in transfers from the Appellant's Wells Fargo checking account. (Appellant's Exhibit G)(Appellant's Exhibit I)
51. Subsequent to [REDACTED] 2018, the detective received the results of a search warrant as to the joint ownership and individual transactions associated with the Way2Save account. (Appellant's Exhibit I)
52. The detective has chosen not to refer the matter of the 2016 cash withdrawals and wire transfers for criminal prosecution. (Appellant's Exhibit I)
53. Exploitation with respect to the 2016 cash withdrawals and wire transfers was not established.
54. The Appellant's penalty period of ineligibility for Medicaid payment of long-term care services has expired; he has active Medicaid long-term care coverage. (Department's representative's testimony)(Dept. Ex. 9)
55. [REDACTED] is not threatening to evict the Appellant for non-payment.

56. The Department declines to waive the Appellant's penalty period of ineligibility for Medicaid payment of long-term care services. (Department's representative's testimony)(Department's [REDACTED] 2018 email)

### **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. 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. Uniform Policy Manual ("UPM") § 3029.05 (A).

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).

#### **The Appellant is an institutionalized individual.**

3. 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. UPM § 3029.03.

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).

#### **The Appellant's look-back period related to Medicaid long-term care coverage runs from [REDACTED] 2012 through [REDACTED] 2017.**

**The \$39,800.00 in cash withdrawals and wire transfers from Wells Fargo checking account from [REDACTED] 2016 through [REDACTED] 2016 occurred within the Appellant's look-back period.**

4. 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.

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. UPM § 3029.05 (D)(2).

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).

**The Department correctly attributed the \$19,800.00 in wire transfers and the \$20,000.00 in cash withdrawals from the Wells Fargo checking account to the Appellant, as: 1) the wire transfers and cash withdrawals had been made from an account the Appellant held jointly with his son from the Appellant's funds from the sale of the Florida property; 2) the wire transfers and cash withdrawals reduced the Appellant's ownership or control of the funds in the Wells Fargo checking account; and 3) the son held the Appellant's power of attorney in the relevant period.**

5. Incompetence. When an individual is incompetent at the time of the transfer, the transfer does not cause ineligibility. UPM § 3025.25 (B).

**The [REDACTED] appointment of an involuntary conservator for the Appellant establishes that the Appellant was legally incompetent as of [REDACTED] 2017.**

**The Appellant's conservator did not prove that the Appellant was legally incompetent in [REDACTED] 2016 or [REDACTED] 2016, the period in which the \$39,800.00 in transfers occurred.**



**The Appellant has not met the criteria located at UPM § 3025.25 (B).**

6. 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).

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).

**The Appellant did not provide clear and convincing evidence that the \$39,800.00 in transfers from the Wells Fargo checking account during the look-back period had been made exclusively for a purpose other than qualifying for assistance.**

**The \$39,800.00 in transfers from the Wells Fargo checking account during the look-back period subjects the Appellant to a transfer penalty of ineligibility for the Medicaid program.**

7. During the penalty period, the following Medicaid services are not covered: a. LTCF [long-term care facility] 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).

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).

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 [long-term care] 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).

**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] 2017.**

8. 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).

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).

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).

On ██████████ 2017, the average monthly cost of care for LTCF services in Connecticut equaled \$12,604.00.

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).

**The Appellant's penalty period of ineligibility of Medicaid payment for long-term care service equals 3.15 months. [\$39,800.00 divided by \$12,604.00]**

**The Department correctly assessed a penalty period of ineligibility for Medicaid payment of the Appellant's long-term care services to run from ██████████ 2017 through ██████████ 2017.**

9. Section 19a-535 (b) of the Connecticut General Statutes provides in part that a facility shall not transfer or discharge a resident from the facility except to meet the welfare of the resident which cannot be met in the facility, or unless the resident no longer needs the services of the facility due to improved health, the facility is required to transfer the resident pursuant to section 17b-359 or 17b-360, or the health or safety of individuals in the facility is endangered, or in the case of a self-pay resident, for the resident's nonpayment or arrearage of more than fifteen days of the per diem facility room rate, or the facility ceases to operate.

**The Appellant is not a self-pay resident at ██████████, due to his Medicaid coverage.**

**██████████ cannot evict the Appellant for non-payment of an arrearage of more than fifteen days of the per diem facility room rate, as he is not a self-pay resident.**

10. Undue Hardship. When an individual would suffer undue hardship if assistance is denied or discontinued as a result of a transfer, the transfer does not cause ineligibility if all of the following conditions are present:

1. The individual is currently a resident of a long term care facility; and
2. The transferred asset was the individual's home property; and
3. The facility has threatened the individual with eviction due to nonpayment; and
4. The transferor establishes that the transferee is no longer in possession of the transferred asset and the transferee has no other assets with which to pay the cost of care. UPM § 3025.25 (A).

**In order to establish “undue hardship” as defined by section 3025.25 (A) of the Department’s Uniform Policy Manual, the individual must meet all four conditions listed in that section.**

**The Appellant’s circumstances did not meet all four required conditions as set in UPM § 3025.25 (A) so as to establish “undue hardship.”**

11. 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. Stat. § 17b-261a (c).

The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. Conn. Gen. Stat. § 1-2z.

In the construction of the statutes, words and phrases shall be construed according to the commonly approved usage of the language; and technical words and phrases, and such as have acquired a peculiar and appropriate meaning in the law, shall be construed and understood accordingly. Conn. Gen. Stat. § 1-1 (a).

**Section 17b-261a (c) of the Connecticut General Statutes, in its use of the word “may,” contains language that is permissive.**

**A hearing officer ordering the Department to waive a penalty period of ineligibility when the language of Section 17b-261a (c) of the Connecticut General Statutes is permissive, and not mandatory, would be arbitrary and an abuse of discretion.**

## DISCUSSION

During the pendency of the Appellant's Medicaid application, the Appellant's conservator notified the Department that the Appellant's son had withdrawn \$2,000.00 per week in cash for a number of weeks from the Wells Fargo checking account to send to an unidentified woman in Cuba for the Appellant's support. The Appellant's conservator did not submit probative documentation to support this theory. The Appellant's conservator now speculates that the Appellant's son misappropriated the cash withdrawals as well as completing several wire transfers to an account not held by the Appellant, as there was a breakdown in the father and son's relationship.

Speculation is not evidence.

The statutes addressing transfers of assets with respect to 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.

The Appellant's conservator did not provide *clear and convincing evidence* that \$39,800.00 (total) in cash withdrawals and wire transfers from the Wells Fargo checking account in the period from [REDACTED] 2016 through [REDACTED] 2016 were for a purpose other than to gift, transfer, conceal, or otherwise reduce the Appellant's assets so as to become eligible for medical assistance.

In the alternative, the Appellant's conservator opines that the Department must waive the penalty period of ineligibility for Medicaid payment of the Appellant's long-term care services, as: 1) the Appellant had been diagnosed with dementia at the time of his October 11, 2017 Medicaid application, and 2) the assertion that the Appellant's son had the intent and opportunity to steal the Appellant's funds in the relevant period.<sup>2</sup> This argument is unpersuasive, based on the plain language of section 17b-261a (c) of the Connecticut General Statutes.

As the wording of section 17b-261a (c) of the Connecticut General Statutes is *permissive*, rather than mandatory, the Department *may choose* to waive the imposition of a penalty period of ineligibility.

On two separate occasions, the Department has stated without equivocation that the agency would not voluntarily waive the Appellant's penalty period of ineligibility.<sup>3</sup>

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<sup>2</sup> (Appellant's conservator's testimony)(Appellant's Exhibit I)

<sup>3</sup> (Department's representative's testimony)(Department's [REDACTED] 2018 email)

For the hearing officer to substitute her opinion for the Department's affirmed course when the language of the controlling statute is permissive, and not mandatory, would be arbitrary and an abuse of discretion.

The Department's imposition of a penalty period of ineligibility for Medicaid coverage of the Appellant's long-term care services from [REDACTED] 2017 through [REDACTED] 2017 is affirmed.

**DECISION**

The Appellant's appeal is DENIED.

*Eva Tar - electronic signature*  
Eva Tar  
Hearing Officer

Pc:

[REDACTED]  
[REDACTED]

Michael Briggs, DSS (LTSS)-Bridgeport  
Fred Presnick, DSS-Bridgeport  
Yecenia Acosta, DSS-Bridgeport/Stamford  
Tim Latifi, DSS-Bridgeport

### **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.