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

[redacted], 2019
SIGNATURE CONFIRMATION

Case ID [redacted]
Client ID # [redacted]
Request ID # 145493

NOTICE OF DECISION
PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2019 the Department of Social Services (the "Department") sent [redacted] (the "Appellant") a Notice of Action ("NOA") imposing a transfer of assets penalty on her Medicaid for Home Care benefits for the period from [redacted] 2019 through [redacted], 2021.

On [redacted] 2019, the Appellant requested an administrative hearing to contest the Department's decision to impose a penalty on the Applicant's Home Care Medicaid benefits.

On [redacted]5, 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for [redacted], 2019.

On [redacted] 2019, the Appellant's daughter [redacted], the Authorized Representative ("AREP") requested a continuance of the hearing.

On [redacted] 2019, OLCRAH issued a notice rescheduling the administrative hearing for [redacted] 2019.

On [redacted] 2019, the Appellant's Authorized Representative called to request another reschedule.

On [redacted] 2019, OLCRAH issued a notice rescheduling the administrative hearing for [redacted], 2019.

On [redacted], 2019, in accordance with sections 17b-60, 17b-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:

[redacted], the Appellant's daughter, Authorized Representative
Laurie Filippini, Department's representative
Swati Sehgal, Hearing Officer

STATEMENT OF THE ISSUE

The issue is whether the Department's decision to deny and impose a Transfer of Assets ("TOA") penalty on the Applicant's Medicaid for Home Care benefits beginning [redacted], 2019, and ending on [redacted] 2021, for transfers of $245,442 was correct.

FINDINGS OF FACT

1. The Appellant is [redacted] years old and her only income is Social Security Benefits in the amount of $598.00 a month. (Exhibit 1: W-1LTC Application)

2. The Appellant was a recipient of MSP-Qualified Medicare Beneficiaries. (Exhibit 10:Notice of Action, [redacted]19)

3. The Appellant was admitted to a nursing home in [redacted]er 2019 to recover from a fall, she is expected to be there for less than thirty days. (AREP's Testimony)

4. The Appellant is suffering from arthritis, diabetes, depression, and forgetfulness. (Exhibit 1, AREP's Testimony)

5. Until [redacted]r 2017, the Appellant lived in her own house. (Hearing Record)

6. On [redacted] 2017, the Real Estate Agent listed the Appellant's house for $299,900.00, the price was reduced to $279.900 on [redacted] 2017, and the house was sold on [redacted], 2017, for $265,000.00. (Exhibit 13: Realtor's Listing)

7. The Appellant was not able to keep up with the house. The Appellant and her granddaughter decided to buy a house where a basement apartment will be prepared for the Appellant to live for the remaining of her life. (AREP's Testimony)

8. In [redacted] 2017, the Appellant's granddaughter purchased a house in [redacted] CT and the Appellant moved in that property. (AREP's Testimony)

9. The Appellant's name was not added to the deed nor does she have the right to life use. (Department's Testimony)

10. On [redacted] 2019, the Department received an application for Husky C under Home and Community Based Services. (Department's Summary, Exhibit 1: W-1LTC Application)

11. On [redacted] 2019, the Department reviewed the Application and mailed W1348, Request for Information form to the Appellant. (Department's Summary, Exhibit 2: Case Notes)

12. On [redacted] 2019, the Department reviewed the received information and sent another request for information form to the Appellant. (Exhibit 2)

13. The Department determined that the fair market value of the house was $319,130.00. (Exhibit 2)

14. The Department also determined that the Appellant sold the property for less than the fair market value and therefore the difference of $54,130.00 will be included in the penalty (319,130.00 Fair Market Value - $265,000.00 property sold for). (Department's Summary and Exhibit 2)

15. On [redacted] 2019, the Department reviewed the new information and determined that the Appellant had transferred total of $258,213.00 including $1,600.00 on [redacted], 2017, $500.00 on [redacted] 2017, $27,635.00 on [redacted], 2017, $167,333.00 on [redacted], 2017 to her granddaughter, and $2,900.00 on [redacted], 2017 and $740.00 on [redacted], 2017 to unknown entities. $2,375.00 on [redacted], 2017, for work done on her granddaughter's house, and $54,130.00 the difference between the fair market value and the amount the house was actually sold for. (Exhibit 6: W495A, Exhibit 2)

16. The Department also determined that the Appellant's granddaughter gave the Appellant total of $2,046.00 between [redacted], 2017 and [redacted] 2018 ($96.00 on [redacted], 2017, $100.00 on [redacted] 2017, $500.00 on [redacted] 2017, $500.00 on [redacted], 2018, $200.00 on [redacted] 2018, $550.00 on [redacted], 2018 and $100.00 on [redacted],

2018), and reduced the penalty by such amount. (Department's Summary, Exhibit 2)

17. On [redacted], 2019, the Department issued a W495 A Transfer of Assets Preliminary Decision Notice advising of the Department's position that the Appellant had transferred $256,167 ($258,213.00-$2,046.00). The Department also allowed the Appellant time to rebut the claim. (Exhibit 6)

18. On [redacted] 2019, the Department received the Appellant's response to W495A. The Appellant disputed the penalty for $54,130.00. The Appellant stated that transfers to her granddaughter were to build an in-law apartment so the Appellant could live there for rent-free. (Exhibit 2)

19. The Department determined the average monthly rent in the town of Woodbury is $975.00. The Department determined that Appellant moved in with her granddaughter in [redacted] 2018 because that is when the Appellant informed the Department of her address change. (Department's Summary, Exhibit 2 and Department's Testimony)

20. The Department calculated the rent amount the Appellant would have paid from [redacted] 2018 through [redacted] 2019 as $10,725 (11 months X $975.00). The Department reduced the penalty by $10,725 and the updated penalty amount is $245,442 ($256,167-$10,725). (Department's Summary, Exhibit 2)

21. On [redacted] 2019, the Department issued a 495B informing the Appellant about the reduction of the penalty. The Department set up a penalty period beginning [redacted] 2019 and ending on [redacted], 2021.(Exhibit 11: W495B)

22. On [redacted] 2019, the Department denied the Appellant's application for Medicaid for Home Care Services because the Appellant gave her assets to someone in order to get benefits and did not meet program requirements. The Department determined the penalty period beginning [redacted] 2019, and ending on [redacted], 2021. (Exhibit 10: Notice of Action, [redacted]/19)

23. The issuance of this decision is timely under Connecticut General Statutes 17b-61(a), which requires that a decision be issued within 90 days of the request for an administrative hearing. The Appellant requested an administrative hearing on [redacted]8, 2019. Therefore, this decision is due not later than [redacted] 2019. However, the hearing, which was originally scheduled for [redacted] 2019, was rescheduled for [redacted], 2018, at the request of the Appellant, which caused a 20-day delay. Because this 20-day delay resulted from the Appellant's request, this decision is not due until [redacted] 2019, and is therefore timely.

CONCLUSIONS OF LAW

1. 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.

2. 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. Section § 17b-261a(d)(1) of the Connecticut General Statutes provides For purposes of this subsection, an “institutionalized individual” means an individual who has applied for or is receiving (A) services from a long-term care facility, (B) services from a medical institution that are equivalent to those services provided in a long-term care facility, or (C) home and community-based services under a Medicaid waiver.

4. “The Department’s Uniform Policy Manual (“UPM”) is the equivalent of a state regulation and, as such, carries the force of law.” Bucchere v Rowe, 43 Conn Supp. 175 178 (194) (citing Conn. Gen. Stat. § 17b-10; Richard v.Commissioner of Income Maintenance, 214 Conn. 601, 573 A.2d712(1990)).

5. Uniform Policy Manual (“UPM”) § 3029.03 stated that the Department uses the policy contained in Chapter 3029 of the Uniform Policy Manual to evaluate asset transfers if the transfer occurred on or after February 8, 2006.

6. 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.

7. UPM § 3029.05(C) provides that 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], 2014.

9. UPM § 3029.05 B provides that the policy contained in this chapter on transfers of assets pertains to institutionalized individuals and to their spouses.

10. 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.

11. 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, provide clear and convincing evidence that the transfer was made exclusively for a purpose other than qualifying for assistance.

12. The Department was correct when it determined that the $256,167.00 that the Applicant gave to her granddaughter in 2017 was a transfer of assets subject to a penalty.

13. UPM § 3029.15 B provides for transfers made exclusively for reasons other than qualifying and states that an institutionalized individual or the individual's spouse is considered to have transferred an asset exclusively for a purpose other than qualifying for assistance under the circumstance in which the transferor met their foreseeable needs. 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.

14. The Appellant did not retain enough income and assets to meet her foreseeable needs.

15. The Department correctly determined that the $256,167.00 that the Appellant gave to her granddaughter was a transfer of assets subject to a penalty because at the time of the transfers the Appellant did not retain enough assets or income to cover her basic living expenses and medical costs.

16. UPM § 3029.05(F) provides that 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 by the average monthly cost to a private patient for long-term care services in Connecticut. Uncompensated

values of multiple transfers are added together and the transfers are treated as a single transfer.

17. UPM § 3029.05 provides for the length of the penalty period and nature of the penalty as follows:

F. Length of the Penalty Period

1. 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.

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.

a. For applicants, the average monthly cost for LTCF services is based on the figure as of the month of application.

b. For recipients, the average monthly cost for LTCF services is based on the figure as of:

(1) the month of institutionalization; or

(2) the month of the transfer, if the transfer involves the home or the proceeds from a home equity loan, reverse mortgage or similar instrument improperly transferred by the spouse while the institutionalized individual is receiving Medicaid, or if a transfer is made by an institutionalized individual while receiving Medicaid…

3. 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.

4. Once the Department imposes a penalty period, the penalty runs without interruption, regardless of any changes to the individual's institutional status.

G. Medicaid Eligibility During the Penalty Period

1. 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.

2. Payment is made for all other Medicaid services during a penalty period if the individual is otherwise eligible for Medicaid

18. The average monthly cost of LTCF services in Connecticut as of [redacted] 2019, the month of the application, was $12,851.00

19. The Department correctly reduced the penalty by $10,725.00, credit has been given for the rent.

20. The Applicant is subject to a penalty period of 19.01 months after dividing the uncompensated value of the transferred asset by the average monthly cost of LTCF services ($245,442.00 divided by $12,851.00).

21. The Department correctly imposed a transfer of assets penalty and denied the Applicant Home Care Medicaid benefits for the period from [redacted] 2019 through [redacted] 2021.

DISCUSSION

In considering whether transfers were made for the purpose of eligibility for Medicaid, the Department considers whether the transferor retains enough income and assets to meet her foreseeable needs.

The Appellant listed her house for sale for $299,900.00 which was below the fair market value of $319,130.00 determined by the Department based on the town's appraisal value. The Appellant further reduced the price and sold the property for $265,000.00 in [redacted] 2017. The Department penalized the Appellant for the difference between the fair market value and the actual sale price of the property in the amount of $54,130.00 (319,130.00-$265,000.00). During the hearing, the Department's Representative agreed to reduce the fair market value to Realtor's initial listing price of $299,900.00 and agreed to reduce the difference between fair market value and the actual price the house was sold for.

The Appellant sold her property and transferred all the proceeds to her granddaughter, who in return bought a house and the Appellant moved in with her. The Property is solely in the granddaughter's name. The Appellant's Authorized Representative testified that the Appellant moved in the granddaughter's house in [redacted] of 2017. However the Department was not notified of the change of address until [redacted] 2018. The Appellant claims that transfers were made so her

granddaughter could build an in-law apartment for the Appellant to say there rent-free. The Department reduced the penalty by $10,725, cost of rent the Appellant would have paid for eleven months to live in that town from [redacted] 2018- [redacted] 2019. No evidence was provided to the fact that the Appellant moved in with her granddaughter prior to [redacted] 2018.

The Appellant applied for Home and Community Based service on [redacted] 2018. The Appellant did not present evidence that she retained enough income and assets to meet her foreseeable needs. There is no clear and convincing evidence that the transfer was made for a purpose other than qualifying for assistance, therefore, the Department's action to assign a penalty is upheld. However the amount of the penalty and length of the penalty period need to be reevaluated.

DECISION

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

ORDER

1. The Department shall reevaluate and recalculate the Transfer of Asset penalty amount based on its stipulation during the hearing of the fair market value.

2. The Department shall make any necessary adjustments to the penalty period if needed.

3. The Department shall issue new notices confirming these actions.

4. The Compliance with this order is due to the undersigned by [redacted] 2019.

Swati Sehgal

Swati Sehgal
Hearing Officer

PC: Alejandro Arbelaez, Operations Manager, DSS R. O. #62, Torrington
Pam Adams, Paul Chase, Laurie Filippini, Shirlee Stoute, Lisa Bonetti, DSS, Central Office

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.

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.