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

[redacted], 2019
SIGNATURE CONFIRMATION

CLIENT ID #: [redacted]
HEARING ID #: [redacted]

NOTICE OF DECISION

PARTY

[redacted]

[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2018, the Department of Social Services (the "Department") sent [redacted] (the "Appellant") a notice of action granting Husky C Long Term Care assistance effective [redacted].

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

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

On [redacted], 2019, Attorney [redacted] (the "Attorney") requested to reschedule the administrative hearing.

On [redacted], 2019, the OLCRAH issued a notice scheduling 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] Appellant's daughter
Attorney [redacted], Appellant's representative
Dorothea Kelson, Eligibility Services Worker, Department's Representative
Roberta Gould, Hearing Officer

At the request of the Attorney the hearing record remained open for the submission of additional evidence. The hearing record closed on [redacted], 2019.

STATEMENT OF THE ISSUE

The issue is whether the Department correctly determined an effective date of Medicaid based on a Transfer of Assets ("TOA") penalty.

FINDINGS OF FACT

1. The Appellant is [redacted] years old. (Exhibit A: Attorney's opposition to the transfer of asset penalty)

2. On [redacted] 2014, the Appellant suffered a fall resulting in a broken femur. (Exhibit C: OT progress and discharge summary)

3. The Appellant entered [redacted], where she remained until [redacted] 2014. (Exhibit C)

4. On [redacted] 2014, the Appellant entered [redacted] facility. (Exhibit C)

5. On [redacted], 2014, the Appellant was discharged from [redacted] facility and moved in with her daughter, [redacted]. (Exhibit A and Exhibit C)

6. Prior to discharge from [redacted] facility the Appellant's daughter purchased addition railings, and completed a bathroom remodel that included a new shower bench, a commode, and bathroom fixtures. ([redacted] testimony)

7. At the time of discharge from [redacted] facility, the Appellant required 24-hour supervision with monitors, a bench, a rolling walker, and a variety of home modifications including a raised toilet seat, grab bars, and handrails on stairs. She also required PT, OT and nursing care upon discharge. (Exhibit B: Letter from [redacted] medical director, Exhibit C, Exhibit D: Rehabilitation functional status report and Exhibit G: Medical records)

8. At the time of discharge from [redacted] facility and ongoing the Appellant was unable to complete ADL's independently and required supervision with all mobility self-care and IADL's. (Exhibit C)

9. The Appellant would not have been discharged from the facility without 24 hour care and supervision in place and required nursing facility level of care. (Exhibit B, Exhibit G and [redacted] testimony)

10. At the time of discharge from [redacted] facility the Appellant and her daughter, [redacted], developed a Personal Care Agreement that provided for housing, transportation, grocery shopping, laundry, meal preparation, medical appointments,

medication supervision, and daily supervision as of [redacted] 2014, to continue as a month-to-month tenancy and caregiver service agreement. The Appellant's caregivers, [redacted] and [redacted] received compensation for services provided for the Appellant at the rate of $27.00 per hour. (Exhibit F: Care agreement and Exhibit I: Written statement from [redacted])

11. The Appellant's daughter, [redacted], took Family Medical Leave from [redacted] 2014, through [redacted], 2015, in order to provide full-time care for the Appellant. (Attorney's testimony)

12. The Appellant employed a home health aide until [redacted] of 2015 to provide services for her while her daughter, [redacted], was working. ([redacted] testimony)

13. In [redacted] of 2015 [redacted] retired from her job in order to provide full-time care for the Appellant. ([redacted] testimony)

14. On [redacted], 2016, [redacted] issued a check in the amount of $18,210.90 for services provided for the Appellant. (Exhibit 2: People's United Bank checks and Hearing summary)

15. On [redacted] 2016, [redacted] issued a check in the amount of $43,000.00 to [redacted] for services provided to the Appellant. (Exhibit 2 and Hearing summary)

16. On [redacted], 2016, [redacted] issued a check in the amount of $13,500.00 for services provided for the Appellant. (Exhibit 2 and Hearing summary)

17. On [redacted] 2017, [redacted] issued a check in the amount of $5,000.00 for services provided to the Appellant. (Exhibit 2 and Hearing summary)

18. In [redacted] of 2018, the Appellant developed the flu and entered [redacted] Hospital. (Exhibit G and [redacted] testimony)

19. In [redacted] of 2018, the Appellant re-entered [redacted] facility due to complications from influenza. [redacted] testimony)

20. From [redacted] 2014, through [redacted] of 2018, [redacted] provided the Appellant with medical transportation, assistance with general transportation, grocery shopping, laundry, meal preparation, medical appointments, medication supervision, and daily supervision, as well as home modifications for which she was paid pursuant to the Care Agreement between the Appellant, [redacted] and [redacted]. (Exhibit F and [redacted] testimony)

21. On [redacted] 2018, the Appellant's attorney applied for Long Term Care Medicaid assistance for her as an authorized representative. (Exhibit 1: W-1LTC application

form and Hearing summary)

22. On [redacted], 2018, the Department issued the Appellant a *W-495A Transfer of Assets Preliminary Decision Notice* stating that the Department's initial decision regarding her transfer was that she made a transfer in the amount of $79,710.50 during the period of [redacted] 2016, through [redacted], 2017, in order to be eligible for Medicaid assistance. (Exhibit 5: W-495A and Hearing summary)

23. On [redacted] 2018, the Appellant's attorney responded to the *Transfer of Assets Preliminary Decision Notice* indicating that the Appellant required 24 hour care and that a Caregiver Agreement was in place to address the Appellant's needs while she resided with her daughter, [redacted]. (Exhibit 6: Rebuttal from attorney dated [redacted] and Hearing summary)

24. On [redacted] 2018, the Department sent the Appellant's attorney a *W-1348 Verification We Need* form requesting verification of the time frame for each bank transaction in question. (Exhibit 7: W-1348LTC dated [redacted] 2018 and Hearing summary)

25. The Department did not send the Appellant a *W-495B Notice of Response to Rebuttal/Hardship Claim* or a *W-495C Transfer of Assets Final Decision Notice*. (Department's testimony)

26. On [redacted] 2018, the Department sent the Appellant a Notice stating that Medicaid is being granted effective [redacted] 2018, but did not address the transfer of assets penalty. (Exhibit 9: Notice of action dated [redacted] and Hearing summary)

27. There is evidence in the record to reflect that funds removed from the Appellant's bank account in the amount of $79,710.50 during the period of [redacted] 2016, through [redacted], 2017, were used to pay for services and care provided to the Appellant. (Hearing record)

28. The Department imposed a penalty on the Appellant's Long Term Care Medicaid assistance for the period of [redacted], 2018, through [redacted] 2018. (Hearing summary)

29. 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's attorney requested an administrative hearing on [redacted], 2019. However, the Appellant's attorney requested to reschedule the administrative hearing and the close of the hearing record was further extended through [redacted], 2019, to allow for the submission of additional evidence by the Appellant's attorney. Because of the delay in the close of the hearing record, this final decision was 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. "The Department's Uniform Policy Manual ("UPM") is the equivalent of a state regulation and, as such, carries the force of the law." *Bucchere v. Rowe*, 43 Conn. Supp. 175, 178 (1994) (citing Conn. Gen. Stat. § 17b-10; *Richard v. Commissioner of Income Maintenance*, 214 Conn. 601, 573 A.2d 712 (1990).

4. 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."

   The Department correctly looked back 60 months prior to the Appellant's application in order to determine whether any improper asset transfers occurred.

5. 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."

6. Uniform Policy Manual ("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."

7. UPM § 3029.10(G) provides that

   > "An institutionalized individual or his or her spouse may transfer an asset without penalty if the individual provides 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. (Cross Reference: 3029.20)"

8. UPM § 3029.30(A)(2) provides that compensation received prior to the time of the transfer is counted if it was received in accordance with a legally enforceable agreement.

   UPM § 3000.01 provides that "A **legally-enforceable agreement** is a binding and credible agreement, either oral or written, wherein two or more parties agree to an arrangement in consideration of the receipt of money, property, or services and in which all parties can be reasonably expected to fulfill their parts of the agreement."

   The Care Agreement is a legally-enforceable agreement between the Appellant, her daughter, [redacted], and caregiver, [redacted]. The agreement was put in place when the Appellant was discharged from [redacted] facility in [redacted] of 2014, specifying that a month-to-month tenancy would commence on [redacted] 2014, and that the services of housing, food, medical and social transportation, cleaning, bathroom assistance, and any other assistance with activities of daily living would be provided for the Appellant by her caregivers, [redacted] and [redacted].

9. UPM § 3029.20(A) provides that

   "1. Other valuable consideration may be received either prior to or subsequent to the transfer.

   2. The value of the other valuable consideration, computed as described in 3029.20 A. 3, must be equal to or greater than the value of the transferred asset in order for the asset to be transferred without penalty.

   3. The value of the other valuable consideration, as described in 3029.20 B, is equal to the average monthly cost to a private patient for long-term care services in Connecticut, multiplied by the number of months the transferee avoided the need for the transferor to be institutionalized."

   The average cost of care for long-term care services in Connecticut for 42 months was $529,368.00 ($12,604.00 [eff. [redacted]2017] x 42).

10. UPM § 3029.20(B) provides that

    "Other valuable consideration must be in the form of services or payment for services which meet all of the following conditions:

    1. the services rendered are of the type provided by a homemaker or a home health aide; and

    2. the services are essential to avoid institutionalization of the transferor for a

period of at least two years; and

3. the services are either:

a. provided by the transferee while sharing the home of the transferor; or

b. paid for by the transferee."

The Appellant's daughter, [redacted], provided for homemaker and home health aide services for the Appellant which were essential to avoiding institutionalization for a period of 42 months while the Appellant lived with her in her home.

11. UPM § 3029.35(B) provides that

"1. An institutionalized individual, or his or her spouse, who is notified of the Department's determination that an asset transfer was improper, has ten days from the date of the notice to rebut this determination prior to the implementation of the negative action. The Department may grant an extension if the individual so requests and the request is reasonable.

2. Rebuttal must include:

a. a statement from the individual or his or her spouse as to the reason for the transfer; and

b. objective evidence, which is:

(1) evidence which rational people agree is real or valid; and

(2) documentary or non-documentary."

The Department correctly notified the Appellant of its determination to impose a transfer of asset penalty in the amount of $79,710.50 for the period of [redacted] 2016 through [redacted], 2017. The Appellant's attorney appropriately responded to the *Transfer of Assets Preliminary Decision Notice* within ten days.

UPM § 3029.35(C)(2) provides that "If the individual rebuts the Department's preliminary decision to impose a penalty period, the Department has ten days from the receipt of the rebuttal to send an interim notice to the individual stating that it is either upholding or reversing its preliminary decision.

UPM § 3029.35(C)(4) provides that "The Department sends a final decision notice regarding the rebuttal issue at the time of the mailing of the notice regarding the disposition of the Medicaid application."

The Department failed to send either the *W-495B Notice of Response to Rebuttal/Hardship Claim* or a *W-495C Transfer of Assets Final Decision Notice*.

The Department was incorrect when it determined that the Appellant did not provide clear and convincing evidence that she received 24-hour home health aide services and assistance with ADL's and IADL's at the fair market value of $27.00 per hour, as well as home modifications, as outlined in the legally enforceable Care Agreement between the Appellant, her daughter and [redacted].

On [redacted], 2018, the Department incorrectly imposed a transfer of assets penalty for the period from [redacted] 2018, through [redacted], 2018.

The Department incorrectly determined that the Appellant improperly transferred assets of $79,710.50 during the Medicaid eligibility look-back period.

DISCUSSION

After reviewing the evidence and testimony presented at the hearing, I find that the Department's action to impose a Medicaid period of ineligibility for long-term care coverage is not upheld. It is credible that the Appellant received care services provided by [redacted] and [redacted] at the rate of $27.00 per hour, and that home modifications were necessary to avoid institutionalization for a period of more than two years. The Appellant's attorney and daughter provided credible evidence that the services provided for the Appellant were in accordance with a legally enforceable agreement established in 2014. Also, the Department neglected to send either the *W-495B Notice of Response to Rebuttal/Hardship Claim* or a *W-495C Transfer of Assets Final Decision Notice,* as required by Departmental policy. I find that the transfers during the period of [redacted] 2016, through [redacted] of 2017, totaling $17,710.50 are not subject to a Medicaid penalty and that the attorney and daughter provided clear and convincing evidence that she did not transfer the assets in order to qualify for Medicaid.

DECISION

The Applicant's appeal is **GRANTED**

ORDER

1. The Department shall reopen the Appellant's [redacted], 2018, application for Medicaid and continue the eligibility process.

2. No later than [redacted], 2019, the Department will submit to the undersigned verification of compliance with this order.

Roberta Gould
Hearing Officer

Pc: Brian Sexton, Social Services Operations Manager, DSS Middletown
Dorothea Kelson, Eligibility Services Worker, DSS New Haven

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.