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

[redacted] 2019
Signature Confirmation

Client ID # [redacted]
Request # 140633

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2019, the Department of Social Services (the "Department") issued [redacted] (the "Appellant") a Notice of Action ("NOA"). The notice stated you have transferred "cash on numerous occasions between [redacted] 2014 and [redacted] 2017 to become eligible for Medicaid." The Department imposed a period of ineligibility for Medicaid payment of long term care services effective [redacted] 2018 through [redacted] 2018 under the Medicaid Long Term Care Program.

On [redacted] 2019, [redacted] (the "Conservator"), Conservator of the Estate, on behalf of the Appellant, requested an administrative hearing to contest the Department's decision to impose a penalty under the Medicaid Long Term Care Program.

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, the OLCRAH issued a corrected notice scheduling the administrative hearing for [redacted] 2019.

On [redacted] 2019, the Conservator requested a continuance which OLCRAH granted.

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] Conservator of the Estate for the Appellant
[redacted] Witness for the Appellant
Adam Silverman, Department Representative
Melissa Lora, Department Representative
Lisa Nyren, Fair Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly determined the Appellant transferred $109,459.24 to become eligible for Medicaid.

A secondary issue to be decided is whether the transfer subjected the Appellant to a penalty period of ineligibility for Medicaid payment of long-term care services.

FINDINGS OF FACT

1. On [redacted] 2017, [redacted] ("nursing facility"), a skilled nursing facility admitted the Appellant to their facility. (Hearing Record)

2. On [redacted] 2017, the [redacted] appointed [redacted] (the "Conservator") as Conservator of the Estate on behalf of the Appellant. (Exhibit C: Court of Probate)

3. On [redacted] 2018, the Department received an application for Long Term Care ("LTC") Medicaid from the Conservator on behalf of the Appellant. (Exhibit B: W-1 LTC Long-term Care/Waiver Application)

4. The Department determined the Appellant transferred $109,459.24 between [redacted] 2014 and [redacted]2017 for the purpose of becoming eligible for LTC Medicaid. (Exhibit D: Transfer of Assets Preliminary Decision Notice, Exhibit E: Notice of Response to Rebuttal/Hardship Claim, and Exhibit F: Transfer of Assets Final Decision Notice)

5. The Department determined the Appellant asset eligible for Medicaid effective April 1, 2018 without eligibility for room and board under the LTC Medicaid program due to the imposition of a $109,459.24 transfer of asset penalty starting [redacted] 2018 and ending on [redacted] 2018. (Exhibit F: Transfer of Assets Final Decision Notice and Department Representative's Testimony)

6. On [redacted] 2019, the Department issued a W495A Transfer of Assets Preliminary Decision Notice to the Conservator regarding the transfer of assets. The Department lists the following [redacted] ("brokerage firm") checks as transfers of assets: [redacted] 2016 $10,000, [redacted] 2016 $6,000.00, and [redacted] 2017 $9,897.00. The notice stated you transferred assets that affect eligibility and you have not given us proof that the transfer was not made for the purpose of qualifying for LTC Medicaid. The Department proposes to impose a penalty period for the transfer. A response is due by [redacted] 2019. (Exhibit D: Transfer of Assets Preliminary Decision Notice)

7. On [redacted] 2019, the Conservator submitted a rebuttal response to the Department. (Exhibit I: Rebuttal Email)

8. On [redacted] 2019, the Department issued a W495B Transfer of Assets Notice of Response to Rebuttal/Hardship Claim. The Department reviewed the Appellant's rebuttal and determined the [redacted] 2016 $10,000.00 transfer, [redacted] 2016 $6,000.00 transfer and [redacted] 2017 $9,897.00 transfer subjected the Appellant to a penalty period of ineligibility of Medicaid for a period of 61.29 days should the Appellant qualify for Medicaid. If Medicaid eligible, the Department will not cover LTC services such as daily room and board rate at the nursing facility but will cover other medical services such as doctor or hospital costs. (Exhibit E: W495B Transfer of Assets Notice of Response to Rebuttal/Hardship Claim)

9. On [redacted] 2019, the Department issued a W495A Transfer of Assets Preliminary Decision Notice to the Conservator regarding the transfer of assets. The Department lists ATM transactions totaling $83,562.24 between [redacted] 2014 and [redacted] 2016 as transfers of assets. The notice stated you transferred assets that affect eligibility and you have not given us proof that the transfers were not made for the purpose of qualifying for LTC Medicaid. The Department proposes to impose a penalty period for the transfer. The Department failed to list a response due date. (Exhibit D: Transfer of Assets Preliminary Decision Notice)

10. On [redacted] 2019, the Conservator submitted a rebuttal response to the Department. (Exhibit I: Rebuttal Email)

11. On [redacted] 2019, the Department issued a W495B Transfer of Assets Notice of Response to Rebuttal/Hardship Claim. The Department reviewed the Appellant's rebuttal and determined the ATM transactions for the period [redacted] 2014 through [redacted] 2016 totaling $83,562.24 subjected the Appellant to a penalty period of ineligibility of Medicaid for a period of 197.78 days should the Appellant qualify for Medicaid. If Medicaid eligible, the Department will not cover LTC services such as daily room and board rate at the nursing facility but will cover other medical services such as doctor or hospital costs. (Exhibit E: W495B Transfer of Assets Notice of Response to Rebuttal/Hardship Claim)

12. On [redacted] 2019, the Department issued W495C Transfer of Assets Final Decision Notice. The Department lists the following transfers: cash on numerous occasions between [redacted] 2014 and [redacted] 2017 as improper transfer of assets for the purpose of qualifying for Medicaid. The Department will impose a penalty period beginning [redacted] 2018 through [redacted] 2018 in which the Appellant will remain ineligible for LTC benefits under Medicaid during the penalty period. Medicaid will begin paying for nursing home costs beginning [redacted] 2018. (Exhibit F: W495C Transfer of Assets Final Decision Notice and Department Representative's Testimony)

13. The Department granted the Appellant Medicaid effective [redacted] 2018 with a penalty period beginning [redacted] 2018 and ending on [redacted] 2018 under the LTC program. (Exhibit F: W495C Transfer of Assets Final Decision Notice and Department Representative's Testimony)

14. 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 Conservator requested an administrative hearing on [redacted] 2019 on behalf of the Appellant. However, the hearing, which was originally scheduled for [redacted] 2019, was rescheduled for [redacted] 2019, at the request of the Conservator, which caused a [redacted] delay. Because this [redacted] delay resulted from the Appellant's request, this decision is not due until [redacted] 2019, and therefore timely.

CONCLUSIONS OF LAW

1. Connecticut General Statute § 17b-2(6) provides that 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.

2. State statute provides that the Department of Social Services shall be the sole agency to determine eligibility for assistance and services under programs operated and administered by said department. (Conn. Gen. Stats. § 17b-261b(a))

3. State statute provides 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. The commissioner shall establish the standards for eligibility for medical assistance at one hundred forty-three per cent of the benefit amount paid to a household of equal size with no income under the temporary family assistance program in the appropriate region of residence. In determining eligibility, the commissioner shall not consider as income Aid and Attendance pension benefits granted to a veteran, as defined in section 27-103, or the surviving spouse of such veteran. Except as provided in section 17b-277 and section 17b-292, the medical assistance program shall provide coverage to persons under the age of nineteen with household income up to one hundred ninety-six per cent of the federal poverty level without an asset limit and to persons under the age of nineteen, who qualify for coverage under Section 1931 of the Social Security Act, with household income not exceeding one hundred ninety-six per cent of the federal poverty level without an asset limit, and their parents and needy caretaker relatives, who qualify for coverage under Section 1931 of the Social Security Act, with household income not exceeding one hundred fifty per cent of the federal poverty level without an asset limit. Such levels shall be based on the regional differences in such benefit amount, if applicable, unless such levels based on regional differences are not in conformance with federal law. Any income in excess of the applicable amounts shall be applied as may be required by said

federal law, and assistance shall be granted for the balance of the cost of authorized medical assistance. The Commissioner of Social Services shall provide applicants for assistance under this section, at the time of application, with a written statement advising them of (1) the effect of an assignment or transfer or other disposition of property on eligibility for benefits or assistance, (2) the effect that having income that exceeds the limits prescribed in this subsection will have with respect to program eligibility, and (3) the availability of, and eligibility for, services provided by the Nurturing Families Network established pursuant to section 17b-751b. For coverage dates on or after January 1, 2014, the department shall use the modified adjusted gross income financial eligibility rules set forth in Section 1902(e)(14) of the Social Security Act and the implementing regulations to determine eligibility for HUSKY A, HUSKY B and HUSKY D applicants, as defined in section 17b-290. Persons who are determined ineligible for assistance pursuant to this section shall be provided a written statement notifying such persons of their ineligibility and advising such persons of their potential eligibility for one of the other insurance affordability programs as defined in 42 CFR 435.4. (Conn. Gen. Stats. § 17b-261(a))

4. State statute 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. (Conn. Gen. Stats. § 17b-261a(a)

5. State statute provides that any transfer or assignment of assets resulting in the establishment or imposition of a penalty period shall create a debt, as defined in section 36a-645, that shall be due and owing by the transferor or transferee to the Department of Social Services in an amount equal to the amount of the medical assistance provided to or on behalf of the transferor on or after the date of the transfer of assets, but said amount shall not exceed the fair market value of the assets at the time of transfer. The Commissioner of Social Services, the Commissioner of Administrative Services and the Attorney General shall have the power or authority to seek administrative, legal or equitable relief as provided by other statutes or by common law. (Conn. Gen. Stats. § 17b-261a(b))

6. State statute provides that 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. (Conn. Gen. Stats. § 17b-261a(d)(1))

7. "The department's uniform policy manual is the equivalent of a state regulation and, as such, carries the force of 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))

8. Uniform Policy Manual ("UPM") § 3029 provides in part that this chapter describes the technical eligibility requirements in the Medicaid program pertaining to the transfer of an asset for less than fair market value. The policy material in this chapter pertains to transfers that occur on or after February 8, 2006.

9. UPM § 3029.03 provides that 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.

10. UPM § 3029.05(B)(1) provides that the policy contained in this chapter pertains to institutionalized individuals and to their spouses.

    UPM § 3029.05(B)(2)(a) provides that an individual is considered institutionalized if he or she is receiving: LTCF services.

11. UPM § 3029.05(D)(1) provides that the Department considers transfers of assets made within the time limits described in 3029.05C, 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.

12. 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.

13. UPM § 3029.05(C) 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:

    1. The individual is institutionalized; and
    2. The individual is either applying for or receiving Medicaid.

14. The Department correctly established the look back period as [redacted] 2013 through [redacted] 2018 since the Appellant applied for Medicaid on [redacted] 2018 and has been institutionalized since [redacted] 2017.

15. UPM § 3029.10(F) 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 at fair market value.

16. UPM §3029.35(A)(1) provides that prior to denial or discontinuance of LTC Medicaid benefits, the Department notifies the individual and his or her spouse of its preliminary decision that a transfer of an asset is determined to have been improper.

    UPM § 3029.35(A)(2) provides that the notification includes a clear explanation of both:
    a. The reason for the decision; and
    b. The right of the individual or his or her spouse to rebut the issue within ten days.

17. UPM § 3029.35(B)(1) provides that 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.

    UPM § 3029.35(B)(2) provides a 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.

18. 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.

19. UPM § 3029.35(C)(3) provides that the notification described 3029.35(C)(2) informs the individual that:

    a. The Department is reversing its preliminary decision, and is not imposing a penalty period with respect to LTC services; or

b. The Department's preliminary decision is upheld, and a penalty period is being established, during which Medicaid will not pay for LTC services.

20. 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.

21. The Conservator on behalf of the Appellant failed to provide clear and convincing evidence that the reason for the transfers totaling $109,459.24 for the period [redacted] 2014 through [redacted] 2017 were not for qualifying for assistance under Medicaid.

22. The Department correctly determined the Appellant transferred assets totaling $109,459.24.

23. The Department correctly imposed a transfer of assets penalty against the Appellant's LTC Medicaid due to the transfer of assets. The Appellant is subject to a transfer of asset penalty.

24. UPM § 3029.05(F)(1) provides that 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).

25. UPM § 3029.05(F)(2) provides that the length of the penalty period is determined by diving 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 of LTCF services is based on the figure as of the month of application.

    Effective [redacted], the average cost of care is [redacted].

26. The Department correctly determined the penalty period as [redacted] months beginning [redacted] 2018 ending [redacted] 2018. ($109,562.24 total transfer / [redacted] Average Cost of Care = [redacted] months)

DISCUSSION

Neither the Conservator nor the witness provided any first-hand knowledge to support the transfers totaling $109,459.24 made by the Appellant were for reasons other than to qualify for Medicaid. The witness divorced the Appellant in [redacted] and has not resided with the Appellant in over [redacted] years and the

conservator testified he had no access to medical or personal information regarding the Appellant. The only evidence submitted by the Conservator is an affidavit signed by the Appellant in [redacted] 2018, on a good day, indicating he used the money to purchase drugs. The Department's decision that the Appellant transferred assets in order to qualify for Medicaid and impose a transfer of asset penalty is upheld.

DECISION

The Appellant's appeal with regards to whether or not he transferred $109,459.24 to become eligible for Medicaid is denied.

The Appellant's appeal with regards to whether the transfer subjected the Appellant to a period of ineligibility for Medicaid payments of LTC services is denied.

Lisa A. Nyren
Fair Hearing Officer

CC: Musa Mohamud, DSS RO #10
Judy Williams, DSS RO #10
Jessica Carroll, DSS RO #10
Jay Bartolomei, DSS RO #10
Melissa Lora, DSS RO #10
Adam Silverman, DSS RO #10

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.