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 # 145741

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 stating that the Department denied Medicaid coverage under the Husky C – Individuals Receiving Home and Community Based Services ("Husky C") and was imposing a penalty period of ineligibility for the improper transfer of assets.

On [redacted] 2019, the Appellant, through her daughter and authorized representative [redacted] ("AREP") requested an administrative hearing to contest the Department's penalty determination.

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, in accordance with sections 17b-60, 17-61 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 Authorized Representative
Shawn Hardy, Department Representative
Glenn Guerrera, Department Chaperon
Lisa Nyren, Fair Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly determined: 1) the Appellant transferred $34,674.20 to become eligible for Medicaid under the Husky C program; and 2) the $34,674.20 transfer subjected the Appellant to a penalty period of ineligibility for Medicaid payment of home care services under the Husky C program.

FINDINGS OF FACT

1. On [redacted] 2019, the Department received an application for Medicaid under the Husky C program from the Appellant. (Department Representative's Testimony and Exhibit K: W-1 LTC Application)

2. On [redacted] 2019, the Department received a copy of check 1803 dated [redacted], 2017 for $5,000.00 issued to [redacted] the Appellant's granddaughter and a letter of explanation signed by [redacted]. [redacted] writes: "My grandmother graciously offered us $5,000.00 to help with moving expenses and to buy furniture for our rental apartment. … Since mid-[redacted], when she had major surgery, my grandmother has spent almost all of her savings on nursing care so she could stay in the cottage she rents." (Hearing Summary and Exhibit A: Letter of Explanation)

3. On [redacted] 2019, the Department received a copy of check 1875 dated [redacted] 2018 for $6,616.00 issued to [redacted], the Appellant's granddaughter and a letter of explanation signed by [redacted]. [redacted] writes: "I received the above-mentioned check from my grandmother to reimburse me for expenses incurred before and during our trip to New Orleans in [redacted] of 2018. … She has now spent almost all of her savings on hiring certified nursing aides to care for her at home." (Hearing Summary and Exhibit B: Letter of Explanation)

4. The Appellant is age [redacted], born on [redacted]. (Exhibit K: W-1 LTC Application and AREP's Testimony)

5. The Appellant resided in an assisted living facility in a one bedroom apartment. (AREP's Testimony)

6. In [redacted] 2018, the Appellant required emergency surgery due to a perforated bowel and was discharged with a colostomy bag. (AREP's Testimony)

7. The Department determined the following checks written by the Appellant to her grandchildren, [redacted] spouse) as transfers of assets:

Check Date	Check #	Check Amount	Check Payee
[redacted], 2016	1624	$5,453.00	[redacted]
[redacted] 2016	1633	$1,000.00	[redacted]
[redacted] 2016	1651	$1,000.00	[redacted]
[redacted] 2016	1661	$1,000.00	[redacted]
[redacted], 2016	1670	$3,863.00	[redacted]
[redacted] 2017	1738	$1,382.00	[redacted]
[redacted] 2017	1748	$2,000.00	[redacted]
[redacted] 2017	1771	$1,360.20	[redacted]
[redacted] 2017	1768	$1,000.00	[redacted]o
[redacted], 2017	1803	$5,000.00	[redacted]
[redacted] 2017	1789	$1,000.00	[redacted]
[redacted], 2018	1875	$6,616.00	[redacted]
[redacted], 2018	1895	$2,000.00	[redacted]
[redacted], 2018	1916	$1,000.00	[redacted]
[redacted] 2019	1931	$1,000.00	[redacted]
Total		$34,674.20	

8. On [redacted], 2019, the AREP issued an explanation of monies transferred from the Appellant to family members. The AREP argued the money given to family members were for gifts, reimbursement of travel expenses for trips to Israel, New Orleans, and Philadelphia incurred by the Appellant's grandchildren, and to assist grandchildren in times of financial need. (Exhibit E: Explanation Letter and Appellant's Testimony)

9. On [redacted] 2019, the Department mailed a notice, Form W495A Transfer of Assets Preliminary Decision Notice to the Appellant regarding the transfer of assets. The notice stated that the Department initially determined that the Appellant transferred $34,674.20 to family members between 2016 and 2019 for the purpose of qualifying for Medicaid because proof has not been provided to the Department confirming the transfers were not to become eligible for Medicaid. (Exhibit G: W495A Transfer of Assets Preliminary Decision Notice)

10. On [redacted] 2019, the Department denied the Appellant's application for Husky effective [redacted] 2019 with a penalty period beginning [redacted] 2019 and ending on [redacted] 2019 and issued a notice of denial to the Appellant. (Exhibit J: Notice of Action)

11. On [redacted], 2019, the Appellant passed away. (AREP's Testimony)

12. 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], 2019. Therefore, this decision is due not later than [redacted], 2019.

CONCLUSIONS OF LAW

1. Section 17b-2(6) of the Connecticut General Statute ("Conn. Gen. Stat.") provides as follows: "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. "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. Stat. § 17b-261b(a)

3. State statute provides as follows:

   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. Stat. § 17b-261(a)

4. State statute provides as follows:

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)

5. State statute provides as follows:

   Any transfer or assignment of assets resulting in the establishment or imposition of a penalty period shall create a debt, as defined in section 36b-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. Stat. § 17b-261a(b)

6. "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))

7. Uniform Policy Manual ("UPM") § 3029 provides as follows: "This chapter describes the technical eligibility requirement 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."

8. "The Department uses the policy contained in this chapter to evaluate assets 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

9. "The policy contained in this chapter pertains to institutionalized individuals and to their spouses." UPM § 3029.05(B)(1)

   "An individual is considered institutionalized if he or she is receiving:
   a. LTCF 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 § 3029.25(B)(2)

10. "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)

11. "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." UPM § 3029.10(E)

12. "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." UPM § 3029.10(F)

13. 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.

    UPM 3029.15(B)

14. Compensation in exchange for a transferred asset is counted in determining whether fair market value was received.

    A. Compensation which is counted
        1. When an asset is transferred, compensation is counted when it is received at the time of the transfer or any time thereafter.
        2. Compensation received prior to the time of the transfer is counted if it was received in accordance with a legally enforceable agreement.
        3. Compensation may include the return of the transferred asset to the extent described at 3029.10.

    UPM § 3029.30

15. The AREP on behalf of the Appellant failed to provide clear and convincing evidence that the reason for the transfers totaling $34,674.20 between the period [redacted], 2016 and [redacted] 2019 was not for qualifying for assistance under Medicaid.

16. The Department correctly determined the Appellant transferred assets totaling $34,674.20.

17. "There is a period established, subject to the conditions described in this chapter, during which institutionalized individuals are not eligible for certain Medicaid services 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."

UPM § 3029.05(A)

18. The Department correctly imposed a transfer of assets penalty against the Appellant due to the transfer of assets. The Appellant is subject to a transfer of asset penalty.

19. "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)

20. 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.

    UPM §3029.05(F)(2)

21. The average monthly cost of care to a private patient in a LTCF is $12,851.00 on or after [redacted] 2018. UPM § P-3029.30

22. "During the penalty period, the following Medicaid services are not covered: home and community-based services under a Medicaid waiver." UPM § 3029.05(G)(1)(c)

23. The Department correctly determined the penalty period as 81 days beginning [redacted] 2019 ending [redacted],2019 ($34,674.20 transfer / $12,851.00 average cost of care = 2.698 months x 30 days = 80.945 days)

DISCUSSION

The AREP argued the checks written by the Appellant to [redacted] were for reimbursement for annual trips taken with the Appellant and her five grandchildren to Israel, New Orleans, and Philadelphia. The AREP argued the checks written to [redacted] and her spouse were financial assistance given to her granddaughter after the birth of twins, relocation assistance for their move from Israel to the United States, and nursery school application fees for the twins. The

AREP argued the Appellant gave [redacted] money to assist with expenditures and costs associated with her start-up business. Additionally, the Appellant gave two wedding gifts of $1,000.00 to [redacted] and [redacted] Without documentation of receipts or travel expenses, the AREP failed to provide clear and convincing evidence the monies spent between [redacted] 2016 and [redacted] 2019 were not for qualifying for assistance under Medicaid based on the Appellant's age, medical needs, and residency in an assisted living facility.

DECISION

The Appellant's appeal is DENIED.

Lisa A. Nyren
Fair Hearing Officer

CC: Alejandro Arbelaez, DSS RO 62
Shawn Hardy, 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.