

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

█ 2020
Signature Confirmation

CLIENT No # █
Request # 151704

NOTICE OF DECISION

PARTY

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█
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PROCEDURAL BACKGROUND

On █ 2019, the Department of Social Services - ("the Department") sent █ (the "Appellant") a final decision notice that she transferred \$98,532.00 in order to become eligible for Long Term Care ("LTC") Medicaid and the Department will impose a penalty starting █ 2019 and ending █, 2020.

On █ 2020, the Appellant requested an administrative hearing to contest the Department's determination.

On █ 2020, █, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for █, 2020.

On █ 2020, counsel for the Appellant requested a re-schedule of the administrative hearing, which was granted and re-scheduled for █ 2020.

On █, 2020, 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:

█, Appellant- was not present due to her institutionalization.
█, daughter and POA of the Appellant
Attorney █, counsel for Appellant
Amanda Cunningham, Department's Representative
Almelinda McLeod, Fair Hearing Officer ("FHO")

On [REDACTED] 2020, counsel for the Appellant requested a continuance for the submission of additional evidence, which was granted.

On [REDACTED] 2020, counsel for the Appellant submitted the additional evidence.

On [REDACTED] 2020 the Department responded to the additional evidence provided.

On [REDACTED] 2020, counsel responded to the Departments response to the additional evidence provided.

On [REDACTED] 2020, the hearing record closed.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to impose a transfer of assets penalty beginning [REDACTED] 2019 to [REDACTED] 2020 was correct.

FINDINGS OF FACT

1. The Appellant is [REDACTED] years of age (DOB- [REDACTED]) who resided at [REDACTED]. (Hearing record)
2. On [REDACTED] 2018, the Appellant was temporarily admitted into [REDACTED] (Appellant's testimony)
3. On [REDACTED], 2019, the Appellant applied for W01 Home and Community Based Services medical coverage. (Hearing summary)
4. On [REDACTED], 2019, the Department issued a W-1348 Verification We Need form requesting verification of the Appellant's [REDACTED] [REDACTED] checking account # [REDACTED] in regards to monthly statements, copies of checks, source and documentation of deposits and [REDACTED] monthly statement for savings account [REDACTED]. (Exhibit 2 W-1348 LTC)
5. On [REDACTED] 2019, [REDACTED] informed the Department that the Appellant will remain in the skilled nursing facility. (Hearing summary)
6. On [REDACTED] 2019, the Department changed the application from W01 to L01, Long term care facility ("LTF") medical coverage. (Hearing record)
7. On [REDACTED] 2019, the Appellant was discharged from [REDACTED] and admitted into [REDACTED]. (Hearing record)

8. During a review of the Appellant's [REDACTED] account # [REDACTED], the Department discovered a check for \$15,000.00 from the Appellant to the Appellant from another account ending in # [REDACTED] (Hearing summary)
9. The Appellant was the sole heir and executor of account # [REDACTED] from the estate of her deceased daughter, [REDACTED] ([REDACTED]) who had resided at [REDACTED]. (Hearing Summary)
10. The Appellant's surviving daughter, [REDACTED] of [REDACTED] [REDACTED] is the Appellant's power of attorney ("POA") as of [REDACTED]. The POA did not reside with the Appellant at [REDACTED] [REDACTED]. (Hearing record and Exhibit 7, Short form Power of Attorney document)
11. The POA assisted the Appellant with the responsibilities of [REDACTED] estate due to her declining health. (POA's testimony)
12. The POA's name was listed on the Appellant's [REDACTED] [REDACTED] account; however, there were no deposits from the POA into this account during the look back period. (Department testimony)
13. The look back period for LTF Medicaid is 5 years from [REDACTED] 2014 to [REDACTED] 2019. (Hearing record)
14. The Department issued subsequent W-1348LTC's as the POA requested more time to get verifications and multiple 10 day extensions were granted. The requested verifications were on all bank accounts; [REDACTED] [REDACTED] accounts # [REDACTED] and SW's [REDACTED] estate acct # [REDACTED] explanation of transactions; and probate documentation of [REDACTED]'s estate and verification that the Appellant's house was listed for sale. (Hearing record and Exhibit 1- W-1348LTC requests 1-19)
15. The Department's review of [REDACTED]'s [REDACTED] estate acct# [REDACTED] showed the following transfers to the POA:

Date:	Check #:	Check amount:	Reason:
[REDACTED]/16	91	\$35,000.00	Gifted to POA
[REDACTED]/16	93	\$20,000.00	Gifted to POA
[REDACTED] 16	132	\$5,000.00	Renewal by Andersen to POA
[REDACTED]/16	101	\$3,400.00	Roof to POA
[REDACTED]/16	161	\$3,000.00	Roof to POA
[REDACTED]/16	102	\$4,100.00	Trees to POA
[REDACTED]/16	103	\$5032.00	Renewal by Andersen to POA
[REDACTED]/17	108	\$7,500.00	Windows to POA
[REDACTED] 19	125	\$5,000.00	To POA

The Department's review of [REDACTED] acct# [REDACTED] indicated:

[REDACTED] 14	[REDACTED]	\$8,500.00	To POA
[REDACTED] /15	[REDACTED]	\$2,000.00	To POA
Total:		\$98,532.00	

(Exhibit 2, transfer to POA chart, canceled checks and POA's testimony)

16. The Department determined that none of the checks written above were for the benefit of the Appellant. (Hearing record)
17. On [REDACTED], 2019, the Department issued a W-0495A Notice of Possible Improper Transfer of Assets notice stating that an improper transfer of assets totaling \$98,532.00 occurred on [REDACTED] 2019 and if found eligible for Medicaid, the Department planned on imposing a penalty period for the improperly transferred assets. The notice indicated the right to Rebuttal prior to imposing the penalty. (Exhibit 3, W-0495A)
18. The Department did not receive a rebuttal or any explanation of the transfers and receipts to show that the expenditures were for the benefit of the Appellant. (Hearing record)
19. The POA does not dispute that a rebuttal was not presented in response to the W-0495A. (Hearing record, POA's testimony)
20. The Department determined the Appellant became asset eligible effective [REDACTED] 2019 and calculated a penalty period from [REDACTED] 2019 to [REDACTED] 2020. (Hearing summary)
21. On [REDACTED], 2019, the Department issued a W-495C Transfer of Assets Final decision Notice which granted certain Medicaid benefits beginning [REDACTED] 2020; however imposing a penalty period starting from [REDACTED] 2019 and ending on [REDACTED] 2020. The letter noted that during this time of the penalty, Medicaid will not pay for long term care services or the daily room and board rate at the nursing home but will still cover other medical services received in the community. (Exhibit 4, W-495C)
22. On [REDACTED], 2019, the Department issued a Notice of Action ("NOA") granting Medicaid with a penalty period from [REDACTED] 2019 to [REDACTED] 2020. (Exhibit 5, NOA)
23. On [REDACTED] 2020, the Appellant was transferred to [REDACTED] in [REDACTED]. (Appellant testimony)
24. On [REDACTED] 2020, the day of this hearing, the POA indicated she advanced monies to the Appellant for her home making services, home health aides and out of pocket medical expenses, thus the TOA transfers

were intended for other valuable consideration. (POA's testimony & Counsel's Exhibit A: Appellant's Hearing Memorandum)

25. The POA also advanced monies for repairs and services in [REDACTED]'s house in order to maximize the inheritance from [REDACTED]'s estate to the Appellant, thus the TOA transfers was for fair market value ("FMV"). (POA's testimony & Counsel's Exhibit A: Appellant's Hearing Memorandum)

26. On [REDACTED] 2020, counsel for the Appellant provided bills, invoices, credit card receipts, utility receipts and the POA's [REDACTED] bank statements and canceled checks from 2014 to 2019 as *examples* of the types of bills and expenses that the POA incurred on behalf of the Appellant and on behalf of [REDACTED]'s estate for the benefit of the Appellant. (Exhibit A- Appellant's Hearing Memorandum, Exhibit C)

27. The following accounts were submitted identifying the POA's accounts by which payments were made for the benefit of the Appellant or payments made on behalf of [REDACTED]'s estate for the benefit of the Appellant from 2014 to 2019:

POA's accounts	Accounts ending with
[REDACTED] Bank	xx-xxx [REDACTED]
[REDACTED] MasterCard	xxxx [REDACTED]
[REDACTED] credit card	xxxx- [REDACTED]
[REDACTED] credit card	xxxx- [REDACTED]
[REDACTED] credit card	xxx- [REDACTED]
[REDACTED] credit card	xxxx- [REDACTED]
[REDACTED] credit card	xxxx- [REDACTED]
[REDACTED] credit card	xxxx [REDACTED]
[REDACTED] credit card	xxxx- [REDACTED]
[REDACTED] credit card	xxxx- [REDACTED]

(Hearing record and Exhibit C- account summary, copy of bills, invoices, credit card bills, [REDACTED] Bank statements and canceled checks)

28. On [REDACTED] 2020, the Department reviewed the provided receipts against the POA'S [REDACTED] Bank statements and found the following expenditures were paid by the Appellant:

Bill	Date	Amount	Paid through	Paid by:
Medical Alert	[REDACTED]/15	\$34.95	[REDACTED] xxx [REDACTED]	Appellant
Medical Alert	[REDACTED] 15	\$34.95	[REDACTED] xxx [REDACTED]	Appellant
Town of [REDACTED]	[REDACTED] 15	\$2880.88	[REDACTED] xxx [REDACTED]	Appellant
Connecticare	[REDACTED] 15	\$329.20	[REDACTED] xxx [REDACTED]	Appellant
Superior Energy	[REDACTED] 6	\$812.00	[REDACTED] xxx [REDACTED]	Appellant
MetLife	[REDACTED] 16	\$1675.25	[REDACTED] xxx [REDACTED]	Appellant
Superior Energy	[REDACTED] 16	\$374.00	[REDACTED] xxx [REDACTED]	Appellant
MetLife	[REDACTED] 17	\$823.75	[REDACTED] xxx [REDACTED]	Appellant
Eversource	[REDACTED] 18	\$267.05	[REDACTED] xxx [REDACTED]	Appellant
Eversource	[REDACTED] 18	\$57.64	[REDACTED] xxx [REDACTED]	Appellant
Connecticare	[REDACTED] /8	\$183.40	[REDACTED] xxx [REDACTED]	Appellant
Eversource	[REDACTED] /18	\$339.28	[REDACTED] xxx [REDACTED]	Appellant

Eversource	█/18	\$38.88	█-xxx█	Appellant
Eversource	█/18	\$400.40	█-xxx█	Appellant
Eversource	█/18	\$57.58	█-xxx█	Appellant
Firehouse	█19	\$814.27	█-xxx█	Appellant
Eversource	█19	\$108.68.	█-xxx█	Appellant
Eversource	█/19	\$18.50	█-xxx█	Appellant
Paines	█19	\$166.38	█-xxx█	Appellant
Real Estate taxes	█19	\$2476.26	█-xxx█	Appellant

(Exhibit 9- Department's response to Appellant's Exhibit C)

29. On █ █ 2020, the Department's review found the following expenditures were incurred by the POA on behalf of the █'s estate.

Bill	Date	Amount	Paid through	Purpose	Paid by:
Town of █	█14	\$270.38	█ █	█'s Estate	POA
█	█14	\$145.92	█ █ # █		
Total:		\$ 416.30			

(Exhibit 9-Department's response to Appellant's Exhibit C)

30. On █ █ 2020, the Department's review found the following expenditures were incurred by the POA for the benefit of the Appellant:

Bill	Date	Amount	Paid through	Purpose	Paid by:
█	█/16	\$330.00	█ █	Appellant	POA
Private home health aid	█/16	\$240.00	█ █ # █		
Town of █	█/16	\$108.69	█ █ # █	Appellant water/sewer taxes	POA
█	█16	\$64.05	█ █ # █		
█	█/16	\$2417.59	█ █ # █		
Connecticare premium	█/16	\$345.80	█ █	Appellant	POA
█	█/16	\$500.00	█ █ # █	Appellant	POA
Healthcare	█/16	\$10.94	█ █ cc	Appellant	POA
█ Dental	█/18	\$575.00	█ █ cc █	Appellant	POA
Total:		\$4,592.07			

(Exhibit 9-Department's response to Appellant's Exhibit C)

31. This FHO found additional expenses incurred by the POA for the benefit of the Appellant within the look back period . See the following chart:

Bill	Date	Amount	Paid through	Purpose	Paid by:
<i>Connecticare</i>	█/16	\$172.90	█-xxx█	<i>Payment for Appellant</i>	POA
	█/16	\$172.90	█-xxx█		
	█16	\$172.90	█-xxx█		
	█/16	\$345.80	█-xxx█		
	█/16	\$172.90	█-xxx█		
	█/19	\$399.00	Care credit █		
J & L Caruso	█/16	\$800.00	█ █ # █	Payment for Appellant	POA
Holmes	█19	\$225.11	█-xxx█	Replace	POA

Electric				light porch at mother's house	
<u>Health Care</u>	█/17	\$8.91	Amazon Chase	Payment for Appellant	POA
	█/16	\$500.09	█ # █		
<u>nursing & Ret.</u>	█/18	\$1000.00	█ █ Visa	Payment for Appellant	POA
<u>Healthcare</u>	█ 17	\$22.52	Amazon Chase	Payment for Appellant	POA
Firehouse discount fuel	█/15	\$270.15	Discover █	Payment for Appellant	POA
	█/16	\$217.22	ChaseSlate █		
	█/16	\$224.84	CitiSimplicity █		
	█/16	\$500.00	CitiSimplicity █		
	█ 16	\$21.47	CitiSimplicity █		
	█/16	\$9.52	CitiSimplicity █		
	█/17	\$500.00	CitiSimplicity █		
* <u>Medical Alert</u> <u>12 pvmts@\$34.95</u> <u>21pvmts@\$29.95</u>	From █ 16 to █ 19	\$1048.35	█-xxx █	Payments for Appellant	POA
Total:		\$6,784.58			

(Exhibit C- copy of bills, invoices, credit card statements, TD Bank statements and canceled checks)

32. The POA paid a total of \$11,376.65 for the benefit of the Appellant. [\$6,784.58 + \$4,592.07] consisting of home maker, home health aide, medical premiums and expenses, taxes, sewer, water, upkeep and fuel. (Exhibit C)

33. This FHO found additional expenses incurred by the POA on behalf of █'s estate within the look back period. See the following chart.

Bill	Date	Amount	Paid through	Purpose	Paid by:
Roy Nechkos Plumbing	█/14	\$282.54	█-█ # █	█'s estate drain pipes	POA
Brett Connors	█/14	\$1000.00	█ # █	█'s Estate painting	POA
Russ's Septic Services	█/14	\$275.00 (1/2 of \$550.00)	█ # █	█'s estate. clean empty septic.	POA
Harwington Construction Services	█ 15	\$750.00	█ # █	█'s estate Deposit	POA
	█ 15	\$740.00	█ # █	Doors	
Moore Wood floors	█ 15	\$2082.00	█ █	█'s estate floors	POA
Kay Con Electric	█ 15	\$325.00	█ █	█'s estate wiring circuits	POA
Firehouse discount oil	█ 16	\$332.20	█ █	█'s estate furnace	POA
JL Anderson	█ 15	\$1733.00	█ █	█'s estate	POA

Heather Bell	█/15	\$1200.00	█ #█	█'s estate	POA
Chimney Guy	█/15	\$914.61	█ #█	█'s estate fireplace	POA
█ Village Fire Tax Collector	█ 16	\$12.75	█ █	█'s estate	POA
Total:		\$9,647.10			

(Exhibit C- copy of bills, invoices, credit card statements, █ Bank statements and canceled checks)

34. The POA paid a total of \$10,063.40 on behalf of █'s estate for repairs and services of █. [\$9,647.10 + \$416.30]. (Exhibit C)
35. The total verified expenses that were incurred by the POA on behalf of the Appellant and █'s estate for the benefit of the Appellant equals \$21,440.05. [\$11,376.65 + \$10,063.40] (Exhibit C)
36. On █, 2020, Counsel for the Appellant signed the Waiver of Right to a Timely Hearing Decision under Section 17b-61 (a) of the Connecticut General Statutes waiving the requirement that a final decision be issued within 90 days of the date the administrative hearing was requested. (Hearing record)

CONCLUSIONS OF LAW

1. Section § 17b- 2 (6) of the Connecticut General Statutes ("Conn. Gen. Stat.") 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. Conn. Gen. Stat. § 17b-261 (a) provides that any disposition of property made on behalf of an applicant for recipient by a 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.
3. 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, 177 (1994) (citing Conn. Gen. Stat. 17-3f 9c) [now 17b-10]; Richard v. Commissioner of Income maintenance, 214 Conn. 601, 573 A. 2d 712 (1990)).
4. UPM § 3029.05 (B) (2) provides 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.

5. **The Department correctly determined the Appellant is an institutionalized individual.**
6. UPM § 3029.05 (A) provide there is a period established, subject to the conditions described in chapter 3029, 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 specified in UPM 3029.05 (C). This period is called the penalty period or period of ineligibility.
7. UPM § 3029.05 (C) provides 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. UPM § 3029.05 (D) (1) provides 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.
9. **The Department correctly determined the look back period from the Appellant's application for LTC Medicaid dated [REDACTED], 2019 is [REDACTED] 2014.**
10. **The Department was correct to evaluate the transfers that occurred within the look back period.**
11. UPM § 3029.10 (F) pertains to Transfers at Fair Market Value which states 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.
12. UPM § 3029.30 (B) (1) (b) provides that each form of compensation is assigned a dollar value to compare with the fair market value of the transferred asset. In determining the dollar value of services rendered directly by the transferee, the Department uses the actual cost for all other services not rendered by a homemaker or home health aid.
13. UPM § 3029.30 (B) (2) provides that out-of pocket payment by the transferee may include capital alterations necessary to allow the transferor continued use of the home to avoid institutionalization.
14. **Based on the documentary evidence, the amount incurred by the POA, on behalf of [REDACTED]'s estate located at [REDACTED],**

■ was \$10,063.40 for the actual costs of repairs and services for the benefit of the Appellant; therefore the \$10,063.40 is the FMV.

15. UPM § 3029.20 (A) (1) provides the general principles for other valuable consideration and states that it may be received either prior to or subsequent to the transfer.
16. UPM § 3029.20 (B) (1) (2) (3) (a) (b) provides the criteria for other valuable consideration and states that other valuable consideration must be in the form of services or payment for services which meet all of the following conditions: The services rendered are of the type provided by a homemaker or a home health aide; and the services are essential to avoid institutionalization of the transferor for a period of at least two years and the services are either: a. provided by a transferee while sharing the home of the transferor; or paid for by the transferee.
17. UPM § 3029.10 (E) pertains to Transfers made exclusively for reasons other than Qualifying and provides 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.
18. UPM § 3029.30 (B) (2) provides that out-of pocket payment by the transferee may include capital alterations necessary to allow the transferor continued use of the home to avoid institutionalization.
- 37. Based on documentary evidence provided, the amount incurred by the POA for the benefit of the Appellant within the look back period was \$11,376.65. The expenses included home maker, home health aide, medical premiums and other medical expenses. The POA also incurred expenses for the Appellant's taxes, sewer, water, upkeep and fuel. The criteria for other valuable consideration have been met.**
- 19. The Appellant provided clear and convincing evidence that the POA incurred a total of \$21,440.05 (\$10,063.40 + \$11,376.65) in expenses within the look back period from ■ 2014 to ■ 2019 for the benefit of the Appellant.**
20. UPM § 3029.10 (G) pertains to Transfers made for other valuable consideration and provides that if an institutionalized individual provides clear and convincing evidence of the intent to dispose of the asset for other valuable consideration, the value must be equal or greater than the value of the transferred asset in order for the asset to be transferred without penalty.

21. UPM § 3029.20 (A) (2) provides that 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.
- 22. The POA's verified expenses of \$21,440.05 does not fit the criteria of UPM 3029.10 (G) nor 3029.20(A) (2) because \$21,440.05 is not equal or greater value than the \$98,532.00 asset that was transferred.**
- 23. The Department is correct that the Appellant is subject to TOA penalty.**
24. UPM 3029.15 (B) provides 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.
- 25. Based on the POA's testimony that she assisted the Appellant with the responsibilities of SW's estate due to her declining health; the Department correctly determined the Appellant did not meet her foreseeable needs as the Appellant did not retain income or assets based on her health and financial situation at the time of transfer.**
26. UPM 3029.35 (A) (1) provides that prior to a denial or discontinuation of LTC Medicaid benefits, the Department notifies the individual and his or her spouse of its preliminary decision that a transfer of asset is determined to have been improper.
27. 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 10 days.
- 28. The Department correctly notified the Appellant of its preliminary decision pertaining to the improper transfer and provided an explanation for the reason for the letter and their ability to rebut such claims thorough the issuance of the W-0495A.**
- 29. The Department correctly determined no Rebuttal had been offered by the Appellant.**
30. UPM 3029.05 (G) (1) provide that 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.

31. UPM 3029.05 (G) (2) provide that payment is made for all other Medicaid services during a penalty period if the individual is otherwise eligible for Medicaid.

32. The Department correctly notified the Appellant that neither LTCF Medicaid services nor services equivalent to LTCF services are covered with the issuance of the W-495C.

33. UPM 3029.05 (F) (2) (a) provide 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 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.

34. UPM 3029.05 (F) (3) provides that 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.

35. UPM 3029.05 (F) (4) provides that once the Department imposes a penalty period, the penalty runs without interruption, regardless of any changes to the individual's institutional status.

36. The Department is correct to impose a penalty; however, the amount of the penalty should be reduced by \$21,440.05 and the penalty period adjusted.

DISCUSSION

The \$98,532.00 TOA from the Appellant to the POA, is not in dispute; however, the argument presented was that the POA advanced monies to the Appellant for her homemaker, home health aide, and medical expenses and was therefore made for other valuable consideration. In addition, the POA advanced monies for the administration of her deceased sister's estate for the benefit of the Appellant. The TOA was reimbursement for the POA's out of pocket expenses and is therefore made for Fair Market Value and argues that the whole penalty should be vacated.

Counsel for the Appellant states that the POA advanced at least \$106,639.83 on behalf of the Appellant and submitted additional documents as *examples* of the type of expenditures that were incurred.

Departmental Policy dictates that in order for the transfer to be made exclusively for a purpose other than qualifying for assistance, the evidence must be clear and convincing. In this case, the documentary evidence submitted by the POA verified she incurred a total of \$21,440.05 of expenses for the benefit of the Appellant.


Policy also states that the value of 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. It is clear from the evidence provided that \$21,440.05 is not equal or greater than the \$98,532.00 that was transferred; therefore the Department is correct to impose a TOA penalty. However, based on the documentary evidence provided, it is reasonable to reduce the penalty by \$21,440.05.

DECISION

The Appellant's appeal is DENIED in part because the Appellant incurred a TOA penalty. The Appellant's appeal is GRANTED in part because the TOA penalty is reduced.

ORDER

1. The Department shall reduce the penalty by \$21, 440.05 and re-adjust the penalty period.
2. Compliance with this order shall be provided to the undersigned by [REDACTED] 2020.



 Almelinda McLeod
 Hearing Officer

CC: Alejandro Arbelaez, SSOM Torrington Regional Office
 Musa Mohamud, SSOM Hartford Regional Office
 Judy Williams, SSOM Hartford Regional Office
 Jessica Carroll, SSOM Hartford Regional Office
 Jay Bartolomei, Fair Hearing Liaison Supervisor, Hartford
 Amanda Cunningham, Fair Hearing Liaison, Hartford
 [REDACTED], [REDACTED]

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.