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

2020 Signature confirmation

Case: Client: Request: 157631

### NOTICE OF DECISION

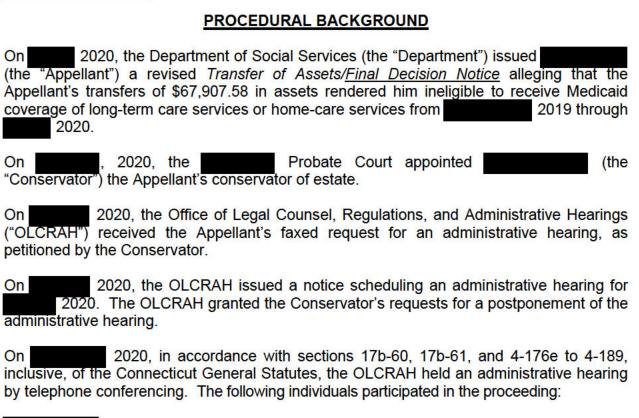
# **PARTY**



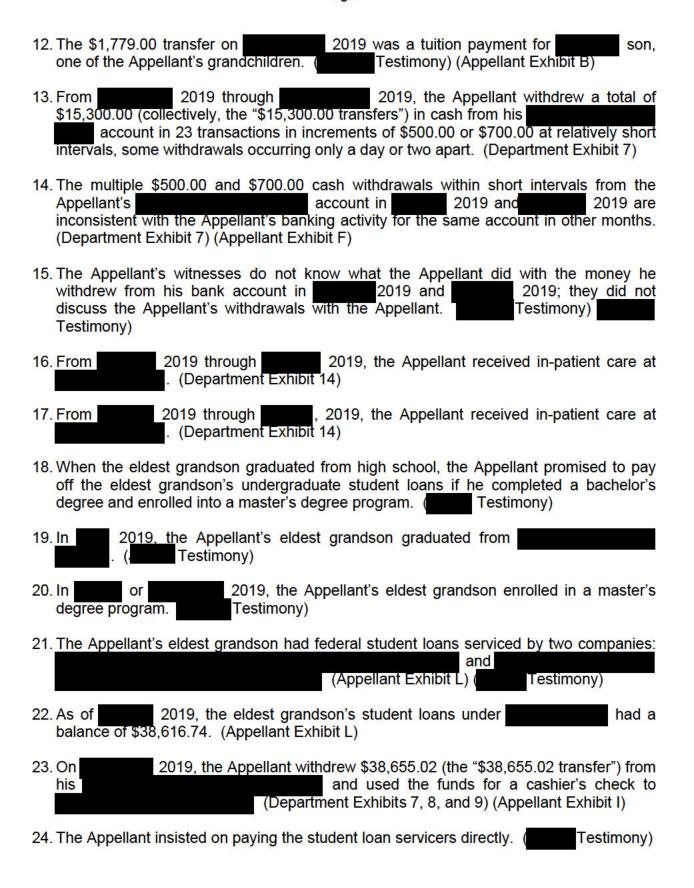
Appellant's Conservator

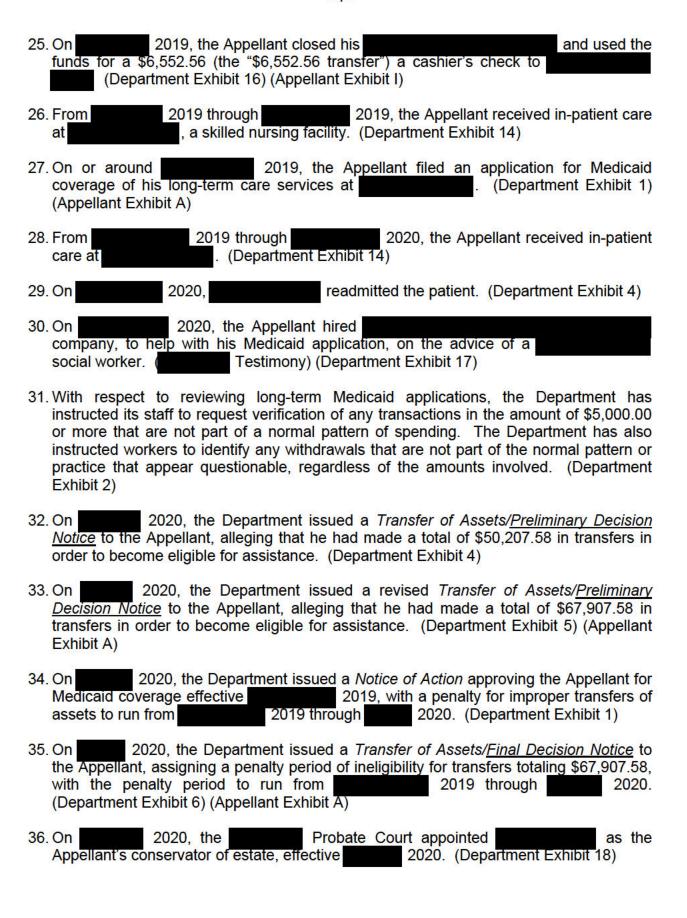
, Appellant's Witness (son) , Appellant's Witness (son)

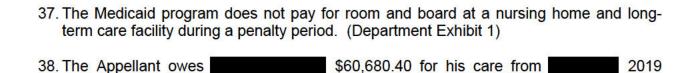
, Counsel for



, Appellant's Witness Ilirjana Sabani, Department's Representative Eva Tar, Hearing Officer		
The hearing record closed on 2020.		
STATEMENT OF ISSUE		
The Appellant disputes the Department's 2020 determination that his \$67,907.58 in transfers rendered him ineligible for Medicaid payment of long-term care services from 2019 through 2020.		
FINDINGS OF FACT		
1. The Appellant's date of birth is . (Department Exhibits 12 and 14)		
2. The Appellant's children are Testimony)		
3. (the "eldest grandson") is son and the Appellant's first-born grandson. (Testimony)		
4. In or around , the Appellant retired at the age of years. (Appellant Exhibits B and C)		
5. Since his retirement, the Appellant has been living with different family members in Testimony) (Testimony)		
6. The Appellant did not pay rent when he lived with family members; the family members also did not ask him to pay them rent. (Testimony) (Testimony)		
7. On 2017, the Appellant withdrew \$5,000.00 (the "\$5,000.00 transfer") in a cashier's check from his account account and 16) (Appellant Exhibits H and I)		
8. The Appellant would withdraw large sums of cash prior to visiting Testimony)		
9. The Appellant visited from 2017 through (Appellant Exhibit G)		
10. From 2018 through 2019, the Appellant received in-patient care at a skilled nursing facility. (Department Exhibit 14)		
11. On 2019, the Appellant transferred \$1,779.00 (the "\$1,779.00 transfer") from his account to 2019. (Department Exhibit 7)		



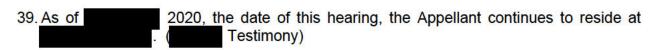




Testimony)

through

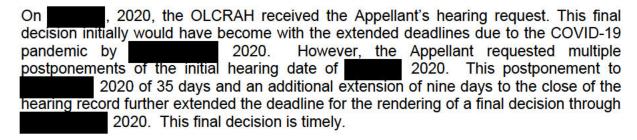
2020. (



40. Connecticut General Statutes § 17b-61 (a), as amended on passage by Section 309 of *Public Act No. 19-117 (January Session)*, provides the deadline for the rendering of a hearing decision.

Executive Order 7M, Section 3, dated March 25, 2020, extends the period for rendering a hearing decision. Executive Order 7DDD, Section 2, dated June 29, 2020 in part authorizes a further extension to the time frames provided by Executive Order 7M, Section 3, dated March 25, 2020 that would have lapsed on June 28, 2020.

ORDER, (Commissioner Deidre S. Gifford, 4/13/2020) provides in part: "Section 17b-61(a)'s timeframe for the commissioner or commissioner's designated hearing officer to render a final decision is extended from 90 to 'not later than 120 days' after the date the commissioner receives a request for a fair hearing pursuant to Section 17b-60...."



## CONCLUSIONS OF LAW

 Section 17b-2 of the Connecticut General Statutes in part designates the Department as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.

"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).

"The Commissioner of Social Services may make such regulations as are necessary to administer the medical assistance program...." Conn. Gen. Stat. § 17b-262.

"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)).

In Connecticut, the Department has the authority to administer the Medicaid program and make regulations governing the same.

2. "An individual is considered institutionalized if he or she is receiving: a. LTCF [long-term care facility] services...." Uniform Policy Manual ("UPM") § 3029.05 B. 2. a.

# The Appellant is an institutionalized individual.

 Section 17b-261 (a) of the Connecticut General Statutes, as revised in the 2020 SUPPLEMENT TO THE GENERAL STATUTES OF CONNECTICUT (revised to 1/1/20), provides in part:

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....

Conn. Gen. Stat. § 17b-261 (a).

"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." UPM § 3029.05 A.

"Look-Back Date for Transfers. 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.

The Appellant's "look-back" period as related to his application for long-term care coverage ran from 2019 Medicaid 2019.

The Department acted within its authority to administer the Medicaid program when it reviewed the Appellant's financial activity for transfers of assets within the 60-month "look-back" period of 2014 to 2019.

4. "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). (emphasis added).

"Transfers Made Exclusively for Reasons Other than Qualifying. An otherwise eligible institutionalized individual is not ineligible for Medicaid payment of LTC [Long-Term Care] 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.

The Appellant provided clear and convincing ewas made exclusively for a purpose other than withdrawn in proximity of the Appellant's 2017 visit to	• •
The Appellant provided clear and convincing e	• •

The Appellant provided clear and convincing evidence that the \$38,655.02 transfer

was made exclusively for a purpose other than qualifying for assistance, as the payment was in fulfillment of the Appellant's long-standing promise to his eldest grandson involving the payment of that grandson's undergraduate loans.

The Appellant provided clear and convincing evidence that the \$6,552.56 transfer to was made exclusively for a purpose other than qualifying for assistance, as the payment was in fulfillment of a long-standing promise to his eldest grandson involving the payment of that grandson's undergraduate loans.

The Appellant did <u>not</u> establish by clear and convincing evidence that the \$15,300.00 transfers were made exclusively for a purpose other than qualifying for medical assistance.

5. "During the penalty period, the following Medicaid services are not covered: a. LTCF [long-term care facility] 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." UPM § 3029.05 G.1.

"Payment is made for all other Medicaid services during a penalty period if the individual is otherwise eligible for Medicaid." UPM § 3029.05 G.2.

Section 3029.05 E. of the Uniform Policy Manual provides:

The penalty period begins as of the later of the following dates: 1. the first day of the month during which assets are transferred for less than fair market value, if this month is not part of any other period of ineligibility caused by a transfer of assets; or 2. the date on which the individual is eligible for Medicaid under

Connecticut's State Plan and would otherwise be eligible for Medicaid payment of the LTC services described in 3029.05 B based on an approved application for such care but for the application of the penalty period, and which is not part of any other period of ineligibility caused by a transfer of assets.

UPM § 3029.05 E.

2019 is the first date of the month in which the Appellant was otherwise eligible for Medicaid payment of the LTC services based on an approved application for such care but for the application of the penalty period.

 "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." UPM § 3029.05 F.2.

"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 § 3029.95 F.1.

"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." UPM § 3029.05 F.3.

"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. a.

As of January 1, 2019, the average monthly cost for LTCF services in Connecticut equaled \$12,851.00.

The Appellant's penalty period of ineligibility of Medicaid payment for long-term care services in a skilled nursing facility equals 36 days. [(\$15,300.00 (transfers) divided by \$12,851.00 (average monthly cost of LTCF services in Connecticut) multiplied by 30 days in the application month of nearest day]

The Appellant is ineligible for Medicaid payment of long-term care services from 2019 through 2019.

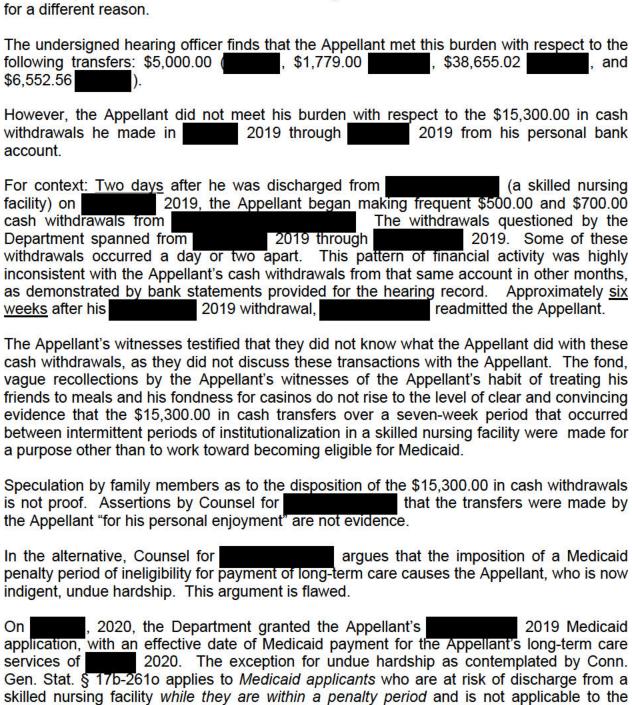
# **DISCUSSION**

During the 2020 hearing, Counsel for asserted that the Department failed to prove that the large transfers of the Appellant's assets that occurred within the five years immediate preceding the Appellant's 2019 Medicaid application were made so as to facilitate the Appellant becoming eligible for Medicaid coverage. This argument ignores the plain and unambiguous language<sup>1</sup> of Conn. Gen. Stat. § 17b-261a (a).

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<sup>&</sup>lt;sup>1</sup> "Plain meaning rule. The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable

Section 17b-261a (a) of the Connecticut General Statutes establishes the presumption that all transfers of an applicant's assets by the applicant or on his behalf by his agents are made for the purpose of qualifying for Medicaid coverage. The burden is *on the applicant* to rebut that presumption with "clear and convincing evidence" that those transfers were made for a different reason.



results, extratextual evidence of the meaning of the statute shall not be considered." Conn. Gen. Stat. § 1-2z.

Appellant, a Medicaid recipient, whose penalty period had since expired at the time of

grant—a penalty period that also will be shortened in accordance with the Order below. Further, it does not appear from the hearing record that has instituted formal discharge proceedings of the Appellant in accordance with Conn. Gen. Stat. § 19a-535.		
The Department is directed to adjust the penalty period of Medicaid ineligibility for long-term care to incorporate only the \$15,300.00 transfers, i.e., the suspicious cash withdrawals from the Appellant's account from 2019 through 2019.		
DECISION		
The Appellant's appeal is <b>GRANTED in part</b> , in that the penalty period of ineligibility for Medicaid payment of the Appellant's long-term care services is reduced to incorporate only the \$15,300.00 transfers from 2019 through 2019.		
<u>ORDER</u>		
<ol> <li>The Department will reduce the Appellant's penalty period of ineligibility for Medicaid long-term care services to incorporate only the \$15,300.00 transfers from 2019 through</li> </ol>		
<ol> <li>The Department will impose a penalty period of ineligibility for Medicaid coverage of the Appellant's long-term services in a skilled nursing facility to run from through 2019.</li> </ol>		
<ol> <li>Within 31 calendar days of the date of this decision, or of compliance with this <u>Order</u> is due to the undersigned.</li> </ol>		
<u>Cva Tar-elect</u> ronic signature Eva Tar Hearing Officer		
Pc: , Ilirjana Sabani, DSS-Waterbury Rachel Figueroa, DSS-Waterbury Jamel Hilliard, DSS		

## 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 <u>specific</u> 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, 165 Capitol Avenue, 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.