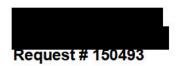
STATE OF CONNECTICUT DEPARTMENT OF SOCIAL SERVICES OFFICE OF LEGAL COUNSEL, REGULATIONS AND ADMINISTRATIVE HEARINGS 55 FARMINGTON AVENUE HARTFORD, CT 06105

2020 SIGNATURE CONFIRMATION

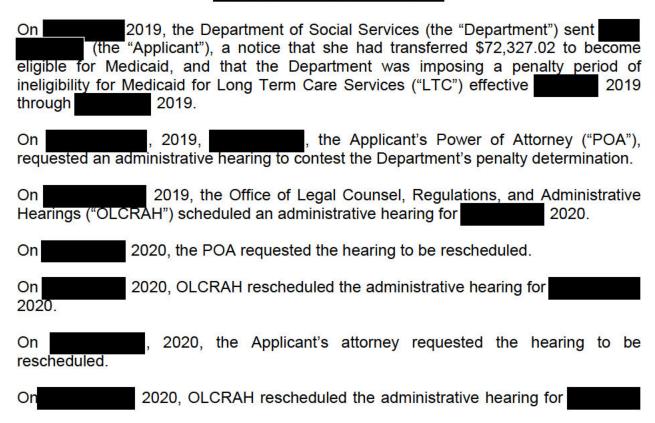


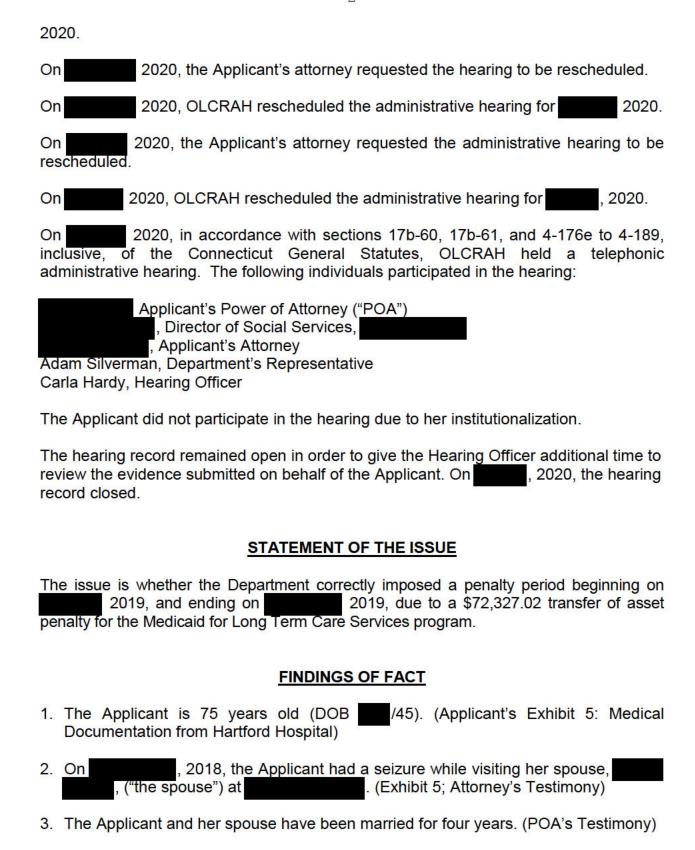
NOTICE OF DECISION

PARTY

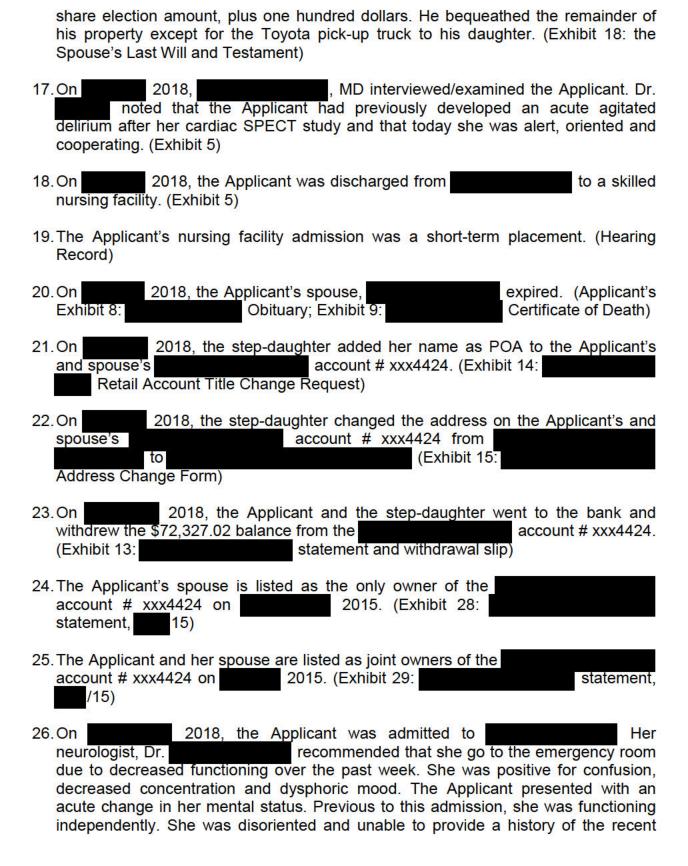


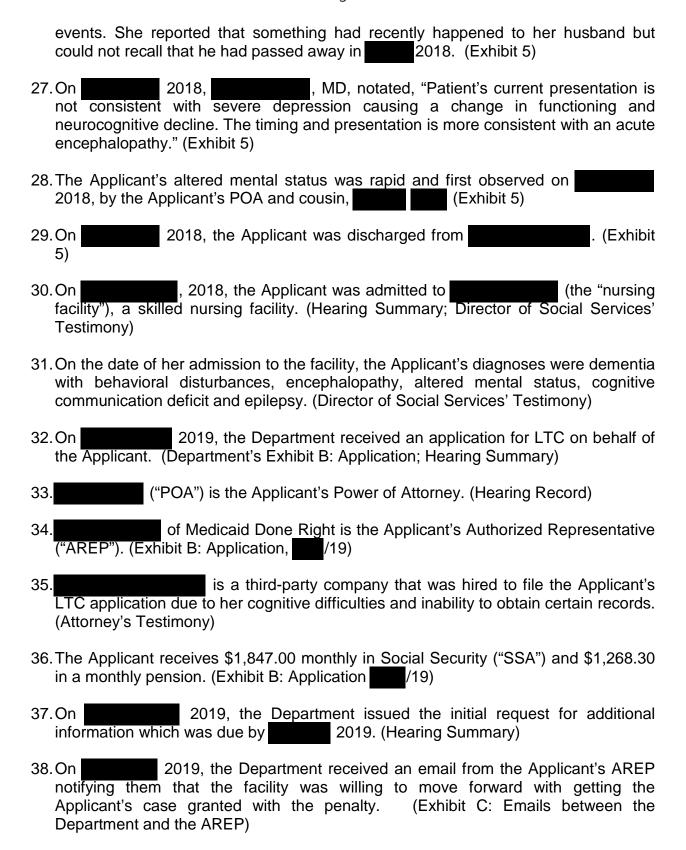
PROCEDURAL BACKGROUND

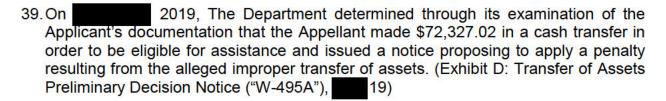




4.	. (Exhibit 5)
5.	The Applicant's diagnoses are Epilepsy; Myocardial infarction type 2; secondary and unspecified malignant neoplasms of lymph node; Cachexia; Takotsubo syndrome; Hypotension, unspecified; Rheumatic disorders of both mitral and tricuspid valves; Long QT Syndrome; Malignant neoplasm of unspecified site of right female breast; Essential (primary) hypertension; and dysphagia. The Applicant has a history of non-Hodgkin lymphomas, irradiation and antineoplastic chemotherapy. (Exhibit 5)
6.	The Applicant has a history of Alcoholism. She quit in 1983. (Exhibit 5)
7.	The Applicant has a history of seizures since the 1980's. (Exhibit 5)
8.	While in, the Applicant experienced extreme agitation. Psychiatry was consulted. Her delirium quickly improved. Due to her improvement, the hospital deferred further psychiatry follow up and medication. (Exhibit 5)
9.	On 2018, the Applicant's spouse was discharged from the home of his daughter, (the "step-daughter"), who is the Applicant's step-daughter. (Exhibit 7: Acknowledgement of Emergency Estate Planning Waiver and Release; Attorney's Testimony)
10	On 2018, the Applicant was diagnosed with encephalopathy. (Exhibit 5)
11	Encephalopathy is the swelling of the brain.
12	(the "Director of Social Services") is the Director of Social Services at nursing facility. (Hearing Record)
13	On 2018, the Applicant's spouse and her step-daughter signed an Acknowledgement of Emergency Estate Planning Waiver and Release document with Attorney (Exhibit 7)
14	On 2018, the Applicant and her step-daughter were granted joint statutory Power of Attorney ("POA") of the Applicant's spouse. (Exhibit 16: POA document)
15	Attorney advised the Applicant's spouse and his daughter that she only represents the spouse and not the Applicant. She also advised that since all of the spouse's assets are jointly held with the Applicant, that he open a separate joint account with his daughter and to fund that account with the money that he wants to give to his daughter prior to his death. (Exhibit 7)
16	On 2018, the Applicant's spouse executed his Last Will and Testament. He appointed his daughter as Executrix and the Applicant as Successor Executrix. He bequeathed to the Applicant the amount which is equal to the Connecticut statutory







- 40. The Department spoke to the Applicant's AREP about the proposed penalty. She acknowledged that there was an improper transfer. (Department's Testimony)
- 41. On 2019, the Department notified the Applicant's AREP that \$72,327.02 was transferred to become eligible for Medicaid. A penalty would be assessed from 2019, through 2019, through 2019. (Exhibit E: Final Decision Notice ("W-495C"), 1019.
- 42.On 2019, the AREP notified the Department that she forwarded the W-495A to her field representative and asked that they contact the facility to verify if they were in agreement with it. (Exhibit C)
- 43. On 2019, the Department reminded the AREP that was the due date for the response to the W-495A. (Exhibit C)
- 44.On at the nursing facility and informed them of the penalty that ends on 2019. (Exhibit C)
- 45. There was no evidence provided showing that anyone tried to retrieve the \$72,327.02 from the step-daughter on the Applicant's behalf. (Hearing Record)
- 46. There was no evidence provided showing that anyone filed any charges against the step-daughter on the Applicant's behalf. (Hearing Record)
- 47. 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. Per Commissioner Gifford of the Department of Social Services order dated 2020; this time frame has been extended to 120 days, pursuant to Governor Lamont's Executive Order 7M issued March 25, 2020. This hearing decision is due 2020. However, this hearing has been rescheduled at the request of the Applicant's representative causing a 117-day delay. Therefore this decision is due no later than 2020. (Hearing Record)

CONCLUSIONS OF LAW

 The Department is the state agency that administers the Medicaid program pursuant to Title XIX of the Social Security Act. The Department may make such regulations as are necessary to administer the medical assistance program. Connecticut General Statutes ("Conn. Gen. Stat.") § 17b-2; Conn. Gen. Stat. § 17b-262

- 2. The Department is the sole agency to determine eligibility for assistance and services under the programs it operates and administers. Conn. Gen. Stat. § 17b-261b(a)
- 3. Conn. Gen. Stat. § 17b-261a(d)(1) provides 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.
- 4. The Department correctly determined that the Applicant is an institutionalized individual of a long term care facility who has applied for Medicaid coverage with the Department.
- 5. Subsection (a) of section 17b-261a of the Conn. Gen. Stat. provides that any transfer or assignment of assets resulting in the imposition of a penalty period shall be presumed to be made with the intent, on the part of the transferor or the transferee, to enable the transferor to obtain or maintain eligibility for medical assistance. This presumption may be rebutted only by clear and convincing evidence that the transferor's eligibility or potential eligibility for medical assistance was not a basis for the transfer or assignment.
- 6. "The department's Uniform Policy Manual ("UPM") is the equivalent of 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") Section 1500.01 provides that an applicant is the individual or individuals for whom assistance is requested.
- 8. UPM § 4010.10(A)(2) provides that an assistance unit member and spouse who hold a bank account or similar asset jointly are each considered legal owners of the asset except as described below:
 - a. If the spouse became a joint holder of the account within 24 months prior to the date of the assistance unit's application, or subsequently, the spouse is considered the record owner only, and not a legal owner.
- 9. The Department correctly determined that the Applicant is the legal owner of the account # xxx4424.

- 10.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.
- 11.UPM 3029.05(A) provides 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 date specified in UPM 3029.05(C). This period is called the penalty period or period of ineligibility.
- 12. 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.
- 13. The look-back date is 2014.
- 14.UPM § 3029.10(E) provides that an otherwise eligible institutionalized individual is not ineligible for Medicaid payment of LTC services if the individual, or his or her spouse, provides clear and convincing evidence that the transfer was made exclusively for a purpose other than qualifying for assistance.
- 15. An institutionalized individual or the individual's spouse is considered to transferred assets exclusively for a purpose other than qualifying for assistance under circumstances, which include, but not limited to undue influence; foreseeable needs met; transfer to or by legal owner; or that a transferred asset would not affect eligibility if retained. UPM § 3029.15(A-D)
- 16. The POA has not provided evidence that the Applicant was incompetent at the time of the transfer.
- 17. The POA did not establish with clear and convincing evidence that the Applicant was unduly influenced when she transferred the \$72,327.02 to the step-daughter.
- 18.UPM § 3029.05(E) provides that 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; 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.

- 19.UPM § 3029.05(F) provides in part 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). 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.
- 20. The average monthly cost of LTCF services in Connecticut as of the month of the Applicant's application is \$12,851.00.
- 21. The \$72,327.02 is subject to a transfer of asset penalty.
- 22. The Applicant is subject to a penalty of 5.63 months after dividing the uncompensated value of the transferred asset by the average monthly cost of LTC facility services (\$72,327.02/\$12,851.00 = 5.63)
- 23. The Department correctly determined that the Applicant is subject to a penalty of 5.63 months, ending on 2019.

DISCUSSION

The POA gave testimony that the Applicant had a stroke on impaired when she closed out her bank account and gave the \$72,327.02 closing balance to the step-daughter. The Applicant's attorney's argued that the Applicant was unduly influence when the transfer was made due to the Applicant's cognitive decline and the recent loss of her spouse. The medical documentation shows that the Applicant was confused and that her mental status was altered while she was admitted to the hospital from through through The evidence also shows that the Applicant was confused and that her mental status was altered in 2018. The evidence presented does not show that the Applicant's mental status was altered at the time of the transfer.

It is not clear as to when the Applicant was diagnosed with dementia. The Applicant had a diagnosis of dementia when she was admitted to the nursing facility on 2018. However, dementia is not documented in the medical notes that were submitted as evidence.

The attorney also argued that the money that was placed in the account belonged to the Applicant's spouse. He acquired this money when he sold his mother's home and deposited the funds in the Applicant.

xxx4424, a joint account with the Applicant.

It may have been the spouse's intention to provide for his adult daughter. However, his

primary responsibility was to his aging spouse, the Applicant. The Department correctly determined that the Applicant is subject to a penalty of 5.63 months for the Medicaid payment of long-term care service.

DECISION

The Appellant's appeal is **DENIED**.

Carla Hardy

Hearing Officer

Pc: , POA , Counsel for the Applicant

Alejandro Arbelaez, Adam Silverman, Department of Social Services, Torrington Office

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 <u>what</u> error of fact or law, <u>what</u> new evidence, or <u>what</u> other good cause exists.

Reconsideration requests should be sent to: Department of Social Services, Director, Office of Administrative Hearings and Appeals, 55 Farmington Avenue, Hartford, CT 06105-3725.

RIGHT TO APPEAL

The appellant has the right to appeal this decision to Superior Court within 45 days of the mailing of this decision, or 45 days after the agency denies a petition for reconsideration of this decision, provided that the petition for reconsideration was filed timely with the Department. The right to appeal is based on §4-183 of the Connecticut General Statutes. To appeal, a petition must be filed at Superior Court. A copy of the petition must be served upon the Office of the Attorney General, 55 Elm Street, Hartford, CT 06106 or the Commissioner of the Department of Social Services, 55 Farmington Avenue Hartford, CT 06105. A copy of the petition must also be served on all parties to the hearing.

The 45 day appeal period may be extended in certain instances if there is good cause. The extension request must be filed with the Commissioner of the Department of Social Services in writing no later than 90 days from the mailing of the decision. Good cause circumstances are evaluated by the Commissioner or the Commissioner's designee in accordance with §17b-61 of the Connecticut General Statutes. The Agency's decision to grant an extension is final and is not subject to review or appeal.

The appeal should be filed with the clerk of the Superior Court in the Judicial District of New Britain or the Judicial District in which the appellant resides.