

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

██████████, 2021
Signature Confirmation

Case # ██████████
Client ID # ██████████
Request # 176727

NOTICE OF DECISION

PARTY

██████████
██████████
████████████████████

PROCEDURAL BACKGROUND

On ██████████, 2021, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA") denying her application for Husky C Home and Community Based Services benefits under the Medicaid program due to improper transfer resulting in a penalty.

On ██████████ 2021, the Appellant through the representation of the Law Offices of ██████████ requested an administrative hearing to contest the Department's decision to deny such benefits.

On ██████████ 2021, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice scheduling an in person administrative hearing for ██████████ 2021.

On ██████████ 2021, the Appellant requested a telephone hearing, which was granted.

On ██████████ 2021, the Appellant requested a re-schedule for a telephone hearing for a date after ██████████ 2021, which was granted.

On ██████████ 2021, OLCRAH re-scheduled the administrative hearing for ██████████ 2021.

On ██████████ 2021, 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:

Attorney [REDACTED] Appellant's Legal Representative
 [REDACTED], Appellant's daughter 1, and Attorney in fact as of [REDACTED] 2008
 [REDACTED], Appellant's daughter 2, and Attorney in fact as of [REDACTED] 2008
 [REDACTED] Attorney [REDACTED] paralegal and witness
 Meghan Monopoly, DSS Eligibility Worker, Department Representative
 Liza Moriaz, DSS Eligibility Supervisor, Department Representative
 Almelinda McLeod, Hearing Officer

[REDACTED], Appellant was not present at the hearing due to her disabilities.

The hearing record was held open for the submission of additional evidence and response. On [REDACTED] 2021 the hearing record was closed.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to impose a transfer of asset penalty was correct.

FINDINGS OF FACT

1. The Appellant is a [REDACTED] year-old widow with 8 children. Her spouse, prior to his passing in [REDACTED], did everything for her. Since then, she depends on her family members because she doesn't drive, does not speak English, she can-not read or write. (Hearing record)
2. On [REDACTED] 2008, the Appellant's daughters, [REDACTED] - (daughter 1), [REDACTED] (daughter 2), and [REDACTED] (daughter 3) became the Appellant's attorney in fact. (Court decree)
3. On [REDACTED] 2016, the Appellant sold her property listed as [REDACTED] [REDACTED]. (Hearing record)
4. On [REDACTED] 2016, the Appellant's daughters established a family trust where the net proceeds of the sale of the house \$256,777.35 were deposited into two separate [REDACTED] trust accounts x [REDACTED] and x [REDACTED]. (Hearing record)
5. The [REDACTED] Family Trust indicated that payments for services rendered on behalf of the Appellant must be presented with an invoice or bill. That such payments must be made in connection with a personal needs contract or lease agreement. (Exhibit 2, Trust)
6. The Appellant's daughters verbally agreed to provide care for their mother 4 months at a time and charge the Appellant \$3000 per month for a guest room in their homes with separate utilities. The \$3000 was

based on the price of an assisted living facility. (Hearing record testimony-Daughters 1 and 2)

7. In [REDACTED] 2018, the Appellant fell while renting the guest room in the home of daughter 3 resulting in the hospitalization of the Appellant at [REDACTED] Hospital in [REDACTED] CT, and subsequent convalescence for rehabilitation at the [REDACTED], CT from [REDACTED] 2018 to [REDACTED] 2018. Around this time, daughter 3 withdrew her participation from the agreement. (Hearing record testimony-Daughters 1 and 2)
8. With the withdrawal of daughter 3 from the agreement, the two remaining daughters residing in [REDACTED] CT and [REDACTED], CT respectively, continued to rent a guest room at their own homes two months at a time. (Hearing record testimony-Daughters 1 and 2)
9. On [REDACTED] 2018, A lease was created and signed by Daughters 1 and 2 and the Appellant with legal witness. The Lease included the landlord's responsibilities and the tenant's responsibilities. The landlord is to keep the room neat and tidy and shall carry insurance for third party liability and casualty; however, will not carry insurance for the Appellant's personal property. While the Appellant is to keep and maintain the order of her guest room, return the guest room in good order, use of household fixtures, equipment and appliances in a reasonable manner and has kitchen rights. The lease reflected \$5000 monthly rent for a guest room with separate utilities. (Exhibit 4, Lease)
10. The \$5000 monthly rent for a guest room in the homes of Daughters 1 and 2 was based on the price of an assisted living facility. (Hearing record testimony-Daughters 1 and 2)
11. The household members of Daughter 1 assisted her with the care of the Appellant in her absence because the Appellant could not be left alone as she was a fall risk. (Daughter 1 testimony)
12. Daughter 2 was employed until [REDACTED] 2020; thereafter she has provided continuous care to the Appellant. While she worked, Daughter 2 testified she paid for homecare services for the Appellant. (Daughter 2 testimony)
13. It is unclear by the hearing record if homecare service expenses incurred by Daughter 2 for the benefit of the Appellant were made known to the Department. (Hearing record)
14. On [REDACTED] 2020, the Appellant was the subject of an unwitnessed fall where she was treated at the [REDACTED] Hospital Emergency room for

lacerations on her forehead (scalp laceration, right temporal) and lacerations on her finger (left index finger) both requiring sutures. (Exhibit B- Medical records)

15. On [REDACTED] 2020 and [REDACTED] 2020, the Appellant had follow-up appointments with her doctor for the removal of sutures on the Appellant's scalp right temporal and the left index finger. (Exhibit B- Medical records)
16. On [REDACTED] 2021, the [REDACTED] Family Trust was reviewed by the Department's legal department and it was determined that the trust is a self-funded trust therefore every transaction from the trust must be examined to determine if funds were used for the Appellant's benefit. If it is determined that the funds were not used for the benefit of the Appellant, the transactions would be considered transfers for less than fair market value and subject to a penalty. (Exhibit 5, Daniel Butler's e-mail)
17. At the time of the Trust review, the Appellant was applying for Husky C, Medicaid for the Medically Needy- Aged, Blind and Disabled. (Hearing record, Exhibit 9, NOA)
18. On [REDACTED] 2021, the Department received a referral for an application for Husky C Medicaid Home Care for Elders Waiver. (Hearing record)
19. The Department reviewed the trust and the [REDACTED] trust bank accounts x [REDACTED] and x [REDACTED] and found \$25,000 was transferred to daughter 3, \$106,265 to daughter 2 and \$101,800 to daughter 1 through the 5 year look back. (Hearing record)
20. On [REDACTED] 2021 and [REDACTED] 2021, the Department requested verification that the transfers to the Appellant's daughters were for fair market value. (Hearing record)
21. The Department received lease agreements between the Appellant and the daughters 1 and 2, affidavits attesting to the intent of the Family Trust to be compensated for rent and services as detailed in the Service Care Agreement so that the Appellant would not be placed in a nursing facility. The calculated rent was based on assisted living rates. (Hearing record)
22. The Department determined that the two daughters were not licensed nor accredited as an assisted living facility to charge assisted living facility rates at \$3000 or \$5000 per month for the rent of a guest bedroom without utilities. (Department testimony)

23. The Department made a referral to the Department's resources unit to determine fair market value ("FMV") for rent. (Hearing record)
24. On [REDACTED] 2021, the Department's resource unit determined the maximum price for the FMV of a nice furnished room in the [REDACTED] and [REDACTED] areas of Connecticut which include utilities was \$1200.00 per month. (Exhibit 6)
25. On [REDACTED] 2021, daughter 2 sent an e-mailed list of services she provided to the Appellant's counsel. These services included waking her up, putting her to bed, administering her medications, bathroom, showering, dressing, making her breakfast, lunch and dinner, laundry which includes her bedding, cleaning her room and bathroom, exercise, walking, taking her for a ride, watching TV, and getting up 3 to 4 times a night to tend to the Appellant's needs which included changing her pull up, pad and / or her bedding. (Exhibit E)
26. The Department did not receive any documents verifying services provided to determine fair market value. (Hearing record)
27. The Department determined that without verification of provided services or services paid for, it was not possible to determine if the Appellant received fair market value. (Department testimony)
28. On [REDACTED] 2021, the Department determined the following to be improper transfers and that the total of the improper transfers equaled \$268,738.12:

Transferred asset	purpose
\$27,443.90	Withdrawal from x [REDACTED] on [REDACTED] 21
\$2,818.06	Withdrawal from x [REDACTED] on [REDACTED] /21
\$3,311.16	Withdrawal from x [REDACTED] on [REDACTED] /21
\$2100.00	Withdrawal from x [REDACTED] on [REDACTED] /21
\$25,000	Transferred to daughter 3 within look-back period
\$106,265	Transferred to daughter 2 within look-back period
\$101,800	Transferred to daughter 1 within look-back period

(Exhibit 8, Hearing record and Exhibit 7 W-3016)

29. The Department determined that \$1200 x 56 months equals to \$67,200 fair market value for rent, which reduces the TOA penalty, thus the new penalty is \$201,538.12. ($\$268,738.12 - \$67,200 = \$201,538.12$) (Exhibit 7, W-3016)
30. On [REDACTED] 2021, the Department issued a W-495, Notice of Possible Improper Transfer of Assets proposing to impose a penalty period on the alleged improper transfer of assets. The Department determined

through its review of the Appellant's financial information that the Appellant improperly transferred \$201,538.12. The notice included Appellant's right to rebuttal. (Exhibit 7, W-0495A)

31. On [REDACTED] 2021, counsel for the Appellant sent a rebuttal to the Department citing UPM P-3029 (2) "Evaluating Intent to receive Fair value or other Valuable consideration. Counsel argues the daughters were paid for services provided akin to those of a home maker or home health aide, while the Appellant resided in their homes. The following were submitted with the rebuttal.

- Attestation letter from Dr. [REDACTED] dated [REDACTED] 2021 stating that if it were not for the care of the daughters, the Appellant would have been admitted into a nursing home some time ago.
- Affidavits signed and dated [REDACTED] 2021 by daughters 1 and 2 regarding circumstances for receiving payment for caring and allowing the Appellant to reside with them detailed in the Personal Service contract.
- Medical documents
- Personal Service Contract
- Various letters to family members regarding Family Trust, Personal Service Contract, and lease. (Exhibit D, rebuttal)

32. The Personal Service Contract agreement presented indicated the providers agree to perform and provide services to the Appellant. The agreement consisted of the following: 1) the provider shall agree to perform certain services listed in Schedule A and any other services not listed but requested by the Appellant. 2) The provider shall be compensated at a rate of \$25 per hour for the services provided to the Appellant. 3) The provider shall be reimbursed for all out-of-pocket expenses incurred on behalf of the Appellant. 4) On the 15th and first of every month, the Provider shall provide an invoice detailing the time and services provided and expenses incurred for the period. 5) Each party shall be allowed to terminate such agreement with three days written notice. The Care plan service agreement was signed by the Appellant and her daughters; however, it was not dated. (Exhibit 10)

33. The Department did not receive a Schedule A attachment listed as component 1 of the Personal Service Contract detailing services provided for the Appellant. (Hearing record)

34. The Department did not receive invoices detailing the time and services provided to the Appellant as listed as component 4 of the Personal Service Contract. (Hearing record)

35. Neither the Personal Service Contract nor the Lease provided include homecare services or home health aide services to be performed or provided for the Appellant which would have included an invoice or bill for payment of services as noted in the [REDACTED] Family trust. (Hearing record)
36. The Department determined that without verification of services provided and payment for services, fair market value can-not be determined. (Department testimony)
37. The Department determined the Appellant's did not meet the criteria for compensation because the Department was unable to determine whether fair market value was received. (Department testimony)
38. The Department determined that the Appellant did not meet the criteria for other valuable consideration because the Appellant rented a guest room for 2 to 4 months at a time since 2016; however, no verification of the Appellant's exact whereabouts at any given time to support the daughters resided with her for a period of two years and kept her out of a facility for a period of two years. In addition, there was no verification of services rendered that were the type provided by a homemaker or home health aide and that these services kept her out of a facility for a period of two years. (Department testimony)
39. On [REDACTED] 2021, the Department issued W- 495 B informing the Appellant that it did not agree with the Appellant's rebuttal and would be imposing a penalty for the improper transfer amount of \$201,538 for a period of 453 days. During said penalty period, the Department will not pay for long-term care medical services and the Appellant will not be eligible for home and community-based services. (Exhibit 8, 495B)
40. On [REDACTED] 2021, the Department issued a NOA informing the Appellant she will be denied coverage under the Husky C Home and Community Based Services and that a penalty period for improper transfer of assets will be imposed. The penalty will be imposed from [REDACTED] 2021 and ends on [REDACTED] 2022. She may re-apply after the penalty period is over. (Exhibit 9)
41. 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] 2021. Therefore, this decision is not due until [REDACTED] 2021. However, the Appellant's attorney requested to reschedule the administrative hearing delaying the closing of the record. The close of the hearing record was further extended through [REDACTED] 2021, to allow for the submission of

additional evidence and response. Because of the 26-day delay in the close of the hearing record, this final decision was not due until [REDACTED], 2021 and is therefore timely.

CONCLUSIONS OF LAW

1. Section § 17b-2 (6) of the Connecticut General Statutes provides that the Department of Social Services is designated as the state agency for the administration of the Medicaid program pursuant to the Title XIX of the Social Security Act.
2. Section 17b-342 of the Connecticut General Statutes authorizes the Commissioner of Social Services to administer the Connecticut home-care program for the elderly state wide in order to prevent the institutionalization of elderly persons (1) who are recipients of medical assistance, (2) who are eligible for such assistance, (3) who would be eligible for medical assistance if residing in a nursing facility, or (4) who meet the criteria for the state-funded portion of the program under subsection (i) of this section.
3. Conn. Gen. Stat. § 17b-261b (a) provides the Department is the sole agency to determine eligibility for assistance and services under the programs it operates and administers.
4. "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)).
5. 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.

The date of the Medicaid application was [REDACTED] 2021; therefore, the look-back date is [REDACTED] 2016.

6. Conn. Gen. Stat. § 19a-490 (a) provides the definition of "institution" as a hospital, short-term hospital special hospice, hospice inpatient facility, residential care home, nursing home facility, home health care agency, home health aide agency, behavioral health facility, **assisted living services agency**, substance abuse treatment facility, outpatient surgical facility, outpatient clinic, an infirmary operated by an educational institution for the care of students enrolled in, and faculty and employees of, such institution; a facility engaged in providing services for the prevention,

diagnosis, treatment or care of human health conditions, including facilities operated and maintained by any state agency; and a residential facility for persons with intellectual disability licensed pursuant to section 17a-227 and certified to participate in the Title XIX Medicaid program as an intermediate care facility for individuals with intellectual disability. "Institution" does not include any facility for the care and treatment of persons with mental illness or substance use disorder operated or maintained by any state agency, except Whiting Forensic Hospital.

7. Conn. Gen. Stat. § 19a-490 (I) provides for the definition of assisted living services agency means an agency that provides, among other things, nursing services and assistance with activities of daily living to a population that is chronic and stable.
8. Conn. Gen. Stat. § 19a-491(a) provides no person acting individually or jointly with any other person shall establish, conduct operate or maintain an institution in this state without a license as required by this chapter, except for persons issued a license by the Commissioner of Children and Families pursuant to section 17a-145 for the operation of (1) a substance abuse treatment facility, or (2) a facility for the purpose of caring for women during pregnancies and for women and their infants following such pregnancies.
9. Conn. Gen. Stat. § 19a-491 (c) (14) provides that notwithstanding any regulation, the Commissioner of Public Health shall charge the following fees for the biennial licensing and inspection of assisted living service agencies, except such agencies participating in the congregate housing facility pilot program described in section 8-119n, per site, five hundred dollars.

The Department correctly determined that a hospital or a convalescent home for rehabilitation is an institution as defined in Conn. Gen. Stat. §19a-490 (a).

The Department correctly determined that the Appellant's daughters were not licensed to operate as an assisted living facility in accordance with Conn. Gen. Stat. § 19a-491(a).

10. Uniform Policy Manual ("UPM") Section 1500.01 provides that an applicant is the individual or individuals for whom assistance is requested.
11. Subsection (a) of section 17b-261(a) of the Connecticut General Statutes 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.

12. 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.
13. 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.
14. UPM § 3029.05 (D) provides that 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.
15. 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.
16. 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.
17. UPM 3029.30 provides compensation in exchange for a transferred asset is counted in determining whether fair market was received.
18. UPM 3029.30 (A) provides 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.
19. UPM 3029.30 (B) provides each form of compensation is assigned a dollar value to compare with the fair market value of the transferred asset. 1. In determining the dollar value of services rendered directly by the transferee, the following amounts are used: a. for all services of the type normally rendered by a homemaker or home health aide, the current state

minimum hourly wage for such services; b. for all other types of services, the actual cost.

There is no evidence in the hearing record that any document or invoice was provided to determine the dollar cost of services provided to the Appellant or paid for by the transferee.

There is no evidence in the hearing record that indicates compensation was in accordance with the Personal Services Contract.

There is no evidence in the hearing record that compensation (*at current state minimum hourly wage for services or payment for services*) were of the type provided by a homemaker or a home health aide.

The Department correctly determined the Appellant's did not meet the criteria established by policy for compensation in exchange for a transferred asset, because the Department was unable to determine whether fair market value was received.

20. UPM § 3029.20 (A) provides 1. Other valuable consideration may be received either prior to or subsequent to the transfer. 2. 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 for the asset to be transferred without penalty. 3. The value of the other valuable consideration, as described in 3029.20B, is equal to the average monthly cost to a private patient for long term care services in Connecticut, multiplied by the number of months the transferee avoided the need for the transferor to be institutionalized.

21. UPM § 3029.20 B. provides for the criteria for other valuable consideration. Other Valuable consideration must be in the form of services or payment for services which meet **all** the following conditions: 1. The services rendered are of the type provided by a homemaker or a home health aide; and 2. The services are essential to avoid institutionalization of the transferor for a period of at least two years; and 3. The services are either: a. provided by the transferee while sharing the home of the transferor; or b. paid for by the transferee.

The hearing record shows that the Personal Services Agreement was to provide a Schedule A detailing what services were to be performed and an invoice on the 15th and every 1st day of the month for service provided.

The hearing record shows that the Department did not receive a Schedule A detailing services to be performed nor any document or invoice to show what service was provided and when.

The Department correctly determined that the criteria for other valuable consideration had not been met because the Appellant did not provide clear and convincing evidence that services nor payment for services were provided to the Appellant that were consistent with that of a home maker or home health aide.

The medical records show that the Appellant suffered a fall resulting in a hip fracture which required surgery and rehabilitation in ██████████ 2018 and an unwitnessed fall which left the Appellant with injuries that needed follow-up appointments with her doctor for the removal of sutures in ██████████ 2020. There is no evidence that the services provided by the Appellants daughters kept the Appellant out of a facility or institution for a period of at least two years.

The Appellant and her representatives did not provide clear and convincing evidence that the transfer was made exclusively for a purpose other than to qualify for assistance.

22. Conn. Gen. Stat. § 17b-261a (a) 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.
23. UPM 3029.15 (B) provides that an institutionalized individual or the individual's spouse is considered to have transferred an asset exclusively for a purpose other than qualifying for assistance under circumstances which include, but are not limited to , the following: 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.
24. **The Department correctly determined that the Appellant did not meet her foreseeable needs because she did not retain enough assets to cover her *basic* living expenses and medical costs.**

- 25. The Appellant and her representatives did not establish with clear and convincing evidence that she transferred \$201,538.12 for a purpose other than to qualify for assistance.**
26. UPM 3029.35 (A)(1) (2) 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. The notification includes clear explanation of both a. the reason for the decision and the right of the individual or his or her spouse to rebut the issue within ten days.
- 27. The Department correctly issued the W-495A notices which clearly explained the reason why the action was a transfer of assets and allowed the Appellant the right to rebut the claim.**
28. 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.
29. UPM § 3029.05 (F) (2) (a) pertains to the Length of the Penalty Period and provides 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.
30. UPM § 3029.05 (F) (4) provides the Department imposes a penalty period, the penalty runs without interruptions, regardless of any changes to the individual's institutional status.
31. UPM § 3029.05 (G) provides that during the penalty period, home, and community -based services under a Medicaid waiver are not covered.
- 32. The average monthly cost of LTCF services in Connecticut as of [REDACTED] 2021, the month of application is \$13,512.00.**
- 33. The Department correctly determined \$201,538.12 is subject to a transfer of asset penalty.**

34. The Applicant is subject to a penalty of 14.92 months after dividing the uncompensated value of the transferred asset by the average monthly cost of LTC facility services (\$201538.12/\$13,512.00 = 14.915491415)

35. The Department correctly determined that the Applicant is subject to a penalty of 14.92 months or 453 days starting [REDACTED] 2021 ending on [REDACTED] 2022.

DISCUSSION

The policies that govern Transfer of Assets states that clear and convincing evidence must be provided for the Department to evaluate if fair market was received for either compensation or other valuable consideration. After reviewing the evidence and testimony presented, the Department was correct to impose a transfer of assets penalty.

A review of the lease did not provide a list of services that were to be provided to the Appellant in exchange for \$5000.00 per month outside of a rental agreement of a guest room without utilities between landlord and tenant. The lease did not represent any services that a homemaker or home health aid would provide. The Personal Service Contract clearly indicated that a Schedule A of services was to be included however, no Schedule A nor a copy of a schedule of services was provided to the Department. The personal care contract also stated that an invoice would be provided to show the services performed and paid for. These invoices were not provided to the Department. It is reasonable for the Department to conclude that without such proof of services given or paid for; as is required by policy, a transfer of assets for fair market value or other valuable consideration cannot be determined. The Department is affirmed.

DECISION

The Appellant's appeal is DENIED.


Almelinda McLeod
Hearing Officer

CC: Musa Mohamud, SSOM, Hartford
Liza Morais, LTSS Supervisor, Hartford
Meghan Monopoly, LTSS fair hearing liaison, Hartford
[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 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.