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

[redacted], 2022
Signature Confirmation

[redacted]
Request # 190658

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2022, the Department of Social Services (the "Department") sent [redacted] "Appellant"), a notice that he had transferred $49,000 to become eligible for Medicaid, and that the Department was imposing a penalty period of ineligibility for Medicaid for Long Term Care Services ("LTC") effective [redacted], 2021, through [redacted] 2021.

On [redacted], 2022, the Appellant requested an administrative hearing to contest the Department's penalty determination.

On [redacted], 2022, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") scheduled an administrative hearing for [redacted] 2022.

On [redacted] 2022, the Appellant's attorney requested the hearing to be rescheduled.

On [redacted], 2022, OLCRAH rescheduled the administrative hearing for [redacted], 2022.

On [redacted], 2022, the Appellant's attorney requested the hearing to be rescheduled.

On [redacted] 2022, OLCRAH rescheduled the administrative hearing for [redacted], 2022.

On [redacted] 2022, in accordance with sections 17b-60, 17b-61, and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, OLCRAH held a telephonic administrative hearing. The following individuals participated in the hearing:

[redacted], Appellant's daughter, and Power of Attorney ("POA")
[redacted], M.D., Appellant's Medical Provider
[redacted], attorney for the nursing facility
Clark O'Neill, Department's Representative
Carla Hardy, Hearing Officer

The Applicant did not participate in the hearing due to his institutionalization.

The hearing record remained open for the Department to submit additional information which was received. On [redacted], 2022, the hearing record closed.

STATEMENT OF THE ISSUE

The issue is whether the Department correctly imposed a penalty period beginning on [redacted], 2021, and ending on [redacted], 2021, due to a $49,000 transfer of asset penalty for the Medicaid for Long Term Care Services program.

FINDINGS OF FACT

1. [redacted], 2016, the Appellant was evaluated by [redacted], Ph.D. of [redacted]. He was administered a test to determine his need for supervision in the community. His scores indicated that he required significant supervision to function safely in the community. (Appellant's Exhibit F: [redacted] Hospital's Neuropsychological Evaluation)

2. The results of the evaluation showed the Appellant experienced difficulties in cognitive functioning that beyond normal aging and more than difficulties typical of someone with Parkinson's disease without dementia. (Exhibit F)

3. On [redacted], 2017, the Appellant submitted to a neuropsychological evaluation by [redacted]. Psy.D. of the [redacted] The Appellant's overall cognitive functioning was classified as severely impaired. (Exhibit G: [redacted] Neuropsychological Evaluation

4. On [redacted], 2020, the Department received an email from the Community Options unit requesting they screen the Appellant for W01-home care because the Appellant was active on an M03 and had turned [redacted] years of age. (Exhibit 5: Email from Community Options)

5. On [redacted], 2020, the Department received the Appellant's application for home care services. The Appellant had three Powers of Attorneys ("POA") that included [redacted] ("POA # 1), [redacted] ("POA # 2), [redacted] ("POA # 3"). (Exhibit 4: Case Notes)

6. On [redacted], 2020, the Department requested additional information from the POA that included the look backs for the checking-#[redacted] and savings-#[redacted] accounts with [redacted]. (Exhibit 4)

7. On [redacted] 2020, the Department received notification that the Appellant sold his home in 2017 for $136,000. (Exhibit 4; Exhibit 6: Partial Long Term Care Application)

8. On [redacted], 2020, the Department received notification from the AVS system which showed that there was activity exceeding $5,000.00 in the [redacted] account, # [redacted] between [redacted] 2017 through [redacted] 2017 and in account # [redacted] between [redacted] 2016 and [redacted] 2018. (Exhibit 4)

9. On [redacted] 2020, POA # 3 requested to be removed as an authorized representative. (Exhibit 4)

10. On [redacted], 2020, the Appellant's POAs reported that they pay the Appellant's aid for extra help for the Appellant and POA # 2 reported she uses her credit card to buy things for her father and then reimburses herself for those purchases. (Exhibit 4)

11. On [redacted] 2021, the Department provided the POAs with a list of transactions from accounts numbers [redacted] and [redacted] that they found questionable. (Exhibit 4; Hearing Summary)

12. On [redacted], 2021, the Department received a letter from [redacted] (the "home health aide"), the home health aide stating he provided services for the Appellant between [redacted] 2020 through [redacted] 2020. He was paid $200.00 weekly via Cash App and/or cash. (Exhibit 4)

13. On [redacted] 2021, the Department notified the POA that the following transactions totaling $49,000.00 were questionable and that the initial decision was that the transactions were made to become eligible for assistance:

Date	Amount
[redacted]17	$6,000.00
[redacted]17	$10,000.00
[redacted]17	$6,000.00
[redacted]17	$4,000.00
[redacted]17	$10,000.00
[redacted]17	$13,000.00
Total	$49,000.00

(Exhibit 2A: Transfer of Assets ("TOA") Preliminary Decision Notice; Exhibit 4)

14. The TOA Preliminary Decision Notice notifies the Appellant to contact the Department if he does not agree with this decision and that they will act on this decision if they do not hear from him by [redacted], 2021. (Exhibit 2A)

15. On [redacted], 2017, the Appellant's [redacted] Bank account # [redacted] had a balance of $133,344.49. (After Hearing Exhibit 10: [redacted] Bank Statement, Acct # [redacted])

16. On [redacted], 2017, the Appellant's [redacted] Bank account # [redacted] retained a balance of $7,628.52. (Exhibit 10)

17. On [redacted], 2017, the Appellant's [redacted] Bank account # [redacted] retained a balance of $2,458.61. (Exhibit 10)

18. The Appellant's [redacted] Bank account # [redacted] decreased by $5,169.91 in [redacted] 2017. ($7,628.52 - $2,458.61 = $5,169.91) (Facts #16 and #17)

19. On [redacted] 2017, the Appellant's [redacted] Bank account # [redacted] had a balance of $28.79. (After Hearing Exhibit 11: [redacted] Bank Statement, Acct # [redacted])

20. On [redacted], 2017, the Appellant's [redacted] Bank account # [redacted] retained a balance of $43,686.70. (Exhibit 11)

21. In [redacted] 2017, $50,000.00 was transferred from [redacted] Bank account # [redacted] to [redacted] Bank account # [redacted] (Exhibit 11)

22. On [redacted], 2017, the Appellant's [redacted] Bank account # [redacted] retained a balance of $34,338.70. (Exhibit 11)

23. The Appellant's [redacted] Bank account [redacted] decreased by $9,348.00 in [redacted] 2017 ($43,686.70 - $34,338.70 = $9,348.00). (Facts 19, 20, 21, and 22)

24. In [redacted] 2017, the Appellant's expenses totaled $14,517.91 ($5,169.91 + $9,348.00 = $14,517.91). (Facts 18 and 23)

25. On [redacted] 2017, the Appellant's [redacted] Bank account # [redacted] had a balance of $34,338.70 and $23,038.73 on [redacted], 2017. His bank balance was reduced by $11,399.97 ($34,338.70 - $23,038.73 = $11,399.97). (Exhibit 11)

26. On [redacted], 2021, the Department received notification that the Appellant was admitted to a nursing facility. (Exhibit 4, Hearing Summary)

27. On [redacted] 2021, the Department granted the long-term care coverage for the Appellant effective [redacted] 2021, with a $49,000.00 transfer of asset penalty with an end date of [redacted], 2021. (Exhibit 4, Hearing Summary)

28. On [redacted], 2021, the Appellant requested a hearing. (Appellant's Exhibit H: Notice of Decision, [redacted]/22)

29. [redacted], M.D. (the "medical provider") is the Appellant's medical provider. (Testimony)

30. The Appellant was diagnosed with [redacted] about [redacted] years ago. (Medical Provider's Testimony)

31. The Appellant was diagnosed with [redacted] in [redacted]. (Medical Provider's Testimony)

32. In 2017, the Appellant would have been impaired and not able to make good financial decisions. (Medical Provider's Testimony)

33. On [redacted], 2022, a Hearing Officer issued a Notice of Decision. The Department was ordered to issue a Transfer of Assets Final Decision Notice ("W495C") to the Appellant by [redacted] 2022. (Exhibit H)

34. On [redacted] 2022, issued an NOA to the Appellant approving LTC effective [redacted] 2022, through [redacted], 2022, with a Patient Liability Amount ("PLA") of $2,426.00. (After Hearing Exhibit 8: NOA, [redacted]/22)

35. On [redacted] 2022, the Department notified the Appellant that $49,000.00 was transferred to become eligible for Medicaid. A penalty would be assessed from [redacted], 2021, through [redacted], 2021, due to a $49,000.00 transfer on [redacted], 2021. (Exhibit 2B: W495, [redacted]/22)

36. On [redacted], 2022, the Department issued an NOA notifying the Appellant that he was approved for LTC through [redacted], 2022, with a PLA of $2,426.00. (Exhibit 9: NOA, [redacted]/22)

37. The Appellant was last seen by his medical provider on [redacted], 2022. (Medical Provider's Testimony)

38. 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 hearing was requested on [redacted], 2022. Therefore, this hearing was due [redacted], 2022. However, this hearing was rescheduled several times causing a [redacted] day delay. Therefore, this decision is due no later than [redacted], 2022. (Hearing Record)

CONCLUSIONS OF LAW

1. The Department is the state agency that administers the Medicaid program pursuant to Title XIX of the Social Security Act. Connecticut General Statutes ((“Conn. Gen. Stat.”) § 17b-2)

2. The Department may make such regulations as are necessary to administer the medical assistance program. (Conn. Gen. Stat. § 17b-262)

3. 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)

4. 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.

   “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)).

   Uniform Policy Manual (“UPM”) Section 1500.01 provides that an applicant is the individual or individuals for whom assistance is requested.

   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. 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.

7. 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.

8. 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 Appellant's look-back period ran from [redacted], 2016, through [redacted], 2021.

   The Department correctly determined that the $49,000.00 in transfers occurred within the look-back period.

9. 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.

10. An institutionalized individual or the individual's spouse is considered to have 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)

11. If the transferor has become incompetent since the transfer and is incompetent at the time the Department is dealing with the transfer, the transferor's conservator must provide the information. UPM § 3029.15(A)(2)

12. 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 reasonable been expected to exist based on the transferor's health and financial situation at the time of the transfer. UPM § 3029.15(B)

    POA # 1 did not provide evidence that the Appellant retained assets required to meet basic living and medical costs given that the Appellant was diagnosed with Dementia in 2016.

    POA # 1 did not establish that the Appellant met his foreseeable needs given that the Appellant had $14,517.91 in expenses in [redacted] 2017 and $11,299.97 in [redacted] 2017.

13. 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.

14. 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.

    The average monthly cost of LTCF services in Connecticut as of [redacted]2021, the month of the Appellant's application is $13,512.00.

    The $49,000.00 is subject to a transfer of asset penalty.

    The Applicant is subject to a penalty of 3.62 months after dividing the uncompensated value of the transferred asset by the average monthly cost of LTC facility services ($49,000.00/$13,512.00 = 3.62)

    The Department correctly determined that the Applicant is subject to a penalty of 3.62 months, ending on [redacted], 2021.

DISCUSSION

The facility's attorney asserted that a penalty should not be imposed because the Department failed to issue a correct W-495C in a timely manner and that the W-495C was invalid because the Department referred to a transfer that occurred in [redacted] 2021, when in fact the transfer occurred in [redacted]r 2017. The attorney also asserts that the Appellant was stripped of due process because the W-495C notified the Appellant that he could request a hearing if he did not agree with the W-495C and that his right to a fair hearing is explained in a notice that would be sent out the same day, [redacted] 2022. The Appellant requested a fair hearing on [redacted] 2022, and it was honored so he was not stripped of his due process.

The Attorney believes that the Department waived its right to impose a penalty because they failed to comply with the hearing order from [redacted], 2022. The order was for the Department to issue a W-495 preserving the Appellant's right to an administrative hearing to dispute the penalty period of ineligibility. Although the W-495C did not have the correct date of the transfer, the Appellant's right to request a hearing was reserved. Counsel relied on Connecticut General Statute Section 17b-261a(c) which states that the imposition of the penalty period may be waived in accordance with UPM § 3025.25. UPM 3025 is an obsolete policy. The Department relies on UPM § 3029 for transfers.

The Appellant has a 20-year history with Parkinson's Disease. In addition to a Parkinson's Disease Dementia diagnosis in 2016. His Neuropsychological Evaluation in 2016, showed that he would require significant supervision to function safely in the community. It should have been expected that his medical needs and expenses would be significant. He should have retained more of his assets to meet his foreseeable needs.

DECISION

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

Carla Hardy
Carla Hardy
Hearing Officer

Pc: Angelica Branfalt, Manager, DSS, Manchester
Clark O'Neill, Hearing Liaison, DSS, Hartford

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.