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

[redacted] **2016**
SIGNATURE CONFIRMATION

CLIENT ID #: [redacted]
HEARING ID #: 773268

NOTICE OF DECISION

PARTY

[redacted]
C/O Attorney [redacted]
[redacted]
[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2016, the Department of Social Services (the "Department") sent [redacted] ("the Appellant") a notice of its decision to impose a penalty period of ineligibility for cash benefits from the State Supplement - Aid to the Aged, Blind and Disabled ("AABD") program, because of assets that he transferred without compensation.

On [redacted] 2016, Attorney [redacted], the Appellant's Counsel, requested an administrative hearing to contest the Department's decision to impose a penalty.

On [redacted] 2016, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling an administrative hearing for [redacted] 2016.

On [redacted] 2016, the Appellant's Counsel requested to reschedule the hearing.

On [redacted] 2016, OLCRAH issued a notice rescheduling the hearing for [redacted] 2016.

On [redacted] 2016, in accordance with sections 17b-60, 17b-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:

[redacted] Daughter/POA of Applicant
Attorney [redacted], Counsel, for Applicant and Daughter/ POA
John DeLeonardo, Department Representative
Shelley Starr, Hearing Officer

The Applicant, [redacted] was not present at the hearing.

The hearing record remained open for the submission of additional evidence from the Department, to allow time for the review and response by Counsel and for a final response from the Department. On [redacted] 2016, the hearing record closed.

STATEMENT OF THE ISSUE

The issue is whether the Department was correct to impose a penalty period for the AABD program because the Appellant transferred assets without compensation during the look back period.

FINDINGS OF FACT

1. The Applicant is 61 years old [DOB [redacted]/55], divorced, and has a primary medical diagnosis of stroke, [redacted] diabetes and visual impairment. The Applicant suffered a stroke in 2006 and a minor stroke this year. (POA's testimony)

2. The Applicant has two children, [redacted] and [redacted] (POA's testimony)

3. On [redacted] 2014, the Applicant's two children drove from Connecticut to Pennsylvania to visit their estranged father. (POA's testimony)

4. The children found their father to be in distress, living alone in deplorable conditions at his home in Pennsylvania and in need of physical and mental care. (POA's testimony; Exhibit 3: Care/log)

5. On [redacted] 2014, the Applicant relocated from Pennsylvania to Connecticut. The Applicant resided with his daughter for approximately one month, until he moved to a licensed boarding home. (POA's testimony)

6. On [redacted] 2014, [redacted] was appointed as Power of Attorney ("POA") on behalf of the Applicant. (Exhibit 4: POA document, signed [redacted] 2014)

7. On [redacted] 2015, the Applicant was admitted to [redacted] Home of [redacted], Connecticut. (POA's testimony; Hearing Record)

8. On [redacted] 2015, following the Applicant's admission to a licensed boarding home, the Applicant and his daughter entered into a Personal Services Contract. The Applicant's daughter, who is the Power of Attorney ("POA"), signed the contract on behalf of the Applicant. (Exhibit 2: Personal Service Contract entered [redacted] 2015)

9. The POA document executed on [redacted] 2014, does not give the POA specific authority to enter into contracts on behalf of the Applicant. (Exhibit 4: POA document dated [redacted] 2014)

10. The Personal Services Agreement, entered into on [redacted] 2015, provides that '[redacted] has requested and receives increasing amounts of help with various chores and activities. He has the benefit of his daughter, [redacted] who performs substantial work for him." (Exhibit 2: Personal Service Contract; entered [redacted] 2015)

11. The Personal Services Agreement states that " the provider agrees to provide the following extraordinary care and special services, over [redacted] lifetime, on an "as needed" basis" including: Monitor Health Status; Secure Health Care; Personal Needs; Visitation; Financial Management; Dealing With Others; Resident's Rights." (Exhibit 2: Personal Service Contract entered [redacted] 2015)

12. The "Monitor Health Status" category of the Agreement provides that "the Provider shall monitor Care Recipient's health status, including but not limited to Care Recipient's physical and mental condition, through regular communication with health care providers, attendance at care plan meetings, communication with the Care Recipient, and through all other methods when appropriate for the Care Recipient's care, safety and maintenance." (Exhibit 2: Personal Service Contract entered [redacted] 2015)

13. The "Secure Health Care" category of the Agreement provides that "the Provider shall attempt to secure qualified health care professionals, including doctors, nurses, nurse's aids, therapists, etc., to aid in such diagnosis, treatment, palliation, cure and remedy as may be deemed necessary due to Care Recipient's illness, discomfiture, or mental illness as it is found to exist from time to time." (Exhibit 2: Personal Service Contract entered [redacted] 2015)

14. The "Personal Needs" category of the Agreement provides that "the Provider will assess the personal needs and desires of Care Recipient as to social, physical, entertainment, hobby, personal hygiene, maintenance and other personal factors, and shall seek to provide the equipment, supplies goods, wares, and services of others so these needs and desires are met." Exhibit 2:

Personal Service Contract entered [redacted] 2015)

15. The "Visitation" category of the Agreement provides that "the Provider will periodically visit with Care Recipient, wherever Care Recipient shall be, to provide the services enumerated herein and to provide the social interaction and entertainment, and will seek visitations of family and friends with Care Recipient." (Exhibit 2: Personal Service Contract entered [redacted] 2015)

16. The "Financial Management" category of the Agreement provides that "the Provider will assist Care Recipient or Care Recipient's agents in investments, bill paying, and daily money management to the extent funds of the Care Recipient are available and accessible to Provider." (Exhibit 2: Personal Service Contract entered [redacted] 2015)

17. The "Dealing With Others" category of the Agreement provides that "the provider shall interface with, and/or shall aid any other agent of Care Recipient in dealing with health care providers, insurance personnel, financial institutions, and others, assuring Care Recipient freedom of communication and decision-making as it appropriate under the circumstances."(Exhibit 2: Personal Service Contract entered [redacted] 2015)

18. The "Resident's Rights" category of the Agreement provides that "the Provider shall reasonably oversee and safeguard the rights and benefits of Care Recipient While Care Recipient may be a resident in a hospital, assisted living facility or skilled nursing facility." (Exhibit 2: Personal Service Contract entered [redacted] 2015)

19. The Personal Services Agreement provides that "In return for the foregoing services, Care Recipient agrees to pay Provider reasonable hourly rates for the services contemplated by this agreement, with the understanding that the number of hours and the level of services will vary. The rate of payment will be no higher than the community's prevailing rates, depending on the services. For the convenience of the parties, it is anticipated that the payment will be made monthly." (Exhibit 2: Personal Service Contract entered [redacted] 2015)

20. The Personal Services Agreement does not contain a designated hourly rate of compensation for the various types of services intended to be provided on an "as needed basis." (Exhibit 2: Personal Service Contract entered [redacted] 2015)

21. There is no language in the Personal Services Agreement regarding compensation for travel mileage and tolls, cleaning, or calling out of work. (Exhibit 2: Personal Service Contract entered [redacted] 2015)

22. The Personal Services Agreement does not include language stating that it is memorializing a previously existing oral agreement to provide services. (Exhibit

2: Personal Service Contract entered [redacted] 2015)

23. The Personal Services Agreement states that "this agreement is entered into this [redacted] day of [redacted] 2015, between [redacted] of [redacted] CT ("Care Recipient" or [redacted] and [redacted] of [redacted] CT ("Provider" or [redacted] There is no language in the Agreement regarding the Applicant's son, [redacted] (Exhibit 2: Personal Service Contract)

24. No evidence has been provided during the application process, that the Applicant has engaged in an oral agreement that is legally enforceable prior to the Personal Service Contract entered on [redacted] 2014, by [redacted] (Hearing Record; Testimony)

25. On [redacted] 2015, check #136 was made payable to [redacted] in the amount of $4,800.00 for alleged services for the period [redacted]/14 to [redacted]/15. (Exhibit 5: list of transfers and checks; Department's testimony)

26. On [redacted] 2015, check #140 was made payable to [redacted] [redacted] in the amount of $2,250.00 for alleged services for the period [redacted]/15 to [redacted]/15. (Exhibit 5: list of transfers and checks; Department's testimony)

27. On [redacted] 2015, check #143 was made payable to [redacted] [redacted] in the amount of $1,200.00 for alleged services for the period [redacted]/15 to [redacted]/15. (Exhibit 5: list of transfers and checks; Department's testimony)

28. On [redacted] 2015, check #142 was made payable to [redacted] [redacted] in the amount of $2,600.00 for alleged services for the period [redacted]/14 to [redacted]/15. (Exhibit 5: list of transfers and checks; Department's testimony)

29. On [redacted] 2015, check #169 was made payable to [redacted] [redacted] in the amount of $2,050.00 for alleged services for the period [redacted]/15 to [redacted]/15. (Exhibit 5: list of transfers and checks; Department's testimony)

30. The Applicant's POA was unable to explain the particulars of why the payments issued were not made in accordance with the monthly payment schedule as indicated in the Personal Service Contract, entered on [redacted] 2015. (POA's Testimony; Exhibit 2: Personal Service Contract)

31. The care log/report submitted at the time of application, outlines alleged services beginning [redacted] 2014 through [redacted] 2015; prior to entering the [redacted] 2015, Personal Service Contract. (Exhibit 2: Personal Service Contract; Exhibit 3: Care Log/Report)

32. The care log/report submitted for the period of [redacted] 2014 through [redacted] 2015, consists of a three paged typed report consisting of a few lines for each entry, briefly outlining alleged services provided for a given day.

(Exhibit 3: Care log/report)

33. The care log/report for the period of [redacted] 2014 through [redacted] 2015, is inconclusive and does not provide details of a daily start and end time of the services provided, the type of services performed in a given day, the total hours of service performed in the day, or the dollar amount of compensation due for the reported service. No supporting documents such as travel receipts, gas/mileage logs, appointment records, telephone logs, payments, ledgers or any third party verification documenting the services given to the provider was included with the log/report. (Exhibit 3: Care/log report; Hearing Record)

34. On [redacted] 2016, the POA, on behalf of the Applicant, submitted an application to the Department for the AABD cash assistance program, to pay for his residential care at the boarding home. (Department's Testimony; Hearing Summary)

35. As part of the application process, the Department reviewed assets that were transferred by the Applicant during the look back period, to determine whether fair market value was received for any transferred assets. (Hearing Record)

36. The Department identified $12,900.00 in transferred assets that it believed the Applicant had transferred without receiving fair market value: four payments to [redacted] totaling $10,300.00; one payment to [redacted] for $2,600.00) (Exhibit 5: List of transfers)

37. On [redacted] 2016, the Department sent the Applicant a "Transfer of Assets Preliminary Decision Notice" informing him of its preliminary decision that the Appellant will have a $12,900.00 penalty and period of ineligibility for cash assistance from the AABD program because of the $12,900.00 that he transferred. (Exhibit 6: W-495A, Transfer of Assets Preliminary Decision Notice dated [redacted] 2016.

38. On [redacted] 2016, the Applicant's Counsel, sent a rebuttal advising that the $12,900.00 being considered a transfer was "actually payment pursuant to a Personal Service Contract." " Specifically, on [redacted] 2015, [redacted] and his daughter, [redacted] entered into a Personal Service Contract." (Exhibit 7: Rebutal dated [redacted] 2016)

39. The Counsel's rebuttal did not include any new or additional documents that were not previously provided prior to the proposed penalty and issuance of the W-495A. The rebuttal did not indicate that an oral agreement had been made prior to the execution of the POA's written agreement. (Exhibit 7: Rebuttal dated [redacted] 2016)

40. On [redacted] 2016, the Department sent the Applicant a W-495C Final Decision Notice informing him of its final decision, that the Department was imposing a

penalty period for $12,900.00 in assets that the Appellant transferred, and that the Department would not pay for the Appellant's residential care room and board until the penalty period ends in May 2017. (Exhibit 8: W-495C Final Decision Notice dated [redacted] 2016)

41. At the time of the hearing, the Applicant was residing in [redacted] a skilled nursing facility and was no longer residing at a boarding home. (Testimony; Hearing Record)

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes authorizes the Commissioner of Social Services to administer the Aid to the Aged, Blind, and Disabled ("AABD") program.

2. Uniform Policy Manual ("UPM") § 3025.03(A)(1) provides that the Department uses the policy contained in this chapter with respect to the AABD program under all situations involving a transfer of an asset.

3. UPM § 3025.05(C) provides that transfers which affect eligibility are those which occur within the 24 months immediately preceding the date of application affect eligibility.

   The Applicant applied for AABD benefits on [redacted] 2016; assets that the Applicant transferred after [redacted] 2014, affect his eligibility for the program.

4. UPM § 3025.05(A) provides that an individual who transfers an asset for the purpose of establishing or maintaining eligibility is ineligible for any program, subject to the provisions of this chapter.

5. UPM § 3025.15 (A) provides that if fair market value is received, the transfer of asset is not considered to be for the purpose of establishing or maintaining eligibility.

6. UPM § 3025.15 (E) provides for foreseeable needs and states that if the transferor retains other counted assets in an amount sufficient to meet the average cost of private nursing home care, as determined by the Department, for a period of no less than 24 months, the transfer of the asset is not considered to be for the purpose of establishing or maintaining eligibility.

7. UPM § 3000.01 provides the definition of compensation and states that compensation is all money, notes, real or personal property, food, shelter, or services received in exchange for something of value.

8. UPM § 3025.20 provides that compensation in exchange for a transferred asset is counted in determining whether fair market value was received. There are certain restrictions in counting compensation which was received before the date of the transfer.

9. UPM § 3025.20(A) provides in part that when an asset is transferred, compensation is counted when one of the following applies:
   1. Compensation was received at the time of the transfer or any time thereafter; or
   2. Compensation was received prior to the time of the transfer, but only if one of the following applies:
      a. Compensation was received in accordance with a legally enforceable agreement.

   UPM § 3000.01 provides the definition of a Legally-Enforceable Agreement and states that a legally enforceable agreement is a binding and credible arrangement, either oral or written, wherein two or more parties agree to an arrangement in consideration of the receipt of money, property, or services and in which all parties can be reasonable expected to fulfill their parts of the agreement.

   The Department correctly determined that the transfers issued to [redacted] and to [redacted] between [redacted] 2015 and [redacted] 2015, potentially affect the total amount of his eligibility for AABD because they were made within the 24 month look back period.

   The Applicant failed to provide clear and convincing evidence that he transferred $12,900.00 for compensation received pursuant to a legally enforceable agreement.

10. UPM § 3025.20 (B) provides the Value of Compensation and provides that 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 aid, the current state minimum hourly wage for such services;
       b. for all other types of services, the actual cost.

    The compensation cannot be assigned a dollar value in accordance with the fair market value of the transferred asset based on insufficient evidence to establish whether the Applicant received fair market value for the services for the amounts transferred. The dollar values have not been assigned for the services rendered and the services rendered are inconclusive.

11. UPM 3025.10 provides that a transfer of an asset is considered to be for the purpose of establishing or maintaining eligibility if all of the following circumstances apply:

A. Fair market value is not received
B. There is no convincing evidence that the transfer is for another purpose; and
C. The Transferor does not retain sufficient funds for foreseeable needs.

Fair Market Value could not be determined as received based on the provided evidence.

The Applicant did not provide clear and convincing evidence to support that the transfer(s) were made for the purposes other than establishing eligibility.

The transferor did not retain sufficient funds for his foreseeable needs as he applied for assistance with 24 months of the transfers.

12. UPM § 3025.35 provides that if the Department determines that a transfer of an asset is for the purpose of establishing or maintaining eligibility, a penalty period applies as follows:
1. the transferor is ineligible as of the date of transfer.

UPM § 3025.35 (1) provides the penalty period begins as of the first day of the month in which the improper transfer occurs.

UPM § 3025.35 (B)(3) provides the length of the penalty period is computed as follows:

a. for any full month in which the individual is a resident of a long term care facility, ineligibility is for the number of months equal to the result of dividing the uncompensated value by the current average monthly cost of medical assistance to a patient in a skilled nursing facility;

b. all other transferors are ineligible for the number of months equal to the result of dividing the uncompensated value by $500.00.

The Department correctly determined the penalty period of ineligibility was effective, [redacted] 2015, the first day of the month in which the improper transfer occurred.

The Department correctly divided the $12,900.00 by $500.00 to determine the Appellant's period of ineligibility as 25.8 months, ending on [redacted]

2017. ($12,900.00/ $500.00 = 25.8.

The Department was correct to impose a penalty period of ineligibility for AABD cash assistance because of assets improperly transferred.

DISCUSSION

After reviewing the evidence and testimony presented at this hearing, I find that the Department's action to impose a $12,900.00 penalty and Medicaid period of ineligibility for AABD boarding home coverage is upheld. I did not find it credible that the Applicant's Daughter and Son entered into an oral personal service agreement on the day they arrived at the home of their Father. The Applicant's children chose to drive to the home of their estranged Father and I question his ability to enter into an agreement on that day due to the testimony that he was found in deplorable conditions and of ill physical and mental health that required emergency crisis services. I did not find any indication on the application or the submitted documents sent during the application process, that an oral personal service agreement existed. Page 10 of the 23 page application presents a question regarding care expenses and states: "Does anyone in your household pay for child care or care for an adult with a disability?" The response was checked "No". In addition, I did not see any indication in the Counsel's rebuttal of the proposed penalty or his request for a hearing that indicated that an oral agreement existed. The fair hearing request stated that "I do not agree with the decision taken on my case. I am requesting a hearing because: the transfer amounts totaling $12,900.00 were made pursuant to a Personal Service Contract dated [redacted] 2015."

On [redacted] 2015, the Applicant moved to a licensed boarding home. I found that the majority of the alleged services listed on the three page log were performed prior to the execution of the [redacted] 2015, personal services agreement. At the time of the written agreement, the Applicant had already been receiving boarding home assistance. Much of the provider services would be duplicative in nature as the POA testified that she found the boarding home to be the most appropriate setting for the Applicant, as it provided him with services such as personal care, the administering of meals, laundry, supervision and recreation. In addition to discounting the claimed oral agreement, I found that according to the care/log, the provider was arranging and driving the Applicant to his various appointments in the month of [redacted] of 2015, but did not arrange to include him in the signing of a significant document such as the written service contract. Further, based on the POA document, the POA signed the written personal service contract on the Applicant's behalf without having the specific authority to enter into contracts on his behalf. The signed agreement did not include language to indicate the memorializing of a previously existing oral agreement or provide any mention of the Applicant's son as part of either agreement.

I found the submitted care/log insufficient and lacking details needed to formulate a dollar value to establish whether the Applicant received fair market value for the alleged services for the amount transferred. The care log consisted of a typed three page document briefly outlining a given day, without including any specific details necessary to determine fair market value or compensation. I question why an educated nurse, who would have an understanding of the significance of charting and documenting services, provided such a log. Lastly, no additional documents or supporting verification was provided to help validate the alleged services.

In conclusion, based on these factors, the Department correctly imposed a $12,900.00 penalty and Medicaid period of ineligibility.

DECISION

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

Shelley Starr
Hearing Officer

cc: Tonya Cook-Beckford, Operations Manager, DO # 42
John DiLeonardo, Department Representative

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 06105-3725.

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.