STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
25 SIGOURNEY STREET
HARTFORD CT 06106-5033

NOTICE OF DECISION

[redacted]

August 26, 2008
CERTIFIED MAIL

CL [redacted] ISSUE: MAABD effective date and transfer of asset penalty

REASON FOR HEARING

On July 21, 2008, the appellant, [redacted], acted through her attorney, Nicholas DeNigris, Esq., and requested an administrative hearing. The Department of Social Services (agency) processed her request for Medical Assistance to the Aged, Blind, and Disabled (MAABD) to meet the cost of long-term care. It decided that there were transfers of assets, and penalized the appellant. It set a June 2, 2008 effective date. They appellant and her representative disagreed. On August 18, 2008, the undersigned conducted an administrative hearing in this matter according to Connecticut General Statutes Sections 17b-60, 17b-61, and 4-176e to 4-184. Because of the appellant's age and infirmity, I waived her presence at the Administrative Hearing.

The undersigned left open the hearing record for the agency to submit some checking account statements, to the Hearing Officer and attorney. The record closed on August 25, 2008.

PRESENT AT THE HEARING

[redacted] Appellant's Husband
Nicholas DeNigris, Esq., Appellant's Representative
Melissa Garvin, Department's Representative
Anne C. Popolizio, Hearing Officer

STATEMENT OF ISSUE

The agency assessed the appellant's application for Medicaid to assist with the cost of care. It alleged that there were several improper transfers of assets. It levied a penalty against her eligibility, and set an eligibility date of June 2, 2008. Those acting for her disagreed. The issues include whether there were transfers of assets that were improper, and whether the agency acted correctly when evaluating the data and in delaying the initial date of eligibility.

HEARING RECORD

The hearing record consists of the testimony and evidence presented.

FINDINGS OF FACT

1. On March 27, 2008, the appellant's husband and attorney initiated for her an application for Medical Assistance to the Aged, Blind, and Disabled (MAABD). They sought assistance with the cost of her care in a long-term care facility. [Testimony and Narrative screen prints (Ex. A)]

2. On June 2, 2008, the agency denied the appellant's application for a failure to respond an Application Requirements List (W-1348). [Ex. A]

3. On June 3, 2008, the agency received a faxed message that responded to the W-1348. The agency initiated another application with June 3, 2008, as the application date. [Ex. A and notice of action of June 25, 2008 (Ex. C)]

4. On June 25, 2008, the agency granted the appellant MAABD benefits effective June 2, 2008. [Ex. C and Institution (INST) screen print (Ex. B)]

5. On January 22, 2008, the appellant became a patient at Brittany Farms, a nursing facility. [Ex. A]

6. Before her becoming institutionalized, the appellant lived at home with her husband. He remains living in the community. She is the institutionalized spouse. He is the community spouse. They are Medicare Catastrophic Coverage Act of 1988 (MCCA) spouses. [Hearing record]

7. In June 2008, the agency alleged that the appellant and her spouse improperly transferred $27,000. On August 4, 2008, the agency recalculated the alleged amount and decided that the couple transferred $25,000 improperly. It penalized her MAABD eligibility for more than 2 months. [Testimony, June 10, 2008 list of transfers (Ex. G), and August 4, 2008 list of transfers (Ex. J-2)]

8. The lists of alleged transfers included withdrawals from the couple's joint savings account – Webster Bank account #[redacted]. The withdrawals, which the agency determined were improper transfers, were:

DATE	AMOUNT	DATE	AMOUNT	DATE	AMOUNT
2/7/06	$1000	5/29/07	$2000	11/13/07	$1500
3/2/06	1500	7/11/07	1500	12/10/07	1500
3/28/06	1500	8/7/07	1500	2/7/08	2000
5/3/06	1000	9/4/07	1500	3/7/08	2000
6/6/06	2000	9/17/07	1000		

7/5/06 2000 10/16/07 1500
[Testimony, Ex. J-2, and Webster Bank account information (Ex. D)]

9. In 2006, into the Webster Savings account monthly, the United States Treasury deposited $1637 - a $112 Veteran's benefit, a $1047 Social Security benefit, and a $478 Social Security benefit. Additionally, there were deposits of interest and $53.63. [Ex. D]

10. In 2007, into the Webster Savings account monthly, the United States Treasury deposited $1685 - a $115 Veteran's benefit, a $1079 Social Security benefit, and a $491 Social Security benefit. Additionally, there were deposits of interest and other amounts. [Ex. D]

11. In 2008, into the Webster Savings account monthly, the United States Treasury deposited $1723 - a $117 Veteran's benefit, an $1104 Social Security benefit, and a $502 Social Security benefit. Additionally, there were deposits of interest and other amounts. [Ex. D]

12. Except for the deposits into the Webster savings account, the ongoing balance was under $3,000 from 2006 to 2008. [Ex. D]

13. Every month the appellant and/or her husband withdrew from the Webster account cash with which he paid bills and used for necessities of living. [Hearing record]

14. Money, which an individual receives as income during a month and deposits or causes to deposit into an account during the month, is not an asset for that month.

15. The appellant and her husband caused their ongoing Veteran's and Social Security benefit incomes to go monthly into their Webster savings account. Those funds were not assets during the month of deposit.

16. Monthly, the appellant and/or her husband withdrew from the Webster savings account some or all of their income for the month.

17. The appellant and her husband did not make improper transfers of the funds from the Webster savings account.

18. The agency did not sustain its allegations of improper transfers of assets. It was not correct to penalize the appellant's MAABD eligibility for more than 2 months.

PERTINENT STATE STATUTES

Section 17b-2 designates the department of social services as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.

Section 17b-260 authorizes the Department of Social Services to take advantage of the medical assistance programs in Title XIX of the Social Security Amendments, and provides for the administration of the State's medical assistance program.

Section 17b-261 allows for the provision of medical assistance for eligible persons, and provides for the eligibility factors employed in the medical assistance program. The law states in part:

> (a) Medical assistance shall be provided for any otherwise eligible person [if] such person is an institutionalized individual as defined in Section 1917(c) of the Social Security Act, 42 USC 1396p(c), and has not made an assignment or transfer or other disposition of property for less than fair market value for the purpose of establishing eligibility for benefits or assistance under this section. Any such disposition shall be treated in accordance with Section 1917(c) of the Social Security Act, 42 USC 1396p(c). Any disposition of property made on behalf of an applicant or recipient or the spouse of an applicant or recipient by a guardian, conservator, person authorized to make such disposition pursuant to a power of attorney or other person so authorized by law shall be attributed to such applicant, recipient or spouse. A disposition of property ordered by a court shall be evaluated in accordance with the standards applied to any other such disposition for the purpose of determining eligibility.

Section 17b-262 directs the commissioner of social services to make such regulations as are necessary to administer the medical assistance program.

Section 17b-264 extends the provisions of the public assistance programs to the medical assistance program, except for such provisions that are inconsistent with federal law and regulations governing Title XIX of the Social Security Amendments of 1965.

Section 17b-80 directs the commissioner to make a diligent investigation into requests for aid, and to grant aid only if he finds the applicant eligible. In determining need, the commissioner considers an applicant's resources.

PERTINENT PARTS OF THE UNIFORM POLICY MANUAL

Index 3028.03 advises that Chapter 3028 is to be used to evaluate asset transfers when an individual applies for Medicaid after October 1, 1993; and "the transfer occurred or the trust was established on or after August 11, 1993."

Chapter 3029 describes the technical eligibility requirement in the Medicaid program pertaining to the transfer of an asset for less than fair market value. The material pertains to transfers that occur on or after February 8, 2006.

Index 4030.05 discusses the treatment of bank accounts as a specific type of asset. It states in pertinent part:

A. Types of Bank Accounts

Bank accounts include the following. This list is not all inclusive.

1. Savings account;
2. Checking account;

B. Checking Account

That part of a checking account to be considered as a counted asset during a given month is calculated by subtracting the actual amount of income the assistance unit deposits into the account that month from the highest balance in the account for that month.

C. Income Versus Assets

Money which is received as income during a month and deposited into an account during the month is not considered an asset for that month, unless the source of the money is: 1. an income tax refund; or 2. cash received upon the transfer or sale of property; or 3. a security deposit returned by the landlord.

CONCLUSIONS OF LAW AND DISCUSSION

From the Connecticut General Statutes, Section 17b-261 provides for the eligibility factors employed in the medical assistance program – including the prohibition against improper transfers of assets, and Section 17b-80 directs the commissioner of social services to grant aid only if he finds eligibility. The Uniform Policy Manual regulations that I cited above come from the statutes, and the federal laws and regulations. Chapters 3028 and 3029 discuss the agency's assessments of transfers of assets in two periods. I used the laws and the regulations to make my Findings in this Administrative Hearing.

The agency in this case found improper asset transfers in both of the periods included in those Uniform Policy Manual chapters. It denied the appellant medical assistance for the cost of her long-term convalescent care, because of those alleged transfers. The issue of this Hearing is the propriety of the agency's actions.

I assessed the testimony and evidence in the hearing record. I found that there were no asset transfers. The Medicare Catastrophic Coverage Act of 1988 couple has the majority of their income deposited monthly into the Webster savings account. Each month there are withdrawals from the account. The withdrawals are not asset withdrawals. They are income withdrawals. The account has ongoing asset balances of less than $3,000. The money deposited monthly is income for the month. (Uniform Policy Manual index 4030.05) There were no asset withdrawals of $25,000 from the less than $3,000 ongoing asset balance.

The appellant and her husband prevailed. They successfully rebutted the claims of the agency. They showed that the withdrawals were not transfers of assets, but uses of income. The agency must correct its records to show that there were no asset transfers totaling $25,000. The agency must reopen the application, remove the penalty, and grant MAABD assistance retroactive to March 2008, providing the appellant met all other factors of eligibility.

DECISION

The appellant prevailed. She and her husband did not make $25,000 in improper asset transfers during the period of February 2006 through March 2008.

ORDER

I direct the Department of Social Services:

- **to reopen the June 3, 2008 application,**
- **to correct its records to show no transfer of assets,**
- **to remove the imposed penalty, and**
- **to grant without a transfer of asset penalty Medical Assistance to the Aged, Blind, and Disabled (MAABD) to meet the cost of the appellant's care for the retro-Medicaid period of March 2008 through May 2008, and for the beginning of June 2008.**

By October 21, 2008, the agency must show to the undersigned final compliance.

Anne C. Popolizio
Hearing Officer

pc: Michele Farieri
Operations Manager
R.O. #52, New Britain

Nicholas DeNigris, Esq.
P.O. Box 150
New Britain CT 06050-0150

RIGHT TO REQUEST RECONSIDERATION

Connecticut General Statute Section 4-181a (a) gives the appellant the right to request reconsideration. The grounds for requesting reconsideration include an error of fact or law, discovery of new evidence, or existence of other good cause.

The appellant must file a **written** reconsideration request within **15** days of the mailing date of the hearing decision. The reconsideration petition should include specific grounds for the request: for example, what error of fact or law, what new evidence, or what other good cause exists. The appellant should send the reconsideration request to:

Director
Office of Legal Counsel, Regulations and Administrative Hearings
Department of Social Services
25 Sigourney Street
Hartford CT 06106-5033

If she grants the reconsideration request, the Director will notify the appellant within 25 days of the request date. The Director may deny the reconsideration request by making no response within 25 days.

RIGHT TO APPEAL

Connecticut General Statute Section 4-183 gives the appellant the right to appeal this decision to Superior Court. The time limit for filing an appeal is within **45** days of the mailing of this decision. To initiate an appeal, the appellant must file a petition at Superior Court. The appellant must serve copies of the petition upon the Office of the Attorney General in Hartford or upon the Commissioner of the Department of Social Services, 25 Sigourney Street, Hartford, CT 06106, and upon all parties to the hearing.

Note: Even if an appellant requests reconsideration, there still are only **45** days to file an appeal.

The Commissioner of the Department of Social Services may extend the **45**-day appeal period in certain instances if the appellant has good cause. The appellant must file a written extension request with the Commissioner no later than **90** days from the mailing of the decision. The Commissioner or his designee evaluates good cause circumstances according to Connecticut General Statute Section 17b-61. The Commissioner's decision to grant an extension is final. It is not subject to review or appeal.

The appellant should file the appeal petition with the clerk of the Superior Court in the Judicial District of New Britain or the Judicial District in which he/she resides.