

State of West Virginia DEPARTMENT OF HEALTH AND HUMAN RESOURCES Office of Inspector General Board of Review 1027 N. Randolph Ave. Elkins, WV 26241

Joe Manchin III Governor Martha Yeager Walker Secretary

September 18, 2007



Dear Mr.

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 7, 2007. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your Home and Community Based Waiver Medicaid services.

In arriving at a decision, the State Hearing Officer is governed by the Public Welfare Laws of West Virginia and the rules and regulations established by the Department of Health and Human Resources. These same laws and regulations are used in all cases to assure that all persons are treated alike.

Eligibility for the Home and Community Based Waiver Medicaid Program is based on current policy and regulations. Some of these regulations state as follows: The asset limit for Medicaid for a one-person Assistance Group is \$2,000. (West Virginia Income Maintenance Manual Chapter 11.3)

Information presented during your hearing reveals that the countable equity value of your non-homestead property exceeds the Home and Community Based Waiver Medicaid Program asset limit.

It is the decision of the State Hearing Officer to **uphold** the Department's proposal to terminate Home and Community Based Waiver Medicaid benefits.

Sincerely,

Pamela L. Hinzman State Hearing Officer Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review Harold Langevin, ESW, DHHR

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES BOARD OF REVIEW

Claimant,

v. Action Number: 07-BOR-1928

West Virginia Department of Health and Human Resources,

Respondent.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on September 18, 2007 for This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This fair hearing was convened on September 7, 2007 on a timely appeal filed August 6, 2007.

All persons giving testimony were placed under oath.

It should be noted that benefits have continued pending a hearing decision.

II. PROGRAM PURPOSE:

The program entitled Aged/Disabled Waiver is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

Under Section 2176 of the Omnibus Budget Reconciliation Act of 1981, states were allowed to request a waiver from the Health Care Financing Administration (HCFA) so that they could use Medicaid (Title XIX) funds for home and community-based services. The program's target population is individuals who would otherwise be placed in an intermediate or skilled nursing facility (if not for the waiver services). Services offered under the Waiver Program will include: (1) chore, (2) homemaker and (3) case management services. West Virginia has been offering the Waiver Services Program since July, 1982 to those financially eligible individuals who have been determined to need ICF level care but who have chosen the Waiver Program services as opposed to being institutionalized.

III. PARTICIPANTS:



Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether the Agency is correct in its proposal to terminate the Claimant's Aged/Disabled Waiver Medicaid benefits.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Chapters 11.3 and 11.4, CC

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Notice of Decision dated July 25, 2007
- D-2 West Virginia Income Maintenance Manual Chapter 11.3
- D-3 Lease Agreement
- D-4 Realty Exclusive Right to Sell Agreements
- D-5 Letter from West Virginia Housing Development Fund dated July 17, 2007
- D-6 Letter from West Virginia Housing Development Fund dated August 7, 2007
- D-7 Letter from
- D-8 Letter from West Virginia Housing Development Fund dated August 23, 2007

VII. FINDINGS OF FACT:

- 1) The Economic Service Worker received information that the Claimant had left his homestead and moved into the apartment complex. The Claimant's lease agreement is verified in Exhibit D-3.
- 2) Since the Claimant is no longer living in his former residence, the Economic Service Worker testified that the property must now be counted as a non-homestead asset. He calculated the equity value of the property as \$3,389.65 and that value was undisputed during the hearing. The property has been under a sales agreement (D-4) since October 2006.

3) The Department sent the Claimant a Notice of Decision (D-1) on July 25, 2007 which states, in part:

ACTION: Your Home and Community Based Waiver Medicaid will stop. You will not receive this benefit after JULY 2007.

REASON: The amount of assets is more than is allowed for this benefit.

- 4) The Claimant is no longer making payments on his former homestead and sent a letter (D-7) to the West Virginia Housing Development Fund requesting that the house be returned to that organization. A letter from the West Virginia Housing Development Fund dated August 23, 2007 (D-8) states that the Claimant's loan is in default and gives the Claimant 30 days to correct the default or face foreclosure proceedings. The letter indicates that "acceleration and default is due to the fact that you are no longer residing in the above referenced property and are not using the property as your primary residence."
- 5) The Claimant and his Case Manager testified that the Claimant had been renting his house to an individual for \$160 per month, however that individual made only one payment and is no longer paying rent. The Case Manager stated that it is only a matter of time before the Claimant's residence is in foreclosure status. The Economic Service Worker testified that the equity value of the non-homestead property must be considered a countable asset until the Claimant can verify that he no longer has interest in the property as a result of the foreclosure.
- 6) West Virginia Income Maintenance Manual Section 11.3 (D-2) states that the asset level for Medicaid for a one-person Assistance Group is \$2,000.
- 7) West Virginia Income Maintenance Manual Section 11.4, CC states that the equity value of non-homestead property is counted as an asset for SSI-Related Medicaid Assistance Groups unless it meets certain criteria regarding income production or necessity for self-support.

VIII. CONCLUSIONS OF LAW:

- 1) Policy states that the asset limit for Medicaid for a one-person Assistance Group is \$2,000 and that the equity value of non-homestead property is counted as an asset unless it meets certain exemptions.
- 2) As the Claimant moved from his former residence into an apartment, the former residence is now considered non-homestead property and must meet a policy exemption in order to prevent it from asset consideration. While the Claimant had planned to rent the residence to an individual, his testimony revealed that the tenant paid rent for one month only and is no longer paying rent. Therefore, the property does not meet an exemption based on income production.

	3) As the countable equity value of the Claimant's non-homestead property exceeds \$2,00 the Claimant's assets are excessive for the Home and Community Based Waiver Program
IX.	DECISION:
	It is the decision of the State Hearing Officer to uphold the Agency's proposal to terminate the Claimant's Home and Community Based Waiver benefits.
х.	RIGHT OF APPEAL:
	See Attachment
XI.	ATTACHMENTS:
	The Claimant's Recourse to Hearing Decision
	Form IG-BR-29
	ENTERED this 18th Day of September, 2007
	Pamela L. Hinzman State Hearing Officer