



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
203 East Third Avenue
Williamson, WV 25661

Earl Ray Tomblin
Governor

Michael J. Lewis, M.D., Ph.D.
Cabinet Secretary

May 9, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 29, 2011. Your hearing request was based on the Department of Health and Human Resources' decision to deny your application for the Aged and Disabled (HCB) Title XIX Waiver Services Program.

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.

The Aged /Disabled (HCB) Title XIX Waiver Services Program is granted to those individuals who continue to meet all eligibility requirements. One of these requirements is that the individual must qualify financially. In order for an individual to qualify financially, the client's monthly gross non-excluded income cannot exceed 300% of the maximum SSI payment for a single individual. [West Virginia Income Maintenance Manual, Chapter 17.24 & Chapter 10, Appendix A].

Information submitted at your hearing reveals that you do not meet the financial eligibility requirements for the Aged and Disabled Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to deny your application for the Aged and Disabled Waiver Program.

Sincerely,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Judy Schurdell, WV DHHR, Wyoming County Office

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW**

-----,

Claimant,

v.

Action Number: 11-BOR-549

**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 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 March 29, 2011, at the [REDACTED] County Office of the WV Department of Health and Human Resources (DHHR) on a timely appeal filed February 8, 2011.

II. PROGRAM PURPOSE:

The Home and Community-Based (HCB) Waiver Program is defined as a long-term care alternative that provides services that enable an individual to remain at or return home rather than receiving nursing facility (NF) care. Specifically, ADW services include Homemaker, Case Management, Consumer-Directed Case Management, Medical Adult Day Care, Transportation, and RN Assessment and Review.

III. PARTICIPANTS:

-----, Claimant's spouse and representative

Judy Schurdell, Economic Services Supervisor, WV DHHR, Department's representative

Presiding at the hearing was Stephen M. Baisden, State Hearing Officer and member of the State Board of Review.

The Hearing Officer placed participants under oath at the beginning of the hearing.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Agency was correct in its proposal to deny Claimant's application to the Aged and Disabled Home and Community-Based Waiver Program.

V. APPLICABLE POLICY:

WV DHHR Income Maintenance Manual, Chapter 11.3, Chapter 17.10 and Chapter 17.24.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 IG-BR-29, Hearing/Grievance Request Notification form, dated February 8, 2011.
- D-2 Hearing notification letter and attached Scheduling Order, dated February 22, 2011.
- D-3 Asset Assessment Notification letter, dated November 29, 2010.
- D-4 Home and Community-Based Waiver Medicaid denial letter, dated November 30, 2010.
- D-5 Verification of life insurance policy from Physician's Life Insurance Company.
- D-6 Verification of checking account balance, First Community Bank, dated August 20, 2010.
- D-7 Verification of savings account balance, First Community Bank, dated August 20, 2010.
- D-8 Verification of Certificate of Deposit (CD), First Community Bank, dated August 20, 2010.
- D-9 Verification of 401K Account Balance from Merrill Lynch, dated August 11, 2010.
- D-10 Print-outs from WV Department of Motor Vehicles (DMV) listing vehicles in the name of Claimant's spouse.
- D-11 Print-out of case comments made in Claimant's case record on November 23, 2010, and November 24, 2010.
- D-12 WV Income Maintenance Manual, Chapter 17, Section 25 and Chapter 17, Section 10.
- D-13 Print-out of asset assessment calculation screen from Claimant's case record.

VII. FINDINGS OF FACT:

- 1) Claimant's spouse applied for the Home and Community-Based (HCB) Waiver Program on Claimant's behalf on November 23, 2010. Claimant's application was denied, and notification of the denial was mailed to Claimant on November 30, 2010. (Exhibit D-4.)
- 2) WV Income Maintenance Manual, Chapter 17, Section 25 states that the determination of countable assets in the HCB Waiver Program is identical to the determination of countable assets in the Nursing Facility Services Program. It further states, "The asset level for those eligible for by having income equal to or less than 300% of the monthly SSI payment for an individual is the same as for an SSI-Related Medicaid eligible." WV Income Maintenance Manual, Chapter 17, Section 10 details the determination of

countable assets in the Nursing Facility Services Program. (Exhibit D-12.) This section states in pertinent part:

A legally married individual and his spouse, although separated, are treated as a couple for the Asset Assessment, regardless of the length of the separation.

- 3) Department's witness testified that when Claimant's spouse applied for the HCB Waiver Program on November 23, 2010, the worker who took the application entered a case comment in Claimant's case record which stated, "[Claimant's spouse] in today to apply for Waiver for [Claimant]. [Claimant's spouse] is her ex husband." (Exhibit D-11.) On November 24, 2010, the same worker entered another case recording which stated in part,

"I received a call from [a community care-giver] today stating if [Claimant] is approved she will be the person providing her care. As we were talking, she said [Claimant] had a husband, [Claimant's spouse]. I called [Claimant's spouse] to if they are still married – he said they are but separated. Based on policy he must be included as he is her legal spouse. Once I added him all of his assets were in the case – based on his statement they haven't changed."

- 4) Claimant's representative, her spouse, testified that he and Claimant were married, then divorced. He stated that they remarried in order for her to receive spousal payments from his monthly Social Security and Black Lung benefits. He added that they have not lived as husband and wife for nearly fifteen years.
- 5) Department's representative submitted into evidence verifications of the assets held by Claimant's spouse. They are a life insurance policy with a cash value of \$2,093 (Exhibit D-5), a checking account with a balance of \$1,024.65 (Exhibit D-6), a savings account with a balance of \$3,195.99 (Exhibit D-7), a Certificate of Deposit with a balance of \$5,785.80 (Exhibit D-8), and a 401K account with a balance of \$20,619.58 (Exhibit D-9). The total value of the liquid assets is \$30626.02. Department's representative submitted into evidence information from Claimant's case record indicating spouse owned seven vehicles at the time of application. (Exhibit D-10). These vehicles include two recreational boats, two boat trailers, a sport-utility vehicle (SUV), a tractor-trailer cab and a recreational vehicle motor-home (RV). The RV is listed as personal property with a trade-in value of \$4000. This is the only vehicle counted as part of the assets of Claimant and her spouse. Claimant's spouse did not deny owning these assets, nor did he object to their respective values.
- 6) WV Income Maintenance Manual, Chapter 17, Section 10.A.1 (Exhibit D-12) describes the method by which assets are to be counted in the HCB Waiver Program. In this program, the spouse for whom the application is made is referred to as the "institutionalized spouse" and the spouse who is not applying is referred to as the "community spouse." For the purpose of this matter, Claimant is the institutionalized spouse and her husband is the community spouse. The Manual states as follows:

Calculation of the spouses' shares:

The spouses' shares are computed as follows:

Step 1: Determine the FMV of the couple's combined countable assets, as of the beginning of the first continuous period of institutionalization.

Step 2: Compare the amount from Step 1 to \$21,912. If the Step 1 amount is equal to or less than \$21,912, all assets are attributed to the community spouse. If not, go to Step 3.

Step 3: Divide the Step 1 amount by 2 and compare to \$21,912. If one-half of the Step 1 amount is equal to or less than \$21,912, the community spouse is attributed \$21,912 and the remainder belongs to the institutionalized spouse. If not, go to Step 4.

Step 4: When one-half of the Step 1 amount is greater than \$21,912, one-half of the total assets (Step 1 amount) is attributed to the community spouse, not to exceed \$109,560.

Step 5: The amount not attributed to the community spouse is attributed to the institutionalized spouse.

- 7) Policy states that step 1 of the asset determination process is to determine the fair market value of the applicant's assets. Department's representative submitted the asset assessment from Claimant's case record. (Exhibit D-13.) According to this assessment, the Worker who took Claimant's application counted liquid assets in the household of \$30,626.02, which is the amount of liquid assets listed in item #5 above minus the cash value of the life insurance. Also according to this assessment, no vehicle assets were counted in Claimant's eligibility determination, but the trade-in value of the RV, \$4,000, was counted as personal property. Therefore the total counted assets were \$30,626.02 + \$4,000.00, or \$34,626.02. Policy states that step 2 of the process is to compare the amount from step 1 to the amount of \$21,912. If the amount is equal to or less than this amount, all assets are attributed to the community spouse. According to Exhibit D-13, the total counted assets are higher than \$21,912. Policy states that step 3 of the process is to divide the total counted assets by 2. If that amount is less than \$21,912, the community spouse is attributed \$21,912 from the total assets and the remainder belongs to the institutionalized spouse. The total counted assets, \$34,612.02, minus \$21,912, leaves \$12,714. This is the amount of assets attributed to Claimant.

VIII. CONCLUSIONS OF LAW:

- 1) Policy states that the asset limit for the HCB Waiver Program is identical to the asset limit for SSI-related Medicaid, which is \$2000.
- 2) Policy is clear that the assets of a legally-married husband and wife are counted together in determining eligibility for the Home and Community-Based (HCB) Waiver Program, even if they are separated. Policy specifies that this is so, "regardless of the length of separation."
- 3) Claimant's spouse stated that he and Claimant were married but separated.
- 4) The total counted assets for Claimant and her spouse was \$34,626, with \$12,714 attributed to Claimant. This is higher than the \$2000 asset limit for the HCB Waiver Program.
- 5) The Department acted correctly in counting the spouse's assets in Claimant's asset assessment for the HCB Waiver Program. The Department acted correctly to make the determination that Claimant's assets were above the asset limit for this program.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to deny Claimant's application to the Home and Community-Based Waiver Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 9th Day of May, 2011.

**Stephen M. Baisden
State Hearing Officer**