



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

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

November 13, 2015

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 15-BOR-2908

Dear Mr. [REDACTED]

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

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.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

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

Encl: Claimant's Recourse to Hearing Decision
Form IG-BR-29

cc: Lynelle Zickefoose, WVDHHR

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

██████████,

Appellant,

v.

Action Number: 15-BOR-2908

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for ██████████. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on October 15, 2015, on an appeal filed July 31, 2015.

The matter before the Hearing Officer arises from the July 2, 2015 decision by the Respondent to terminate the Appellant's Aged/Disabled Waiver Medicaid benefits based on excessive assets.

At the hearing, the Respondent appeared by Lynelle Zickefoose, Economic Service Worker, WVDHHR, and Barbara Zickefoose, Family Support Supervisor, WVDHHR. The Appellant appeared pro se. Appearing as a witness for the Appellant was ██████████, Case Manager, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Notice of Decision dated July 2, 2015
- D-2 Rent to Own Contract signed on May 1, 2015
- D-3 Property tax information
- D-4 Loan Payoff Inquiry information from ██████████
- D-5 West Virginia Income Maintenance Manual Chapter 11.4.X
- D-6 Respondent's statement of case details (provided subsequent to hearing at the request of the Hearing Officer)

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the

evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) On July 2, 2015, the Department sent the Appellant a Notice of Decision (D-1) indicating that his Aged/Disabled Waiver Medicaid benefits would stop due to excessive assets.
- 2) Lynelle Zickefoose, Economic Service Worker (ESW) with the Department, testified that the Appellant completed a case review, at which time the Department learned that the Appellant owned property in ██████ County that he was selling under a Rent to Own Contract. The Department determined that the current market value of the property (see Exhibit D-3) is \$19,800. The Appellant told ESW Zickefoose that he owed approximately \$18,000 on the property; therefore, ESW Zickefoose concluded that the Appellant's assets exceed the \$2,000 Medicaid asset limit when considering equity value of the property, plus a bank account balance of \$1,203.90.

Subsequent to the Appellant's hearing request, ESW Zickefoose reviewed policy and determined that the Appellant's Rent to Own Contract (D-2) contains no language barring his sell of the property. Therefore, she concluded that the loan payoff amount of \$17,193.36 as of September 30, 2015 (see Exhibit D-4) should have actually been counted as an asset in its entirety in conjunction with policy. It should be noted that Option Term 4 of the Rent to Own Contract – which concerns the seller's agreement that he will not attempt to sell property to any other party while the Rent to Own Contract is in effect - is marked out on the contract and option date information was not completed.

- 3) The Appellant testified that the other party to the Rent to Own Contract has simply taken over his house payment. He indicated that he believes he is barred from selling the property in the contract, and stated that he has zero equity in the property.

APPLICABLE POLICY

West Virginia Income Maintenance Manual Chapter 17.25 states that the determination of countable assets for Aged/Disabled Waiver Medicaid is the same as for SSI-Related Medicaid. Chapter 11.3 of the manual states that the asset limit for a one-person SSI-Related Medicaid Assistance Group is \$2,000. Chapter 11.4 of the manual states that property on a land sale contract is considered to belong to the buyer or purchaser as a legal contract is in effect but has no equity value until the terms of the contract are fulfilled. When an individual holds a land sale contract as a creditor, the outstanding balance of principal payments is an asset unless there is a legal bar to the sale of the contract.

DISCUSSION

The Department terminated the Appellant's Aged/Disabled Waiver Medicaid benefits based on the asset value of property he is selling under a Rent to Own Contract. As the document provided by the Appellant specifically states "Rent to Own Contract," the Appellant remains the official purchaser of the land and [REDACTED] remains the creditor. Documentation from [REDACTED] continues to list the Appellant as the loan holder, and the \$17,193 he still owes to the bank should not be considered as his asset since the bank is his creditor.

The Department has, therefore, acted incorrectly in terminating Aged/Disabled Waiver Medicaid benefits.

CONCLUSIONS OF LAW

As the amount of the principal owed on land under the Rent to Own Contract cannot be considered as the Appellant's asset, the Department's decision is reversed.

DECISION

It is the decision of the State Hearing Officer to REVERSE the Department's action to terminate Aged/Disabled Waiver Medicaid benefits. The case is remanded to the Department for a redetermination of the Appellant's financial eligibility.

ENTERED this 13th Day of November 2015.

**Pamela L. Hinzman
State Hearing Officer**