



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
150 Maplewood Avenue
Lewisburg, WV 24901**

**Joe Manchin III
Governor**

**Martha Yeager Walker
Secretary**

November 30, 2006

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 16, 2006. Your hearing request was based on the Department of Health and Human Resources' action not to pay for your father's nursing home care for the months of August, September and October 2005.

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 Long Term Care Medicaid Program is based on current policy and regulations. Some of these regulations state as follows: In order to be eligible for programs administered by the Division of Family Assistance (DFA), the total amount of countable assets cannot exceed certain amounts. The asset level for one person for SSI-Related Medicaid is \$2,000. (Section 11.3 of the West Virginia Income Maintenance Manual)

The information which was submitted at your hearing revealed that your father's assets exceeded \$2,000 at the time of application.

It is the decision of the State Hearing Officer to uphold the action of the Department not to pay for your father's nursing home care for the months of August, September and October 2005.

Sincerely,

Margaret M. Mann
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Susan Godby, DHHR

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

_____ by _____,

Claimant,

v.

Action Number: 06-BOR-2572

**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 November 16, 2006 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 November 16, 2006 on a timely appeal, filed August 2, 2006.

It should be noted here that LTC payments were not made for August, September and October 2005.

II. PROGRAM PURPOSE:

The Program entitled Long Term Care Medicaid is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

The program entitled Long Term Care Medicaid (nursing facility services) is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources. It is a medical service which is covered by the State's Medicaid Program. Payment for care is made to nursing homes which meet Title XIX (Medicaid) standards for the care provided to eligible recipients. In order to qualify for Nursing Home Care, an individual must meet financial and medical eligibility criteria

III. PARTICIPANTS:

_____, Acting on behalf of his father, _____, Claimant
Susan Godby, Department Hearing Representative

Presiding at the Hearing was Margaret M. Mann, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the Department should be responsible for the claimant's long term care payments for the months of August, September and October 2005.

V. APPLICABLE POLICY:

Sections 11.3 and 17.10 of the West Virginia Income Maintenance Manual
Kondos v. Board of Regents, 318 F. Supp. 394 (S.D.W.Va.1970), aff'd 441 F.2nd. 1172 (4th Cir. 1971)
Capehart v. Board of Education, 95 S.E. 838 (1920)

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Form IG-BR-29 Hearing/Grievance Record Information
- D-2 Notification Letters dated 01/09/06, 07/27/06, 08/02/06, 03/24/06 & 01/09/06
- D-3 Sections 11.3 & 17.10 of the West Virginia Income Maintenance Manual
- D-4 Department's Summary

VII. FINDINGS OF FACT:

- 1) _____ went to the DHHR office in _____ County on August 10, 2005 and made a Long Term Care Medicaid application for his father, _____. The regular nursing home worker was not in the office and the worker recorded in the computer system (RAPIDS) that the case was not confirmed until the nursing home worker looked the application over. An asset assessment needed to be done as all assets were in the wife's name except for one checking account. The son signed the estate recovery form, the application and the Rights & Responsibilities.
- 2) Un-refuted testimony from _____ revealed that he was in the local office several times from the date he made application for his father on August 10, 2005 through March 2006. He initially reported that his parents had \$210,000 in Certificates of Deposit. The worker he spoke to during this time assured him that none of the above assets would count for his father as long as they were transferred to his mother's name. He acted on the information given to him by the caseworker and his father was placed in a nursing home.

- 3) _____ was told verbally by the caseworker that his father was eligible. He never received any type of written notification. In January 2006, he did receive a letter telling him the application dated 08/10/05 had been approved. It did state the benefit would begin 02/01/06 (D-2) but Mr. _____ thought when you are eligible, you are eligible for it all.
- 4) In April 2006, _____ learned from a business office employee at the nursing home where his father was a resident that his father was not financially eligible for LTC Medicaid. He came to the Lewisburg office in April 2006 and discussed the case with Susan Godby. She explained that the case was approved in error and Mr. _____'s name had not been entered in the case. Mr. _____ left the nursing home on May 5, 2006.
- 5) Testimony from Ms. Godby revealed that the Department paid \$29,534.85 on Mr. _____'s nursing home bill. Payment was not made for August, September and October 2005. There was a combination of errors on the case. Mr. _____ reported the assets up front. An asset assessment should have been done.
- 6) Mr. _____ came into the office, gave all of the correct information, and was told his father was eligible. The family made all of their decisions based on this information and would not have left _____ in the facility at a cost of \$5,000 a month had they known he was not eligible.
- 7) A letter was sent to _____ dated 03/24/06. It reads in part: Your Nursing Home Care Coverage will stop. You will not receive this benefit after March 2006. Reason: The amount of assets is more than allowed for this benefit. (D-2)
- 8) Section 17.10 of the West Virginia Income Maintenance Manual reads in part that a nursing home client must meet the asset test for his eligibility coverage group. The asset level for those eligible 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. See Chapter 11 for the asset limit of the appropriate coverage group. Once the Worker determines the value of the assets, an Asset Assessment, described in item A below, is completed when an institutionalized person has a spouse in the community.
- 9) Section 17.10A of the West Virginia Income Maintenance Manual reads in part that when calculating the spouses' shares, when one-half of the couple's combined countable assets is greater than \$19,908, one-half of the total assets is attributed to the community spouse, not to exceed \$99,540. The amount not attributed to the community spouse is attributed to the institutionalized spouse.
- 10) Section 11.3 of the West Virginia Income Maintenance Manual reads in part that to be eligible for programs administered by the Division of Family Assistance (DFA), the total amount of countable assets cannot exceed the amounts. The asset level for one person for SSI-Related Medicaid is \$2,000.

VIII. CONCLUSIONS OF LAW:

- 1) The claimant had excessive assets at the time of application. He and his wife had \$210,000 in Certificates of Deposit. The asset level is \$2,000 for the LTC Medicaid Program. The asset assessment allows for the spouse in the community to keep one-half of the total assets not to exceed \$99,540. The amount not attributed to the community spouse is attributed to the institutionalized spouse.
- 2) The application was approved in error and the claimant's son was led to believe eligibility had been established.
- 3) The caseworker did not issue a correct notice of approval. The letter which was eventually issued had the wrong beginning date of eligibility. It stated eligibility would begin 02/01/06. The claimant did not receive a letter informing him he was eligible for August, September, and October 2005.
- 4) Payment was not made by the Department to the LTC facility for August, September and October 2005.
- 5) Although the caseworker made a multitude of errors on this case, the state is not liable to pay for the months of August, September and October 2005. The rule in State government is that when a state employee exceeds his/her authority, the State cannot be held liable. It has long been firmly established in West Virginia that the state may not be held liable for illegal or unauthorized acts of its officers. *Kondos v. Board of Regents*, 318 F. Supp. 394 (S.D.W.Va.1970), *aff'd* 441 F.2nd. 1172 (4th Cir. 1971) Also, one dealing with a public officer must inform himself as to his authority. The public will be bound by the acts of a public officer only so far as he possesses authority to act. *Capehart v. Board of Education*, 95 S.E. 838 (1920).

IX. DECISION:

It is the finding of the State Hearing Officer that the Department is not responsible for the claimant's LTC payments for the months of August, September and October 2005.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 30th Day of November, 2006.

**Margaret M. Mann
State Hearing Officer**