



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

March 15, 2006

Estate of _____
c/o _____

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 4, 2005. Your hearing request was based on the Department of Health and Human Resources' action to deny your mother's application for the Long Term Care Medicaid 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.

Eligibility for the Long Term Care Medicaid Program is based on current policy and regulations. Some of these regulations state as follows: When the client is not able to provide the required verification, the Worker must assist him. The client must be instructed that his failure to fulfill his obligation may result in the denial of the application. Prior to taking any action, the Worker must determine whether or not the client is able to cooperate. If he is able, but has not complied, the appropriate action described above is taken. If not, the Worker must assist the client in obtaining required information. Also, the following transfers do not result in a penalty for transferring resources. (f) When the resources were transferred exclusively for a purpose other than to qualify for Medicaid, no penalty is applied. (Sections 1.2E and 17.10 #4 of the West Virginia Income Maintenance Manual)

The information which was submitted at your hearing revealed that the LTC Medicaid application was denied incorrectly. Also, the property in _____ was disposed of because your mother could not afford to pay the mortgage and nursing home. This should not result in a penalty for transferring resources.

It is the decision of the State Hearing Officer to reverse the decision of the Department to deny your mother's application for the Long Term Care Medicaid Program.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
[REDACTED] Esquire
Susan Godby, DHHR

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

_____,

Claimant,

v.

Action Number: 05-BOR-6053

**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 August 15, 2005 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 August 4, 2005 on a timely appeal, filed May 13, 2005. The record was left open in order for closing arguments to be submitted by August 15, 2005.

It should be noted here that the claimant's benefits have been denied.

II. PROGRAM PURPOSE:

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:

_____, Claimant
_____, Ombudsman Attorney, Legal Aid of WV
_____, Claimant's Son
Susan Godby, Department Hearing Representative

Debbie Corbin Morgan, ESW, DHHR

Observing:

_____, Claimant's Son
_____, Regional Ombudsman

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

It should be noted that the hearing was held at _____ where _____ was a resident. Ms. _____ died December 31, 2005.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the claimant meets the financial requirements in order to be eligible for the Long Term Care Medicaid Program.

V. APPLICABLE POLICY:

Sections 1.2E, 4.1, 11.3 and 17.10 of the West Virginia Income Maintenance Manual

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Copy of form IG-BR-29 Hearing/Grievance Record Information
- D-2 Copy of notification letter dated 04/01/05 and Request for Information dated 02/24/05
- D-3 Copy of section 4.1A of the West Virginia Income Maintenance Manual
- D-4 Copy of section 17.10 of the West Virginia Income Maintenance Manual
- D-5 Department's Summary
- D-6 Tax Ticket Account #040412
- D-7 Statement from _____ dated 04/06/2005

Claimants' Exhibits:

- C-1 Mortgage agreement from _____ to The Bank of _____ dated 11/05/1999
- C-2 Promissory Note dated 11/02/1999
- C-3 Notification of loan approval dated 09/20/1999
- C-4 Letter from _____ Attorney at Law, dated 12/10/2004
- C-5 Second Mortgage from _____ to _____ and _____, his wife
- C-6 Blank deed prepared by _____ to transfer property back to _____s

VII. FINDINGS OF FACT:

- 1) An application for Long Term Medicaid was made by _____ for _____ on February 24, 2005. There was a request for the application to be backdated to November, 2004.
- 2) During the interview, Mr. _____ advised the worker that Ms. _____'s house in Salisbury (_____) had been signed back over to the original owners. He advised the worker that there was very little equity in the house and mortgage was quite large. He stated that there had been no money exchange.
- 3) A request for information was issued 02/24/05 for _____ _____. (D-2) The information requested for _____ included: Other pension retirement – Proof of unearned income gross payment amount; proof of unearned income gross payment amount – Social Security; proof of life insurance policy cash surrender value; proof of life insurance policy type; checking account - proof of the value of this asset; automobile/pickup tr – proof of the fair market value of this asset.
- 4) The caseworker asked Mr. Pusey, employee at the bank on 03/09/05 to verify the home transfer. The week of 03/20/05, when the worker had not heard anything from _____ she called Mr. _____ and left voice mail message advising him that she had not gotten the information that she needed from the bank. The application was denied on 03/31/05.
- 5) A letter dated 04/01/05 (D-2) was sent to _____. It reads in part: Your 11/01/04 application for Nursing Home Care Coverage has been denied. Reason: You did not turn in all requested information. Information not verified: Other pension/retirement, Social Security, and Checking account (proof you own and proof of the value).
- 6) On 04/11/05, Mr. _____ dropped off verifications of the annuity and a letter from Mr. Pusey verifying the loan on the house and the outstanding balance.
- 7) On 04/25/05, the worker contacted _____ attorney who handled the transfer of the home to verify the value of the property. \$90,306.67 minus what was owed \$59,644.53 leaves an uncompensated amount of \$30,622.14. (D-6) According to Ms. Godby's testimony, this transaction would place the case in a transfer penalty. Section 17.10 of the Income Maintenance Manual was used. \$30,622.14 divided by the monthly nursing home rate of \$3380 equals 9.05 month penalty. The penalty would begin in 12/04 and continue through 08/05. This occurred after the denial of the application.
- 8) A hearing was requested regarding this issue on May 13, 2005.
- 9) Testimony from Ms. Godby revealed that Mrs. _____ was not contacted for information needed during the application process.
- 10) Testimony from _____ revealed that his mother was in the nursing home and he had been taking care of his mother in _____. He understood the information the Department was requesting. They applied for Medicaid when his mother got to the nursing home and that application was denied. There was miscommunication and he waited some time waiting for information. He was informed by the nursing home there

was nothing going on and he reapplied. He thought it best to enter it in one package and he was waiting on information about the house. He got part of it and it was the transfer papers. As he was waiting this other information, he gave the caseworker the information. The application was denied. They got the information from the bank late. When he presented this to the caseworker, it also seemed to be incomplete. They had to get the original contract. It took a long time to do that. His mother had no role in the application. He thought he was doing it right and she did not have to be involved. It was his mother's idea to sell the property.

- 11) Testimony from Mrs. _____ revealed that the house in question was located at _____. This was her home. She had no other property. She turned the house back to the original owners as she could not afford to pay the mortgage and the nursing home. She signed the house back over to the _____s because she did not have the money to buy the house. The nursing home asked for the information and she answered every question asked.
- 12) The 1st mortgage to purchase residence located at _____ shows the borrower as _____ and guarantors as _____ and _____ and _____. (C-3) The second mortgage was between _____ To _____ and _____, his wife. (C-5)
- 13) A letter dated 12/10/04 from _____ attorney, to _____ reads in part: Mr. & Mrs. _____ have been required to make monthly payments to _____ Bank formerly known as the Bank of _____ at the demand of the Bank since they had guaranteed your loan. They desire that you reconvey the property to them as they can remortgage the property to payoff your loan. (C-4)
- 14) Testimony from Ms. Morgan revealed that she arrived at the figure of \$90, 306.67 by contacting the attorney who handled the transaction. She asked him to send something that would verify the fair market value. He sent her something that showed the assessed value. The value of the property was assessed at \$81,276 as of 07/01/2004. The property is assessed at 90%. The full value would be \$90,306.67. (D-6) The amount owed of \$59,764.24 was determined by a statement from _____ at _____ Bank. (D-7) There was no evidence submitted to show the Department notified the claimant of the transfer of asset penalty.
- 15) _____ argues that _____ should not be penalized because she relied on her son to represent her in the application process. It is also the claimant's argument that the property in _____ was not transferred to qualify for Medicaid.
- 16) Section 1.2 E of the West Virginia Income Maintenance Manual reads in part that the client's responsibility is to provide information about his circumstances so the Worker is able to make a correct decision about his eligibility. When the client is not able to provide the required verification, the Worker must assist him. The client must be instructed that his failure to fulfill his obligation may result in the denial of the application. Prior to taking any action, the Worker must determine whether or not the client is able to cooperate. If he is able, but has not complied, the appropriate action described above is taken. If not, the Worker must assist the client in obtaining required information.

- 17) Section 4.1 of the West Virginia Income Maintenance Manual reads in part that it is an eligibility requirement that the client cooperate in obtaining necessary verifications. The client is expected to provide information to which he has access and to sign authorizations needed to obtain other information. Depending upon the program and the item or requirement for which verification is requested, refusal to cooperate may result in one of the following: Denial of the application. No case may be determined ineligible when a person outside the AG or Income Group fails to cooperate with verification. If the client is unsuccessful in obtaining information, or, if physical or mental limitations prevent his compliance, and there is no one to assist him, the Worker must obtain the verification.
- 18) Section 17.10 of the West Virginia Income Maintenance Manual reads in part that a nursing care client must meet the asset test for his eligibility coverage group.
- 19) 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 certain amounts. The asset level for a one person AG SSI-Related Medicaid is \$2,000.
- 20) Section 17.10 #1 of the West Virginia Income Maintenance Manual defines Fair Market Value (FMV) as an estimate of the value of a resource, if sold at the prevailing price at the time it was actually transferred. For a resource to be considered transferred for FMV, or to be considered transferred for valuable consideration, the compensation received for the resource must be in tangible form, with intrinsic value. Resources includes all income and assets of the individual and of his spouse that are counted for SSI-Related Medicaid purposes. This includes some income or assets which the individual or the spouse is entitled to, but does not receive, because of any action or inaction by the individual or his spouse; a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or any person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse. Resources to which an individual or spouse is entitled includes resources to which the individual is actually entitled, or would be entitled if action had not been taken to avoid receiving the resources.
- 21) Section 17.10 #4 of the West Virginia Income Maintenance Manual reads in part that the following transfers do not result in a penalty for transferring resources. (f) When the resources were transferred exclusively for a purpose other than to qualify for Medicaid, no penalty is applied.
- 22) Section 17.10 #5 of the West Virginia Income Maintenance Manual reads in part that all transfers not specifically excluded from the application of a penalty result in the application of a penalty.
- 23) Section 17.10 #8 of the West Virginia Income Maintenance Manual reads in part that the transfer of resources penalty is ineligibility for nursing facility services..... The penalty is applied as follows. The claimant may remain eligible for Medicaid; services not subject to a penalty are paid. The penalty period starts the month in which the resource is transferred, as long as that month does not occur in any other period of ineligibility due to a transfer of resources penalty. If the month the resource is

transferred falls into another such penalty period, the penalty period begins the month after the previous penalty period ends.....The penalty period lasts for the number of whole months determined by the following calculation: Total amount transferred during the look-back period divided by the State's average, monthly nursing facility private pay rate (\$112.65/day = \$3,380/month). The penalty runs continuously from the first day of the penalty period, whether or not the client leaves the institution. There is no maximum or minimum number of months a penalty may be applied. The institutionalized client is affected by any transfer described above when he or his spouse or any entity acting on their behalf or at their direction transfers an asset.

- 24) Section 17.6 of the West Virginia Income Maintenance Manual reads in part that the applicant or his representative must be notified in writing of the action taken on his application.

VIII. CONCLUSIONS OF LAW:

- 1) Policy requires that prior to taking any action on an application, the Worker must determine whether or not the client is able to cooperate. If he is able, but has not complied, the appropriate action is taken. If not, the Worker must assist the client in obtaining required information.
- 2) The client in this case is _____.
- 3) _____'s son, acting on his mother's behalf, applied for LTC Medicaid in February, 2005 with a request the medical card be backdated to November, 2004. Information was requested to determine eligibility and this was not provided. The application was denied 03/31/05. Later in April 2005, Mr. _____ provided additional information to the Department. Mrs. _____ was not contacted about any information. There was also additional information gathered by the Department's worker. She determined there had been a transfer of assets and established a penalty period of 9.05 months.
- 4) There is a transfer of asset policy for LTC Medicaid. Policy requires that when resources were transferred exclusively for the purpose other than to qualify for Medicaid, no penalty is applied.
- 5) The client was buying her home in _____. A letter was sent to Mrs. _____ asking her to reconvey her property to Mr. & Mrs. _____ as they had guaranteed the loan and have been required to make monthly payments to the bank. Credible testimony was received from Mrs. _____ that the reason she turned the house back to the original owners was because she could not afford to pay the mortgage and the nursing home.
- 6) Regulations require that the applicant or his representative be notified in writing of the action taken on his application. No evidence was submitted at the hearing to show the claimant was notified of the transfer of asset penalty.

IX. DECISION:

The issue regarding the denial of the LTC Medicaid application is a difficult matter for the State Hearing Officer to resolve. It is unclear as to what information was lacking at the time the Department determined there was a transfer of asset penalty. Information had been submitted by Mrs. _____'s son several times. Policy is clear in that prior to taking any action on an application, the worker must determine whether or not the client is able to cooperate. If not, the worker must assist the client in obtaining required verification. Therefore, the Department is obligated to help the claimant. Also, it is the finding of the State Hearing Officer that the claimant did not transfer her property in _____ in order to qualify for Medicaid. No transfer of asset penalty should be applied. The Department is reversed in the decision to deny the claimant's application for LTC Medicaid and apply a transfer of asset penalty. The Department will reevaluate the claimant's financial eligibility for the LTC Medicaid Program beginning November 1, 2004.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 15th Day of March, 2006.

**Margaret M. Mann
State Hearing Officer**