



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
4190 Washington Street West  
Charleston, WV 25313

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

August 16, 2007

Ms. \_\_\_\_\_  
C/o \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 20, 2007. Your hearing request was based on the Department of Health and Human Resources' action to deny your Long Term Care application.

In arriving at a decision, the State Hearings 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 Program is based on current policy and regulations. Some of these regulations state in 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. (West Virginia Income Maintenance Manual Section 17.10 A – Asset Assessments, page 30).

The information submitted at your hearing revealed: Your husband was uncooperative in determining jointly owned assets.

It is the decision of the State Hearings Officer to uphold the action of the Department to deny your application.

Sincerely,

Ray B. Woods, Jr., M.L.S.  
State Hearing Officer  
Member, State Board of Review

cc: State Board of Review  
Ms. [REDACTED] Esq. – Legal Aid of West Virginia, Inc.  
Ms. [REDACTED] Power of Attorney  
Ms. Deborah A. Fidler, ESW

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

\_\_\_\_\_,

**Claimant,**

v.

**Action Number: 07-BOR-1544**

**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 16, 2007 for Ms. \_\_\_\_\_. 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 July 20, 2007 on a timely appeal filed May 30, 2007.

It should be noted here that the Claimant was not receiving Long Term Care benefits at the time of the hearing. A pre-hearing conference was held between the parties prior to the hearing, and the Claimant had legal representation.

**II. PROGRAM PURPOSE:**

The Program entitled Long Term Care 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:**

\_\_\_\_\_, Esq. – Legal Aid of West Virginia, Inc., Claimant's Attorney

\_\_\_\_\_, Claimant

- Power of Attorney

██████████ Long Term Care Ombudsman – Legal Aid of West Virginia, Inc. (Observing)  
Deborah A. Fidler, Economic Services Worker (ESW) – Putnam DHHR Office

Presiding at the Hearing was, Ray B. Woods, Jr., M.L.S., State Hearing Officer and a member of the State Board of Review.

**IV. QUESTIONS TO BE DECIDED:**

The question(s) to be decided is: Does the Claimant meet the financial eligibility criteria for the Long Term Care Medicaid program?

**V. APPLICABLE POLICY:**

West Virginia Income Maintenance Manual Section 17.10 A Asset Assessments, page 30.

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

DHR-1 Copy of Request for Hearing form dated 05/29/07  
DHR-2 Copy of IG-BR-29 dated 05/30/07  
DHR-3 Copy of IG-BR-40 dated 06/11/07  
DHR-4 Denial letter dated 05/18/07  
DHR-5 West Virginia Income Maintenance Manual Section 17.10 Assets, page 30.  
DHR-6 Case Comments dated 05/17/07

**Claimants' Exhibits:**

C-1 PAS-2000, approved 05/10/07  
C-2 Petition for Divorce, filed 07/13/07 – Family Court of ██████████ County  
C-3 Financial Statement, filed 07/13/07 – Family Court of ██████████ County  
C-4 Affidavit of Indigency, filed 07/13/07 – Family Court of ██████████ County

**VII. FINDINGS OF FACT:**

1. The issue in this particular matter involves the un-cooperation of the Claimant's husband in determining jointly owned assets. He has refused to provide verification of any jointly owned assets to determine his wife's financial eligibility for Long Term Care.
2. In early 2007, the Claimant's husband refused to provide further care and support for her. This forced the Claimant to seek residence at a nursing facility and rely on a friend to act as her Power of Attorney.

3. The Claimant, through her Power of Attorney, applied for Long Term Care benefits on May 17, 2007.
4. One of the requirements to establish financial eligibility is found at West Virginia Income Maintenance Manual Section 17.10 A – Asset Assessments, page 30 Assets, page 30 (Exhibit DHR-5). It states in 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.”
5. The Power of Attorney could not provide the required asset information, and the Department issued a Denial Letter on May 18, 2007 (Exhibit DHR-4).
6. The Claimant submitted a Request for Hearing dated May 29, 2007 (Exhibit DHR-1).
7. The Department received the Request for Hearing on May 30, 2007, and forwarded it to the State Hearing Officer (Exhibit DHR-2).
8. A Fair Hearing was scheduled for July 20, 2007 at 9:00 a. m. at the [REDACTED] DHHR Office (DHR-3).
9. At the hearing, the ESW testified that she was unable to determine the assets and/or complete the Asset Assessment, because the Claimant’s husband would not cooperate. The application was subsequently denied.
10. The ESW’s Case Comments dated May 17, 2007, (Exhibit DHR-6), state in part:

The POA is not knowledgeable with regard to the financial status of the (Claimant and her Husband). She is unaware of whether divorce has been initiated. She is not aware of the actual financial circumstances (CD’s, IRA’s, Savings) and is not aware of whether or not (Claimant) remains on the checking account of (Claimant’s Husband). Case has at this time failed for LTC consideration.
11. West Virginia Income Maintenance Manual Section 17.10 Asset Assessments, page 30 (Exhibit DHR-5) states in part:

**NOTE:** 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.

When determining eligibility for nursing facility services for an individual, institutionalized on or after 9/30/89, and who has a community spouse, the Worker must complete an assessment of the couple’s combined countable assets. The assessment is completed, when requested by the client or his representative, prior to application, or at application, if not previously completed. It is completed as of the first continuous period of institutionalization and is completed one time only.

The assessment is completed on form IM-NL-AC-1 or in RAPIDS. See the RAPIDS User Guide. The purpose of the Asset Assessment is to allow the spouse of an institutionalized individual to retain a reasonable portion of the couple’s assets and to prevent the impoverishment of the community spouse.

When requested, the Worker must advise the individual(s) of the documentation required for the assessment. Verification of ownership and the FMV must be provided. When it is not provided, the assessment is not completed.

The Worker documents the total value of all non-excluded assets.

12. The Claimant testified that she must stay at a nursing facility to address her medical needs. She did not have the ability to make her husband do what is necessary.
13. The PAS-2000 was approved by West Virginia Medical Institute on May 10, 2007 (Exhibit C-1). This was submitted on behalf of the Claimant to show her medical eligibility for nursing facility care.
14. A Petition for Divorce was filed July 13, 2007 in the Family Court of Cabell County (Exhibit C-2). The matter is being handled by another attorney through Legal Aid of West Virginia, Inc.
15. A Financial Statement was filed July 13, 2007 in the Family Court of Cabell County (Exhibit C-3). The Claimant (Petitioner) was unable to provide needed financial information.
16. An Affidavit of Indigency was filed July 13, 2007 in the Family Court of Cabell County (Exhibit C-4). This document seeks a waiver of fees, costs or security associated in a civil case.
17. The Claimant's Attorney submitted a Closing Argument advocating, "The Department's denial of (the Claimant's) application should be reversed because all of her resources are currently excluded as unavailable and she was not able to provide any more information than was contained in her initial application."
18. The policies used to support this position are found at WVIMM §§ 1.2D – WORKER RESPONSIBILITIES; 1.2E – Client Responsibility; 11.1 – DEFINITION OF ACCESSIBILITY OF ASSETS; and 11.2 D. - ACCESSIBILITY OF ASSETS.
19. WVIMM § 1.2D WORKER RESPONSIBILITIES states in part:

The Worker has the following general responsibilities in the application process:

Adhere to the Department's policies and procedures to establish eligibility, including those regarding timely action and/or decision.

Assist the client in obtaining information required to establish his eligibility. When the Worker must make a collateral contact, such as an employer, the Worker must not disclose the client's status as an applicant/recipient of a Department program.

Ensure that proper case recordings are made to document the Worker's actions and the reason for such actions.

20. There was no testimony provided or cross-examination of the ESW to determine if she did not assist the Claimant's Power of Attorney in obtaining needed eligibility information.
21. WVIMM § 1.2E. CLIENT RESPONSIBILITY states in part:  
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 one or more of the following actions: Denial of the application; Closure of the active AG; Removal of the individual from the AG; Repayment of benefits; or Reduction in benefits.  
The action taken by the Worker depends on the specific requirement.
- Prior to taking any of the actions described above, 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 the required information.
22. Testimony from the ESW indicated the Claimant's Power of Attorney could not provide any financial information.
23. WVIMM § 11.1 – DEFINITION OF ACCESSIBILITY OF ASSETS states in part:  
A client may not have access to certain assets. In order to be considered an asset, the asset must be owned by or available to the client. If the client cannot legally dispose of the asset, it is not treated as an asset.
24. WVIMM § 11.2 D. ACCESSIBILITY OF ASSETS states in part:  
This Chapter contains the policies for determining asset eligibility for Food Stamp benefits, WV WORKS, AFDC Medicaid and most other Medicaid coverage groups. Instructions for determining the value of assets are included.
- A client may not have access to some assets. To be considered an asset, the item must be owned by or available to the client and available for disposition. If the client cannot legally dispose of the item, it is not his asset.
- If the fractional share of the asset is not available to either owner without the consent of the other, and such consent is withheld, the asset is excluded as being inaccessible.
25. In addressing Findings of Fact #24 and #25, the Claimant testified that she and her husband had little money, Secondly, there was no evidence provided to determine what assets were owned by the Claimant and her husband.

### **VIII. CONCLUSIONS OF LAW:**

1. Policy states, "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."

2. There are no available exceptions for completing the Asset Assessment;
3. Policy requires Workers to:

Adhere to the Department's policies and procedures to establish eligibility, including those regarding timely action and/or decision;

Assist the client in obtaining information required to establish his eligibility. When the Worker must make a collateral contact, such as an employer, the Worker must not disclose the client's status as an applicant/recipient of a Department program; and

Ensure that proper case recordings are made to document the Worker's actions and the reason for such actions;
4. The Worker took the necessary action in compliance with Departmental policies; and finally,
5. The Claimant's financial eligibility could not be established.

**IX. DECISION:**

It is the decision of this State Hearing Officer to uphold the action taken by the Department to deny the Long Term Care application.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 16th Day of August, 2007.**

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**Ray B. Woods, Jr., M.L.S.**  
**State Hearing Officer**