



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 2590
Fairmont, WV 26555

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

December 1, 2008

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on a hearing held for _____ on October 28, 2008. Your hearing request was based on the Department of Health and Human Resources' denial of Long-Term Care Medicaid based on excessive assets.

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 Program is based on current policy and regulations. Some of these regulations state as follows: Non-homestead property, unless otherwise excluded, is a countable asset for the Medicaid Program. The asset limit for the Long-Term Care Program for a one-person Assistance Group is \$2,000. An application is denied when the client fails to establish eligibility. (West Virginia Income Maintenance Manual Chapters 11.1, 11.4 and 1.2)

Information presented during the hearing reveals that the asset value of _____'s non-homestead property was in excess of the maximum allowable asset limit for Medicaid Long-Term Care benefits.

It is the decision of the State Hearing Officer to **uphold** the Department's denial of Medicaid Long-Term Care benefits.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

Pc: Erika H. Young, Chairman, Board of Review
Lori Williams, ESW, DHHR

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

_____ (by _____),

Claimant,

v.

Action Number: 08-BOR-2086

**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 December 1, 2008 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 October 28, 2008 on a timely appeal filed September 9, 2008.

All persons giving testimony were placed under oath.

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.

Long-Term Care 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's daughter/representative
_____, Comptroller, [REDACTED] Nursing Home
Lori Williams, Economic Service Worker (ESW), DHHR

Presiding at the hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether or not the Agency was correct in its denial of the Claimant's Long-Term Care Medicaid application.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Chapters 11.3, 11.4 and 17.10

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Notice of Decision dated 7/22/08
- D-2 Tax Receipt - Real Property in [REDACTED] County - Paid 3/17/08
- D-3 Case Comments for period 2/26/08 through 7/9/08
- D-4 Request for Hardship Waiver for MLTN
- D-5 West Virginia Income Maintenance Manual Chapter 11.3, 11.4 & 17.10

VII. FINDINGS OF FACT:

- 1) On or about July 22, 2008, the Claimant was notified via a Notice of Decision (D-1) that her application for Medicaid payment of Long-Term Care (Nursing Facility) was denied. This notice states, in pertinent part:

Action: Your 7/9/08 application for Nursing Home Care Coverage has been denied.

Reason: The amount of assets is more than is allowed for this benefit.

- 2) Evidence submitted at the hearing reveals that an application was completed on behalf of the Claimant for Medicaid Long-Term Care (Nursing Facility) benefits on July 9, 2008 but was denied by the Department based on excessive assets. The excessive asset was determined to be real property (D-2) that remained in the Claimant's name. There is no homestead or residence located on the 1.11 acre lot, and according to the Department, it could not be counted as homestead property and excluded as an asset.

- 3) Exhibit D-2, Tax Receipt for real property in ██████ County, verifies that the Claimant owned the piece of property at the time of application for Medicaid nursing facility benefits and the assessed value, which is 60% of its actual value, is \$6360. The Current Market Value (CMV) was calculated to be \$9636. This property, however, was being leased to the Claimant's daughter, and according to the Department's representative, \$6000 of the asset amount (property equity) could be excluded as it was producing income sufficient to qualify for the deduction. After the asset deduction is applied, the remaining balance of the asset (\$9636-\$6000) is \$3636. The remaining amount (\$3636) exceeds the \$2000 maximum allowable asset limit for Medicaid Long-Term Care benefits and the Claimant's application was subsequently denied.
- 4) The Claimant's representative contends that the assessed amount of the property is inflated. She purported that she attempted to contest the assessed amount at the Assessor's Office but the Assessor's Office would not reassess or reduce the property value. Because the Claimant's representative contends that the property was incorrectly assessed, and therefore assigned an inflated CMV, the Claimant was permitted 30 days (Post Marked no later than November 28, 2008) to provide a certified appraisal of the CMV. It should be noted that no additional documentation was received within the required time for review.
- 5) West Virginia Income Maintenance Manual Section 11.1 states that the asset limit for a one-person Medicaid Assistance Group is \$2,000.
- 6) West Virginia Income Maintenance Manual Section 11.1 defines *homestead property* as:

The dwelling and land on which the dwelling rests, which is not separated by intervening property owned by others. This property does not have to be part of the original purchase. This includes the life estate interest, when it is the life estate holder's home.

Non-homestead property is defined as:

Real property, other than the homestead, that the client owns or is purchasing.

- 7) West Virginia Income Maintenance Manual Section 11.4, CC, 1, Homestead Property, states:

The client's homestead is the property on which he lives and which is owned, or is being purchased by him. It is the dwelling and the land on which the dwelling rests, which is not separated by intervening property owned by others. Public rights-of-way which run through the surrounding property and separate it from the home, do not affect this exclusion. Any additional property acquired and not separated from the original acquisition by intervening property owned by others, is also excluded.

- 8) West Virginia Income Maintenance Manual, Chapter 11.4, C, b states that, for SSI-Related Medicaid groups:

Only one dwelling is established as the client's principal place of residence, and only the principal place of residence is excluded. When an individual leaves his principle [sic] place of residence for any reason, but intends to return to it, the home is excluded. The exclusion is based solely on the individual's intent to return, even if the home is vacant or rented. The individual need not have the ability to return to the home, but must simply have the intent.

- 9) West Virginia Income Maintenance Manual Section 17.10, C Homestead Property Exclusion, states:

When a nursing facility resident indicates his intention of returning to his homestead property when/if discharged, the homestead property is excluded as an asset.

It is not necessary that the client be medically able to return home to apply the exclusion. The exclusion is based solely on the client's intended action, should he be discharged from the facility.

The homestead property may not be in West Virginia. The homestead exclusion applies, regardless of the state in which it is located. The client's expressed intent to return to the homestead property does not necessarily affect his West Virginia residency.

- 10) West Virginia Income Maintenance Manual Section 11.4, CC, 3 states that non-homestead property is only excluded as an asset for SSI-Related Medicaid purposes if it is income-producing or used for self-support. If the individual's equity is greater than \$6,000, only the amount that exceeds \$6,000 is counted toward the allowable asset limit, when the net annual income requirement of 6% is met. Net annual income is the gross income from the enterprise, less the cost of doing business for a one-year period. The equity in property not otherwise excluded is considered an asset.

VIII. CONCLUSIONS OF LAW:

- 1) As a condition of eligibility, the policy that governs the Medicaid Long-Term Care Program provides that assets cannot exceed \$2000.
- 2) The Claimant owned non-homestead property with a Current Market Value of (CMV) of \$9636 at the time of application. A \$6000 asset reduction was applied to the income producing property, however, the asset value of \$3636 that remains is in excess of the \$2000 asset limit for participation in the Medicaid Long-Term Care Program.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency's action in denying the Claimant's application for Medicaid Long-Term Care benefits due to excessive assets.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 1st Day of December, 2008.

Thomas E. Arnett
State Hearing Officer