



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

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

January 17, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on a hearing held for _____ on January 11, 2008. Your hearing request was based on the Department of Health and Human Resources' denial of Long-Term Care Medicaid.

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 your hearing reveals that the asset value of your non-homestead property is excessive for the Long-Term Care Program.

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

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Krista Mancino, ESW, DHHR
_____, daughter of Claimant

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

_____,
Claimant,

v.

Action Number: 07-BOR-2633

**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 January 17, 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 January 11, 2008 on a timely appeal filed December 10, 2007.

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:

_____, daughter of Claimant
_____, Esq., attorney for Claimant
Krista Mancino, Economic Service Worker, DHHR

Presiding at the hearing was Pamela L. Hinzman, 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 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 1.2, 11.1, 11.2, 11.4 and 17.10

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Hearing Summary
- D-2 Notice of Decision dated November 8, 2007
- D-3 West Virginia Income Maintenance Manual Chapter 11.1
- D-4 West Virginia Income Maintenance Manual Chapter 11.2
- D-5 West Virginia Income Maintenance Manual Chapter 11.3
- D-6 West Virginia Income Maintenance Manual Chapter 11.4, CC, 1, B
- D-7 West Virginia Income Maintenance Manual Chapter 17.10, B, 5
- D-8 West Virginia Income Maintenance Manual Chapter 17.10, B, 10

Claimant's Exhibits

- C-1 Medical information from Dr. _____
- C-2 Grant Deed
- C-3 Huntington Bank statement
- C-4 West Virginia Income Maintenance Manual Chapter 11.7

VII. FINDINGS OF FACT:

- 1) The Claimant, by her attorney, applied for Long-Term Care Medicaid benefits in October 2007. At that time, it was verified that the Claimant owns a one-third interest in property in _____
- 2) The application was denied in a Notice of Decision dated November 8, 2007. This notice states, in pertinent part:

ACTION: Your 10/22/07 application for Nursing Home Care Coverage has been DENIED. REASON: The amount of assets is more than is allowed for this benefit.

- 3) The Economic Service Worker testified that the Claimant had received Long-Term Care Medicaid in ██████ County from January 2007 through April 2007. At that time, the Claimant's home in ██████ was excluded as an asset based on her intent to return to the residence. On March 27, 2007, the Claimant's daughter reported that the Claimant's residence in ██████ had been sold for approximately \$222,000 and the money was to be deposited in the Claimant's checking account at Huntington Bank. The funds rendered the Claimant ineligible for Long-Term Care benefits due to excessive assets and the case was closed.

A new application for Long-Term Care benefits was made by the Claimant's attorney on June 1, 2007 at the ██████ County DHHR. It was determined that proceeds received by the Claimant in regard to the home sale totaled \$223,236.54. The Claimant's attorney reported that monies from the home sale were used to purchase a residence in ██████. A property deed (C-2) lists _____ (the Claimant's son-in-law), _____ (the Claimant's daughter) and the Claimant as joint tenants in the property and indicates that each purchaser has a one-third interest in the property. The Department determined that the Claimant was ineligible for benefits due to excessive assets and the June 2007 application was withdrawn by the Claimant's attorney.

The attorney reapplied for Long-Term Care benefits on behalf of the Claimant in October 2007 at the ██████ County DHHR. The Economic Service Worker testified that the October application was also denied since the ██████ a property was not the Claimant's homestead when she entered the nursing home. She testified that the ██████ property could only be excluded as a homestead if the Claimant resided in the home prior to entering the long-term care facility or lived in the residence at the time of application. The worker testified that the Claimant had never left the nursing home. In addition, the worker contended that the home purchase is considered a transfer of assets since the Claimant's access to the ██████ property is limited by joint ownership. (*The transfer issue will not be addressed in this decision because the Department's Notice of Decision only specifies that assets are excessive and fails to address a transfer penalty.*)

- 4) The Claimant's daughter testified that her mother wishes to move into the ██████ residence. The daughter testified that she has been attempting for months to move her mother to ██████ however, the Claimant's medical condition prohibits her from traveling that distance. Exhibit C-1, medical notes written by Dr. ██████ and dated December 21, 2007, was presented on behalf of the Claimant. Dr. ██████ notes state, in pertinent part:

I spoke with her Daughter, ██████ [sic], who wanted to move her to ██████. The Daughter wanted to know the safest mode of transport and I told her that in my medical opinion there is no such mode available. I do not feel that it would be safe for her to travel that long of a distance in any type of vehicle or mode of transportation or public transportation. I told her that it would be too risky to get her into an airplane. The daughter asked about

sedating her Mother and asked me to give her Ativan to sedate her. I told her that was not safe nor was it sound medical practice. I do not feel that sedation is the answer, I told her that if she does feel that they need to move her to [REDACTED] with them that the only way to do it is to take her in the car with them and to make frequent stops but it would be extremely risky and I feel that it may place the patient in danger.

When questioned by her attorney, the Claimant's daughter maintained that the Claimant is not prohibited from using the [REDACTED] home and that she could technically sell her one-third share. She agreed that the Claimant's medical condition is the only factor preventing her from residing in the home. In addition, she testified that she had believed purchasing the [REDACTED] residence was permissible under policy.

- 5) West Virginia Income Maintenance Manual Section 11.1 (D-5) states that the asset limit for Medicaid for a one-person Assistance Group is \$2,000.
- 6) West Virginia Income Maintenance Manual Section 11.1 (D-3) 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.

This section defines *non-homestead property* as:

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

- 7) West Virginia Income Maintenance Manual Section 11.1 also defines *principal place of residence* as "the dwelling the client considers his fixed, established home."
- 8) West Virginia Income Maintenance Manual Section 11.4, CC, 1, Homestead Property, (D-6) 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.

Section 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. The equity in property not otherwise excluded is considered an asset.

- 11) West Virginia Income Maintenance Manual Section 11.2E, 2 and 2(a) (D-4) Exception for Sale of an Excluded Home:

For SSI-Related Medicaid, CDCS, PAC, QDWI, QMB, SLIMB and QI-1 AG's [sic], the proceeds from the sale of an excluded home are excluded if they are used, or obligated to purchase and occupy another home by the last day of the third full month following the month of receipt.

When the client sells his excluded home and states that he intends to purchase another home, the exclusion applies. The client's statement of intent is sufficient to qualify for the exclusion, unless questionable.

- 12) West Virginia Income Maintenance Manual Section 1.2M states that an application is denied when at least one eligibility requirement is not met or when the client fails to establish eligibility.

VIII. CONCLUSIONS OF LAW:

- 1) Policy defines *homestead* as the property on which the individual lives and *principal place of residence* as “the dwelling the client considers his fixed, established home.” Only one dwelling can be excluded as the client’s principal place of residence. When an individual **leaves** his principal place of residence, but intends to **return** to it, the homestead property can be excluded as an asset for Long-Term Care Medicaid purposes.

Policy indicates that the homestead exclusion applies regardless of the state in which the home is located. It is not necessary for the home to be in West Virginia. However, the client must have intent to return to the out-of-state dwelling. The clear and reasonable interpretation of this provision is that the homestead of an individual who moves from another state and enters a West Virginia long-term care facility can be excluded as an asset if the individual expresses the intent to return to that out-of-state homestead property.

- 2) The Claimant was a recipient of Long-Term Care Medicaid from January 2007 through April 2007, during which time her residence in [REDACTED] was an excluded asset under the homestead provision. In late March 2007, the Claimant’s homestead was sold for more than \$200,000, the proceeds were placed in the Claimant’s bank account, and the nursing home case was closed due to excessive assets. In June 2007, the Department learned that proceeds from the sale of the homestead were used to purchase property in [REDACTED] which has never been the Claimant’s **fixed, established home**. While the Claimant’s daughter indicated that the Claimant wishes to move to [REDACTED] the Claimant has never been able to live in the [REDACTED] residence, therefore, the home cannot be considered homestead property (the property on which the individual lives). Since the Claimant has never resided in the dwelling, intent to **return** to the residence cannot be established.

While the Claimant’s attorney referred to Income Maintenance Manual Section 11.2E, 2 and 2(a) in regard to using proceeds from the sale of a residence to purchase another home, this section refers to the **proceeds** being excluded if the client intends to use the money toward another home. The section contains no exclusions for non-homestead property purchased by the Claimant with the proceeds.

- 3) Because the Claimant’s share of the [REDACTED] property must be counted as an asset, total assets clearly exceeded \$2,000 at the time of the October 2007 application and the Department acted correctly in denying Long-Term Care Medicaid benefits.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency’s action in denying the Claimant’s Long-Term Care Medicaid application.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 17th Day of January, 2008.

**Pamela L. Hinzman
State Hearing Officer**