



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

Earl Ray Tomblin
Governor

Michael J. Lewis, M.D., Ph.D
Cabinet Secretary

December 16, 2010

-----for -----

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your mother's hearing held November 23, 2010. Your hearing request was based on the Department of Health and Human Resources' application of a transfer of assets penalty in your mother's Long-Term Care Medicaid case.

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: No transfer of assets penalty is applied when the transfer was made exclusively for a reason other than to qualify for Medicaid. (West Virginia Income Maintenance Manual Chapter 17.10)

Information presented during the hearing reveals that your mother's transfer of assets was made exclusively for a reason other than to qualify for Medicaid and no penalty should be applied.

It is the decision of the State Hearing Officer to **reverse** the Department's decision to apply a transfer of assets penalty to your mother's Long-Term Care Medicaid benefits.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
James Cox, ESS, DHHR

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

-----,

Claimant,

v.

Action Number: 10-BOR-2028

**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 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 via videoconference on November 23, 2010 on a timely appeal filed June 22, 2010 and received by the Hearing Officer on October 7, 2010. The hearing was originally scheduled for November 10, 2010, but was rescheduled at the request of the Claimant.

All persons giving testimony were placed under oath.

II. PROGRAM PURPOSE:

Medicaid 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 standards for the care provided to eligible recipients. In order to qualify for Nursing Home Care, an individual must meet both financial and medical eligibility criteria.

III. PARTICIPANTS:

-----, Claimant's son/Attorney-in Fact
-----, witness for Claimant
James Cox, Economic Service Supervisor, DHHR

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Agency was correct in its application of a transfer of assets penalty to the Claimant's Long-Term Care Medicaid benefits.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Chapters 17.10, B.3; 17.10, B.8.a; and 17.10, B.4.h
West Virginia Medicaid Provider Manual Chapter 517.10

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Notice of Decision dated June 3, 2010
- D-2 West Virginia Income Maintenance Manual Chapter 17.10, B.1
- D-3 West Virginia Income Maintenance Manual Chapters 17.10, B.8.a; and 17.10, B.8.b
- D-4 Deduction sheet and checks
- D-5 Case comments dated June 3, 2010

Claimant's Exhibits

- C-1 West Virginia DHHR Medical Services Manual Chapter 517.10
- C-2 Information concerning Personal Care Services
- C-3 Power of Attorney documentation for -----

VII. FINDINGS OF FACT:

- 1) The Claimant's son, -----, applied for Long-Term Care Medicaid benefits for the Claimant in June 2010.
- 2) At the time of application, the Department of Health and Human Resources, hereinafter Department, worker learned that the Claimant had transferred \$493 to her son -----on April 30, 2010 and \$2,500 to -----on April 30, 2010 (D-4). James Cox, Economic Service Supervisor, testified that the transfers were non-permissible as they constituted a payment for personal care services and there was no existing personal care contract between the Claimant and her sons.

- 3) As a result, the Department determined that the total amount transferred - \$2,993 - would be counted toward the Claimant's monthly contribution to her cost of nursing home care for the month of May 2010 only.
- 4) The Claimant was notified of the transfer of assets penalty in a Notice of Decision dated June 3, 2010 (D-1).
- 5) -----testified that his father died several years ago and he had served as the "De facto guardian" for his mother, who suffers from schizophrenia, after his father's death. He indicated that his mother could take care of herself and lived independently until she fell and broke her hip in 2009.

----- testified that he is his mother's representative payee for her Railroad Retirement benefits and documentation reveals that he became her attorney-in-fact in 1996 (C-3). The Claimant's son testified that he had a long-term practice – as a matter of convenience- of paying his mother's expenses (groceries, transportation, entertainment, dining, prescriptions, home maintenance items, etc.) from his personal funds and reimbursing himself at the end of the month from her monies. He indicated that he later began reimbursing himself on a less frequent basis and the \$2,500 transfer in question was a reimbursement for accrued personal funds he had spent over an unspecified time period for his mother's benefit. ----- stated that the arrangement to handle funds in this manner was agreed upon by himself and his mother, and approved by the Railroad Retirement Board. The Claimant's son maintained that the transactions were considered reimbursements and not service fees, that he was simply a financial steward, and that he never paid himself \$1 in compensation for managing his mother's finances. In addition, he contended that the transferred funds were not a payment for personal care services as defined by WVDHHR policy.

In addition, ----- testified that the \$493 paid to his brother -----was the Claimant's prorated share of expenses incurred while she resided in -----home from March 4, 2010 to April 9, 2010. ----- testified that his mother began living with ----- following the WVDHHR Adult Protective Service Unit's investigation of his brother -----, who was living with the Claimant in her home following her fall. ----- contended that the Department's APS unit had instructed him to pay his brother ----- while his mother resided in ----- home, and that he reviewed all of ----- household bills and prorated his mother's 1/3 share of expenses.

- 6) West Virginia Income Maintenance Manual Chapter 17.10, B.3 defines the look-back period for Medicaid as the length of time for which a worker looks back for any resource transfers. The look-back period is 60 months for transfers on or after 2/8/06. The time period begins the month the client is both institutionalized and has applied for Medicaid.
- 7) West Virginia Income Maintenance Manual Chapter 17.10, 8.a (D-3):

Non-permissible Transfer of Resources for Payment of Personal Care Services

Personal care services provided to an individual by a relative or friend are presumed to have been provided for free, at the time rendered, when a Personal Care Contract (PCC) did not exist.

Therefore, a transfer of resources from an individual to a relative or friend for payment of personal care services is an uncompensated transfer without Fair Market Value (FMV) received from the transferred resource and subject to a penalty, unless the services were provided in accordance with item (b) below.

- 8) West Virginia Medicaid Provider Manual Chapter 517.10 provides the following definition of personal care services:

Personal care services are medically necessary activities or tasks ordered by a physician, which are implemented according to a Nursing Plan of Care developed and supervised by a registered nurse. These services enable people to meet their physical needs and be treated by their physicians as outpatients, rather than on an inpatient or institutional basis. Personal care services are provided in the member's residence, except that services may be provided outside the home when those services are necessary to assist eligible individuals to obtain and retain competitive employment of at least 40 hours per month. Services are designed to assist an individual with a disability as defined by an SSA program (see Section 517.1) perform daily activities on and off the job; these would include activities that the individual would typically perform if he/she did not have a disability. Assistance is in the form of hands-on assistance, as in actually performing a personal care task for a person. Services include those activities related to personal hygiene, dressing, feeding, nutrition, environmental support functions, and health-related tasks. Personal care services can be provided on a continuing basis or on episodic occasions. Services must be:

- Prescribed by a physician on a PCMEA;
- Necessary to the long term maintenance of the member's health and safety;
- Provided pursuant to a plan of care developed by a registered nurse and periodically monitored by a registered nurse; and
- Rendered by an individual who has met the basic training requirements of this manual and is not a member of the member's family.

- 9) West Virginia Income Maintenance Manual Chapter 17.10, B.4.h, states that no transfer of assets penalty is applied when "the resources were transferred exclusively for a purpose other than to qualify for Medicaid..."

III. CONCLUSIONS OF LAW:

- 1) West Virginia Medicaid policy defines personal care services as medically necessary activities or tasks ordered by a physician, which are implemented according to a Nursing Plan of Care developed and supervised by a registered nurse. These services enable people to meet their physical needs and be treated by their physicians as outpatients, rather than on an inpatient or institutional basis. Personal care services are provided in the member's residence, except that services may be provided outside the home when those services are necessary to assist eligible individuals to obtain and retain competitive employment of at least 40 hours per month. Income Maintenance policy specifies that no asset transfer penalty is applied to a Medicaid case when the resource was transferred exclusively for a reason other than to qualify for Medicaid.
- 2) The Department maintained that the Claimant's transfers - totaling \$2,993 - to her sons in April 2010 were non-permissible transfers of assets as they were payments for personal care services and there was no existing personal care contract between the Claimant and her sons. However, reasonable and convincing testimony was provided from the Claimant's son/Attorney-in Fact to establish that the transferred funds were reimbursements for expenses unrelated to personal care as defined by policy. As the transfers were reimbursements of expenses incurred on the Claimant's behalf, they were made exclusively for a reason other than to qualify for Medicaid.
- 3) Based on information provided during the hearing, the Department's decision to implement a transfer of assets penalty in the Claimant's Long-Term Care Medicaid case cannot be affirmed.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Agency's action in implementing a transfer of assets penalty in the Claimant's Long-Term Care Medicaid benefits for May 2010. Medicaid benefits should be issued retroactively to the date eligibility was otherwise established.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 16th Day of December, 2010.

**Pamela L. Hinzman
State Hearing Officer**