



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1400 Virginia Street
Oak Hill, WV 25901

Joe Manchin III
Governor

Patsy A. Hardy, FACHE, MSN, MBA
Cabinet Secretary

March 26, 2010

-----, Esquire

RE: -----
Action No: 10-BOR-857

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 9, 2010 for ----- . Your hearing request was based on the Department of Health and Human Resources' decision to deny -----'s Long-Term Care Medicaid application due to excessive assets.

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 Medicaid program is based on current policy and regulations. These regulations provide that the asset limit for Long-Term Care Medicaid is \$2,000 (WV Income Maintenance Manual § 11.3).

The information submitted at your hearing revealed that -----'s countable assets exceeded the allowable limit for the program.

It is the decision of the State Hearings Officer to **Uphold** the action of the Department to deny -----'s Long-Term Care Medicaid application.

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

cc: Chairman, Board of Review
Tammy Turner, Economic Service Supervisor

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

-----,

Claimant,

v.

Action Number: 10-BOR-857

**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 March 9, 2010 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 March 9, 2010 on a timely appeal, filed February 1, 2010.

II. PROGRAM PURPOSE:

The Program entitled Long-Term Care Medicaid is administered by the West Virginia Department of Health & Human Resources.

The program entitled Long Term Care Medicaid (nursing facility services) 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:

-----, Esquire, Counsel for Claimant
-----, Attorney-in-Fact for Claimant
-----, Attorney-in-Fact for Claimant
-----, Witness for Claimant

Tammy Turner, Economic Service Supervisor

Presiding at the Hearing was Kristi Logan , State Hearing Officer and a member of the Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department correctly denied Claimant's application for Long-Term Care Medicaid.

V. APPLICABLE POLICY:

WV Income Maintenance Manual § 11.2 A, 11.3 and 11.5 C

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Hearing/Grievance Record Information
- D-2 Hearing Request dated February 1, 2010
- D-3 Denial Notification Letter dated January 26, 2010
- D-4 WV Income Maintenance Manual § 11.3
- D-5 Bank Account Statement dated January 15, 2010
- D-6 Hearing Summary

Claimants' Exhibits:

- C-1 Consumer Account Agreement from First National Bank of [REDACTED] and Copies of Checks Issued from Account

VII. FINDINGS OF FACT:

- 1) An application for Long-Term Care Medicaid was made on Claimant's behalf on January 19, 2010. A denial notification letter dated January 26, 2010 was issued by the Department which read in pertinent parts (D-3):

Your 1/19/10 application for Medicaid has been DENIED. The amount of assets is more than is allowed for this benefit.

- 2) Tammy Turner, Economic Service Supervisor, testified to the denial of Claimant's application. At application, it was reported that he had a checking account with [REDACTED] National Bank. The balance of this account was verified by a bank statement dated January 15, 2010. The balance of the checking account as of January 1, 2010 was \$30,423.53 (D-5).

The Department contends that according to policy, the asset limit for Long-Term Care Medicaid is \$2,000. Claimant's assets were excessive to qualify for Long-Term Care Medicaid (D-4).

- 3) -----, Claimant's daughter and attorney-in-fact, testified that her father's checking account with [REDACTED] National Bank is jointly owned with herself and her brother, -----.

They were added to Claimant's account in 1997, after their mother was admitted to a nursing home.

In 1998, ----- and ----- deposited \$7,500 into Claimant's account from the sale of a piece of heirship property that was deeded to them over twenty (20) years ago. ----- stated they left their share of the proceedings in Claimant's account to pay for repairs and maintenance of his house.

----- stated they finally settled the account in January 2010. ----- and ----- withdrew \$20,000 from the account and deposited \$10,000 into a new account of which Claimant's name was not on. The remaining \$10,000 was split between ----- and -----.

- 4) -----, Senior Vice President of [REDACTED] National Bank of [REDACTED] gave testimony regarding the ownership of Claimant's checking account. -----stated Claimant added his children, ----- and ----- to the account on February 27, 1997. The account is a joint account with survivorship (C-1). -----stated all three (3) owners of the account had full access to its money.

-----stated \$20,000 was withdrawn from Claimant's account on January 12, 2010. One (1) check for \$5,000 was issued to ----- and another was issued to ----- . The remaining \$10,000 was used to open a new account with only ----- and ----- as the owners (C-1).

- 5) WV Income Maintenance Manual § 11.2 A(1) states:

Establishing Date of Asset Eligibility [for Medicaid]

The asset eligibility determination for these applications must be made as of the first moment of the month of application. The client is not eligible for any month in which countable assets are in excess of the maximum, as of the first moment of the month. Increases in countable assets during one month do not affect eligibility unless retained into the first moment of the following month.

- 6) WV Income Maintenance Manual § 11.5 C(3)d states:

Joint Ownership [of Assets] with Others

When all of the following conditions apply, jointly owned assets are counted in their entirety for each owner.

- Joint ownership is indicated by use of the word –OR–.
- The joint owners are not spouses.
- One of the joint owners is not an SSI recipient.
- The joint owners are not SSI-Related, M-WIN, CDCS, PAC, QDWI, QMB, SLIMB or QI-1 clients.
- The client has not successfully rebutted the presumption of full ownership.

- 7) WV Income Maintenance Manual § 11.3 states:

Maximum Allowable Assets

To be eligible for programs administered by the Division of Family Assistance (DFA), the total amount of countable assets cannot exceed the amounts which are listed in the following chart:

SSI-Related Medicaid [Long-Term Care]

1 in Assistance Group (AG) \$2,000
2 in AG \$3,000

VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that the asset limit for Long-Term Care Medicaid is \$2,000. Policy also states an individual must be asset eligible as of the first of the month or he is ineligible for the entire month.
- 2) Claimant had a balance of over \$30,000 in his checking account as of January 1, 2010. The testimony provided revealed that although the checking account is jointly owned with Claimant's two (2) children, Claimant had access to the money in its entirety.
- 3) Claimant's January 2010 application for Long-Term Care Medicaid was correctly denied due to excessive assets.

IX. DECISION:

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

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 26th day of March 2010.

**Kristi Logan
State Hearing Officer**