



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review

P.O. Box 1736
Romney, WV 26757

Earl Ray Tomblin
Governor

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

October 6, 2011

For -----

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your father's hearing held September 23, 2011. Your hearing request was based on the Department of Health and Human Resources' decision to deny your request for an Undue Hardship Waiver involving the transfer of your father's life estate property from March 2011.

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 an Undue Hardship Waiver is based on current policy and regulations. These regulations provide that an undue hardship may exist when the application of some aspects of the asset policy, the trust policy, a transfer of resources, or excess home equity result in denial of payment for Long Term Care services for an applicant or recipient. An undue hardship exists when the denial of eligibility for Long Term Care services results in denial of necessary medical care, such that the individual's health or life would be endangered, or would result in loss of food, clothing, permanent residence and other necessities of life (West Virginia Income Maintenance Manual Chapter 17.10).

The information which was submitted at your hearing revealed that your father was not experiencing a loss of any necessity of life and was receiving continuous care from a nursing facility. Therefore, the Department was correct to deny your request for an Undue Hardship Waiver.

It is the decision of the State Hearing Officer to Uphold the action of the Department to deny the Claimant's application for an Undue Hardship Waiver for long-term care.

Sincerely,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Cindy Myers, Family Support Specialist

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-1711

**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 on a timely appeal, filed August 9, 2011.

II. PROGRAM PURPOSE:

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:

-----, Claimant's Attorney-In-Fact
-----, Claimant's Attorney-In-Fact
██████████ Regional Ombudsman
Cindy Myers, Family Support Supervisor

Presiding at the hearing was Eric L. Phillips , 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 was correct in its decision to deny the Claimant's request for an undue hardship waiver resulting from a denial of long term care Medicaid involving a transfer of assets.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Chapter 17.10

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Letter from ----- dated June 7, 2011
- D-2 Deed of transfer of property, Book 304 Page 479(3) 167513 [REDACTED] County, West Virginia Courthouse
- D-3 West Virginia Income Maintenance Manual Chapter 17.10
- D-4 Application for Undue Hardship Waiver
- D-5 West Virginia Income Maintenance Manual Chapter 17.10 (Undue Hardship Waiver)
- D-6 Electronic Mail Transmission from -----to Cindy Myers dated August 2, 2011
- D-7 Notice of Discharge [REDACTED] County Nursing Home dated August 5, 2011
- D-8 [REDACTED] County, West Virginia Tax Inquiry

VII. FINDINGS OF FACT:

- 1) The Claimant completed an application for long-term care Medicaid assistance in March, 2011, with benefits being approved in the same month.
 - 2) In August, 2004, the Claimant executed a deed in which he transferred his life estate property to his granddaughter and her husband (Exhibit D-2). This property consisted of three and three-fourths acres of land in [REDACTED] County, West Virginia. On February 28, 2011, the Claimant's granddaughter, -----, along with her husband -----, executed a deed releasing the Claimant's life estate rights in the three and three-fourths acre property.
 - 3) On June 7, 2011, the Claimant's Attorney-In-Fact, -----, issued a letter to the Department (Exhibit D-1) documenting his discovery of the release of the Claimant's life estates rights in the property. The exhibit documents that ----- believed that the Claimant remained the owner of a half-acre tract of real estate adjacent to the property transferred to the Claimant's granddaughter. Additionally, this letter documents that the previously transferred property had been sold by the -----.
 - 4) Ms. Cindy Myers, Family Support Supervisor, testified that she researched the issue and discovered that all of the property had been included in the life estate and transferred to -----.
- Ms. Myers stated that this discovery resulted in a transfer of asset penalty being applied to the Claimant's long-term care assistance. The penalty was calculated for 2.10 months with a partial penalty of \$589.58 being attributed to the Claimant's resources in the third month. The penalty was derived from the homestead property value of \$39,183.33 being multiplied by the life estate value of .30859 for a total of \$12, 091.58. This amount was then divided by \$5751.00, the average monthly nursing facility private pay rate, which resulted in a penalty of 2.10 months. Ms. Myers indicated that the Claimant's long-term care Medicaid assistance was terminated effective July 31, 2011.

- 5) On July 8, 2011, the Claimant's Attorney-In-Fact completed an application for an Undue Hardship Waiver (Exhibit D-4). The application documents that the Claimant does not have relatives that are capable of caring for him and that the Claimant's granddaughter sold the property in question with no resources available to her to pay back her grandfather. Additionally, the application notes that the Claimant was not capable of making decisions and released the life estate due to his medical conditions.
- 6) On August 2, 2011, the Undue Hardship Committee issued an electronic mail transmission to Ms. Myers, denying the Claimant's request for an Undue Hardship Waiver (Exhibit D-6). This exhibit documents the following in pertinent part:

The Undue Hardship Waiver request for ----- was denied. The decision of the Committee was to deny the undue hardship request since ----- is in a nursing home receiving care continuously and has not been issued a discharge notice. He is receiving the essentials of life such as food, clothing and shelter and is not endangered. ----- did not provide verification he has exhausted all means, legal and otherwise, to obtain fair market value for his transferred assets which cause the transfer of asset penalty.

- 7) On August 5, 2011, the [REDACTED] County Nursing Home issued the Claimant a Notice of Discharge (Exhibit D-7) effective September 4, 2011 based on the Claimant's financial ineligibility for Medicaid services and the family's inability to privately pay for the Claimant's care. Ms. Myers stated that she attempted to submit a reconsideration of the Claimant's request for an Undue Hardship Waiver, based on the discharge notice, but the committee denied such request.
- 8) Ms. Myers testified that the Claimant was discharged from the facility for a short period of time and that ----- and her sister borrowed the funds to have their grandfather readmitted into the facility. Ms. Myers testified that she spoke with the director of the nursing home prior to the hearing and was informed that the nursing facility would reimburse ----- and her sister for funds privately paid to the facility for the Claimant's care if the decision to deny the Claimant's request for an Undue Hardship Waiver was reversed.
- 9) Testimony from the Claimant's representatives indicated that the Claimant was mentally incapable of signing the deed releasing the life estate rights in the property and noted that the February, 2011 deed documents that the Claimant was no longer physically able to remain in his residence and his intention was to vacate his residence and to enter a nursing home.
- 10) West Virginia Income Maintenance Manual Chapter 17.10 documents in pertinent part:

Transfers Related to a Life Estate

- a. Transfer with retention of a Life Estate

A transfer of property with the retention of a life estate interest is treated as an uncompensated transfer.

To determine if a penalty is assessed and the length of the penalty the worker must compute the value of the transferred asset and of the life estate, then calculate the difference between the two.

Step 1: To determine the value of the transferred asset, subtract any loans, mortgages or other encumbrances from the CMV of the transferred asset.

Step 2: Determine the age of the life estate holder as of his last birthday and the life estate factor for that age found in Appendix A of Chapter 22. Multiply the CMV of the transferred asset by the life estate factor. This is the value of the life estate.

Step 3: Subtract the Step 2 amount from the Step 2 amount. The result is the uncompensated value of the transfer.

Step 4: Divide the Step 3 amount by the State's average, monthly nursing facility private pay rate of \$5, 751. The result is the length of the penalty.

...

g. Transferred Assets Returned

When the client reports assets transferred for less than Fair Market Value have been returned to the client, the Worker must verify this information. Any return of assets must be to the client or his representative rather than to another individual on his behalf or paid directly to the long-term-care facility. When substantiated, the Worker must recalculate the penalty period.

When all such assets have been returned to the client, no penalty is applied. If a penalty has already been applied, a retroactive adjustment back to the beginning of the penalty period is required.

If part of such assets are returned, the penalty period is adjusted accordingly, from the later months of the penalty period rather than the earlier months, and is not applied to months of the penalty period that have expired.

j. Denial Would Result in Undue Hardship

An undue hardship may exist when application of some aspects of the asset policy, the trust policy, a transfer of resources or excess home

equity result in denial of payment for Long Term Care services for an applicant or recipients.

The Worker uses form DFA-NL-UH-1 when the denial of payment for Long Term Care services is due to any of these reasons. An undue hardship exists when the denial of eligibility for Long Term Care services results in denial of necessary medical care, such that the individual's health or life would be endangered, or would result in loss of food, clothing, permanent residence and other necessities of life.

Any request for such a determination must be submitted in writing on form DFA-UH-5 by the individual or authorized representative or by the facility on behalf of the individual, with the approval of the individual or the individual's authorized representative. The DFA-UH-5 form must be returned to the Worker within 13 days of the individual's receipt of the DFA-NL-UH-1 and notice of denial due to some aspects of the asset policy, the trust policy, a transfer of resources of excess home equity. The Worker must forward this form to the DFA Medicaid Policy Unit immediately upon receipt.

VIII. CONCLUSIONS OF LAW:

- 1) Policy requires that a transfer of property with the retention of a life estate interest is treated as an uncompensated transfer and a penalty is assessed to the assistance group based on the value of the transferred asset and of the life estate.
- 2) Policy allows for an undue hardship waiver when the application of some aspects of the asset policy, the trust policy, a transfer of resources or excess home equity result in the denial of payment for Long Term Care services for an applicant or recipient. An undue hardship exists when the denial of eligibility for Long Term Care services results in denial of necessary medical care such that the individual's health or life would be endangered, or would result in loss of food, clothing, permanent residence and other necessities of life.
- 3) The matter before the Board of Review is whether or not the Department's Undue Hardship Waiver Committee was correct in its decision to deny the Claimant's request for an Undue Hardship Waiver. The Claimant's representatives applied for a waiver based on the termination of the Claimant's long-term care due to a transfer of life estate property. Evidence revealed that the Claimant was receiving continuous care at the nursing facility and his health or life was not endangered, a requirement for the approval of the waiver. Because the Claimant was not being denied the necessities of life such as medical care, food, and clothing the decision to deny the Claimant's request for an Undue Hardship Waiver is affirmed.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the decision of the Department to deny the Claimant's request for an Undue Hardship Waiver.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ day of October, 2011.

**Eric L. Phillips
State Hearing Officer**