



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

Earl Ray Tomblin
Governor

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

December 13, 2011

-----for -----

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held December 6, 2011. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate -----'s Long Term Care Medicaid due to an uncompensated transfer of 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 Medicaid program is based on current policy and regulations. These regulations provide that an uncompensated transfer of assets for the sole purpose of qualifying for Long Term Care Medicaid will result in a period of ineligibility (WV Income Maintenance Manual § 17.10).

The information submitted at your hearing revealed that -----'s policy with Employees Life Company is an inaccessible endowment life insurance policy and is not considered an uncompensated transfer of assets.

It is the decision of the State Hearing Officer to **Reverse** the proposal of the Department to terminate -----'s Long Term Care Medicaid.

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

cc: Chairman, Board of Review
Dorothy Ellison-Hunter, Family Support Supervisor

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

IN RE: -----,

Claimant

v.

ACTION NO.: 11-BOR-2251

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

Respondents

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on December 6, 2011 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 October 11, 2011.

It should be noted here that the Claimant's benefits under the Long Term Care Medicaid program have continued pending a decision.

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
- , West Virginia Medicaid Advisors
- , West Virginia Medicaid Advisors
- , Senior Vice President, Employees Life Company (testified by phone)

Dorothy Ellison-Hunter, Family Support Supervisor

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

This hearing was held by videoconference.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department's proposal to terminate Claimant's Long Term Care Medicaid is correct.

V. APPLICABLE POLICY:

WV Income Maintenance Manual § 11.1 and 17.10 B

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Hearing/Grievance Request Notification
- D-2 Hearing Request received October 11, 2011
- D-3 Termination Letter dated September 30, 2011
- D-4 Policy from Employees Life Company (Mutual) dated April 13, 2011
- D-5 WV Income Maintenance Manual § 11.4 B
- D-6 WV Income Maintenance Manual § 17.10 B
- D-7 Department's Summary

VII. FINDINGS OF FACT:

- 1) Claimant purchased a Single Premium Endowment Life Insurance policy on April 13, 2011. The one-time premium amount for the policy was \$234,000 with a maturity date of April 13, 2016 (D-4).

An application for Long Term Care (LTC) Medicaid was made on Claimant's behalf on April 18, 2011. Claimant was approved for LTC Medicaid effective May 2011 and ongoing.

- 2) Dorothy Ellison-Hunter, Family Support Supervisor, stated the ██████████ County district office received a policy clarification from the Department's policy unit stating Claimant's policy with Employees Life Company was not life insurance, but was considered a "balloon annuity". Ms. Ellison-Hunter testified she was advised that Claimant's LTC Medicaid had been approved in error as the purchase of this annuity was considered an uncompensated transfer of assets. Ms. Ellison-Hunter stated that

according to policy, Claimant's policy does not meet the exemptions for her funds to be transferred into an annuity and meet the eligibility requirements for LTC Medicaid (D-6).

Claimant was issued a termination letter on September 30, 2011 by the Department proposing a termination of her LTC Medicaid based on an improper transfer of assets for the purpose of becoming Medicaid eligible (D-3).

- 3) ----- with West Virginia Medicaid Advisors testified he was hired by Claimant's family to help her become asset eligible for LTC benefits in March 2011. ----- stated Claimant's policy with Employees Life Company is not an annuity, but is actually life insurance that is inaccessible and with no cash value. -----stated Claimant's policy is non-transferrable and irrevocable. -----stated the policy will pay out \$235,176 to Claimant on April 13, 2016, when the policy matures. If Claimant dies prior to the maturity date, accumulated dividends will be paid to Claimant's beneficiaries (D-4).
- 4) -----, Senior Vice President of Employees Life Company, testified that the contract Claimant purchased is a life insurance policy and not an annuity. -----explained that an annuity generates a stream of income to the owner of the annuity. Claimant's policy does not generate any income nor can money be withdrawn from the policy prior to the maturity date by Claimant. -----stated Claimant's policy is a single premium endowment, which is considered life insurance. -----testified Claimant's policy is inaccessible and cannot be transferred or cancelled (D-4).
- 5) -----contends Claimant's policy with Employees Life Company was correctly counted as a life insurance policy with no cash value at her application. ----- stated the policy is not an annuity and should not be considered an asset for LTC Medicaid purposes.
- 6) WV Income Maintenance Manual § 11.1 defines:

ANNUITY An investment contract or agreement, which gives the right to receive fixed, periodic payments, either for life or a term of years.

LIFE INSURANCE A contract whereby one party insures his own life or the life of another party for a specified amount of money.

CASH SURRENDER OR CASH-IN VALUE The amount of cash received by the owner of the policy, if redeemed before death of the insured.

FACE VALUE The specified amount payable on death of the insured.

TERM INSURANCE Policies which do not have a cash surrender value.

WHOLE LIFE INSURANCE Insurance policies which have a cash surrender value.

- 7) WV Income Maintenance Manual § 11.4 Z states:

Life Insurance (Cash Value)

SSI-Related Medicaid, M-WIN, CDCS, PAC, QDWI, QMB, SLIMB and QI-1: If the face value of all life insurance policies for one individual totals \$1,500 or less, the cash surrender values are not counted as an asset. If the face value of all life insurance policies for an individual is in excess of \$1,500, the cash surrender values are counted as an asset. The life insurance policy must be owned by the client or by a person whose assets are deemed to him to be counted. If the consent of another individual is needed to surrender a policy for its full cash surrender value, and the consent cannot be obtained, the policy is not an asset. Assignment of a life insurance policy to another individual means consent of that individual is required before it can be cashed.

- 8) WV Income Maintenance Manual § 17.10 B(1) states:

The following policy is used for transfers of resources made on or after 2/8/06.

1. Definitions

For purposes of this item (item B.), the following definitions apply.

- Fair Market Value (FMV): An estimate of the value of a resource, if sold at the prevailing price at the time it was actually transferred.

For a resource to be considered transferred for FMV, or to be considered transferred for valuable consideration, the compensation received for the resource must be in a tangible form, with intrinsic value. A transfer for love and consideration, for example, is not considered a transfer for FMV. Also, while relatives and friends legitimately can be paid for care they provide to the individual, it is presumed that services provided for free, at the time, were intended to be provided without compensation. Therefore, a transfer to a relative for care provided in the past normally is not a transfer of assets for FMV. However, an individual may rebut this presumption.

- 9) WV Income Maintenance Manual § 17.10 B(7)a(1) states:

Annuity-Related Transfers

NOTE: This requirement does not apply to revocable or assignable annuities since these can be cancelled and funds used to purchase the annuity can be refunded.

(1) Institutional Spouse is Annuitant

Establishment of an annuity is treated as a transfer of resources, unless the annuity meets the following criteria:

- The individual disclosed to the State any interest the individual or his spouse has in any annuity;

- The State is named as the remainder beneficiary, or as the second remainder beneficiary after a community spouse or minor or disabled adult child, for an amount at least equal to the amount of Medicaid benefits provided when the annuity is purchased by an applicant/recipient or spouse;

- The annuity was purchased by or on behalf of the individual and one of the following applies.

● The annuity is considered either:

○ An individual retirement annuity (according to Section 408 (b) of the Internal Revenue Code of 1986 (IRC); or

○ A deemed Individual Retirement Account (IRA) under a qualified employer plan (according to Section 408§ of the IRC).

OR

● The annuity is purchased with proceeds from one of the following:

○ A traditional IRA (IRC Section 408a); or

○ Certain account or trusts which are treated as traditional IRAs (IRC Section 408§(c)); or

○ A simplified retirement account (IRC Section 408 § (p)); or

○ A simplified employee pension (IRC Section 408 § (k)); or

○ A ROTH IRA (IRC Section 408A).

OR

● The annuity meets all of the following requirements:

○ The annuity is irrevocable and non-assignable; and

○ The annuity is actuarially sound; and

○ The annuity provides payments in approximately equal amounts, with no deferred or balloon payments.

VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that for Long Term Care Medicaid, an uncompensated transfer of assets will result in a period of ineligibility. To be considered a compensated transfer, the institutionalized individual must receive fair market value for the asset.
- 2) Policy allows for certain transfers of assets that meet specific criteria. It was the Department's contention that Claimant purchased an annuity in order to become asset eligible for Long Term Care Medicaid. This annuity did not meet the criteria in policy to exempt the transfer from a period of ineligibility.
- 3) The contract between Claimant and Employees Life Company is an endowment life insurance policy. This policy does not produce income to Claimant and therefore does not meet the definition of an annuity according to policy. Claimant's endowment life insurance policy meets the definition of life insurance that currently has no cash value. Claimant's policy cannot be counted as either an asset or an impermissible transfer of an asset.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to terminate Claimant's 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 13th day of December 2011.

**Kristi Logan
State Hearing Officer**