



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
9083 Middletown Mall
White Hall, WV 26554

Earl Ray Tomblin
Governor

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

April 26, 2011

Re: -----

Case No.: 11-BOR-353

Dear Mr. Lantz:

Attached is a copy of the findings of fact and conclusions of law on a hearing held for -----on April 21, 2011. Your client's appeal was based on the Department of Health and Human Resources' denial of Long-Term Care Medicaid based on excessive 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 Program is based on current policy and regulations. Some of these regulations state that a nursing care client must meet the asset test for his eligibility coverage group. 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 11.3 and 17.10)

Information presented at the hearing reveals that your client's assets exceeded the maximum allowable asset limit for Medicaid Long-Term Care benefits.

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

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

Pc: Erika H. Young, Chairman, Board of Review
Wil Jones, Esq., Attorney General's Office

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

-----,

Claimant,

v. Action Number: 11-BOR-353

**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 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 originally scheduled to convene on March 1, 2011, but was continued at the
request of the Department and convened on April 21, 2011 on a timely appeal filed January 3,
2011.

All persons giving testimony were placed under oath.

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:

-----, Esq., Counsel for Claimant
-----, Government Benefit Specialist, (b)(6) Law Offices
Wil Jones, Esq, Attorney General's Office, Counsel for the Department
Stacy Beegle, Economic Service Supervisor (ESS), WVDHHR, Department's witness
Erin Nelson, Economic Service Worker (ESW), WVDHHR, Department's witness

Presiding at the hearing was Thomas E. Arnett, State Hearing Officer and a member of the
State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Agency was correct in its decision to deny the Claimant's application for Long-Term Care Medicaid benefits based on excessive assets.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Chapters 11.3, 11.4 and 17.10
Code of Federal Regulations 20 CFR §416.120(c) (14) , 20 CFR §416.202(a)(1) and 20 CFR §416.1202

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

DHHR-1 Asset Assessment signed by -----
DHHR-2 Notice of Decision dated December 21, 2010
DHHR-3 WV Income Maintenance Manual Chapter 11.3
DHHR-4 WV Income Maintenance Manual Chapter 17.10
DHHR-5 WV Income Maintenance Manual Chapter 11.4

Claimant's Exhibits:

Claimant's-1 Code of Federal Regulations 20 CFR §416.1202
Claimant's-2 Memorandum in Support of Exempting Community Spouse Individual Retirement Account.

VII. FINDINGS OF FACT:

- 1) On or about December 21, 2010, the Claimant was notified via a Notice of Decision (DHHR-2) that her application for Medicaid payment of Long-Term Care (Nursing Facility) services was denied. This notice states, in pertinent part:

Action: Your 9/23/10 application for Medicaid has been denied.

Reason: The amount of assets is more than is allowed for this benefit.

- 2) The Department, by counsel, contends that pursuant to the WV Income Maintenance Manual, an asset assessment of the Claimant's asset was completed to determine financial eligibility for participation in the Long-Term Care Medicaid Program. Because the Claimant has a community spouse, her spouse's assets count when determining asset eligibility. The Department contends that the total combined assets as of September 1, 2010 were \$39,987.89, and because \$21,912 of the community spouse's assets are protected, the Claimant's assets were determined to be \$18,075.89. Because this exceeds the \$2,000 asset limit, the Department contends that the Claimant must "spenddown" her assets to below the allowable asset limit before eligibility can be established.

- 3) The Claimant, by counsel, contends that the calculations used by the Department to determine asset eligibility are incorrect. Specifically, the Claimant contends that the Individual Retirement Account (IRA), valued at \$28,196, is owned by the Claimant's community spouse. In accordance with the Code of Federal Regulations for Supplemental Security Income (SSI), an IRA of an ineligible spouse should be excluded from deemed resources and not counted in the asset assessment. If the IRA is excluded, the Claimant is asset eligible as of September 2010. It should be noted that the term "ineligible spouse" was not clearly defined, although Economic Service Worker Erin Nelson testified that the Claimant's spouse was not eligible for Long-Term Care Program services. The community spouse was reported to be 78 years old when the application was completed, he was drawing the mandatory minimum from his IRA, and there would be no penalty applied if withdrawn.
- 4) West Virginia Income Maintenance Manual, Chapter 11.3 states that the asset limit for a one-person Medicaid Assistance Group is \$2,000.
- 5) West Virginia Income Maintenance Manual, Chapter 17.10 states that a nursing care client must meet the asset test for his eligibility coverage group. When determining eligibility for nursing facility services for an individual, institutionalized on or after 9/30/89, and who has a community spouse, the worker must complete an assessment of the couple's combined countable assets. The assessment is completed, when requested by the client or his representative, prior to application, or at application, if not previously completed. It is completed as of the first continuous period of institutionalization and is completed one time only. The first continuous period of institutionalization is the date the client first enters the nursing facility and remains for at least 30 days or is reasonably expected to remain for 30 days at the time the individual enters the facility. The spousal limits in effect at the time the assessment is completed are used. The accessible pension of a community spouse counts in the Asset Assessment, minus any penalty for early withdrawal.
- 6) The Code of Federal Regulations, found at 20 CFR §416.1202 (Deeming of resources - SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED), states in pertinent part:
 - (a) Married individual. In the case of an individual who is living with a person not eligible under this part and who is considered to be the husband or wife of such individual under the criteria in Sec. Sec. 416.1802 through 416.1835 of this part, such individual's resources shall be deemed to include any resources, not otherwise excluded under this subpart, of such spouse whether or not such resources are available to such individual. In addition to the exclusions listed in Sec. 416.1210, we also exclude the following items:
 - (1) Pension funds that the ineligible spouse may have. Pension funds are defined as funds held in individual retirement accounts (IRA), as described by the Internal Revenue Code, or in work-related pension plans (including such plans for self-employed persons, sometimes referred to as Keogh plans);
- 7) The Code of Federal Regulations, 20 CFR §416.120(c) (14) states - Eligible spouse means an aged, blind, or disabled individual who is the husband or wife of another aged, blind, or disabled individual and who is living with that individual (see Sec.416.1801(c)).

- 8) The Code of Federal Regulations, 20 CFR §416.202(a)(1), indicates that for the purpose of SSI eligibility, “Aged” is 65 or older.
- 9) The West Virginia Income Maintenance Manual, Chapter 11.4.HH.3, addresses how an IRA, KEOGH, Simplified Employer Pension Plan, or similar plans, are counted as an asset for SSI-Related Medicaid and states - The amount counted is the total cash value of the account or plan, minus the amount of the penalty, if any, that would be applied for the early withdrawal of the entire amount.

Pension or other retirement funds of spouses ineligible to be included in the SSI-Related Medicaid category because they are not aged, blind, or disabled are not deemed, nor are those belonging to parents or spouses of parents. Once removed from the pension or retirement account, the fund(s) is counted according to the policy for the asset to which it is converted, i.e., bank account, CD, etc.

VIII. CONCLUSIONS OF LAW:

- 1) As a condition of eligibility, the policy that governs the Long-Term Care Medicaid Program provides that the assets for a one (1) person assistance group cannot exceed \$2,000. When determining eligibility for nursing facility services for an individual, institutionalized on or after 9/30/89, and who has a community spouse, the worker must complete an assessment of the couple’s combined countable assets.
- 2) The area of contention in this case is whether or not the IRA belonging to the community spouse should have been counted during the asset assessment and deemed to the Claimant. The Claimant cited the Code of Federal Regulations (CFRs) and noted that SSI excludes the pension fund of an ineligible spouse - and because this is an SSI-Related Medicaid Program - the Department should exclude the IRA as an asset. The WV Income Maintenance Manual provides policy consistent with the CFRs and states - Pension or other retirement funds of spouses ineligible [emphasis added] to be included in the SSI-Related Medicaid category because they are not aged, blind, or disabled are not deemed [emphasis added]. Furthermore, the CFRs state that an eligible spouse is an aged, blind, or disabled individual who is the husband or wife of another aged, blind, or disabled individual and who is living with that individual. If the community spouse is determined ineligible - not aged, blind or disabled – then the IRA/pension would not be counted as an asset.
- 3) Whereas the community spouse in this case is 78 years old, he is “aged” and therefore an “eligible spouse” whose IRA/pension must be counted in the asset assessment and deemed to the Claimant. Based on the evidence, the Department’s asset assessment was correct – the Claimant’s asset determination of \$18,075.89 exceeds the \$2,000 maximum allowable asset limit.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency's action in denying the Claimant's application for Long-Term Care Medicaid benefits due to excessive assets.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ Day of April, 2011.

**Thomas E. Arnett
State Hearing Officer**