



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street, West
Charleston, WV 25313

Earl Ray Tomblin
Governor

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

April 7, 2011

RE: ----- – Nursing Home Medicaid Denial

Dear -----:

Attached is a copy of the findings of fact and conclusions of law for your hearing held on March 24, 2011. Your hearing request was based on the Department of Health and Human Resources' denial of Long-Term Care Medicaid for -----on December 29, 2010.

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 as follows: The asset limit for the Long-Term Care Program for a one-person Assistance Group is \$2,000. Asset eligibility determination for this program 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. [West Virginia Income Maintenance Manual Chapter 11.2 and 11.3]

Information presented during the Claimant's hearing reveals that she applied for Long-Term Care nursing home Medicaid on December 28, 2010 and requested that her eligibility be determined beginning in the month of January 2011. The Department did not determine the amount of assets she owned as of January 1, 2011, and prematurely denied her application based on its determination that she owned excessive assets on December 22, 2010.

It is the decision of the State Hearing Officer to **reverse** the Department's denial of financial eligibility for Long-Term Care Medicaid for the month of January 2011. This case is being **remanded** back to the Department in order to determine eligibility for the month of January 2011. The Department is required by policy to determine asset eligibility based on the amount of assets the Claimant owned on the first day of the month of January 2011, and base its decision on the amount of assets as determined for that date.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
----- [REDACTED] / -----/Mary Cae Henderson, Kanawha DHHR

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

-----,

Claimant,

v.

Action Number: 11-BOR-562

**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 March 24, 2011 on a timely appeal filed February 10, 2011.

II. PROGRAM PURPOSE:

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 (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:

-----, Counsel for Claimant
-----, Claimant's witness

Mary Cae Henderson, Department representative

Presiding at the hearing was Cheryl Henson, 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 denial of the Claimant's Long-Term Care Medicaid financial eligibility for the month of January 2011 based on excessive assets.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Chapters 11.2, and 11.3

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Numerous bank account statements dated from June 2010 through December 22, 2010
- D-2 Fax from [REDACTED] Law Firm including an Assignment of a Bank Account, June 12, 2010
- D-3 West Virginia Income Maintenance Manual Section 17.10
- D-4 Email correspondence between Department workers dated in February 2011
- D-5 Notification letter dated December 29, 2010

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) The Claimant was residing in a nursing home when on December 28, 2010 she applied for Long-Term Care Nursing Home Medicaid in the [REDACTED] County Department of Health and Human Resources' office in [REDACTED] West Virginia, as a one (1) person household. She requested that her eligibility for the program be determined beginning with the month of January 2011. The Claimant has been residing in the nursing home since on or about December 20, 2007, and has been privately paying for services provided to her at that nursing home.
- 2) The parties stipulated that the Claimant previously transferred thirty-three thousand twenty dollars (\$33,020.00) to her daughter, ----, and that this transfer is subject to the transfer of asset penalty. Although larger amounts to include over one hundred thousand dollars (\$100,000+) were discussed, the final agreed amount that is considered to be subject to the asset transfer penalty policy in this instance is thirty-three thousand twenty dollars (\$33,020.00).
- 3) The parties also agreed that the Department determined the Claimant's countable assets to be nineteen thousand three hundred eight dollars (\$19,308.00) on December 22, 2010, based on the Claimant's bank account balance on that date. The Department

subsequently denied the Claimant's application based on excessive assets as it was determined on December 22, 2010.

- 4) The Department submitted evidence (D-2) in the form of a letter drafted by the Claimant's Counsel and addressed to the Department, dated January 27, 2011, which provides that on June 12, 2010 the Claimant irrevocably transferred all rights to her checking account valued at one hundred two thousand, six hundred fifty-six dollars and ninety-two cents (102,656.92), to her daughter, ----- . A copy of the "Assignment of Bank Account" is included in this exhibit. Further, the letter asserts that, as a result, the Claimant "owned" less than two thousand dollars (\$2000.00) on July 1, 2010 and that she "was otherwise eligible for long term care Medicaid but for the penalty imposed from said transfer." In addition, the letter goes on to state that "nowhere in the rules does it state that -----penalty doesn't begin to run until she applies for Medicaid." The letter also claims that the penalty period should be calculated by dividing the agreed upon transferred amount of thirty-three thousand twenty dollars (\$33,020.00) by 5087, and arrives at a penalty period six and one-half (6 1/2) months. By the calculations suggested by the Claimant's Counsel in his letter, the penalty would run from July 1, 2010 to January 15, 2011.
- 5) The Claimant contends that she became financially eligible for the program on July 1, 2010, but for the transfer penalty. July 2010 is the month following the month in which she transferred the majority of her assets to her daughter, leaving her with less than two thousand dollars (\$2000.00) in assets on July 1, 2010. She further asserts that she is not required by policy to have made application July 1, 2010 in order to be eligible from that point. The Claimant contends that once the penalty period of six and one-half (6 1/2) months is applied from July 1, 2010, she is eligible for the Long-Term Care Nursing Home Medicaid program beginning January 15, 2011.
- 6) The Department contends that the application was denied based on its determination that on December 22, 2010 the Claimant's bank account was valued at nineteen thousand three hundred eight dollars (\$19,308.00) which exceeded the asset limit of two thousand dollars (\$2000.00) for the program. Additionally, the Department contends that it never made a formal written decision regarding asset transfer implications or backdating on this application, because it would have first needed to find the Claimant potentially eligible but for the transfer.
- 7) The Department made a decision on December 29, 2010 to deny the Claimant's eligibility for the Long-Term Care Medicaid program based on excessive assets, and sent her a notification letter (D-5) on December 29, 2010 which includes the following pertinent information:

ACTION: Your 12/28/10 application for Medicaid has been DENIED.

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

The following individuals are ineligible. -----

- 8) Policy in West Virginia Income Maintenance Manual Section 11.2 states that the asset eligibility determination 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.
- 9) The first moment of the month of application in this instance is January 1, 2011. The applicant clearly indicated she was applying for the program beginning the month of January 2011. There is no evidence provided by the Department to indicate that it determined the value of the Claimant's assets as of January 1, 2011.
- 10) There was much discussion during the hearing regarding asset transfer policy and backdating eligibility as it relates to the Claimant's application; however, these areas of contention were not addressed in the Department's written adverse action. The Department never made an official decision on these issues because it was unable to first establish the Claimant's financial eligibility for the program without consideration of the asset transfer; therefore, it would be premature for the Board of Review to rule on those issues, and they will not be addressed in this decision.
- 11) Testimony from -----, the Claimant's daughter, provided that after applying for Long-Term Care Nursing Home Medicaid on December 28, 2010, she further depleted the Claimant's assets by drafting a cashier's check for an amount in excess of twelve thousand dollars (12,000.00+) payable to a funeral home for pre-payment of the Claimant's funeral expenses. Additionally, she testified that the Claimant also owed the nursing home an amount which exceeded eight thousand five hundred dollars (\$8500.00+); however, later testimony from her indicated that payments were being withheld from the nursing home on advice of Counsel.
- 12) The West Virginia Income Maintenance Manual Section 11.3 states that the asset limit for Medicaid for a one-person Assistance Group is \$2,000.

VIII. CONCLUSIONS OF LAW:

- 1) Policy is clear in that countable assets for an application for Long-Term Care Nursing Home Medicaid are determined by assessing the amount available as of the first day of the month of application. The Claimant is not eligible for any month in which countable assets are in excess of the maximum, as of the first moment of the month. The maximum asset limit for this program is two thousand dollars (\$2,000.00).
- 2) The Claimant applied on December 28, 2010 for the program, and made it clear to the Department that she wished to be evaluated beginning January 1, 2011; therefore, per policy it is necessary for the Department to determine the Claimant's total assets as of January 1, 2011 in order to determine her asset eligibility.
- 3) The Department determined the Claimant's assets as of December 22, 2010 which is not relevant in determining January 2011 asset eligibility. There is no evidence to support that the Department determined asset eligibility as of January 1, 2011. The Claimant offered some testimony as to reductions in those assets determined by the Department that

occurred after application, however, it is not possible, based on the evidence submitted during this hearing, to determine the total of the Claimant's assets as of January 1, 2011.

- 4) Therefore, it is not possible to determine whether or not the Claimant was asset eligible for the month of January 2011. As a result, the Department was not correct in its determination to deny the Claimant's eligibility for the program for January 2011 based on excessive assets.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Agency's action in denying the Claimant's Long-Term Care Medicaid application dated December 28, 2010 for the month of January 2011. This case is being **remanded** to the Department in order to determine eligibility for the month of January 2011. The Department is required to re-determine the Claimant's eligibility after gathering and assessing asset information for the date of January 1, 2011. The Claimant will have new appeal rights to any unfavorable decision.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 7th Day of April, 2011.

**Cheryl Henson
State Hearing Officer**