



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Earl Ray Tomblin
Governor

Rocco S. Fucillo
Cabinet Secretary

November 28, 2012

RE: -----

Dear Mr. -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on the hearing held November 15, 2012, for -----. Ms. -----'s hearing request was based on the Department of Health and Human Resources' denial of Long-Term Care Medicaid based on the imposition of a transfer of assets penalty.

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. Some of these regulations state as follows: No transfer of assets penalty is applied when the transfer was made for a reason exclusively than to qualify for Medicaid. (West Virginia Income Maintenance Manual Chapter 17.10)

Information presented during the hearing reveals that Ms. -----'s asset transfers are permissible under policy and no penalty should be applied.

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

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
-----, Claimant's daughter-in-law
-----, WVDHHR

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

IN RE: ----,

Claimant,

v.

ACTION NO: 12-BOR-2237

**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 telephonically on November 15, 2012, on a timely appeal filed on September 13, 2012.

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:

----, Claimant's daughter-in-law, Attorney-in-Fact
----, Ombudsman, ----
---- ----, Economic Service Supervisor, WVDHHR
Samara Keith, Economic Service Worker, WVDHHR

Presiding at the hearing was Pamela L. Hinzman, 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 benefits based on the imposition of an asset transfer penalty.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Chapters 17.10.B.3 and 4, and 11.4.VV

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Notice of Decision dated August 31, 2012
- D-2 Letter to ----from ---- and banking information
- D-3 Information from ---- County Assessor's Office
- D-4 Property deed made on June 2, 2010
- D-5 Information concerning Asset Transfer Penalty Period from Department's computer system
- D-6 Asset Transfer information from Department's computer system
- D-7 Letter from ----dated September 9, 2012
- D-8 Copy of check signed by ----on December 30, 2009
- D-9 Information from Miracle-Ear Hearing Aid Centers, receipts from Kmart and Home Depot, information concerning Claimant's Preneed Funeral Contract

Claimant's Exhibits

- C-1 Notice of Decision dated August 31, 2012 (duplicate of D-1)
- C-2 Information from ---- County Assessor's Office (duplicate of D-3)
- C-3 Copy of check signed by ----on December 30, 2009 (duplicate of D-8)
- C-4 Property deed made on June 2, 2010 (duplicate of D-4)
- C-5 Letter to ----from ---- and banking information (duplicate of D-2)
- C-6 Letter to ----from ---- and additional banking information
- C-7 Bill of Sale for 1998 Ford Ranger dated March 27, 2011
- C-8 Information from ---- County Assessor's Office with written statement of ----
- C-9 None
- C-10 Photographs of Claimant's former property
- C-11 West Virginia Income Maintenance Manual Chapter 11.1
- C-12 West Virginia Income Maintenance Manual Chapter 11.1
- C-13 West Virginia Income Maintenance Manual Chapter 11.2
- C-14 West Virginia Income Maintenance Manual Chapter 11.4, VV

- C-15 West Virginia Income Maintenance Manual Chapter 11.5
- C-16 West Virginia Income Maintenance Manual Chapter 11.5
- C-17 Information concerning Claimant's Preneed Burial Contract with ----
Funeral Home
- C-18 Receipt from [REDACTED] Monument Co., LLC

VII. FINDINGS OF FACT:

- 1) The Claimant's daughter-in-law, ----, applied for Long-Term Care Medicaid benefits for the Claimant in August 2012.
- 2) As a result of information provided during the application, a transfer of assets penalty was applied to the Claimant's case for August, September and October 2012, as well as for a portion of November 2012. The Claimant was notified that her Long-Term Care Medicaid benefits had been approved; however, the Notice of Decision dated August 31, 2012 (D-1) also informed her of her ineligibility for August-October 2012, and her partial ineligibility for November 2012, due to the imposition of a transfer of assets penalty.
- 3) WVDHHR Economic Service Supervisor ---- testified that the penalty was applied because the Claimant sold her homestead property in June 2010 (see property deed, D-4) and did not receive fair market compensation for the property. Ms. ---- stated that records from the ---- County Assessor's Office (D-3) indicate that the property had a fair market value of \$26,500; however the property was sold for \$10,010. Therefore, Ms. ---- contended that the difference - \$16,490 - must be considered as an uncompensated transfer of assets.

In addition, Ms. ---- testified that the Claimant paid \$4,000 for a 1998 Ford Ranger in March 2011 (see Exhibit D-2), but the vehicle was not registered in her name. She stated that information obtained from the West Virginia Division of Motor Vehicles indicates that the Claimant's son, ----, was listed as owner of the vehicle. Therefore, the \$4,000 must be considered an uncompensated transfer of assets and a penalty must be applied.

- 4) ----, Ombudsman for ----, contended that the Claimant and her late husband, ----, sold their homestead property because they were elderly and wished to move closer to family members. The Ombudsman testified that the property was in a rural location, on a hillside, and the ----s were no longer able to maintain it. Mr. ---- testified that there was no direct road to the residence and the house was only accessible through a neighbor's property. The ----s attempted to sell the house and left the residence unattended in December 2009, moving into a mobile home on their son's property. One potential buyer, ----, offered a down payment of \$5,000 for the residence on December 30, 2009, prior to personally viewing the property (see Exhibit D-8). However, Mr. ---- backed out of the sale after he visited the site. The house was empty (with utilities shut off) until June 2010, when it was purchased by ----. Mr. ---- provided the following information concerning the condition of the residence in Exhibit D-7:

I have been approached by the family of ---- ---- to advise what condition the house was in when we purchased it. The home was a single story old farm house with no insulation in the walls or flooring. The floor in the main part of the home was in dire need of leveling and/or replacement. The windows were single pane with no storm windows. There was neither air conditioning nor any furnace for heating and cooling. The source of heating was with two wall/floor mounted heaters. The source of water supply is an old well with limited amount of usage. The back porch flooring was rotten and in need of replacement. The roof was of tin that had been tiered to help seal it from leaking, which at one time had leaked and stained the ceilings in much of the home. The home sits up against the hill side [sic] which caused the walls to mildew in the back part of the house. The home sits upon a little more than 2 acres, for which most is all hill side [sic].

The Ombudsman contended that the selling price of \$10,010 was agreed upon by the parties based on the condition and location of the property, and that policy indicates the current market value should be determined based on the economic market. In addition, he stated that the assessor's valuation would have been made from the outside of the residence and did not consider the actual condition of the property. The Ombudsman maintained the property was not sold for the purpose of qualifying for Medicaid benefits. He stated that the Claimant's husband died in September 2010 and money from the home sale was used to pay for his funeral expenses, a tombstone, and a pre-need burial contract for the Claimant (see C-17 and C-18). Ms. ---- testified that she was previously told the home sale proceeds were used for a pre-need burial contract, hearing aids, a safe and a nightstand (D-9).

Mr. ---- contended that the Claimant and her son [REDACTED] purchased a 1998 Ford Ranger in March 2011, as the Claimant had no vehicle and needed transportation for medical appointments. The Claimant reportedly paid \$2,007 of the purchase price and her son paid \$1,993 toward the cost. Mr. ----'s share of the truck price was reportedly deposited into the Claimant's bank account as half-payment for the vehicle (D-2 and C-6). A Bill of Sale for the vehicle (C-7) names ---- as the seller and the Claimant and Mr. ---- as co-buyers; however the Economic Service Supervisor reiterated that the Division of Motor Vehicles only listed Mr. ---- as the owner.

- 5) West Virginia Income Maintenance Manual Chapter 17.10.B.3 defines the look-back period for Medicaid as the length of time for which a worker looks back for any resource transfers. The look-back period is 60 months for transfers on or after 2/8/06. The time period begins the month the client is both institutionalized and has applied for Medicaid.
- 6) West Virginia Income Maintenance Manual Chapter 17.10.B.4.i states that no transfer of assets penalty is applied when "the resources were transferred exclusively for a purpose other than to qualify for Medicaid..."
- 7) West Virginia Income Maintenance Manual Chapter 11.4.VV states that the owner of a vehicle is generally the individual to whom it is titled. However, when the title of a vehicle

is not in the client's name, but the client states he is the owner, the vehicle is counted as the client's asset.

III. CONCLUSIONS OF LAW:

- 1) Policy states that no asset transfer penalty is applied to a Medicaid case when the resource was transferred exclusively for a reason other than to qualify for Medicaid.
- 2) Convincing testimony was provided during the hearing to establish that the Claimant sold her residence exclusively for a reason unrelated to the establishment of Medicaid eligibility. As the home was in a rural setting and had fallen into a state of disrepair, it is reasonable to believe the Claimant and her husband could no longer maintain the property, and wished to move closer to family members for health and security purposes. Therefore, a transfer of assets penalty is not applicable. While the Department indicated there was no verification of the Claimant's partial ownership of the 1998 Ford Ranger in Division of Motor Vehicles records, the Claimant's name is listed as a co-buyer on the Bill of Sale. Information indicates that the Claimant's son provided half of the funds toward the vehicle's purchase price, and that the truck was used for medical transportation for the Claimant. Therefore, there is no convincing argument that the Claimant purchased the truck exclusively to qualify for Medicaid benefits and no transfer penalty should be applied.
- 3) Based on information provided during the hearing, the Department's decision to deny Long-Term Care Medicaid benefits based on a transfer of assets penalty cannot be affirmed. The Claimant's Long-Term Care Medicaid benefits should be approved retroactively to August 2012, provided that all other eligibility requirements were met.

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 based on the imposition of a transfer of assets penalty.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 28th Day of November 2012.

**Pamela L. Hinzman
State Hearing Officer**