



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Earl Ray Tomblin
Governor

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

May 23, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on ----- hearing held March 14, 2012. Your hearing request was based on the Department of Health and Human Resources' decision to deny financial eligibility for Long Term Care Medicaid, based on the assets of ----- wife.

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.

The policy governing Medicaid states that to be considered an asset, an item must be owned by or available to the client and available for disposition and that if the client cannot legally dispose of the item, it is not his asset (West Virginia Income Maintenance Manual, Chapter 11.2.D).

Information submitted at ----- hearing revealed that the assets in question are not legally available for his disposition and cannot be counted as his assets. Further, any asset assessment that would include ----- spouse cannot include her assets, as this would violate a standing Court Order prohibiting the deeming of her assets as available to -----.

It is the decision of the State Hearing Officer to **reverse** the action of the Department to deny financial eligibility for Long Term Care Medicaid.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Lisa Heater, Department Representative

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-315

**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 on May 23, 2012, 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 February 22, 2012, on a timely appeal filed December 12, 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
-----, Claimant's witness
-----, Claimant's witness
Melva Farris, Department representative

Presiding at the Hearing was Todd Thornton, 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 Department was correct to deny the Claimant Long Term Care Medicaid based on financial eligibility.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 11.2.D

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Hearing request form
- D-2 Denial notice dated January 3, 2012
- D-3 Case overview
- D-4 Court Order entered September 6, 2011, ██████████ County Family Court; Quit Claim Deed; Transfer on Death Designation Affidavit
- D-5 Excerpts from the West Virginia Income Maintenance Manual, Chapter 17.10; Chapter 11.5; Chapter 11.1

Claimant's Exhibit:

- C-1 Affidavit from -----

VII. FINDINGS OF FACT:

- 1) Melva Farris, representative for the Department, testified that the Claimant applied for Long Term Care Medicaid and was denied based on a finding that financial eligibility for the program was not met. A denial notice (Exhibit D-2) was mailed to the Claimant on or about January 3, 2012, which states in pertinent part:

YOUR APPLICATION FOR NURSING HOME MEDICAID ON 11/3/11 FOR BACKDATED COVERAGE TO 10/01/11 HAS BEEN DENIED.

HERE IS WHY: YOU ARE MARRIED. NO VERIFICATIONS WERE RECEIVED FOR YOUR WIFE'S ASSETS. AN ASSET ASSESSMENT SHOULD HAVE BEEN COMPLETED BASED ON THE DATE YOU WERE AMITTED [*sic*] TO THE NURSING HOME ON 07/07/11.

- 2) The representative for the Claimant presented a court order (Exhibit D-4), entered on September 6, 2011, in the Family Court of ██████ County, West Virginia. The Claimant is identified as the Respondent in this order, the Claimant's spouse is identified as Petitioner, and the order states in pertinent part:

The assets of the Petitioner shall not be available to the Respondent for any purpose whatsoever, nor shall any person, firm, corporation or business or governmental entity deem those assets available to the Respondent or require the Petitioner to contribute or the fair market value thereof such assets to the cost of care or support for the Respondent.

- 3) The West Virginia Income Maintenance Manual, Chapter 11.2.D, states in pertinent part:

D. ACCESSIBILITY OF ASSETS

A client may not have access to some assets. To be considered an asset, the item must be owned by or available to the client and available for disposition. If the client cannot legally dispose of the item, it is not his asset.

VIII. CONCLUSION OF LAW:

Policy provides that an asset does not belong to an individual if that individual cannot legally dispose of the asset. The Claimant has clearly shown that the assets of his spouse are not legally at his disposal, as a result of a court order. The same court order precludes the inclusion of the Claimant's spouse in any asset assessment of the Claimant, because to do so would be to "...deem those assets available to the [Claimant]." The Department was incorrect to deny Long Term Care Medicaid to the Claimant based on financial eligibility.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Department's denial of Long Term Care Medicaid to the Claimant based on financial eligibility.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ Day of May, 2012.

**Todd Thornton
State Hearing Officer**