



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

Rocco S. Fucillo
Cabinet Secretary

November 26, 2012

---- for ----

Dear Mr. ----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held November 20, 2012. Your hearing request was based on the Department of Health and Human Resources' denial of an Undue Hardship Waiver for Long Term Care (LTC) Medicaid for ----.

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 an Undue Hardship Waiver is based on current policy and regulations. These regulations provide that an undue hardship may exist when a denial of payment for LTC Services is due to one or more of the following asset policies, (1) excessive home equity, (2) transfer to a non-permissible trust, and/or (3) a transfer of asset penalty which would result in depriving the individual of medical care to the extent that the individual's health or life would be endangered or his food, clothing, shelter or other necessities of life would be at severe risk (WV Income Maintenance Manual § 17.10 B(4)).

The information submitted at your hearing revealed that ---- meets the criteria for the approval of an Undue Hardship Waiver for Long Term Care Medicaid.

It is the decision of the State Hearing Officer to **reverse** the action of the Department to deny ----'s request for an Undue Hardship Waiver.

Sincerely,

Kristi Logan
State Hearing 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.: 12-BOR-2105

**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 held on November 20, 2012, by telephone conference. This hearing was held in accordance with the provisions found in the West Virginia Department of Health and Human Resources Common Chapters Manual, Chapter 700. This fair hearing was convened on a timely appeal, filed August 24, 2012.

It should be noted here that Claimant's Long Term Care Medicaid has 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 Medical Attorney-in-Fact
----, ---- Medicaid Advisors
----, Admissions Coordinator, ---- -----
Dorothy Ellison-Hunter, Family Support Supervisor

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

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department's denial of an Undue Hardship Waiver for Long Term Care Medicaid for Claimant was correct.

V. APPLICABLE POLICY:

WV Income Maintenance Manual § 17.10 B

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Department's Evidence List
- D-2 Undue Hardship Application received July 25, 2012, Correspondence from ----, DO, dated June 18, 2012, and Correspondence from ----dated June 17, 2012
- D-3 Notice of Decision for Request for Undue Hardship dated August 21, 2012
- D-4 WV Income Maintenance Manual § 17.10 B
- D-5 Department's Summary

Claimants' Exhibits:

- C-1 Pre-Admission Screening (PAS) dated May 15, 2011

VII. FINDINGS OF FACT:

- 1) Claimant was approved for Long Term Care Medicaid in 2010. Claimant owns a Single Premium Endowment Life Insurance policy that had previously been exempted as an exempt asset. Due to a change in policy, effective February 1, 2012, Endowment Life Insurance policies were considered "balloon annuities" and subject to a transfer penalty.
- 2) The Department applied an ineligible transfer of assets penalty to Claimant and her Long Term Care Medicaid was terminated. Claimant's representative submitted an Application for Undue Hardship Waiver (D-2) to the Department on July 25, 2012. The application was forwarded to the waiver committee for review on July 26, 2012.
- 3) The Department issued a Notice of Decision for Request of Undue Hardship (D-3) on August 21, 2012, which reads in pertinent part:

You are not eligible for Long Term Care services unless you meet undue hardship criteria. Undue hardship exists if:

- You meet all other eligibility requirements, and

- You are unable to obtain appropriate medical care without receiving Medical Assistance; or
- The application of some aspect of Medicaid asset policy would deprive you of food, clothing, shelter or other necessities of life

Based on the above criteria, the decision is to DENY your request for undue hardship dated July 26, 2012 for Medical assistance coverage for Long Term Care services because: [Claimant] is in a nursing home and is receiving nursing facility services continuously. She is receiving the essentials of life such as food, clothing and shelter and is not endangered.

- 4) ----, Claimant's son and representative, testified the funds in Claimant's Endowment Life Insurance Policy are inaccessible until the policy matures. The policy was purchased in 2010, when Claimant was admitted to the nursing home. The policy allowed Claimant a thirty (30) day period to cancel the policy and receive a refund. Mr. ---- stated the purchase of the policy was fully disclosed to the Department at application for Long Term Care Medicaid, at which time was considered an exempt asset. The thirty day grace period has long since expired and Mr. ---- stated the money is inaccessible.

Mr. ---- testified Claimant's family does not have the resources to pay for her care at the nursing home and do not have the medical training necessary to care for her at home. Mr. ---- stated Claimant's life would be endangered if she were discharged from the nursing home.

- 5) ----, representative with ---- Medicaid Advisors, argued Claimant meets the criteria in policy for the approval of an undue hardship waiver. The Department's denial of Claimant's undue hardship request was based on the fact that Claimant currently resides in a nursing home and is receiving proper medical care. However, Mr. ---- contends policy does not allow the approval of Long Term Care Medicaid until an individual is admitted to a nursing facility, which contradicts the denial of Claimant's undue hardship waiver based on her residence in a nursing facility. Mr. ---- argued that once Claimant's Medicaid is terminated, the facility will discharge her for nonpayment, and her health and safety will be endangered.
- 6) ----, Admissions Coordinator with ---- -----, testified that the facility would initiate the discharge process for Claimant if Long Term Care Medicaid is terminated and if Claimant is unable to pay privately. Ms. ---- stated the facility typically starts the discharge process if a patient has a ninety (90) day outstanding balance.
- 7) WV Income Maintenance Manual § 17.10 B(4)j states:

An undue hardship may exist when a denial of payment for LTC [Long Term Care] Services is due to one or more of the following asset policies, (1) excessive home equity, (2) transfer to a non-permissible trust, and/or (3) a transfer of asset penalty and results in depriving the

individual of medical care to the extent that the individual's health or life **would be endangered** [*emphasis added*], or his food, clothing, shelter or other necessities of life are at severe risk.

When the Worker determines the individual is *otherwise* eligible for LTC Services but for one or more of the asset policies listed above to which an undue hardship provision applies, he is given at the time of the eligibility decision the DFA-FH-1 and the DFA-NL-UH-1 which provides him the opportunity to request a Waiver of the denial due to undue hardship. The individual, his representative or a nursing facility staff member with the client's permission, can apply for this Waiver.

The DFA-UH-5 must be attached to the DFA-NL-UH-1. The DFA-UH-5 is the application that must be completed and returned to the Worker within 13 days of notice of the eligibility decision. Upon receipt, the Worker immediately forwards it via mail, electronic mail or fax to the DFA [Division of Family Assistance] Policy Unit for distribution to the Undue Hardship Waiver Committee. The DFA-UH-5 must include a signature of the individual for whom the Waiver is filed when the LTC facility is completing the Request. It must include an explanation of any efforts made to resolve the asset issue that resulted in the LTC Services denial. Documentation that supports these attempts must be attached. Details regarding the individual's undue hardship must be explained. If the DFA-UH-5 is not returned complete and timely, no additional notice occurs and the negative eligibility decision and any penalty applied remains.

An individual that resides in a facility and requests an Undue Hardship Waiver is eligible for payment of up to 30 bed-hold days from the date the DFA-UH-5 is received by the DFA Policy Unit through when a decision is made by the Committee. The Committee has 60 days to make a decision concerning the Waiver request. Denial of payment of LTC Services due to excessive home equity is not subject to payment of bed-hold days. If the Request is not appropriate for the Committee, it is returned to the local office that made the eligibility decision. The individual is notified of the Committee's decision via form DFA-NL-UH-2. The Committee forwards the DFA-NL-UH-2 to the individual, with a copy to the Supervisor and Worker. The decision of the Committee to deny the Request can be overturned by a State Hearings Officer, therefore a DFA-FH-1 is sent. The local office must notify the DFA Economic Services Policy Unit when a Hearing Request regarding the Committee's decision is received. The Regional Attorney is also advised. A member of the Committee will be available, via telephone to participate in a Fair Hearing regarding the denial of the DFA-UH-5, but not to discuss the ineligibility for LTC Services for reasons other than those related to excessive home equity, trust, and/or transfer issues.

8) WV Income Maintenance Manual § 17.2 A(2) states:

Payment for nursing facility services begins on the earliest date the three following conditions are met simultaneously:

- The client is eligible for Medicaid; and
- The client resides in a Medicaid-certified nursing facility; and

- There is a valid PAS or, for backdating purposes only, physician's progress notes or orders in the client's medical records.

VIII. CONCLUSIONS OF LAW:

- 1) Due to a change in policy effective February 2012, Claimant's once exempt Endowment Life Insurance policy became subject to a transfer of assets penalty. The penalty imposed upon Claimant's Long Term Care Medicaid will not expire until March 2013.
- 2) Policy allows for a waiver of the transfer of asset policy for Long Term Care Medicaid if the application of said policy would deprive an individual of medical care to the extent that the individual's health or life would be endangered, or if food, clothing, shelter or other necessities of life are at severe risk. Claimant's Request for an Undue Hardship Waiver was denied because Claimant was currently residing in a nursing facility at the time of the waiver request, and her necessities of life were being met.
- 3) The testimony and documentation provided validate Claimant's representatives' argument that her life would be endangered if Long Term Care Medicaid is terminated. Claimant meets the medical criteria for Long Term Care Medicaid, and if discharged from the nursing facility, her family would be unable to provide her necessary medical care.
- 4) Claimant meets the criteria for an Undue Hardship Waiver for Long Term Care Medicaid.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Department's denial of Claimant's Undue Hardship Waiver for 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 26th day of November 2012

**Kristi Logan
State Hearing Officer**