



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

December 7, 2012

----, Esq.

RE: ----

Dear Mr. ----:

Attached is a copy of the Findings of Fact and Conclusions of Law on the hearing held November 28, 2012, for ----. Ms. ----'s hearing request was based on the Department of Health and Human Resources' action to deny her application for Long-Term Care Medicaid based on failure to verify 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 Medicaid Program is based on current policy and regulations. Some of these regulations state as follows: 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 treated as an asset. (West Virginia Income Maintenance Manual Chapters 11.1 and 11.2.D)

Information presented during the hearing reveals that the Claimant is mentally unable to conduct her own banking or access her own bank statements. The bank has denied access to the Claimant's conservator, and no relatives have been located to assist the Claimant in the verification process. Therefore, the account is an inaccessible asset for purposes of Long-Term Care Medicaid eligibility.

It is the decision of the State Hearing Officer to **reverse** the Department's action in denying Ms. ----'s Long-Term Care Medicaid application.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
----, Esq., ----
Margie Woods, WVDHHR

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

IN RE: ----,

Claimant,

v.

ACTION NO. : 12-BOR-2076

**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 28, 2012, on a timely appeal filed August 28, 2012. The hearing was originally scheduled for October 31, 2012, but was continued by the Hearing Officer.

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 the Claimant and ----Center
----, Esq., ----, Counsel for the Claimant and ----Center
----, ----, ---- County Sheriff's Department
----, Administrator, ----
----, RN, Unit Manager, ----

----, Business Officer Director, ----
Margie Woods, 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. QUESTIONS TO BE DECIDED:

The question to be decided is whether the Agency was correct in its action in denying the Claimant's Long-Term Care Medicaid application based on failure to verify assets.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Chapters 1.2.E, 11.1, 11.2.D, 11.3 and 11.4.C

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Letter to Claimant dated April 30, 2012, requesting verification of bank account
- D-2 SSA Benefit Details for Claimant
- D-3 Screen Help Display from Department's computer system for Social Security data exchange
- D-4 Notice of Decision dated May 31, 2012
- D-5 West Virginia Income Maintenance Manual Chapter 17.10
- D-6 Hearing Summary
- D-7 Letter and documentation from ---- concerning Medicaid appeal dated September 5, 2012

Claimant's Exhibits:

- C-1 Appellant's Pre-Hearing Brief
- C-2 Authorization Statement
- C-3 Assignment Provision
- C-4 Order of Appointment of Temporary Guardian And/Or Conservator dated August 23, 2012
- C-5 Aging Reports from ----Center for period ending September 2012
- C-6 Letter to Claimant dated April 30, 2012, requesting verification of bank account
- C-7 Notice of Decision dated May 31, 2012
- C-8 Letter and documentation from ---- concerning Medicaid appeal dated August 28, 2012
- C-9 Letter and documentation from ---- concerning Medicaid appeal dated September 5, 2012
- C-10 Appointment of Health Care Surrogate dated November 12, 2011
- C-11 Medicaid application received by Department on March 30, 2012
- C-12 West Virginia Income Maintenance Manual Chapter 1.2.E
- C-13 Code of Federal Regulations 42 CFR 435.911
- C-14 United States Code Service 42 USCS Section 1396a
- C-15 United States Code Service 42 USCS Section 12101

- C-16 West Virginia Code Section 55-2-15
- C-17 Affidavit of Physician dated August 22, 2012
- C-18 Evaluation Report of Licensed Physician/Psychologist dated August 22, 2012

VII. FINDINGS OF FACT:

- 1) The Department received an application for Long-Term Care Medicaid benefits (C-11) for the Claimant on March 30, 2012. The application had been signed by ----, an employee of -- --, on February 9, 2012, on the Claimant's behalf. Margie Woods, Economic Service Worker (ESW) with WVDHHR, testified that Ms. ---- requested that Medicaid be backdated as far as possible (to December 1, 2011). It should be noted that the WVDHHR currently serves as guardian for the Claimant.
- 2) ESW Woods testified that the only liquid asset listed on the Claimant's application was a "resident account." Verification was attached to the application to indicate the account was established on December 1, 2011, and had a balance of \$38.06. The application stated that the Claimant received Social Security benefits, but did not specify an amount. ESW Woods indicated that the Department's data exchange with the Social Security Administration (see Exhibits D-2 and D-3) revealed that the Claimant's Social Security income is directly deposited into a checking account. Therefore, the Department sent Ms. ---- a letter on April 30, 2012 (D-1, C-6), requesting that verification of the account balance (for the period of September 1, 2011, through April 1, 2012) be provided within 30 days.
- 3) ESW Woods testified that the Claimant's application was denied because the requested verification was not received by May 31, 2012, and the Department sent the Claimant's representative a Notice of Decision (D-4, C-7). ESW Woods indicated that she did not attempt to assist the Claimant in obtaining the requested bank account verification. In addition, ESW Woods confirmed that the Claimant's application was processed in an untimely manner due to the Department's application backlog, and that a representative at the nursing facility had requested additional time to obtain the verification. Additional time was not granted as the application had been processed.
- 4) ----, ---- for the ---- County Sheriff's Department, testified that she is the Claimant's court-appointed conservator (see Exhibit C-4) and learned from the Social Security Administration that the Claimant receives \$113 per month in Social Security benefits, which are directly deposited into a Direct Express debit card account. Ms. ---- contended that she has attempted to obtain the requested account statements; however, the company informed her it would require a subpoena in order to release the records. She stated that the Claimant is unable to assist in obtaining the paperwork. According to the Claimant's Pre-Hearing Brief (C-1) – as well as documentation contained in Exhibits C-17 and C-18 - the Claimant suffers from dementia, bipolar disorder and other medical conditions. Exhibit C-4 states that the Claimant had an immediate need for a guardian and/or conservator because she is unable to assist in submitting paperwork for her Medicaid application, and her daughter is unavailable and/or unwilling to assist. This document states that the Claimant meets the definition of "protected person" under West Virginia Code Section 44A-1-4.

----, Administrator at ----where the Claimant currently resides, testified that officials at the facility have attempted to locate the Claimant's family members to assist in obtaining the

bank account verification, but have been unsuccessful. Exhibit C-5 provides information concerning the Claimant's outstanding balance with the nursing facility.

----, RN/Unit Manager at ----, testified that she interacts with the Claimant on a daily basis and the Claimant is unable to care for herself. She maintained that the Claimant would be unable to obtain her own bank statements.

The Claimant's counsel contended that the Department failed to assist the Claimant in obtaining verification of the bank account, improperly delayed processing of the Claimant's application, and failed to grant an appropriate application deadline extension in light of the Claimant's incapacity.

- 5) West Virginia Income Maintenance Manual Chapter 11.3 states that the asset limit for SSI-Related Medicaid for a one-person Assistance Group is \$2,000.
- 6) West Virginia Income Maintenance Manual Chapter 11.4.C states that bank accounts are counted as assets for the SSI-Related Medicaid Program.
- 7) West Virginia Income Maintenance Manual Chapters 11.1 and 11.2.D state that a client may or 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 treated as an asset.
- 8) West Virginia Income Maintenance Manual Chapter 1.2.E (C-12) states that when a client is unable to provide the required verification, the worker must assist him. Prior to taking action on the application, the worker must determine whether or not the client is able to cooperate. If he is able, but has not complied, the appropriate action is taken. If he is unable, the worker must assist the client in obtaining the required verification.

VIII. CONCLUSIONS OF LAW:

- 1) Policy states that a client may or 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 treated as an asset.
- 2) Information provided during the hearing reveals that both the Claimant's conservator and the nursing facility have attempted to secure information concerning the Claimant's bank account, but have been unsuccessful. The nursing home administrator testified that the facility has attempted to locate the Claimant's family members in an effort to assist with gaining access to the account statements; however those efforts have proven futile. As the Claimant is mentally incompetent, she does not have the capacity to personally access the account and the Department made no attempt to assist in verifying the account information.
- 3) The Claimant is mentally unable to access the bank account, her conservator has been denied access to the account, and no family members can be located to assist in securing the account verification. Therefore, the account is inaccessible, the client cannot dispose of the account due to her incapacity, and the account is not an available asset.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Agency's action to deny the Claimant's application for Long-Term Care Medicaid benefits based on failure to provide asset verification. The Claimant's application for Long-Term Care Medicaid should be approved retroactively to December 1, 2011, provided that all other eligibility requirements were met,

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 7th Day of December 2012.

**Pamela L. Hinzman
State Hearing Officer**