



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 19, 2012

---- for ----

Dear Ms. ----:

Attached is a copy of the Findings of Fact and Conclusions of Law on the hearing held November 16, 2012, for ----. Your hearing request was based on the Department of Health and Human Resources' denial of Long Term Medicaid for June, July and August 2012 due to excessive 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. These regulations provide that a client may retain a maximum of \$3,000 in burial funds for himself. He may also retain the same amount for his spouse. These funds may be in the form of money set aside for burial (maximum of \$1,500, not comingled with other funds), face value of life insurance policies, revocable or some irrevocable burial trusts or prepaid funeral contracts, etc. (WV Income Maintenance Manual § 11.5 C(7)].

The information submitted at your hearing revealed that ---- was asset-eligible for Long Term Care Medicaid effective June 2012.

It is the decision of the State Hearing Officer to **reverse** the action of the Department to deny ---- Long Term Care Medicaid for June 2012, July 2012 and August 2012.

Sincerely,

Kristi Logan
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
Paula Salcedo, Economic Service Worker

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

IN RE: ----,

Claimant,

v.

ACTION NO.: 12-BOR-2306

**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 16, 2012, by videoconference. 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 September 25, 2012.

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 Representative

----, Claimant's Witness

Paula Salcedo, Economic Service Worker

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 Long Term Care Medicaid was correct.

V. APPLICABLE POLICY:

WV Income Maintenance Manual § 11.3 and 11.5

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Verification Request dated July 27, 2012
- D-2 Burial Contract with ----Funeral Home dated April 17, 1990 and Irrevocable Agreement dated August 30, 2012
- D-3 Checking Account Statement from ----- dated June 1, 2012
- D-4 Request for Remedial Medical Expense from -----
- D-5 Notice of Contribution to the Cost of Care dated September 14, 2012
- D-6 Notification Letter dated September 14, 2012
- D-7 WV Income Maintenance Manual § 11.3

VII. FINDINGS OF FACT:

- 1) An application for Long Term Care Medicaid was submitted to the Department on Claimant's behalf on June 25, 2012. The application was processed on July 27, 2012, and the case was pended for verification of Claimant's burial contract (D-1).
- 2) The Department received a copy of Claimant's burial contract (D-2) on August 6, 2012, that was purchased from ----Funeral in April 1990. The purchase price of the burial was \$2024 and the contract was revocable.
- 3) Paula Salcedo, Economic Service Worker, testified that the accessible burial contract coupled with Claimant's checking account that had a balance (D-3) of \$419.99 as of June 1, 2012, made Claimant asset ineligible (D-6) for Long Term Care Medicaid for June 2012, July 2012 and August 2012. Ms. Salcedo stated Claimant's burial contract was made irrevocable (D-2) on August 30, 2012, and Long Term Care Medicaid was approved for Claimant effective September 2012.
- 4) Ms. Salcedo stated she received a request for a remedial medical expense from ---- ----- (D-4) to adjust Claimant's resource amount to allow payment on her outstanding bill with the facility, incurred during June, July and August

2012. Ms. Salcedo stated the remedial medical expense was approved (D-5) and Claimant's resource will be \$0 until the balance at the facility is paid in full.

- 5) Claimant's daughter and representative, ----, testified that she began applying for Medicaid for Claimant in March 2012. Ms. ---- stated her mother received an Electronic Benefit Transfer (EBT) card in the mail, even though Supplemental Nutrition Assistance Program (SNAP) benefits were not requested. Ms. ---- stated the spenddown process was never explained to her. Ms. ---- stated she was not aware that the burial contract was a countable asset until July 2012, when a copy of the contract was requested by the Department. During previous Medicaid applications, there was no mention of the burial contract and Ms. ---- stated she could have had the burial amended to irrevocable long before August 2012.

Ms. ---- stated her mother is 94 years old, and although her resource amount was adjusted to pay off the \$16,000 bill owed to the facility, it will take years before it is paid off.

- 6) ----, Social Worker with -----, testified that Claimant is not in danger of a discharge due to the outstanding bill, but the facility wishes to be paid in full.

- 7) WV Income Maintenance Manual § 11.3 states:

To be eligible for programs administered by the Division of Family Assistance (DFA), the total amount of countable assets cannot exceed the amounts which are listed in the following chart:

SSI-Related Medicaid [Long Term Care Medicaid]: \$2,000 for a one (1) person Assistance Group (AG)

- 8) WV Income Maintenance Manual § 11.5 C(7) states:

Beginning with applications processed on 8/11/93, a client may retain a maximum of \$3,000 in burial funds for himself. He may also retain the same amount for his spouse. These funds may be in the form of money set aside for burial (maximum of \$1,500, not comingled with other funds), face value of life insurance policies, revocable or some irrevocable burial trusts or prepaid funeral contracts, etc.

VIII. CONCLUSIONS OF LAW:

- 1) Policy allows the exemption of up to \$3000 in burial funds for an individual for SSI-Related Medicaid (Long Term Care Medicaid) including revocable burial trusts and prepaid funeral contracts.

- 2) Claimant's revocable burial contract was in the amount of \$2024. This amount is less than the allowable amount of \$3000 that can be exempted in the asset determination for SSI-Related Medicaid and should have been exempted in determining Claimant's countable assets. Claimant's countable assets as of June 2012, the month of application and admission to a nursing facility, were \$419.99, the balance of her checking account.
- 3) The Department incorrectly denied Claimant Long Term Care Medicaid for June 2012, July 2012 and August 2012.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Department's denial of Long Term Care Medicaid for Claimant for June 2012, July 2012 and August 2012.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 19th day of November 2012

Kristi Logan
State Hearing Officer