



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

September 17, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held September 5, 2012. Your hearing request was based on the Department of Health and Human Resources' refusal to review an undue hardship waiver request for Long Term Care 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 the Long Term Care Medicaid program is based on current policy and regulations. These regulations state that an individual may request an undue hardship waiver if some aspect of the asset policy for Long Term Care Medicaid would result in the denial of necessary medical care. The request must be submitted to the Department within 13 calendar days of the notice of the adverse action (WV Income Maintenance Manual § 17.10 B(2)).

The information submitted at your hearing revealed that the application for undue hardship waiver was submitted untimely.

It is the decision of the State Hearing Officer to **uphold** the Department's denial to review -----'s application for 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-1699

**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 September 5, 2012, for ----- . 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 July 3, 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 Attorney-in-Fact
-----, Claimant's Attorney-in-Fact
[REDACTED] WV Medicaid Advisors
[REDACTED] WV Medicaid Advisors
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 refusal to review an undue hardship waiver request was correct.

V. APPLICABLE POLICY:

WV Income Maintenance Manual § 17.10 B

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Hearing/Grievance Request Notification for Verbal Hearing Request received April 6, 2012
- D-2 Notification Letter dated April 6, 2012
- D-3 Notification of Right to Request an Undue Hardship Waiver (Form DFA-NL-UH-1) dated April 5, 2012
- D-4 Hearing Request dated April 13, 2012
- D-5 Hearing/Grievance Request Notification and Order of Dismissal dated May 4, 2012
- D-6 Application for Undue Hardship Waiver received May 10, 2012, Correspondence from ----- Company dated May 8, 2012, Written Argument for Undue Hardship Waiver, Conclusions of Law from Hearing Decision issued December 13, 2011, Pre-Admission Screening dated October 7, 2011
- D-7 Hearing/Grievance Request Notification for Hearing Request received July 3, 2012
- D-8 Hearing Request received July 3, 2012 and Notification Letter dated July 5, 2012
- D-9 WV Income Maintenance Manual § 17.10
- D-10 Department's Summary

VII. FINDINGS OF FACT:

- 1) Claimant had been receiving of Long Term Care (LTC) Medicaid since her admission to a nursing facility in 2011. Claimant purchased a Single Premium Endowment Life Insurance Policy in April 2011, which had previously been an exempt asset for Medicaid.
- 2) Effective February 2012, a change in policy specifically ruled that endowment life insurance policies were considered "balloon annuities" and were therefore subject to a transfer penalty. On April 5, 2012, the Department issued a notification letter, after a financial eligibility review, which reads in pertinent part (D-3):

We have determined that on 4/13/11 you/your spouse transferred life insurance valued at \$234,000. The difference between this value and the amount actually received is \$_____ [sic]. This amount is considered to be the uncompensated value. This results in a penalty period from 5/1/12 to 8/31/15 during which you are ineligible for institutional level of care services.

You now have a right to request a waiver of this decision if you can prove that it will result in an undue hardship. To request a waiver, you or your representative must notify the Worker named below in writing by the date noted below.

You will have until 4/18/12 which is 13 calendar days from the date of this notice, to request the undue hardship waiver. If you contact your Worker in writing by this date you will be notified regarding what information you need to provide to document your claim of undue hardship. Failure to contact your Worker by this date to request an undue hardship waiver will result in imposition of the penalty period and/or denial of institutional services.

You have the right to a Fair Hearing due to the denial of your Long Term Care Services and/or Undue Hardship Waiver request.

- 3) Claimant's daughter and attorney-in-fact, -----, submitted a written hearing request to the Department on April 13, 2012 (D-4). The hearing request was dismissed on May 4, 2012, as the decision to impose an uncompensated transfer of asset penalty against Claimant was a matter of policy (D-5).
- 4) ----- submitted an Application for Undue Hardship Waiver to the Department on May 10, 2012, which was submitted to the Waiver committee via facsimile on May 11, 2012 (D-6). Dorothy Ellison-Hunter, Family Support Supervisor, testified she was notified by the Waiver committee on May 18, 2012, that the committee would not review the application for undue hardship as the application was not submitted within the 13-day time frame dictated by policy (D-10).

----- contacted the Department regarding the undue hardship application and requested a hearing on July 3, 2012, as notification of the status of the waiver request had not been issued. A notice of the denial of the undue hardship waiver was issued by the Department on July 5, 2012 (D-8).
- 5) Ms. Hunter testified she was unaware that the Waiver committee had not notified Claimant's representatives regarding the denial of the waiver application, and that notification was the responsibility of the local office. Ms. Hunter conceded Claimant's representatives were not notified in a timely manner of the Department's decision and that the waiver application should have been denied by the local office as untimely and never submitted to the Waiver committee for review.

6) [REDACTED] representative with [REDACTED] Advisors, contended that Claimant's application for the undue hardship waiver was submitted within 13 days of the Hearing Officer's dismissal of the April 13, 2012, request for hearing regarding the imposition of the transfer penalty. [REDACTED] held that the imposition of the transfer penalty was still in the appeal process and since a decision was not rendered until May 4, 2012, and the matter adjudicated at that time, the waiver application was submitted timely after the issue of transfer penalty was concluded.

[REDACTED] stated Claimant's endowment life insurance policy is irrevocable and does not mature until 2016 (D-6). Claimant's representatives had a thirty (30) day grace period after initially purchasing the endowment life insurance policy to cancel and receive a refund. [REDACTED] stated since the Department initially exempted the policy from a transfer penalty, the policy is non-refundable and Claimant now does not have the funds to pay for her nursing care.

[REDACTED] argued that Claimant's life insurance policy should be "grandfathered in" since it had previously been an acceptable transfer of assets. Claimant's representatives have given the Department full disclosure regarding Claimant's assets and the wording of policy was changed to discriminate against Claimant.

[REDACTED] stated Claimant meets the criteria for the approval of the undue hardship waiver and contends Claimant should be given the opportunity to have the application reviewed.

7) WV Income Maintenance Manual § 17.10 B(2)j states:

An undue hardship may exist when application of some aspects of the asset policy, the trust policy, a transfer of resources or excess home equity result in denial of payment for Long Term Care services for an applicant or recipient.

The Worker uses form DFA-NL-UH-1 when the denial of payment for Long Term Care services is due to any of these reasons. An undue hardship exists when the denial of eligibility for Long Term Care services results in denial of necessary medical care, such that the individual's health or life would be endangered, or would result in loss of food, clothing, permanent residence and other necessities of life.

Any requests for such a determination must be submitted in writing on form DFA-UH-5 by the individual or authorized representative or by the facility on behalf of the individual, with the approval of the individual or the individual's authorized representative. The DFA-UH-5 form must be returned to the Worker within 13 days of the individual's receipt of the DFA-NL-UH-1 and notice of denial due to some aspect of the asset policy, the trust policy, a transfer of resources or excess home equity.

The Worker must forward this form to the DFA Medicaid Policy Unit immediately upon receipt.

An individual that resides in a facility and requests an Undue Hardship Waiver is eligible for payment of up to 30 bed hold days while a decision is pending by the Committee. When Undue Hardship is established, no penalty is applied. Undue Hardship determinations are made by the Undue Hardship Waiver Committee, which consists of BMS and DFA Medicaid Policy Unit representatives, within 30 days of receipt. The individual is notified of the decision with form DFA-NL-UH-2. The Committee forwards the DFA-NL-UH-2 to the individual, with a copy to the Worker. A copy of the DFA-UH-5 is forwarded to the local office Supervisor for their records. If the Undue Hardship request is denied by the Committee, the individual may request a hearing before a State Hearings Officer. See Notification Requirements in Section 17.6 and Section 11.1 for the definition of Undue Hardship.

NOTE: Bed hold days related to Undue Hardship Waiver requests are days that will be paid for the individual to remain in the facility during the decision-making process, not to exceed 30 days. The decision-making process begins when the DFA Medicaid Policy Unit receives a valid DFA-UH-5 form and ends when a decision is rendered.

- 8) WV Income Maintenance Manual § 17.10 B(7)a states in pertinent part:

NOTE: Endowment Life Insurance Policies are considered balloon annuities and subject to a transfer penalty.

VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that an individual may request an undue hardship waiver if some aspect of the asset policy for Long Term Care Medicaid would result in the denial of necessary medical care. The request must be submitted to the Department within 13 calendar days of the notice of the adverse action.
- 2) Claimant was issued notification of the asset transfer penalty on April 5, 2012, which outlined the process to apply for an undue hardship waiver. The notice clearly stated that Claimant was required to return the application for an undue hardship waiver by April 18, 2012, or the transfer policy would be applied.
- 3) Claimant's representatives had the option of requesting an undue hardship waiver or requesting a fair hearing regarding the transfer penalty, and chose to request a hearing. The request for a hardship waiver was not requested until May 10, 2012, well outside of the time frame indicated, not only in policy, but also in the notification of the transfer penalty.

- 4) Because the application for undue hardship was received untimely, the Department was correct in its decision to not review the application.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's refusal to review Claimant's application for an undue hardship waiver.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 17th day of September 2012.

Kristi Logan
State Hearing Officer