



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

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

April 20, 2012

RE: -----

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on the hearing held April 20, 2012 for -----
-. -----'s hearing request was based on the Department of Health and Human Resources' action to deny her
Application for an Undue Hardship Waiver under the Long-Term Care Medicaid Program.

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: 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. (West
Virginia Income Maintenance Manual Chapter 17.10.B.4.j)

Information presented during the hearing reveals that ----- has been issued an eviction notice from
Pocahontas Center and the denial of Long-Term Care Medicaid benefits would endanger her health and life.

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

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
[REDACTED] Esq. Legal Aid of West Virginia
Angela Walters, Esq Office of Attorney General
Dorothy Ellison-Hunter, WVDHHR
[REDACTED] Center

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

IN RE: ---- ----,

Claimant,

v.

ACTION NO. : 12-BOR-680

**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 April 20, 2012 on a timely appeal filed February 10, 2012. The hearing was originally scheduled for March 29, 2012, but was continued at the request of the Department.

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:

██████████ Social Worker, ██████████ Center
██████████ Business Office Manager, ██████████ Center
██████████ Administrator, ██████████ Center
Brenda Alvarado, Ombudsman, Legal Aid of West Virginia
Dorothy Ellison-Hunter, Family Support Supervisor, WVDHHR

██████████ Legal Aid of West Virginia
Angela Walters, Esq., Office of Attorney General

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 Request for Undue Hardship for Long-Term Care Medicaid benefits.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Chapter 17.10.B.4.j

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Hearing/Grievance Request Notification (IG-BR-29)
- D-2 Application for Undue Hardship Waiver
- D-3 Notification of Transfer/Discharge effective October 21, 2011
- D-4 Letter to Undue Hardship Committee from ██████████ Administrator of ██████████ Center, dated January 11, 2012
- D-5 Letter to Undue Hardship Committee from ██████████ Administrator of ██████████ Center, dated March 20, 2012
- D-6 Undue Hardship Committee Meeting Minutes dated January 31, 2012
- D-7 Notice of Decision for Request of Undue Hardship dated February 2, 2012
- D-8 West Virginia Income Maintenance Manual Chapter 17.10.B.4.j

Claimant's Exhibits:

- C-1 Letter to ---- dated December 29, 2011 with Application for Undue Hardship Waiver and certified mail receipt with unclaimed envelope
- C-2 Letter to ---- dated January 17, 2012 and certified mail receipt with unclaimed envelope
- C-3 ██████████ Center Progress Notes dated June 17, 2011 through February 23, 2012
- C-4 ██████████ Center Activity Reports dated July 7, 2011 through March 19, 2012
- C-5 Decision of State Hearing Officer dated December 16, 2011

VII. FINDINGS OF FACT:

- 1) An Application for Undue Hardship Waiver (D-2) was completed for the Claimant in January 2012, as the Claimant had been denied Long-Term Care Medicaid services due to excessive assets. It should be noted that the Claimant owns burial crypt space in the State of New York, the value of which exceeds the Long-Term Care Program asset limit of \$2,000 for a one-person Assistance Group. The Application for Undue Hardship Waiver states that

the Claimant's great-grandson, ---- ----, was attempting to sell the burial crypt and had placed advertisements for the mausoleum space in several publications. The application states that the Claimant suffered a stroke with right-side paralysis and is transferred with a Hoyer lift. The Claimant is unable to ambulate or assist with her bathing, dressing and grooming, cannot communicate verbally, and is spoon-fed. The document continues to state that there are no family members available to care for the Claimant, and the Claimant's care needs are beyond that which could be provided in a home-based setting.

Exhibit D-4, a letter to the Undue Hardship Committee from [REDACTED] Center Administrator [REDACTED] Ph.D., states that the Claimant is 92 years old and severely impaired due to a stroke. In the letter, [REDACTED] indicates that the Claimant is unable to speak, ambulate or conduct any tasks of daily living, and requires 24-hour nursing care. The Claimant's assets/funds have been depleted, with the exception of the burial space in New York, which the family has been unable to liquidate. The Administrator stated that the Claimant has had no payment source since August 2011, but the facility would not discontinue her care.

- 2) A Notice of Decision for Request of Undue Hardship (D-7) dated February 2, 2012 was provided to the Department's Division of Family Assistance. The notice indicates that the request was denied because the Claimant was in a nursing facility receiving continuous care and was receiving the essentials of life.
- 3) Exhibit D-5 is a letter from [REDACTED] to the Undue Hardship Committee dated March 20, 2012, explaining that [REDACTED] Center had issued the Claimant a 30-day eviction notice in September 2011 (D-3) and would now actively pursue the eviction.
- 4) Dorothy Ellison-Hunter, Family Support Supervisor with the Department, testified that the Claimant's family had made attempts to sell the burial crypt beginning in the 1980s and more recently, however, there has been no market for the space. She testified that she does not believe the Claimant could go without continuous care and stated that the Claimant would "absolutely" be in danger if she was discharged from the nursing facility.
- 5) Testimony from [REDACTED] Center representatives - as well as Exhibits C-1, C-2, C-3 and C-4 - was presented on behalf of the Claimant to document the facility's unsuccessful attempts to contact the Claimant's great-grandson, ---- ----, who serves as her attorney-in-fact. ---- ----, Business Office Manager at [REDACTED] Center, testified that the Claimant currently owes the facility more than \$64,000. Administrator [REDACTED] explained that the Claimant has always been in danger of discharge, as there are no funds to hold her bed should she be hospitalized and absent from the facility for more than 24 hours.
- 6) West Virginia Income Maintenance Manual Chapter 17.10.B.4.j (D-8) states the following:

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.

VIII. CONCLUSIONS OF LAW:

- 1) Policy states that 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.

2) It is clear that the Claimant – for several months – has been in danger of eviction from ██████████ Center due to lack of payment and eviction is now imminent. It is also clear that the denial of necessary medical care would endanger the Claimant’s health and life. Therefore, the Department’s decision to deny the Claimant’s Request for an Undue Hardship Waiver cannot be affirmed.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Agency’s action to deny the Claimant’s Request 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 20th Day of April, 2012.

**Pamela L. Hinzman
State Hearing Officer**