



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
9083 Middletown Mall
White Hall, WV 26554

Earl Ray Tomblin
Governor

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

April 25, 2012

Re: -----

Case No.: 12-BOR-757

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law for the hearing held in the matter of ----- on April 17, 2012. Your client's appeal was based on the Department of Health and Human Resources' decision to deny her application for Long-Term Care Medicaid based on 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 Program is based on current policy and regulations. Some of these regulations state that a nursing care client must meet the asset test for his eligibility coverage group. The asset limit for the Long-Term Care Program for a one-person Assistance Group is \$2,000. An application is denied when the client fails to establish eligibility. (West Virginia Income Maintenance Manual Chapters 11.3 and 17.10)

Information presented at the hearing reveals that your client's assets exceeded the maximum allowable asset limit for Medicaid Long-Term Care benefits.

It is the decision of the State Hearing Officer to **uphold** the Department's denial of Medicaid Long-Term Care benefits.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

Pc: Erika H. Young, Chairman, Board of Review
Katherine Bond, Assistant Attorney General

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

---- ----,

Claimant,

v.

Action Number: 12-BOR-757

**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 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 on April 17, 2012 on a timely appeal filed February 24, 2012.

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:

Julie Gower Romain, Esq., Counsel for Claimant

---- ----, Claimant's spouse

---- ----, Claimant's daughter

---- ----, Claimant's daughter

Katherine Bond, Esq., Assistant Attorney General

Teresa Copney, Economic Services Worker (ESW), WVDHHR

Presiding at the hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Agency was correct in its decision to deny the Claimant's application for Long-Term Care Medicaid benefits based on excessive assets.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Chapters 11.3, 11.4 and 17.10
Code of Federal Regulations 42 CFR § 435.601 and 20 CFR §§ 416.1240, 416.1242 and 416.1245(b)

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Asset Assessment for ---- ----
- D-2 Real estate listing for Claimant's non-homestead property at -- ----- -----, -----, --
- D-3 WV Income Maintenance Manual Chapter 11.4

Claimant's Exhibits:

- C-1 42 USC § 1396r-5
- C-2 42 USC § 1382b
- C-3 Social Security Online - Program Operations Manual System (POMS) SI 01130.140 – found at <https://secure.ssa.gov/apps10/poms.nsf/inx/0501130140> - 1/26/2012
- C-4 Program Operations Manual System (POMS) SI 01150.201 – found at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0501150201> - 1/26/2012

VII. FINDINGS OF FACT:

- 1) The Claimant was notified on or about February 24, 2012 that her January 27, 2012 application for Medicaid payment of Long-Term Care (Nursing Facility) services was denied due to excessive assets.
- 2) As a matter of record, both parties stipulated that the value of the asset assessment completed to determine financial eligibility for participation in the Long-Term Care Medicaid Program was correct, and that the Claimant would be asset eligible, but for the inclusion of non-homestead real property (identified in Exhibit D-2). It was further agreed that the value of the property (\$124,900 list price) is not at issue, as a low property estimate would elevate the Claimant's assets over the allowable asset limit. The question is whether or not the non-homestead real property can be excluded from the asset assessment.
- 3) Katherine Bond, Esq., Assistant Attorney General, counsel for the Department of Health and Human Resources, hereinafter Department, contended that policy found in the West Virginia Income Maintenance Manual (WVIMM) requires the Department to include the non-homestead real property in the Claimant's asset assessment because only the Claimant's principal place of residence is excluded.

The Department further noted that real property used as a business or trade is excluded, and that up to \$6,000 of the individual's equity in an income-producing property can be excluded,

if it produces a net annual income of at least 6% of the excluded equity. The Department contended that pursuant to policy, the non-homestead real property owned by the Claimant cannot be excluded from the asset assessment.

- 4) The Claimant, by counsel, [REDACTED] Esq., contended that the policy found in the WVIMM does not follow federal regulatory requirements found in 42 USC § 1396r-5 (Exhibit C-1) and 42 USC § 1382b (Exhibit C-2). The Claimant cited the Social Security Administration POMS (Exhibits C-3 and C-4) and asserted that an individual is allowed a 9-month period of conditional Medicaid benefits when they have demonstrated reasonable, but unsuccessful efforts to sell the non-homestead real property. The Claimant's spouse, ---- ----, provided testimony to indicate that the non-homestead real property has been listed with a real estate agency (D-2) and that efforts to sell the property have been unsuccessful. It should be noted, however, that Exhibits C-2, C-3 and C-4 fall under the heading of Supplemental Security Income [emphasis added].
- 5) The Department contended that the federal regulations cited by the Claimant are not applicable as 42 USC § 1396r-5 specifically states that the term "resources" does not include resources excluded under subsection (a) or (d) of section 1382b – meaning that the resources falling under section (b) "Disposition of resources; grounds for exemption from disposition requirements" cited by the Claimant are only applicable to SSI income benefits, not SSI-Related Medicaid.
- 6) West Virginia Income Maintenance Manual, Chapter 17.10 states that a nursing care client must meet the asset test for his eligibility coverage group. When determining eligibility for nursing facility services for an individual, institutionalized on or after 9/30/89, and who has a community spouse, the worker must complete an assessment of the couple's combined countable assets. The assessment is completed, when requested by the client or his representative, prior to application, or at application, if not previously completed. It is completed as of the first continuous period of institutionalization and is completed one time only. The first continuous period of institutionalization is the date the client first enters the nursing facility and remains for at least 30 days or is reasonably expected to remain for 30 days at the time the individual enters the facility. The spousal limits in effect at the time the assessment is completed are used.
- 7) West Virginia Income Maintenance Manual, Chapter 11.3 states that the asset limit for a one-person Medicaid Assistance Group is \$2,000.
- 8) West Virginia Income Maintenance Manual, Chapter 11.4.LL (Real Property) provides that for purposes of Medicaid Long-Term Care eligibility, only one dwelling is established as the client's principal place of residence, and only the principal place of residence is excluded. Treatment of non-homestead property as an asset depends on its use for Medicaid Long-Term Care eligibility.

It should be noted that the Claimant did not contend that the non-homestead real property in question is used in a trade or business, or a source of rental income.

- 9) The Federal Regulations, found at 42 USC § 1396r-5c (Medicaid and Chip Payment and access Commission / Grants to States for Medical Assistance Programs / Treatment of income and resources for certain institutionalized spouses / Rules for Treatment of Resources:

(5) Resources defined

In this section, the term “resources” does not include—

(A) resources excluded under subsection (a) or (d) of section [1382b](#) of this title, and...

Resources under subsection (b) of section 1382b are included, and therefore count in the asset/resource assessment for Medicaid.

- 10) 42 USC Chapter 7, Subchapter XVI - SUPPLEMENTAL SECURITY INCOME FOR AGED, BLIND, AND DISABLED 42 USC Part A - Determination of Benefits (42 USC § 1382b)

(b) Disposition of resources; grounds for exemption from disposition requirements

(1) The Commissioner of Social Security shall prescribe the period or periods of time within which, and the manner in which, various kinds of property must be disposed of in order not to be included in determining an individual’s eligibility for benefits. Any portion of the individual’s benefits paid for any such period shall be conditioned upon such disposal; and any benefits so paid shall (at the time of the disposal) be considered overpayments to the extent they would not have been paid had the disposal occurred at the beginning of the period for which such benefits were paid.

(2) Notwithstanding the provisions of paragraph (1), the Commissioner of Social Security shall not require the disposition of any real property for so long as it cannot be sold because

(A) it is jointly owned (and its sale would cause undue hardship, due to loss of housing, for the other owner or owners),

(B) its sale is barred by a legal impediment, or

(C) as determined under regulations issued by the Commissioner of Social Security, the owner’s reasonable efforts to sell it have been unsuccessful.

It should be noted that this regulation applies to SSI Income.

- 11) The Code of Federal Regulations, found at 20 CFR §§ 416.1240, 416.1242 and 416.1245(b) – provides that when resources of an individual in the form of real property exceed the limitations, the individual may be eligible for SSI payments for a 9-month period provided that the individual agrees to repay SSI payments received during the period of conditional eligibility. If it is determined that reasonable efforts to sell the real property have been unsuccessful, further SSI payments will not be conditioned on the disposition of the property and the only the benefits paid during the 9-month disposal period will be subject to recovery.

VIII. CONCLUSIONS OF LAW:

- 1) As a condition of eligibility for Medicaid Long-Term Care Program benefits, policy provides that the assets for a one (1) person assistance group cannot exceed \$2,000. When determining eligibility for nursing facility services for an individual institutionalized on or after 9/30/89, and has a community spouse, the worker must complete an assessment of the couple's combined countable assets. When determining real property assets, the principal place of residence is excluded, however, any additional real property is counted as an asset unless it can be excluded as a business, or on the basis of a rental income.
- 2) The Federal regulations cited by the Claimant in support of excluding the non-homestead real property asset (based on reasonable efforts to sell the real property) do not apply in this case. The regulations cited by the Claimant are applied to SSI Income benefits and not applicable to asset determinations for SSI-Related Medicaid / Medicaid Long-Term Care Program benefits. It is a requirement under 42 CFR 435.601 that the methodology for determining countable resources for medically needy cases must not be more restrictive than the cash assistance program to which it is categorically related. With regard to SSI-Related Medicaid, the methodologies need to match the SSI methodologies for determining what assets/resources are counted. However, the section from 42 U.S.C cited by the claimant is reflected for SSI at 20 CFR 416.1245 (reasonable efforts to sell excess real property), which is a provision for disposing of assets in order to receive SSI monetary payments for a period of time while the individual is trying to dispose of an asset, and once the asset is disposed, the individual repays the SSI monies received. The asset still counts for both SSI income and Medicaid, however, this conditional benefit provision permitted for Supplemental Security Income does not apply to Medicaid.
- 3) Based on the evidence, the Claimant non-homestead real property cannot be excluded on the asset assessment and therefore, the Department was correct to deny the Claimant's application for Medicaid Long-Term Care benefits based on excessive assets.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency's action in denying the Claimant's application for Long-Term Care Medicaid benefits due to excessive assets.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ Day of April, 2011.

**Thomas E. Arnett
State Hearing Officer**