



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
2699 Park Avenue, Suite 100
Huntington, WV 2504

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

August 25, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 15-BOR-2067

Dear Mr. [REDACTED]

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

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.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
Form IG-BR-29

cc: Emilio Veltri, Department Representative

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

██████████,

Appellant,

v.

Action Number: 15-BOR-2067

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for ██████████. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened in two parts – the first on July 21, 2015, and the second on August 5, 2015 – on an appeal filed May 13, 2015.

The matter before the Hearing Officer arises from the November 24, 2014 decision by the Respondent to deny Long Term Care (LTC) Medicaid due to excessive assets, and an unnoticed decision by the Respondent to deny the Appellant's request for consideration of non-reimbursable medical expenses in the post-eligibility process for LTC Medicaid.

At the hearing, the Respondent appeared by Kimberly Taylor, Daniel McCord, and Emilio Veltri (Mr. Veltri was not present for the first hearing date and Mr. McCord was not present for the second hearing date). The Appellant was represented by her son, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Case summary from Kimberly Taylor
- D-2 Notification letters, dated November 24, 2014, regarding LTC Medicaid eligibility for October 2014, November 2014, December 2014 and January 2015
- D-3 West Virginia Income Maintenance Manual (WVIMM), Chapter 17.2
- D-4 WVIMM, Chapter 17.9 (excerpt)
- D-5 WVIMM, Chapter 17.9 (excerpt)
- D-6 Billing information from ██████████

- D-7 Screen print of comments regarding the Appellant's case from the Respondent's data system, entries dated March 14, 2013, through May 13, 2015
- D-8 Case summary from Emilio Veltri

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) The Appellant applied for LTC Medicaid on September 30, 2014.
- 2) The Respondent issued notification to the Appellant on November 24, 2014, indicating that her application for LTC Medicaid was denied for the month of October 2014 due to excessive assets for the program. (Exhibit D-2)
- 3) The Appellant had excessive assets in the form of mineral rights as of the beginning of October 2014.
- 4) The Appellant was not allowed a post-eligibility income deduction in the form of nursing facility expenses incurred during the period in which she was over the asset limit for the program. There was no notification to the Appellant regarding this decision.

APPLICABLE POLICY

WVIMM, Chapter 17.9, reads, "There is a two-step income process for providing Medicaid coverage for nursing facility services to individuals in nursing facilities. The client must be eligible for Medicaid by being a member of a full Medicaid coverage group, by being a [Qualified Medicare Beneficiary] recipient or by meeting a special income test...Once Medicaid eligibility is established, the client's contribution toward his cost of care in the facility is determined in the post-eligibility process."

WVIMM, Chapter 17.9.D, reads, "In determining the client's contribution toward his cost of nursing facility care, the Worker must apply only the income deductions listed below."

This list includes Non-Reimbursable Medical Expenses. WVIMM, Chapter 17.9.D.1.e, reads, "When the client is Medicaid eligible, only as determined in items C, 2, 3 or 4 above, certain medical expenses which are not reimbursable may be deducted in the post-eligibility process."

WVIMM, Chapter 17.9.C, reads, "Eligibility for payment for nursing facility services is determined in any of the following four ways, in the following priority order..."

The first item is not considered for purposes of Non-Reimbursable Medical Expenses. The second item (§17.9.C.2) establishes eligibility if the client is a recipient of Medicaid in a full coverage group. The third item (§17.9.C.3) requires a special income test, but also requires SSI-Related Medicaid asset guidelines be met. The fourth item (§17.9.C.4) is an SSI-Related Medicaid test that also requires “All policies and procedures in effect for other SSI-Related cases to apply to these cases...”

WVIMM, Chapter 11.3, shows the SSI-Related Medicaid asset limit for a one-person assistance group as \$2,000.

WVIMM, Chapter 11.2, A, establishes the date of asset eligibility for SSI-Related Medicaid as “...the first moment of the month of application.”

DISCUSSION

The Respondent denied a LTC Medicaid application based on excessive assets. The Appellant had assets in excess of the applicable asset limit (\$2,000) as of the ‘first moment’ of the month of October 2014.

The Appellant described factors that prevented the disposal of assets prior to the beginning of October 2014. These factors may have prevented the Appellant from making the financial arrangements necessary to meet asset eligibility at the beginning of October 2014, but LTC Medicaid policy does not provide exceptions in this area, and the Board of Review is bound by policy in its decisions.

Because of the Appellant’s asset ineligibility, she does not meet any of the applicable tests for Medicaid eligibility that allow income deductions in the post-eligibility process. She was not a member of a full coverage Medicaid group, and the other applicable tests circle back to the same asset limit previously unmet.

The Respondent was correct to deny LTC Medicaid coverage for a period in which the Appellant had excessive assets for the program. As a result of this determination, the Respondent was unable to allow the requested non-reimbursable medical expense.

CONCLUSIONS OF LAW

- 1) Because the Appellant had excessive assets as of the ‘first moment’ of October 2014, the Respondent must deny LTC Medicaid for that month.
- 2) Because the Appellant was not Medicaid-eligible in October 2014 as specified in WVIMM, Chapter 17.9.D.1.e, the Respondent must not allow income deductions for non-reimbursable medical expenses in the post-eligibility LTC Medicaid process.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Respondent's decision to deny LTC Medicaid benefits to the Appellant for October 2014 based on excessive assets for the program and the resulting disallowance of non-reimbursable medical expenses in the post-eligibility LTC Medicaid process.

ENTERED this ____ Day of August 2015.

**Todd Thornton
State Hearing Officer**