



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
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Charleston, West Virginia 25313
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Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

January 13, 2015



RE: [REDACTED] v. WV DHHR
ACTION NO.: 14-BOR-3527

Dear Ms. [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,

Donna L. Toler
State Hearing Officer
Member, State Board of Review

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

cc: Misty Fielder, Economic Service Worker

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

██████████,

Claimant,

v.

Action Number: 14-BOR-3527

**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 on January 13, 2015, on an appeal filed October 23, 2014.

The matter before the Hearing Officer arises from the October 14, 2014 decision by the Respondent to apply a transfer of asset penalty to the monthly contribution of the Claimant's cost of care at the nursing home.

At the hearing, the Respondent appeared by Misty Fielder, Economic Service Worker. The Claimant appeared by her Power of Attorney/Sister, ██████████. Appearing as a witness for the Claimant was ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Correspondence from ██████████ DHHR to Claimant, dated October 14, 2014
- D-2 Notice of Contribution to the Cost of Care, dated October 14, 2014
- D-3 West Virginia Income Maintenance Manual (WV IMM) §17.10.B (excerpts)
- D-4 Computer screen print of Claimant's eligibility determination calculations
- D-5 Copy of Cashiers' checks, dated September 24, 2014 and September 29, 2014

Claimant's Exhibits:

None

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) On or about October 14, 2014, the Claimant was notified that her application for nursing home Medicaid had been approved effective October 1, 2014, and was subject to an asset transfer penalty in the amount of \$1000.00. The notice indicated the Claimant's resource amount was calculated at \$1719.56, plus the \$1000 asset transfer penalty, which resulted in a total resource contribution of \$2719.56 for the month of October 2014. (Exhibits D-1 and D-2)
- 2) The Department's representative, Misty Fielder (Ms. Fielder), testified that the Department was correct in assessing the Claimant an asset transfer penalty because a Cashier's check in the amount of \$1000 from the Claimant's assets was issued to the [REDACTED] on September 29, 2014 (Exhibit D-5). Ms. Fielder stated that the contribution to the church was not excluded from the asset transfer penalty because the assets were not used exclusively for the Claimant's benefit or use. Ms. Fielder referred to policy contained in the West Virginia Income Maintenance Manual (WV IMM) at §17.10.B (Exhibit D-3), which requires the application of an asset transfer penalty for all transfers not specifically excluded from the application of a penalty.
- 3) The Claimant's representative, [REDACTED] (Ms. [REDACTED]) testified that a check in the amount of \$1000 was written to the [REDACTED]. Ms. [REDACTED] contended that the money contributed to the church should not be subject to an asset transfer penalty. Ms. [REDACTED] testified that \$1000 was contributed to the [REDACTED] to provide food and clothing for the needy in the community. Ms. [REDACTED] testified there was a lot of pressure to reduce the Claimant's assets so she would remain eligible for Medicaid. She reported that the Claimant did not need any more clothing and she had recently purchased her a television. She reported that because of her own religious convictions and because the Claimant loved giving to the church when she was able to do so, she felt that the contribution should not be subject to the asset transfer penalty.

APPLICABLE POLICY

WV IMM §17.10.B.4 outlines permissible transfers which do not result in a transfer penalty and include the following: certain instances involving the transfer of a home, transfers from the Economic Stimulus Tax Rebate for 2007, transfers from the American Recovery and Reinvestment Act of 2009, transfers of Federal Refunds or Advance payments, transfers to the client's spouse or for the benefit of the client's spouse, or to the client's disabled child, transfers of a trust, returned transferred resources, transfers of assets which the client intended to receive fair market value, transfers exclusively for a purpose other than to qualify for Medicaid, undue hardship, and transfers previously disregarded by the Long-Term Care Insurance Partnership.

WV IMM §17.10.B.5 indicates that “all transfers not specifically excluded from the application of a penalty result in application of a penalty. This also applies to jointly owned resources. The jointly-owned resource, or the affected portion of it, is considered transferred by the client when any action is taken, either by the client or any other person, that reduces or eliminates the client's ownership or control of the resource.”

DISCUSSION

Policy permits the transfer of assets with no penalty under limited circumstances, such as transfers to the client’s spouse or disabled child. There are also instances when no transfer penalty is applied if the transfer of the asset is made exclusively for a purpose other than to qualify for Medicaid. Evidence established that the \$1000 transfer of assets to the [REDACTED] was made because of the pressure to reduce the Claimant’s assets in order to remain eligible for the Medicaid program.

While the Claimant’s action of contributing to the needy is admirable, the contribution is not defined by policy as an asset transfer which is excluded from the application of a transfer penalty.

CONCLUSION OF LAW

Policy requires that all transfers not specifically excluded from the application of a penalty result in the application of a penalty. Therefore, the Department acted correctly in assessing the Claimant with a \$1000 asset transfer penalty.

DECISION

It is the decision of the State Hearing Officer to uphold the Department’s action to assess the Claimant with a \$1000 asset transfer penalty effective October 2014.

ENTERED this ____ Day of January 2015.

**Donna L. Toler
State Hearing Officer**