



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1027 N. Randolph Ave.  
Elkins, WV 26241

Bill J. Crouch  
Cabinet Secretary

Jolynn Marra  
Inspector General

February 24, 2022

[REDACTED]

RE: [REDACTED], 22-BOR-1013

RE: [REDACTED] v. WVDHHR  
ACTION NO.: 22-BOR-1013

Dear [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,

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

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

cc: Michael Phillips, WVDHHR

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

██████████,

**Appellant,**

v.

**Action Number: 22-BOR-1013**

**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 February 15, 2022, on an appeal filed November 9, 2021.

The matter before the Hearing Officer arises from the November 9, 2021 decision by the Respondent to deny the Appellant's benefits under the Long-Term Care Medicaid Program.

At the hearing, the Respondent appeared by Michael Phillips, Economic Services Supervisor, WVDHHR, and Ruth Skinner, Economic Service Worker, WVDHHR. The Appellant was represented by ██████████, and ██████████. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Long-Term Care Medicaid application dated October 7, 2021 (received by Respondent on October 29, 2021)
- D-2 Preneed Funeral Contract-Assignment of Insurance and/or Annuity Contract dated June 9, 2021
- D-3 Statement from ██████████ Insurance Co. dated April 6, 2021
- D-4 ██████████, West Virginia, Real Property tax receipt for property on ██████████ and Quit-Claim Deed dated October 19, 2021
- D-5 Statements from ██████████ Bank dated October 1, 2021 and October 6, 2021
- D-6 ██████████ Bankshares, Inc. 2020 Tax Form 1099-DIV
- D-7 Statement from ██████████ dated April 5, 2021
- D-8 Statement from ██████████ Insurance Co. dated April 13, 2021

- D-9 [REDACTED], West Virginia, Personal Property Tax Receipt for 2002 Chevrolet Trailblazer with Kelley Blue Book information
- D-10 [REDACTED], West Virginia, Real Property Tax Receipt for [REDACTED]
- D-11 [REDACTED], West Virginia, Real Property Tax Receipt for Lot [REDACTED]
- D-12 West Virginia Standard Residential Lease Agreement signed April 26, 2021
- D-13 Information concerning time share values in [REDACTED], West Virginia, and [REDACTED]
- D-14 Asset Computation and Asset Assessment
- D-15 West Virginia Income Maintenance Manual Chapters 5.5.39.B.1, 5.5.39.B.2, and 5.5.7.B.1
- D-16 Notice of Decision dated November 9, 2021
- D-17 Fair Hearing Request dated November 9, 2021

**Appellant's Exhibits:**

- A-1 West Virginia Income Maintenance Manual Chapter 5 (definitions)
- A-2 West Virginia Income Maintenance Manual Chapter 5.5.7.B.1
- A-3 West Virginia Income Maintenance Manual Chapter 5.5.39.B.1
- A-4 West Virginia Income Maintenance Manual Chapter 5.5 (list of assets)

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's attorney submitted a Long-Term Care Medicaid application to the Respondent on October 29, 2021 (Exhibit D-1).
- 2) The Appellant and/or her husband own two residences, one of which is their homestead and is excluded from asset consideration.
- 3) The second residence, located at [REDACTED] West Virginia, has an undisputed value of \$100,200.
- 4) The Appellant's husband, [REDACTED], rents the [REDACTED] property for \$850 per month to [REDACTED] (Exhibit D-12).
- 5) [REDACTED] property is considered income-producing, non-homestead property which is not used in a business or trade.
- 6) The countable value of the [REDACTED] property is \$94,200 after applying the exclusions permitted in policy.

- 7) The Appellant's non-homestead property, combined with additional countable assets, exceeds the asset limit for Long-Term Care Medicaid (Exhibit D-14).
- 8) The Appellant's representative was sent a Notice of Decision on November 9, 2021, advising that the Long-Term Care Medicaid application was denied based on excessive assets (Exhibit D-16).
- 9) The rental property's consideration as a countable asset was the only issue contested by the Respondent's legal counsel.

### **APPLICABLE POLICY**

West Virginia Income Maintenance Manual Chapter 5.4 states that the asset limit for Long-Term Care Medicaid (SSI Medicaid Group) is \$2,000 for a one-person Assistance Group and \$3,000 for cases involving spouses who are living together and only one is eligible for Medicaid.

West Virginia Income Maintenance Manual Chapter 5 (definitions) (Exhibit A-1) defines the following:

**Personal Income-Producing Property:** Movable belongings, exclusive of land and buildings, which are annually producing income consistent with their current market value.

**Real Income-Producing Property:** Fixed property, including land and buildings, that is annually producing income consistent with its current market value.

West Virginia Income Maintenance Manual Chapter 5.5.39.B.1 states that real property used in a trade or business is excluded as an asset, regardless of its value or rate of return. The property must be in current use or been in use, with a reasonable expectation that the use will resume within 12 months of the last use (Exhibits D-15 and A-3).

West Virginia Income Maintenance Manual Chapter 5.5.7.B.1 addresses income-producing property and states that up to \$6,000 of an individual's equity in personal or real income-producing property is excluded if it produces a net annual income of at least 6 percent of the excluded equity. The minimum amount of net annual income the property must produce is \$360. If the individual's equity is greater than \$6,000, only the amount that exceeds \$6,000 is counted toward the asset limit when the net annual income requirement of 6 percent is met on the excluded equity (Exhibits D-15 and A-2).

### **DISCUSSION**

Policy states that the asset limit for Long-Term Care Medicaid is \$2,000 for an individual or \$3,000 for cases involving spouses who are living together and only one is eligible for Medicaid.

The Appellant's attorney contested the Respondent's treatment of the non-homestead rental property, but did not contest the Respondent's calculation of other assets. The Appellant's counsel

argued that the rental property should be considered as real property in accordance with policy because the definition of personal property excludes land and buildings. She stated that since the property produces rental income, it should be considered income-producing and should be totally excluded from consideration as a countable asset. The attorney also noted that the Appellant's oil and gas mineral rights are not counted as assets by the Respondent. She contended that the mineral rights produce income and the Appellant is not required to have a business license to receive that income. In addition, the Appellant's attorney does not believe that the rental property should be considered as both an asset and an income source.

The Respondent contended that the rental property is not considered as business property under policy because the Appellant does not have a license to operate a business. The Respondent applied policy in Chapter 5.5.7.B.1 of the Income Maintenance Manual in determining the property's countable asset value, excluding \$6,000 of the equity because the property produces a net annual income of at least 6 percent of the excluded equity.

Policy found in Chapter 5.5.39.B.1 of the manual indicates that real property used in **trade or business** [emphasis added] is excluded as an asset. While the Appellant's husband is a landlord and receives rental income from his investment, there is no evidence that the rental property is the location of a trade or business.

As there is no indication that a trade or business is operated on the non-homestead rental property, the Respondent's decision to consider the property as a countable asset is correct.

### CONCLUSIONS OF LAW

- 1) Policy states that real property used in trade or business is excluded as an asset for Long-Term Care Medicaid purposes, regardless of the value or rate of return.
- 2) The Appellant owns non-homestead property which is rented for \$850 per month.
- 3) There is no evidence that trade or business is conducted at the rental property.
- 4) The Respondent's decision to consider the rental property as an asset for Long-Term Care Medicaid purposes is correct.

**DECISION**

It is the decision of the State Hearing Officer to UPHOLD the Respondent's decision to deny the Appellant's Long-Term Care Medicaid application.

**ENTERED this 24<sup>th</sup> day of February 2022.**

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**Pamela L. Hinzman  
State Hearing Officer**