



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF THE INSPECTOR GENERAL

Bill J. Crouch  
Cabinet Secretary

Board of Review  
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Sheila Lee  
Interim Inspector General

October 28, 2022



RE: [REDACTED] v. WVDHHR  
ACTION NO.: 22-BOR-2074

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 Board of Review 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 that may be taken if you disagree with the decision reached in this matter.

Sincerely,

Tara B. Thompson, MLS  
State Hearing Officer  
State Board of Review

Enclosure: Appellant's Recourse  
Form IG-BR-29

CC: David Griffin, [REDACTED] DHHR

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

██████████,

**Appellant,**

v.

**ACTION NO.: 22-BOR-2074**

**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 of Chapter 700 of the West Virginia Department of Health and Human Resources' (DHHR) Common Chapters Manual. This fair hearing was convened October 5, 2022 on an appeal filed with the Board of Review on September 7, 2022.

The matter before the Hearing Officer arises from the Respondent's March 2, 2022 decision to deny the Appellant Medicaid Long-Term Care (LTC) benefit eligibility.

At the hearing, the Respondent appeared by Lona Charley, Economic Service Worker, ██████████ DHHR. Appearing as witnesses on behalf of the Respondent were Carrie Casto and David Griffin, Economic Service Supervisors, ██████████ DHHR. The Appellant appeared by ██████████. All witnesses were sworn in and the following exhibits were entered as evidence.

**Department's Exhibits:**

- D-1 West Virginia Income Maintenance Manual (WVIMM) § 23.11.5
- D-2 Bank Statements, dated November 1, 2021 to March 1, 2022; Savings Account Activity, dated March 15, 2021 to January 20, 2022

**Appellant'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 following Findings of Fact are set forth.

### **FINDINGS OF FACT**

- 1) On February 7, 2022, an application for financial eligibility for the Medicaid Long-Term Care (LTC) program was submitted on the Appellant's behalf.
- 2) On March 2, 2022, the Respondent issued a notice advising that the Appellant was denied Medicaid LTC eligibility, beginning February 1, 2022, because the amount of the Appellant's assets exceeded the Medicaid LTC eligibility limit.
- 3) As of January 20, 2022, the Appellant's savings account balance was \$12,089.50 (Exhibit D-2).
- 4) As of March 1, 2022, the Appellant's checking account balance was \$1,205.86 (Exhibit D-2).
- 5) On May 3, 2022, the Respondent issued a notice advising the Appellant that she was financially eligible for Medicaid LTC benefits, effective June 1, 2022.
- 6) When determining the Appellant's May 3, 2022 Medicaid LTC benefit eligibility, the Respondent considered \$1,654.36 in liquid assets and \$1,051.60 in gross unearned income for the Appellant.

### **APPLICABLE POLICY**

**West Virginia Income Maintenance Manual (WVIMM) § 23.11.5. provides in pertinent parts:**

To be eligible for Medicaid Nursing Facility benefits, an individual's assets must be equal to or below \$2,000.

**WVIMM §§ 5.5.6.A-B provide in pertinent parts:**

Money set aside to pay for funerals and related expenses may be counted as an asset. When set up as a trust, prepaid burials can be paid for by cash, insurance policies, or annuities.

**WVIMM § 5.3.4 provides in pertinent parts:**

A client may not have access to some assets. To be considered an asset, the item must be owned by, or available to, the client and available for disposition. If the client cannot legally dispose of the item, it is not his asset ....

For Medicaid only, Assets may be marked as inaccessible for clients who are currently declared incapacitated by a physician and have no legal financial power of attorney. Verification of the physician declaration of incapacity must be provided prior to entering the asset exclusion.

### **DISCUSSION**

The Appellant contested the Respondent's determination that the Appellant was ineligible for Medicaid Long-Term Care (LTC) benefits, beginning in February 2022. The Respondent argued the amount of the Appellant's assets excluded the Appellant from Medicaid LTC benefit eligibility in February 2022.

The Respondent bears the burden of proof. The Respondent had to demonstrate by a preponderance of the evidence that the Appellant's assets exceeded Medicaid LTC benefit eligibility guidelines at the time of the Respondent's March 2, 2022 decision. Pursuant to the policy, the Medicaid LTC asset limit for an individual is \$2,000. The policy stipulates that to be considered an asset, the item must be owned by, or available to, the Appellant and available for disposition. To prove that the Respondent correctly considered the financial resources in the Appellant's bank accounts as an asset, the Respondent had to demonstrate by a preponderance of the evidence that the financial resources in the Appellant's accounts were owned by, or available to, the Appellant and available for disposition.

The Appellant's representative argued that the assets in the Appellant's bank account were set aside for the Appellant's and the Appellant's spouse's cemetery fees. The Appellant's representative testified she attempted to pay the fees to the cemetery but was unable to make the payment until February 2022 due to staffing barriers at the cemetery office. The Respondent did not contest that the Appellant's representative had barriers making the cemetery payments until February 2022.

No evidence was entered to indicate the Appellant had been declared incapacitated by a physician and had no legal financial power of attorney at the time of the March 2, 2022 decision. No evidence was entered to establish that the Appellant's bank accounts had been set up as a trust for burial purposes. Although the Appellant's representative argued the financial resources were set aside for cemetery fees and unable to be disposed of before February 2022, the preponderance of evidence verified that the Appellant owned the accounts and that the financial resources in the accounts were available for disposition.

### **CONCLUSIONS OF LAW**

- 1) To be eligible for Medicaid LTC benefits, an individual's assets must be equal to or below \$2,000.
- 2) To be considered an asset, the Appellant's bank accounts must be owned by, or available to, the Appellant and available for disposition.
- 3) The preponderance of evidence demonstrated the Appellant owned the bank accounts and

the financial resources contained in the accounts were available for disposition at the time of the Respondent's March 2, 2022 Medicaid LTC benefit eligibility denial.

- 4) The preponderance of evidence demonstrated that the Appellant's assets exceeded \$2,000 at the time of the Respondent's March 2, 2022 Medicaid LTC benefit eligibility denial.

### **DECISION**

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to deny the Appellant Medicaid LTC benefit eligibility, beginning February 1, 2022.

ENTERED this 28<sup>th</sup> day of October 2022.

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**Tara B. Thompson, MLS**  
State Hearing Officer