



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

Jeffrey H. Coben, M.D.  
Interim Cabinet Secretary

Board of Review  
State Capitol Complex  
Building 6, Room 817-B  
Charleston, West Virginia 25305  
Telephone: (304) 352-0805 Fax: (304) 558-1992

Sheila Lee  
Interim Inspector General

December 15, 2022

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 22-BOR-2404

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,

Todd Thornton  
State Hearing Officer  
Member, State Board of Review

Encl: Recourse to Hearing Decision  
Form IG-BR-29

cc: Sean Hamilton, DHHR

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

██████████,

**Appellant,**

v.

**Action No.: 22-BOR-2404**

**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 December 13, 2022, on an appeal filed October 31, 2022.

The matter before the Hearing Officer arises from the July 12, 2022 decision by the Respondent to impose a Medicaid transfer of assets penalty.

At the hearing, the Respondent appeared by Sean Hamilton. The Appellant was represented by her daughter, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

**EXHIBITS**

**Department's Exhibits:**

- D-1            Statement from the Appellant, dated May 24, 2022
- D-2            Notice dated July 12, 2022  
                  Notice dated October 24, 2022
- D-3            Policy excerpts from the West Virginia Income Maintenance Manual (WVIMM)

**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 Hearing Officer sets forth the following Findings of Fact.

### **FINDINGS OF FACT**

- 1) The Appellant was a recipient of Long Term Care (LTC) Medicaid.
- 2) The Appellant sold her home to her grandson, [REDACTED] for \$94,150, with a closing date of April 11, 2022. (Exhibit D-1)
- 3) The Appellant used \$76,555 of the proceeds from the sale of her home to pay off a reverse mortgage on the property. (Exhibit D-1)
- 4) The Appellant noted a gift of equity of \$14,122 to [REDACTED], and a \$2,859 residual amount gifted to [REDACTED], from the proceeds of the sale of her home. (Exhibit D-1)
- 5) The Respondent issued a July 12, 2022 notice (Exhibit D-2), advising the Appellant that “Income or assets have been transferred, without receiving fair compensation, in order to become eligible for benefits...”
- 6) The July 2022 notice (Exhibit D-2) additionally advised that this transfer resulted in the decrease in the amount paid to the nursing facility, from \$983.50 to zero, effective August 1, 2022.
- 7) The Respondent issued an October 24, 2022 (Exhibit D-2) notice advising the Appellant of a correction in the amount of September penalty remaining.
- 8) The gift of equity and residual amount total \$16,981 uncompensated from the sale of the Appellant’s home.
- 9) The Respondent subtracted \$10,650 from the uncompensated amount of \$16,981 in August 2022, for a remaining penalty of \$6331 in September 2022, as noticed on the October 24, 2022 notice (Exhibit D-2).

### **APPLICABLE POLICY**

West Virginia Income Maintenance Manual (WVIMM), Chapter 24, addresses Long Term Care. At §24.8.2, this policy reads:

Under the transfer of resources policy, the Worker must deny coverage of LTC Medicaid services to otherwise eligible institutionalized individuals who transfer (or whose spouses transfer) resources for less than fair market value (FMV).

The current asset and income transfer policy governs transfers made after February 8, 2006 and applies to payments made for institutional care on or after March 1, 2009.

This section outlines which transfers of resources are allowable (or permissible) and which result in a penalty that delays the applicant's eligibility for Medicaid coverage of LTC services. Whether the transfer is considered permissible depends on the timing of the transfer, whether the client was compensated, for whose benefit the transfer was made and other factors.

WVIMM, at §24.8.2.A.1, defines Fair Market Value (FMV) as an estimate of the value of a resource, if sold at the prevailing price at the time it was actually transferred.

WVIMM, at §24.8.2.A.6, defines Uncompensated Value as the difference between the FMV at the time of transfer (less any outstanding loans, mortgages, or other encumbrances on the resource) and the amount received for the resource.

WVIMM, §24.8.2.C, reads, "All transfers not specified as permissible result in an application of a penalty..."

## **DISCUSSION**

The Appellant has contested the Respondent's decision to establish a transfer of assets penalty on the Appellant's LTC Medicaid benefits. The Respondent must show by preponderance of the evidence that it correctly established this Medicaid penalty.

The Appellant is a nursing facility resident who receives LTC Medicaid. Her daughter testified on her behalf, explaining that the Appellant sold her home and gifted some of the equity and proceeds to the Appellant's grandson based on a price established between the two of them previously. The Appellant's daughter did not have dispute of the amounts provided or used by the Respondent, but contended that the decision to sell the home, as completed, was based on advice from a loan officer.

LTC Medicaid policy allows for FMV of a property to be reduced, by "...any outstanding loans, mortgages, or other encumbrances...", which the Respondent did by reducing the \$94,150 proceeds from the sale by \$76,555 (the reverse mortgage payoff), resulting in a net resource value of \$17,595. Of this amount, \$16,981 (\$14,122 gifted equity, plus \$2,859 gifted residual) was an impermissible transfer. The Respondent has applied \$10,650 to this penalty in August 2022, leaving a \$6331 balance for September 2022 (Exhibit D-2). These amounts were based on the information from the sale provided by the Appellant, and there was no dispute of these amounts at hearing.

Because the Appellant sold her home resulting in an impermissible transfer of assets for less than Fair Market Value (FMV), the Respondent was correct to establish a penalty against the Appellant's LTC Medicaid benefits.

### **CONCLUSIONS OF LAW**

- 1) Because the Appellant received less than the FMV for the sale of her home, after allowable deductions for a reverse mortgage, the Respondent correctly identified this transaction as an impermissible transfer of assets.
- 2) Because the Appellant completed an impermissible transfer of assets, the Respondent must establish and apply a penalty against the Appellant's LTC Medicaid benefits.

### **DECISION**

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to impose a transfer of assets penalty against the Appellant's LTC Medicaid benefits.

**ENTERED this \_\_\_\_ Day of December 2022.**

---

**Todd Thornton  
State Hearing Officer**