



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

Bill J. Crouch
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

Jolynn Marra
Inspector General

August 25, 2022

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 22-BOR-1793

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: Appellant's 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-1793

**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 August 18, 2022, on an appeal filed June 27, 2022.

The matter before the Hearing Officer arises from the June 28, 2022 decision by the Respondent to deny Medicaid benefits due to excessive assets.

At the hearing, the Respondent appeared by Sean Hamilton. The Appellant was represented by her daughter, ██████████. Appearing as a witness for the Appellant was ██████████, an employee of ██████████. All witnesses were sworn and the following documents were admitted into evidence.

EXHIBITS

Department's Exhibits*:

- | | |
|-----|--|
| D-1 | Notice of decision, dated June 10, 2022
Notice of decision, dated June 28, 2022 |
| D-2 | Application for Medicaid, signed March 25, 2022
Application for Medicaid, signed October 19, 2018 |
| D-3 | Notice dated April 11, 2022 |
| D-4 | Screen prints of photographs of insurance policy documents |

- D-5 Email chain between Respondent employees and [REDACTED] employees, dates from May 10, 2022, through June 27, 2022
- D-6 Excerpt of a notice of decision, dated January 11, 2019
- D-7 Notice regarding July 2018 Medicaid eligibility, dated January 18, 2019
 Notice regarding August 2018 Medicaid eligibility, dated January 18, 2019
 Notice regarding October 2018 Medicaid eligibility, dated January 28, 2019
 Excerpt of notice regarding November 2018 Medicaid eligibility, dated January 28, 2019
 Notice regarding December 2018 Medicaid eligibility, dated January 28, 2019
 Notice of decision, dated January 28, 2019
- D-8 Screen print of case comments from the Respondent's data system regarding the Appellant's case, entries dated January 17, 2019, through June 27, 2022
- D-9 Excerpts from the West Virginia Income Maintenance Manual (WVIMM), Chapter 5
- D-10 Excerpts from the West Virginia Income Maintenance Manual (WVIMM), Chapter 24
- D-11 Excerpts from the West Virginia Income Maintenance Manual (WVIMM), Chapter 24

*Department exhibits were relabeled due to errors in labeling, dating, and document ordering, throughout the evidence provided.

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 applied for Long Term Care (LTC) Medicaid on or about October 19, 2018. (Exhibit D-2)
- 2) The Appellant was admitted to a nursing facility on October 25, 2018. (Exhibit D-8, entry dated January 25, 2019)
- 3) The Appellant was discharged from the nursing facility on December 28, 2018. (Exhibit D-8, entry dated January 25, 2019)

- 4) The October 2018 application listed the Appellant as an individual "...who needs or is already receiving nursing home services," and the Appellant's spouse as residing in the community in [REDACTED]. (Exhibit D-2)
- 5) The Respondent completed an asset assessment of the Appellant as part of its eligibility determination for the Appellant's October 2018 LTC Medicaid application.
- 6) The Respondent notified the Appellant of the findings of their asset assessment in a notice dated January 11, 2019. (Exhibit D-6)
- 7) The Appellant most recently applied for LTC Medicaid on March 21, 2022. (Exhibit D-2)
- 8) In a notice dated April 11, 2022, the Respondent advised the Appellant that "Life insurance Verification (Copy of life insurance policy and copy of current surrender values)" was necessary to establish LTC Medicaid eligibility. (Exhibit D-3)
- 9) This notice (Exhibit D-3) set a deadline of April 21, 2022, to provide this information and indicated the application would be denied if the deadline was not met.
- 10) The Appellant provided information regarding her insurance policy (Exhibit D-4) which does not provide current surrender values.
- 11) The Appellant was born on February 11, 1945. (Exhibit D-2)
- 12) The Appellant provided undated insurance policy verification (Exhibit D-4) which lists a policy date of July 1, 1992, the Appellant's age as 47, and the 'years to pay' as 53.
- 13) This insurance policy information (Exhibit D-4) also provides a table of cash surrender values for the policy by the age of the Appellant upon the policy anniversary, with listed cash values increasing with age until a maximum cash value of \$3,450 attained on the policy anniversary at age 67.
- 14) The cash surrender value of the Appellant's life insurance policy is at least \$3,450.
- 15) The total countable assets of the Appellant exceeds the \$2000 limit set by policy for households with a community spouse.
- 16) The Respondent issued a notice of their decision to deny the Appellant's LTC Medicaid application on June 28, 2022 (Exhibit D-1), which provided the basis for denial as, "The amount of assets is more than allowed for this benefit."

APPLICABLE POLICY

West Virginia Income Maintenance Manual (WVIMM), Chapter 24, addresses Long Term Care. At §24.8, this policy reads:

Applicants for nursing facility services must meet the asset test for their eligibility coverage groups, except for Modified Adjusted Gross Income (MAGI) groups. The asset level for those eligible in the Nursing Facility coverage group and Supplemental Security Income (SSI) – Related/Monthly Spenddown is the same as SSI-Related Medicaid [*sic*] When both spouses are institutionalized and both apply for nursing facility services, the SSI-Related Medicaid asset limit for a couple is used to determine eligibility. See Chapter 5 for the asset limit of the appropriate coverage group.

WVIMM, Chapter 5, addresses assets, and at §5.4, lists the asset limit for SSI Medicaid groups as \$2000 for an assistance group (AG) size of one (1).

WVIMM, §5.5, provides a list of items considered in determining asset eligibility, and at §5.5.27, *Life Insurance (Cash Surrender Value)* is listed as a countable asset for SSI Medicaid groups.

WVIMM, §24.8.1.A, reads, in pertinent part:

When determining eligibility for nursing facility services for an individual who has a community spouse, the Worker must complete a one-time assessment of the couple's combined countable assets, called an Asset Assessment.

...

An Asset Assessment is completed when an institutionalized individual transfers to a nursing facility in West Virginia, even if one was previously completed in the former state of residence.

...

An asset assessment must be completed as of the first continuous period of institutionalization. The first continuous period of institutionalization is the date the client first enters the nursing facility and remains for at least 30 days or is reasonably expected to remain for 30 days at the time the individual enters the facility. The spousal limits in effect at the time the assessment is completed are used. If requested by the client or authorized representative, the assessment may be completed prior to application as of the first continuous period of institutionalization.

...

WVIMM, §24.8.2.B.7, reads:

When the Worker determines the individual is otherwise eligible for LTC services, an undue hardship may exist when a denial of payment for LTC services is due to one or more of the following asset policies:

- Excessive home equity;
- Transfer to a non-permissible trust; and/or,
- A transfer of asset penalty.

For undue hardship to exist, the denial must result in:

- Depriving the individual of medical care to the extent that the individual's health or life would be endangered; or
- Depriving him of the ability to obtain food, clothing, shelter or other necessities of life.

The WVIMM provides a section designated *Acronyms, Forms, and Glossary*. In this section, the term *Community Spouse* is defined as:

A spouse living in the community whose spouse is an institutionalized individual. This definition is used when one spouse is applying for long term care (LTC) benefits and the other spouse is not and is used in conjunction with the definition of institutionalized spouse.

DISCUSSION

The Appellant has contested the Respondent's decision to deny the Appellant's application for LTC Medicaid due to excessive assets. The Respondent must show by preponderance of the evidence that it correctly denied Medicaid on this basis.

The Appellant was admitted into [REDACTED], a nursing home, on October 25, 2018, and resided there until she was discharged on December 28, 2018. The Appellant applied for LTC Medicaid at that time in conjunction with her nursing home stay, and the Respondent completed a "one-time assessment" of the Appellant's assets at that time. The Appellant's spouse resided in the community, the Appellant resided in the nursing home at least 30 days, and the Respondent's decision about the Appellant's 2018 LTC Medicaid eligibility and the "one-time assessment" of assets at that time is outside the window for any reconsideration by the Board of Review. The Respondent correctly conducted a "one-time assessment" of the Appellant's assets in 2018.

The matter before the Board of Review is the Appellant's 2022 LTC Medicaid application. The Appellant was afforded the opportunity to resolve asset issues, to the extent possible, one and only one time in 2018. Policy requires the cash surrender value of life insurance policies to be considered an asset for LTC Medicaid, and the only exception to the "one-time assessment" limit

for assessments is in instances of out-of-state transfers where the first assessment was completed in another state – a provision that does not apply in the Appellant’s case. Also not applicable is the argument made on the Appellant’s behalf that a hardship provision applies. The Appellant’s denial was not based on excessive assets stemming from home equity, the transfer to a non-permissible trust, or transfer of asset penalties. The Respondent correctly determined the Appellant’s life insurance cash surrender value was a countable asset.

In response to a request for the cash surrender value of this asset, the Appellant provided very incomplete information. The Appellant’s date of birth (February 11, 1945), the policy date (July 1, 1992), and the unclear table provided (Exhibit D-4) can be used to infer that on July 1, 2012 – the policy anniversary when the Appellant was 67 years old – the life insurance policy had a cash surrender value of \$3,450. The table provided cash surrender values that increase every year with age, and the Respondent assumed this value was at least \$3,450 at the time of the 2022 LTC Medicaid application. Because there is nothing in the insurance documentation provided to the Respondent that clearly shows a possibility of *reduction* in the cash surrender value, this assumption is more likely to be true than not. The Respondent correctly determined the Appellant’s assets to be at least \$3,450. Because the Appellant’s spouse resides in the community, the \$2,000 asset limit for an assistance group (AG) of one (1) is applicable and the Respondent correctly determined the Appellant had excessive assets to receive LTC Medicaid.

Because the Appellant had excessive assets, the Respondent was correct to deny the Appellant’s application for LTC Medicaid.

CONCLUSIONS OF LAW

- 1) Because the Appellant has life insurance assets worth at least \$3,450, the Respondent correctly determined that she had excessive assets for LTC Medicaid eligibility.
- 2) Because the Appellant had assets over the program limit, the Respondent was correct to deny the Appellant’s LTC Medicaid application on this basis.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent’s decision to deny the Appellant’s application for LTC Medicaid benefits.

ENTERED this ____ Day of August 2022.

**Todd Thornton
State Hearing Officer**