State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street West
Charleston, WV 25313

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

January 20, 2006

________, Esquire
Attorney at Law
____
____

Case Name: ________

Dear Mr. ________:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 13, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to close the Long Term Care Medicaid Case due to a series of asset transfers.

In arriving at a decision, the State Hearings 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.

Eligibility for the Long Term Care Medicaid Program is based on current policy and regulations. Some of these regulations state as follows: When the amount of the transfer is less than the average monthly cost of nursing facility, no penalty is applied until a series of transfers totals more than the average monthly nursing facility rate. (West Virginia Income Maintenance Manual Section 17.10 (B) (8) (a & b) Transfer Penalty/Start of the Penalty/Length of Penalty).

The information submitted at your hearing revealed: The combined series of monthly transfers totaled more than the average monthly state rate for nursing facility costs.

It is the decision of the State Hearings Officer to UPHOLD the PROPOSAL of the Department in this particular matter.

Sincerely,

Ray B. Woods., M.L.S.
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Patrick McKinney, Supervisor
________, Son of Claimant

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW

________,

Claimant,

v. **Action Number: 05-BOR-7019**

West Virginia Department of
Health and Human Resources,

Respondent.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on January 20, 2006 for Mr. ________ This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This fair hearing was convened on January 13, 2006 on a timely appeal filed December 1, 2005.

It should be noted here that the claimant's benefits have been continued pending a hearing decision. A pre-hearing conference was held between the parties prior to the hearing.

II. PROGRAM PURPOSE:

The Program entitled Long Term Care Medicaid is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

The program entitled Long Term Care Medicaid (nursing facility services) is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources. It is a medical service which is covered by the State's Medicaid Program. Payment for care is made to nursing homes which meet Title XIX (Medicaid) standards for the care provided to eligible recipients. In order to qualify for Nursing Home Care, an individual must meet financial and medical eligibility criteria

III. PARTICIPANTS:

________, Esquire – Attorney at Law
________, Son

Patrick McKinney, Supervisor – [redacted] District DHHR Office
Marie Murphy, Economic Services Worker – [redacted] District DHHR Office

Presiding at the Hearing was, Ray B. Woods., M.L.S., State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided: Does a series of monthly asset transfers exceed the state rate for the average monthly nursing facility costs?

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Section 11.3 Maximum Allowable Assets – SSI-Related, Medicaid, AFDC-Related, PAC, CDCS and; West Virginia Income Maintenance Manual Section 17.10 (B) (8) (a & b) Transfer Penalty/Start of the Penalty/Length of Penalty

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

<u>Department's Exhibits:</u>

- D-1 WVIMM Section 11.3 Maximum Allowable Assets - SSI-Related, Medicaid, AFDC-Related, PAC, CDCS
- D-2 Closure Letter dated 11/30/05
- D-3 Notice of Contribution to the Cost of Care dated 11/10/05
- D-4 WVIMM Section 17.10 (B) (8) (a & b) Transfer Penalty/Start of the Penalty/Length of Penalty
- D-5 Hearing Summary

<u>Claimant's Exhibits:</u>

None

VII. FINDINGS OF FACT:

1) On July 12, 2005, Mr. ________. made an application for Long Term Care (LTC) for his father, Mr. ________ It was determined at this time that Mr. ________ was ineligible for LTC Medicaid due to excessive assets. The asset limit for Medicaid is $2,000.00 **(D-1)**.

2) On August 10, 2005, Mr. ________. reported that he had changed the beneficiary to [redacted]s Funeral Home and that he had completed an irrevocable contract. Mr. ________ reported that he had transferred interest in property valued at $21,500 in the months of March, April, May and, June 2005. He also reported that in July 2005 Mr. ________, had given him $6,000.00 and in February 2005 had given him $6,500.00. These transfers resulted in a one month penalty in the month of the transfer. The case was approved effective August 2005.

3) Beginning on August 30, 2005, Mr. ________[redacted] reported that a transfer had occurred on the homestead. The homestead is valued at $122,500.00. Mr. ________ reported that 1/37th interest, valued at $3,310.81, had been transferred by deed to ________ and him. No penalty was applied as the transfer was less than the average monthly cost of the nursing home state rate ($3,380.00).

4) On October 12, 2005, the agency received notice of transfers in August and September 2005 of 1/37th interest in the property per month. At this point the Agency looked at the monthly transfers on the homestead as a series of transfers, below market value that resulted in the penalty.

5) The nursing home coverage for December 2005 was denied after proper notice. The Department issued a Closure Letter on November 30, 2005**(D-2)**. It stated in part:

> ACTION: Your Nursing Home Care Coverage will stop. You will not receive this benefit after November 2005.
>
> REASON: Income or assets have been transferred, without receiving fair compensation, in order to become eligible for benefits.

6) A Notice of Contribution to the Cost of Care was issued on November 10, 2005 **(D-3)**. It stated in part, "Client financially ineligible for services effective 12/01/05 – Transfer of Asset Penalty."

7) Nursing Home coverage was reinstated upon receiving a request for a fair hearing. Since the request, Mr. ________ has transferred 1/37th interest in the properly on a monthly basis and, submitted verification of said transfers.

8) Mr. ________, Esq., does not dispute the facts of the case.

9) The disagreement between the parties rests with the interpretation of West Virginia Income Maintenance Manual Section 17.10 (B) (8) (a & b) Transfer Penalty/Start of the Penalty/Length of Penalty.

10) The State interprets the policy as the total of all transfer of assets beyond the average monthly cost of the nursing home state rate ($3,380.00). This results in continued ineligibility, i.e. 08/05 - $3,310.81 + 09/05 - $3,310.81 + 10/05 - $3,310.81 + 11/05 - $3,310.81 etc.

11) Mr. ________'s interpretation of the policy would determine the penalty period based upon the average of the transferred assets. According to Mr. ________, a 1/37th monthly transferred interest ($3,310.81), would always fall below the average monthly cost of the nursing home state rate ($3,380.00).

12) West Virginia Income Maintenance Manual Section 11.3 Maximum Allowable Assets – SSI-Related, Medicaid, AFDC-Related, PAC, CDCS **(D-1)**, lists the asset limit for a one (1) person Assistance Group as $2,000.00.

13) West Virginia Income Maintenance Manual Section 17.10 (B) (8) (a & b) Transfer Penalty/Start of the Penalty/Length of Penalty **(D-4)**:

Transfer Penalty

The transfer of resources penalty is ineligibility for:

- Nursing facility services, and
- A level of care in any institution, equivalent to that of nursing facility services, and
- Home and Community Based Waiver services.

The penalty is applied as follows. The client may remain eligible for Medicaid; services not subject to a penalty are paid.

a. Start of the Penalty

The penalty period starts the month in which the resource is transferred, as long as that month does not occur in any other period of ineligibility due to a transfer of resources penalty. If the month the resource is transferred falls into another such penalty period, the penalty period begins the month after the previous penalty period ends.

When a single resource is transferred, or a number of resources are transferred at the same time, the penalty period is determined by adding together the total uncompensated value of the resource(s) and dividing as shown below. When resources are transferred at different times, the following general guidelines are used.

(1) When Penalty Periods Would Overlap

When resources have been transferred in amounts and/or frequency that would make the calculated penalty periods overlap, add together the value of all resources transferred, and divide by the average cost of nursing facility services.

This produces a single penalty period which begins on the first day of the month in which the first transfer was made.

EXAMPLE: An individual transfers $13,000 in January, $13,000 in February and $13,000 in March. Calculated individually, based on a nursing facility cost of $3,380 a month, the penalty for the first transfer is from January through March, the second is from February through April and the third is from March through May. Because these periods overlap, the Worker must calculate the penalty periods by adding the transfers together (a total of $39,000) and dividing by the nursing facility cost ($3,380). The penalty period of 11 months, which runs from January 1 through November 30.

(2) When Penalty Periods Would Not Overlap

When multiple transfers are made in such a way that the penalty periods for each would not overlap, the Worker must treat each transfer as a separate event, with its own penalty period.

EXAMPLE: An individual transfers $5,000 in January, $5,000 in May and $5,000 in October. Assuming an average private nursing facility cost of $3,380 a month, the penalty periods for the transfers are, respectively, January 1 through January 31, May 1 through May 31 and October 1 through October 31.

All penalties for resources transferred on or after 8/11/93 run consecutively.

b. Length of Penalty

The penalty period lasts for the number of whole months determined by the following calculation:

Total amount transferred during the look-back period divided by the State's average, monthly nursing facility private pay rate ($112.65/day = $3,380/month).

When the amount of the transfer is less than the average monthly cost of nursing facility, no penalty is applied until a series of transfers totals more than the average monthly nursing facility rate.

The penalty runs continuously from the first day of the penalty period, whether or not the client leaves the institution.

There is no maximum or minimum number of months a penalty may be applied.

VIII. CONCLUSIONS OF LAW:

1) The policy found at West Virginia Income Maintenance Manual Section 17.10 (B) (8) (a) (1 & 2)) addressing “When Penalty Periods Would Overlap” and “When Penalty Periods Would Not Overlap” address the monthly transfer of assets when they **exceed,** the average monthly cost of nursing facility care. That is not the case in this particular matter. Instead, we are addressing the monthly transfer of assets that are **under** the average monthly cost for nursing facility care **and,** the continued eligibility for Long Term Care Medicaid benefits.

According to the policy found at West Virginia Income Maintenance Manual Section 17.10 (B) (8) (b) it states in part, “When the amount of the transfer is less than the average monthly cost of nursing facility, **no penalty is applied until a series of transfers totals more than the average monthly nursing facility rate**.” [Emphasis added]. The Claimant has continued to receive Long Term Care Medicaid Benefits, while the assets from the homestead are being dispersed on a monthly basis.

Mr. ________’s interpretation of the policy would determine the penalty period based upon the average of the transferred assets. According to Mr. ________, a 1/37th monthly transferred interest ($3,310.81), would always fall below the average monthly cost of the nursing home state rate ($3,380.00). In essence, the Claimant would always be eligible for LTC Medicaid. The Department on the other hand, interprets the policy as the total of all transfer of assets beyond the average monthly cost of the nursing home state rate ($3,380.00). I agree with the Department. To do otherwise would allow anyone with assets to transfer them monthly to continue eligibility for the LTC Medicaid program.

IX. DECISION:

It is the decision of this State Hearing Officer to UPHOLD the PROPOSAL of the Department in this particular matter.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 20th day of January, 2006.

Ray B. Woods., M.L.S.
State Hearing Officer