



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 468
Hamlin, WV 25523

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

June 24, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 2, 2009. Your hearing request was based on the Department of Health and Human Resources' action to terminate your eligibility for WV Works Cash Assistance and Medicaid.

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.

Eligibility for the WV Works Cash Assistance and Medicaid Programs is based on current policy and regulations. Some of these regulations state as follows: For WV Works Cash Assistance: The total amount of the lump sum payment is counted, except for portions earmarked and used for back medical bills, funeral and burial costs, or intended for use to replace a defective automobile or other asset. For active cases, the number of months of ineligibility is determined by dividing the lump sum amount by the 100% FPL for the AG size. (WV Income Maintenance Manual Section 10.24.11.) For Medicaid: The total amount of the lump sum payment is counted, except for portions earmarked and used for back medical bills, funeral and burial costs, or intended for use to replace a defective automobile or other asset. (WV Income Maintenance Manual Section 10.7) The asset limit for WV Works Cash Assistance is \$2000.00 and AFDC Related Medicaid is \$3000.00 for a two person household. (WV Income Maintenance Manual Section 11.3)

The information submitted at your hearing shows that you reported receipt of an insurance settlement in the amount of one hundred twenty thousand dollars (\$120,000.00), which is in excess of the asset limit for WV Works Cash Assistance and Medicaid. Although you now report that you only received thirty thousand dollars (\$30,000.00), this amount is also in excess of the asset limit for the programs.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to terminate your eligibility for WV Works Cash Assistance and Medicaid.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review / Richard Riley, [REDACTED] DHHR

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

-----,

Claimant,

v.

**Action Number: 08-BOR-2552 WVW
09-BOR-1088 Medical**

**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 June 15, 2009 for ----- . 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 June 2, 2009 on a timely appeal filed December 3, 2008.

II. PROGRAM PURPOSE:

AFDC/U RELATED MEDICAID

The Medicaid categorically related to Aid to Families with Dependent Children Program is designed to provide medical assistance to eligible families with children from the fetal stage to age 18. These dependent children must be deprived of parental support due to the death, continued absence, incapacity, or unemployment of the parents. In addition, the family must meet financial eligibility criteria.

WV WORKS

WV Works was created by Senate Bill 140, Article 9 of the West Virginia Code and the Temporary Assistance to needy Families Block Grant, Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The purpose of WV Works is to provide assistance to needy families with children so they can be cared for in their own home, reduce dependency by promoting job preparation, work and marriage. The goals of WV Works are to achieve more efficient and effective use of public assistance funds, reduce dependence on public programs by promoting self-sufficiency and structure the assistance programs to emphasize employment and personal responsibility.

III. PARTICIPANTS:

-----, Claimant
Richard Riley, [REDACTED] DHHR Representative
-----, [REDACTED] DHHR employee, witness

Presiding at the hearing was Cheryl Henson, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether the Department took the correct action to terminate the Claimant's WV Works Cash Assistance and Medicaid.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Chapter 10.24.D.11, 10.7.D.11 and 11.3

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Notification letter dated December 4, 2008 – WV Works
- D-2 WV Income Maintenance Manual Section 10.24
- D-3 WV Income Maintenance Manual Section 10.7
- D-4 Notification letter dated December 4, 2008 - Medicaid

Claimant's Exhibits:

- C-1 Invoice from [REDACTED] Funeral Home
- C-2 Fax from [REDACTED] Funeral Home dated June 15, 2009

VII. FINDINGS OF FACT:

- 1) The Claimant was an active recipient of WV Works Cash Assistance and AFDC Related Medicaid during the month of December 2008. The Claimant reported to the Department in December 2008 that she received a lump sum payment in the amount of approximately one hundred twenty thousand dollars (\$120,000.00) from her mother's estate.
- 2) The Department sent the Claimant two notification letters (D-1, D-4) on December 4, 2008 which included the following pertinent information:

ACTION: YOUR W.V. WORKS BENEFIT BENEFITS [sic] WILL STOP. YOUR LAST BENEFITS WILL BE RECEIVED IN DECEMBER 2008.

REASON: ----- RECENTLY REPORTED THE RECEIPT OF AN INSURANCE SETTLEMENT OF 120,000.00. THIS EXCEEDS THE ASSET LIMIT FOR W.V. WORKS WHICH IS 2000.00. THE W.V. WORKS BENEFIT WILL CLOSE EFFECTIVE 0109. THE RECEIPT OF THIS LUMP SUM ALSO SUBJECTS ----- TO THE LUMP SUM INELIGIBILITY PERIOD. THE TOTAL NUMBER OF INELIGIBLE MONTHS IS 102 WITH 966.00 COUNTING AS A RESOURCE IN THE 103RD MONTH. THE PERIOD OF INELIGIBILITY CAN BE SHORTENED IF ----- VERIFIES SHE WAS NOT THE INTENDED RECIPIENT OF THE ENTIRE AMOUNT OF THE INSURANCE SETTLEMENT AND INDEED DID NOT RECEIVE THE ENTIRE AMOUNT. THIS CAN BE VERIFIED THROUGH WILLS, BANK STATEMENTS AND OTHER RELEVANT MATERIALS RELATED TO THIS MATTER. PLEASE PROVIDE ANY VERIFICATIONS TO THE OFFICE BY 12-15-08.

ACTION: YOUR AFDC RELATED MEDICAID BENEFITS WILL STOP. YOUR LAST BENEFITS WILL BE RECEIVED IN DECEMBER 2008.

REASON: ----- RECENTLY REPORTED RECEIPT OF INSURANCE SETTLEMENT OF 120,000.00. THIS IS IN EXCESS OF AFDC RELATED MEDICAID ASSET LIMIT WHICH MAXIMUM ASSET LIMIT IS 3000.00 FOR TWO PERSONS. ----- IS SUBJECT TO THE AFDC RELATED LUMP SUM INELIGIBILITY DUE TO RECEIPT OF THIS INSURANCE SETTLEMENT. ----- IS INELIGIBLE FOR AFDC MEDICAID FOR 152 MONTHS BEGINNING 01-09 WITH 528.00 COUNTED AS A RESOURCE IN THE 153RD MONTH. THIS PERIOD CAN BE SHORTENED IF THE ENTIRE AMOUNT OF THE INSURANCE SETTLEMENT WAS NOT DESIGNATED ENTIRELY FOR ----- . THIS CAN BE VERIFIED WITH COPIES OF ALL RELEVANT MATERIALS RELATED TO THIS MATTER SUCH AS WILLS AND BANK STATEMENTS AND ANY OTHER RELATED EXPENSES THAT WILL DETRACT FROM THE ACTUAL AMOUNT OF INSURANCE MONIES RECEIVED. PLEASE BRING ANY VERIFIED EXPENSES TO DHHR BY 12-15-08 SO THEY CAN BE EVALUATED.

- 3) The Department contends the Claimant was properly notified of the asset policy and never responded with any verification in order to further evaluate the ineligibility period. In addition, the amount of lump sum asset reported far exceeds the monthly asset limits for the programs involved. The asset limit for WV Works Cash Assistance

is two thousand dollars (\$2000.00), and for AFDC Related Medicaid is three thousand dollars (\$3000.00).

- 4) The Claimant contends the lump sum amount was ninety thousand dollars (\$90,000.00), and was divided between her and two other individuals. She states she only received thirty thousand dollars (\$30,000.00). She also states she was responsible for paying her mothers funeral expenses (C-1) which total eight thousand two hundred seventy six dollars (\$8276.00).
- 5) The Claimant provided additional documents (C-2) in the form of various utility bills and funeral expenses which show an additional two thousand eight hundred thirty dollars (\$2830.00) expense shared by the Claimant and another individual for funeral expenses. None of the other documents (C-2) submitted show allowable expenses.
- 6) WV Income Maintenance Manual Chapter 10.24.D.11 states in pertinent part:

WV WORKS

D. Special Situations

11. Lump Sum Payments

The lump sum payment policy applies to applicants, when the lump sum is received in the month of application, and to all recipients. This includes lump sum payments received by a disqualified person(s) who would otherwise be required to be included in the AG. See item 8,b above. Because the client is expected to use the lump sum for general living expenses, a period of ineligibility must be calculated.

The number of months in the period of ineligibility is determined by dividing the lump sum amount by the 100% FPL for the AG size.

For any partial month remaining after the division, the amount of the lump sum payment which remains is counted as income.

The following portions of a lump sum payment are not counted.

- Lump sum payments that are earmarked and used for the purpose for which they are intended (e.g., monies for back medical bills resulting from injury, or funeral and burial costs) are deducted. In addition, lump sum payments that are intended and used for replacement or repair of an asset (e.g., monies to replace a defective automobile) are deducted.
- Any of the lump sum funds, obligated and used for legal fees as a result of the efforts of the attorney to obtain the lump sum payment, are deducted.

- 7) WV Income Maintenance Manual Section 10.7.D.11 states in pertinent part:

AFDC MEDICAID

D. Special Situations

The lump sum payment policy applies to applicants, when the lump sum is received in the month of application, and to all recipients. Because the client is expected to use the lump sum for general living expenses, a period of ineligibility must be calculated.

The number of months in the period of ineligibility is determined by dividing the lump sum amount by the Standard of need for the AG size.

For any partial month remaining after the division, the amount of the lump sum payment which remains is counted as income.

The following portions of a lump sum payment are not counted.

- Lump sum payments that are earmarked and used for the purpose for which they are intended (e.g., monies for back medical bills resulting from injury, or funeral and burial costs) are deducted. In addition, lump sum payments that are intended and used for replacement or repair of an asset (e.g., monies to replace a defective automobile) are deducted.
- Any of the lump sum funds, obligated and used for legal fees as a result of the efforts of the attorney to obtain the lump sum payment, are deducted.

After applying appropriate exclusions, disregards and deductions to other income received for the month, add the lump sum payment to all other monthly income. When the total amount is less than the AFDC Medicaid limit for the number in the Needs Group, the lump sum payment is counted as income in its entirety for one month.

When the total amount is greater than the Standard of Need, divide the lump sum payment by the appropriate Standard of Need.

The case is ineligible for the full number of months equal to the result of the division. Ineligibility begins the month of receipt, although the AG cannot be closed until properly notified of ineligibility.

8) WV Income Maintenance Manual Section 11.3 states in pertinent part:

11.3 MAXIMUM ALLOWABLE ASSETS

To be eligible for programs administered by the Division of Family Assistance (DFA), the total amount of countable assets cannot exceed the amounts which are listed in the following chart:

SNAP BENEFITS	AFDC MEDICAID	WV WORKS	SSI-RELATED MEDICAID, AFDC-RELATED MEDICAID, PAC, CDCS		QDWI, QMB SLIMB, QI-1	
			Size of AG	Asset Level	Size of AG	Asset Level
\$2,000 - all AG's except as below.	\$1,000 - regardless of the number in the AG.	\$2,000 - regardless of the number in the AG.	1	\$2,000	1	\$4,000
			2	\$3,000	2	\$6,000
<p>\$3,000 - at least one AG member is age 60 or over, or is disabled, according to Section 12.15,B, regardless of the size of the AG.</p> <p>NOTE: For categorically eligible AG's, the asset test is presumed to be met.</p>			<p>Add \$50 to the asset maximum for each additional Needs Group member.</p> <p>NOTE: For SSI-Related Medicaid only: In cases involving a husband and wife who are living together, only one of whom is eligible, the asset level for 2 persons is used for their combined non-excluded assets.</p> <p>NOTE: For AFDC-Related Medicaid: Use the asset limit for the appropriate Needs Group size.</p>		<p>NOTE: In cases involving a husband and wife who are living together, only one of whom is eligible, the asset level for 2 persons is used for their combined non-excluded assets.</p>	

VIII. CONCLUSIONS OF LAW:

1. Policy is clear in that for the programs of assistance in question, that being WV Works Cash Assistance and AFDC Related Medicaid, lump sum payments are considered assets, and when they exceed the monthly asset limit for active cases, the case becomes ineligible for a period of time determined by the amount of the lump sum received.
2. The monthly asset limit for WV Works Cash Assistance is two thousand dollars (\$2000.00), and for AFDC Medicaid in this case is three thousand dollars (\$3000.00).
3. Although the exact amount of lump sum payment has not been verified, the Claimant clearly received at least thirty thousand dollars (\$30,000.00) by her own testimony. This amount far exceeds the monthly asset limits for both WV Works Cash Assistance and AFDC Related Medicaid. The Claimant failed to provide the Department with verification of the amount received or any allowable expenses prior to this hearing.
4. Given the information the Department had available at the time, they were correct in their decision to terminate the Claimant's WV Works Cash Assistance and AFDC Related Medicaid due to excessive assets.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the action of the Department to terminate the Claimant's WV Works Cash Assistance and AFDC Related Medicaid.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 24th Day of June, 2009

**Cheryl Henson
State Hearing Officer**