



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Joe Manchin III
Governor

Office of Inspector General
Board of Review
PO Box 29
Grafton WV 26354
September 13, 2007

Martha Yeager Walker
Secretary

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 23, 2007. Your hearing request was based on the Department of Health and Human Resources' denial of your January 5, 2007 application for benefits under the Medicaid Title XIX (Home & Community-Based) Waiver Program.

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.

Some of these regulations specify as follows: The Medicaid "transfer of resources policy" applies to Title XIX, Home and Community Based Waiver cases. The look-back period is 36 months. The time period begins the month the client has applied for Medicaid. All transfers not specifically excluded result in application of a penalty. (West Virginia Income Maintenance Manual § 17.10)

The information submitted at the hearing revealed that a number of Certificates of Deposit were transferred from your name in the 3 months prior to your application. Consideration of this resource resulted in a penalty period ending April 30, 2008. Policy provides no exception or exclusion which might eliminate consideration of the resources in question as a countable transfer.

It is the decision of the State Hearing Examiner to uphold the determination of the Agency as set forth in the February 8, 2007 notification.

Sincerely,

Ron Anglin
State Hearing Examiner
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Susan Mayle, ESW, Barbour Co DHHR

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

Claimant,

Action Number 07-BOR -1026

v.

**West Virginia Department of Health and Human Resources,
Respondent.**

DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Examiner resulting from a fair hearing concluded on September 13, 2007 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 May 23, 2007 on a timely appeal received March 28, 2007.

II. PROGRAM PURPOSE:

The Program entitled Medicaid Title XIX Waiver (HCB) is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

Under Section 2176 of the Omnibus Budget Reconciliation Act of 1981, states were allowed to request a waiver from the Health Care Financing Administration (HCFA) so that they could use Medicaid (Title XIX) funds for home and community-based services. The program's target population is individuals who would otherwise be placed in an intermediate or skilled nursing facility (if not for the waiver services).

Services offered under the Waiver Program will include: (1) chore, (2) homemaker and (3) case management services. West Virginia has been offering the Waiver Services Program since July 1982 to those financially eligible individuals who have been determined to need ICF level care but who have chosen the Waiver Program Services as opposed to being institutionalized.

III. PARTICIPANTS:

_____, claimant's daughter and POA

Susan Mayle, ESW, WVDHHR

Presiding at the hearing was Ron Anglin, State Hearing Examiner and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the agency was correct in their determination that the claimant did not qualify financially for the Medicaid Title XIX Waiver (HCB) Program based on a transfer of assets.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual § 11.3, 17.10 and 17.25

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

- A-1 Certificate of Deposit, 7017054, 10/27/06
- A-2 CD Receipt, 6000125626, 10/27/06
- A-3 CD Receipt, 6000125627, 10/27/07
- A-4 CD Receipt, 6000125628, 10/27/07
- A-5 CD Receipt, 0030018293, 11/7/07
- A-6 Notification, 2/8/07
- A-7 WVIMM 11.7 page 82
- C-1 Medical Power Of Attorney, 3/21/91
- C-2 Application for Annual Renewal Certificate, 12/1/03
- C-3 Safe deposit Box payment, 5/24/07
- C-4 Belington Bank Statement, 12/31/98
- C-5 Gas Utility bill, 12/2006
- C-6 (1). Bank Statement, Freedom Bank, In name of Claimant and POA, 1/10/2007
(2). Copy of deposit ticket Belington Bank, _____ with claimant and POA as owners, (3). Copy of Freedom Bank check, _____ with POA as own. Copy of POA personal check from BC Bank.
- C-7 Same as C-1
- C-8 Letter POA to DHHR, 6/27/07
- C-9 Letter POA to SSA, 1/15/07
- C-10 Last Will and Testament of POA
- C-11 POA Investment Portfolio, Edward Jones.
- C-12 Claimant/POA statements- 2

VII. FINDINGS OF FACT:

- 1) The claimant applied for Aged/Disabled Home and Community-Based Waiver Services on January 5, 2007. This application was denied and the claimant notified in a notice mailed February 8, 2007. the reason cited in the notice read: " Transfer of assets. You are ineligible for 19 months. Period of ineligibility is October 1, 2006 – April 30, 2008".
- 2) The claimant requested a hearing March 26, 2007.
- 3) A hearing was scheduled for and held May 23, 2007. At the hearing the claimant was granted a continuance to enable her to submit additional documentation in support of her case. On May 27 a letter was sent to the POA advising her to provide this information by July 1. It was also noted that any information would be shared with the agency for their rebuttal.
- 4) Documents herein marked as C- claimant's were received on July 2 and July 6, 2007. Originals were returned to the POA on July 11, 2007 and copies made available to the agency. August 9, 2007, E-mail from the agency advising that no rebuttal is being submitted nor change in their position based on documentation.
- 5) Exhibits as noted in Section VI above were presented.
- 6) Testimony was heard from the individuals listed in Section III above. All persons giving testimony were placed under oath.
- 7) The agency testified that the claimant's application was denied based on a non permissible transfer of assets. As documented in Exhibits A1 thru 5, total assets transferred were \$64,783.64. The claimant's name was removed from CD's noted and the POA name entered on 10/27/06 and 11/7/06. This results in a period of ineligibility of 19 months. (Total transferred divided by \$3380-average monthly LTC cost of private pay)
- 8) Testimony by the POA reveals that the assets that the claimant had were due to the POA's income. The POA moved back to WV in 1975. The claimant (her mother) helped to set up a business for her. This consisted of a beauty and dress shop and a grocery store which had belonged to the claimant and her spouse. She supported the claimant after the death of her spouse. Everything was in the POA's name and she gave money to the claimant. She has put the claimant's name on her accounts at various times. She still helps her mother financially. The money was not the claimant's but hers. Wanted claimant to be able to access funds if something happened to her.

9) West Virginia Income Maintenance Manual § 11.4 reveals that bank accounts and CD's must be considered for purposes of determining Medicaid eligibility. The amount deposited, plus any accrued interest, minus any penalties imposed for early withdrawal, is counted as an asset.

10) West Virginia Income Maintenance Manual § 11.3 reveals that the allowable asset level for a one person Medicaid group is \$2000

11) West Virginia Income Maintenance Manual § 17.25 (HCB) Waiver

The determination of countable assets is the same as for SSI-Related Medicaid. See Chapter 11. The SSI-Related Medicaid asset limit for one person is used. For transfers of resources see Sections 17.9 and 17.10. See Section 17.10 for the spousal assessment of assets. **Both apply to HCB applicants.**

12) West Virginia Income Maintenance Manual § 17.10 sets forth the "transfer of resources policy" applying to Medicaid Title XIX, Home and Community Based Waiver cases.

The look-back period is 36 months. The time period begins the month the client is both institutionalized and has applied for Medicaid.

All transfers not **specifically excluded** from the application of a penalty result in application of a penalty.

VIII. CONCLUSIONS OF LAW:

1) Bank accounts and CD's must be considered for purposes of determining Medicaid eligibility and counted as an asset. Evidence reveals that CD's totaling \$64,783.64 in value were owned by the claimant (in her name) as of October 2007.

2) The Medicaid – Transfer of Resources Policy applies Home and Community Based Waiver cases. The look-back period is 36 months. The time period begins the month the client has applied for Medicaid. The aforementioned assets were transferred from the claimant's name in October and November 2006. The claimant applied for Medicaid January 5, 2007.

3) All transfers not specifically excluded by policy result in application of a penalty. Testimony on the part of the POA, to whom the assets in question were transferred, suggests that the funds in question were never the claimant's but had been put in her name in case of emergency. This testimony in addition to the documentation provided by the POA, fail to provide a reason or situation meeting any of the specific guidelines which would establish an exclusion to the transfer policy.

IX. DECISION:

The Agency's determination as set forth in the February 8, 2007 notification is upheld. The agency determination was correct and in compliance with current policy and regulations. Policy provides no exception or exclusion which might eliminate consideration of the resources in question as a countable transfer.

X. RIGHT OF APPEAL

See Attachment.

XI. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

Entered this 13th Day of September 2007

RON ANGLIN
State Hearing Examiner

CLAIMANT'S RECOURSE TO ADMINISTRATIVE HEARING DECISION

For

**Public Assistance Hearings,
Administrative Disqualification Hearings, and
Child Support Enforcement Hearings**

A. CIRCUIT COURT

Upon a decision of a State Hearing Officer, the claimant will be advised he may bring a petition in the Circuit Court of Kanawha County within four months (4) from the date of the hearing decision.

The Court may grant an appeal and may determine anew all questions submitted to it on appeal from the decision or determination of the State Hearing Officer. In such appeals a certified copy of the hearing determination or decision is admissible or may constitute prima facie evidence of the hearing determination or decision. Furthermore, the decision of the circuit Court may be appealed by the client or petitioner to the Supreme Court of Appeals of the State of West Virginia.

B. THE UNITED STATE DEPARTMENT OF HEALTH AND HUMAN SERVICES

If you believe you have been discriminated against because of race, color, national origin, age, sex or handicap, write immediately to the Secretary of the United States Department of Health and Human Services, Washington, D.C. 20201.

C. THE UNITED STATE DEPARTMENT OF AGRICULTURE

If you believe you have been discriminated against because of race, color, national origin, age, sex or handicap, write immediately to the Secretary of the Department of Agriculture, Washington, D.C. 20250.

IG-BR-46 (Revised 12/05)



**WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
HEARING DECISION TRANSMITTAL FORM**

DATE: March 6, 2008

TO: Susan Mayle, ESW
Bureau for Senior Services

FROM: Ron Anglin, State Hearing Examiner

RE: NAME: Okarita Glenn
COUNTY: Barbour
CATEGORY: Medicaid, Aged Disabled Waiver- Financial

ATTACHED IS THE DECISION AND SUMMARY ON THE ABOVE-NAMED CASE:

In favor of the agency (UPHELD)

AFTER COMPLETION RETURN THIS FORM TO Erika Young, Chairman, Bd. Of Review

**PLEASE COMPLETE THE BOTTOM OF THIS FORM AND RETURN
ONE COPY TO THE STATE HEARING OFFICER**

- ☐ Date Hearing decision implemented_____
- ☐ Effective Date_____
- ☐ Amount of Retroactive Payment_____
- ☐ Case Continued No Action Necessary_____
- ☐ No Action Necessary _____
- ☐ Action Not Taken (Give Reason) _____

Date_____ Signature_____

(Agency Employee)