



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Joe Manchin III
Governor

Patsy Hardy, FACHE, MSN, MBA
Cabinet Secretary

September 24, 2009

RE: -----

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on the hearing held September 2, 2009 for -----.
-----'s hearing request was based on the Department of Health and Human Resources' denial of Aged/Disabled
Waiver Medicaid based on the imposition of a transfer of assets penalty.

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 Aged/Disabled Waiver Program is based on current policy and regulations. Some of these
regulations state as follows: No transfer of assets penalty is applied when the transfer was made for a reason
exclusively than to qualify for Medicaid. In addition, no penalty is imposed when a home is transferred to the
client's child(ren) who was residing in the home for at least two years immediately prior to the client's
institutionalization and who provided care to the individual which allowed him to remain at home rather than
being institutionalized. (West Virginia Income Maintenance Manual Chapter 17.10)

Information presented during the hearing reveals that -----'s life estate transfer is a permissible transfer under
policy and no penalty should be applied.

It is the decision of the State Hearing Officer to **reverse** the Department's denial of Aged/Disabled Waiver
Medicaid.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
-----, Claimant
Sharon Straley, FSS, DHHR
Judy Talbott, HHR Specialist Senior, DHHR

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

-----,

Claimant,

v.

Action Number: 09-BOR-1375

**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 September 24, 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 September 2, 2009 on a timely appeal filed June 22, 2009. The hearing was originally scheduled for July 20, 2009, but was rescheduled at the request of the Claimant.

All persons giving testimony were placed under oath.

II. PROGRAM PURPOSE:

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 (participated telephonically)
-----, Claimant's witness
-----, Claimant's witness
-----, Claimant's witness
-----, Claimant's witness (participated telephonically)
-----, -----

Harold Langevin, Economic Service Worker, DHHR
Judy Talbott, HHR Specialist Senior, DHHR

Presiding at the hearing was Pamela L. Hinzman, 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 Agency was correct in its denial of the Claimant's Aged/Disabled Waiver Medicaid application.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Chapter 17.10, B, 3 and 4

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Waiver Medicaid Program application dated April 3, 2009
- D-2 Verification Checklist dated April 3, 2009
- D-3 Case comments from Rapids computer system dated May 6, 2009
- D-4 Verification Checklist returned to DHHR office
- D-5 Verification Checklist dated May 6, 2009
- D-6 Property deed dated August 1, 2006
- D-7 Property tax receipt for 2008
- D-8 West Virginia Income Maintenance Manual Chapter 11, Appendix A
- D-9 Case comments from Rapids computer system dated May 18, 2009
- D-10 DHS-2 correspondence between Central West Virginia Aging Services and DHHR
- D-11 Notice of Decision dated May 19, 2009
- D-12 Notification of Right to Request an Undue Hardship Waiver dated May 18, 2009
- D-13 Claimant's request for Undue Hardship Waiver
- D-14 Application for Undue Hardship Waiver dated June 5, 2009
- D-15 Letter from Dr. ----- dated June 12, 2009
- D-16 Letter from Dr. ----- [REDACTED] dated June 16, 2009
- D-17 Correspondence to DHHR from ----- dated June 8, 2009
- D-18 Correspondence to DHHR from ----- dated June 13, 2009
- D-19 Notice of Decision on Request for Undue Hardship dated June 16, 2009
- D-20 Fair Hearing Request Form signed by Claimant on June 20, 2009

D-21 West Virginia Income Maintenance Manual Chapter 17.25, 17.10, 17-Appendix A and 17-Appendix H

Claimant's Exhibits

C-1 PAS-2000, Section V- Eligibility Determination, and PAS-2000, Page 1 of 7

C-2 Property deed dated December 9, 2005 between ----- and -----

VII. FINDINGS OF FACT:

- 1) The Claimant's son, -----, applied for Aged/Disabled Waiver Medicaid benefits for the Claimant on April 3, 2009 (D-1).
- 2) At the time of application, DHHR Economic Service Worker Harold Langevin requested verification (D-2) of household information, including property ownership and previous asset transfers. The Claimant provided written responses to the verification request (D-4) indicating that she does not own a home or real estate and that she transferred assets in August 2006.
- 3) The Economic Service Worker issued a second Verification Checklist (D-5) on May 6, 2009, requesting that the Claimant provide documentation concerning the asset transfer. The Claimant provided a property deed (D-6) indicating that she and her husband, -----, along with her sons, ----- and -----, conveyed a residence on [REDACTED] in the Town of [REDACTED] (also known as [REDACTED] to her son ----- on August 1, 2006. The deed indicates that the Claimant and her husband had originally conveyed the property to their three sons on July 17, 1999, but the couple reserved life estates to the property at that time. The life estates were relinquished in the August 2006 deed.
- 4) The worker determined that the property's fair market value is \$18,566.54 and calculated the value of the Claimant's life estate as \$6,178 by using information on a 2008 property tax receipt (D-7) and the Life Estate Table factors located in West Virginia Income Maintenance Manual Chapter 11, Appendix A (D-8). He determined that the Claimant was ineligible for Aged/Disabled Waiver benefits because she had transferred the property during the look-back period without receiving fair compensation. The worker sent the Claimant a Notice of Decision on May 19, 2009 (D-11) informing her of program ineligibility. The Claimant was also sent a Notification of Right to Request an Undue Hardship Waiver on May 18, 2009. (D-12).
- 5) The Claimant submitted a written request for an Undue Hardship Waiver (D-13) and an application for the waiver (D-14) was sent to the DHHR Undue Hardship Waiver Committee, along with letters (D-15 and D-16) from the Claimant's physicians. The worker received a Notice of Decision on Request for Undue Hardship dated June 16, 2009 (D-19). The decision states that the Undue Hardship Waiver was denied because the Claimant had failed to take any action to recover the life estate from the transferee. The Claimant then submitted a Fair Hearing Request (D-20).
- 6) The Economic Service Worker testified about the transfer determination and indicated that ----- stated on or about May 22, 2009 that the property was transferred for family issues and it would be difficult to recover the life estate.

- 7) ----- testified that the property had been transferred to his brother ----- in 2006 because ----- had divorced and moved into their parents' home. He indicated that he and his brother ----- have their own residences and wanted to ensure that ----- had a home because his house was conveyed to his ex-wife as part of the divorce settlement. ----- indicated that the transfer was made exclusively to assist his brother ----- and that their mother was not in need of Aged/Disabled Waiver services at that time.

----- testified that he had moved to [REDACTED] for a short time following his divorce, but has resided with his parents since moving back to the area in late 2005. Exhibit C-2 verifies that his previous residence was deeded to his ex-wife in their divorce settlement. ----- indicated that he is employed during the day, but assists his father with his mother's care during evenings and weekends. He stated that he assists with household chores, administers his mother's medication and helps her transfer around the house, however his father helps her bathe. He testified that his mother uses continuous oxygen and undergoes kidney dialysis three days per week. ----- purported that he had no prior knowledge of Medicaid Program guidelines and that he was not questioned regarding the reason for the property transfers during the Aged/Disabled Waiver application process.

-----, the Claimant's daughter-in-law and a Quality Assurance Coordinator/Registered Nurse with Central West Virginia Aging Services, testified that the Claimant, who has Chronic Obstructive Pulmonary Disease and congestive heart failure, was in good health in 1999. The Claimant had surgery in 2000 and was hospitalized for several months, but later improved. ----- testified that ----- assists his mother in various capacities in the home. She stated that the Claimant developed additional health problems in February 2009. ----- maintained that the family had no discussion regarding future Aged/Disabled Waiver services when the life estates were transferred in 2006 and first decided to pursue Waiver benefits in February 2009. ----- testified that she had no knowledge of circumstances surrounding the property deeds until issues arose with the Claimant's Aged/Disabled Waiver application.

The Claimant's husband, -----, testified that the couple relinquished their life estates in 2006 to avoid any potential squabbles or future heirship issues with the property. He also indicated that his sons ----- and ----- deeded their interest in the property to ----- because ----- did not have a residence. ----- testified that he and his wife have Medicare and PEIA insurance and he knew nothing about the Medicaid Program when the transfer was completed.

The Claimant testified that her health has deteriorated this year, and that ----- helps her transfer in the home and assists in her medication administration.

Judy Talbott, HHR Specialist Senior for DHHR and a member of the Undue Hardship Waiver Committee, testified that the Undue Hardship Waiver was denied because the Claimant had failed to take action to recover her life estate. She indicated that she was given no information concerning the reason behind the property transfer, however she questioned the Economic Service Worker on June 15, 2009 about whether ----- assists with his mother's care. Ms. Talbott stated that she received an electronic mail transmission response from the worker on June 16, 2009, noting that he had telephoned ----- regarding the issue. According to Ms. Talbott, the e-mail states that the worker was told ----- had

resided in the home for about 6 years and that he does not provide care for the Claimant.

- 8) West Virginia Income Maintenance Manual Chapter 17.10, B, 3 (D-21) defines the look-back period for Medicaid as the length of time for which a worker looks back for any resource transfers. Chapter 17, Appendix H indicates that the look-back period for resources transferred on or after 2/8/06, with the exception of trusts, is “36+ Months until 2/8/11 when a full five years/60 months after 2/8/06 is reached.” This look-back period was established as the result of a policy change effective March 1, 2009.
- 9) West Virginia Income Maintenance Manual Chapter 17.10, B, 4, a, (D-21) states that no penalty is applied when a home is transferred:
 - To the client’s child(ren) who was residing in the home for at least two years immediately prior to the client’s institutionalization and who provided care to the individual which allowed him to remain at home rather than being institutionalized.
- 10) West Virginia Income Maintenance Manual Chapter 17.10, B, 4, g, states that no transfer of assets penalty is applied when “the resources were transferred exclusively for a purpose other than to qualify for Medicaid...”

III. CONCLUSIONS OF LAW:

- 1) Policy states that no asset transfer penalty is applied to a Medicaid case when the resource was transferred exclusively for a reason other than to qualify for Medicaid. In addition, policy states that no transfer of assets penalty is applied when a home is transferred to the client’s child who was residing in the home for at least two years immediately prior to the client’s institutionalization and who provided care to the individual which allowed him to remain at home rather than being institutionalized.
- 2) Reasonable and convincing testimony was provided during the hearing to establish that the Claimant relinquished her property life estate exclusively for a reason unrelated to the establishment of Medicaid eligibility. In addition, the Claimant’s son -----, the transferee, resided with the Claimant for at least two years prior to her Aged/Disabled Waiver application and testimony reveals that he has participated in her care. As ----- is employed, it is clear that he cannot serve as a caregiver 24 hours per day. However, it is reasonable to believe that he participates in his mother’s care during non-work hours.
- 3) Based on information provided during the hearing, the Department’s decision to deny Aged/Disabled Waiver Medicaid benefits based on a transfer of assets penalty cannot be affirmed. As no transfer penalty can be applied, the Undue Hardship Waiver denial - as well as a notification issue and a policy matter addressed by the Claimant’s attorney concerning the transfer penalty - will not be addressed in this decision.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Agency's action in denying the Claimant's Aged/Disabled Waiver Medicaid application. Medicaid benefits should be issued retroactively to the date eligibility was otherwise established.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 24th Day of September, 2009.

Pamela L. Hinzman
State Hearing Officer