



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 Mr. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 8, 2007. Your hearing request was based on the Department of Health and Human Resources denial of Medicaid, Long Term Care (Nursing Home) coverage for May 2007.

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.

Medicaid, Long Term Care Services are provided to eligible Medicaid individuals who reside in a nursing care or ICF/MR facility. Individuals eligible for coverage under this group must qualify medically and financially. The asset eligibility determination for purposes of the Medicaid Program must be made as of the first moment of the month of application. The client is not eligible for any month in which assets are in excess of the maximum, as of the first moment of the month. (West Virginia Income Maintenance Manual § 11.2)

The information which was submitted at your hearing revealed that countable assets as of May 1, 2007 exceeded the \$2000 maximum for Medicaid eligibility.

It is the decision of the State Hearing Officer to **uphold** the agency's determination as set forth in the June 13, 2007 notification.

Sincerely,

Ron Anglin  
State Hearing Examiner  
Member, State Board of Review

cc: Chairman, Board of Review  
[REDACTED] County DHHR, Susan Mayle  
[REDACTED] [REDACTED] Nursing Facility

# WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

\_\_\_\_\_  
Claimant,

vs.

Action Number 07- BOR- 1636

West Virginia Department of Health & Human Resources,  
Respondent.

## SUMMARY AND 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 originally convened on August 8, 2007 on a timely appeal filed June 22, 2007.

### II. PROGRAM PURPOSE:

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

Nursing Home Care 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 standards for the care provided to eligible recipients. In order to qualify for Nursing Home Care, an individual must meet both financial and medical eligibility criteria.

### III. PARTICIPANTS:

\_\_\_\_\_, claimant

\_\_\_\_\_, POA to claimant

\_\_\_\_\_, LSW, \_\_\_\_\_

\_\_\_\_\_, Office Manager, \_\_\_\_\_

Susan Mayle, ESW, \_\_\_\_\_ DHHR

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 denial of Medicaid benefits for nursing home care for May 2007.

#### **V. APPLICABLE POLICY:**

West Virginia Income Maintenance Manual § 11.2, 11.3, 11.4T

#### **VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

Department's Exhibits:

E -1- WVIMM 11.3

E -2- Notification, 6/13/07

E -3- Correspondence from Mutual of Omaha, 4/28/07

Claimant's Exhibits

C-1 Resident Payment Report, 8/8/07

C-2 Life Insurance Withdrawal form, 5/9/07

#### **VII. FINDINGS OF FACT:**

1) June 22, 2007 a hearing was requested by the claimant in response to a notification of 6/13/07. The request was received by this examiner 6/27/07 with a note that POA would be unavailable 7/7 through 7/15. A hearing was scheduled for 8/1/07 and postponed and rescheduled at the agency's request and convened 8/8/07.

2) During the hearing, Exhibits as noted in Section VI were presented.

3) Testimony was heard from the individuals listed in section III above.

4) Testimony by the agency reveals that a Medicaid NH application was made by the POA 5/16/07. Claimant had a life Insurance policy with a cash surrender value of \$4896.88. The face value of the policy was \$10,000 and the asset limit for Medicaid nursing home is \$2000. NH called 6/12/07 stating that paperwork was received at the insurance office 5/14/07 to cash the policy in. Application denied for May 2007. POA has contacted insurance to get paperwork in April.

5) Testimony on behalf of the claimant reveals that the POA contacted the insurance company

immediately when he discovered there was a policy – just prior 4/28/07. The paperwork to cash the policy was mailed back the day it was received 5/9/07 (C-2). Cash Value of the policy was sent directly to the NH and was used to cover April expenses. This check was received by the NH in June. Claimant was private pay for March and April. June costs were paid by Medicaid. Claimant had been a Medicaid client until a VA lump sum payment made him ineligible requiring the reapplication. May is the only month in question.

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

7) West Virginia Income Maintenance Manual § 11.2 A states in part:

The asset eligibility determination for these applications (MEDICAID) must be made as of the first moment of the month of application. The client is not eligible for any month in which assets are in excess of the maximum, as of the first moment of the month.

8) West Virginia Income Maintenance Manual § 11.4 T states in part:

If the face value of all life insurance policies for one individual totals \$1,500 or less, the cash surrender values are not counted as an asset. If the face value of all life insurance policies for an individual is in excess of \$1,500, the cash surrender values are counted as an asset.

## **VIII. CONCLUSIONS OF LAW:**

1) In evaluating an individual's countable assets in the financial eligibility determination for Medicaid Nursing Home Care, policy reveals that if the face value of all life insurance policies for an individual is in excess of \$1,500, the cash surrender values are counted as an asset. Evidence reveals the Face value of the policy in question was \$10,000. The cash value of this policy was \$4896.88.

2) The asset eligibility determination for purposes of the Medicaid Program must be made as of the first moment of the month of application. The client is not eligible for any month in which assets are in excess of the maximum, as of the first moment of the month. The month in question here is May 2007 and evidence is clear that as of the first of May 2007 an asset with a value of \$4896.88 belonged to the claimant. The process to cash in and utilize these funds to cover allowable expenses did not begin until May 9, 2007. The funds in question were clearly still in the claimant's ownership as of May 1, 2007.

3) The allowable asset level for a one person Medicaid group is \$2000. As of May 1, 2007 the claimant's countable assets exceeded the \$2000 maximum. The claimant was financial ineligible for Medicaid for May 2007

**IX. DECISION:**

After reviewing the information presented during the hearing and the applicable policy and regulations, I am ruling to **uphold** the agency's determination in denial of Medicaid, Nursing Home Care benefits for May 2007. The agency's determination in compliance with existing policy and regulations.

**X. RIGHT OF APPEAL**

See Attachment.

**XI. ATTACHMENTS**

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

**ENTERED this 13<sup>th</sup> day of September 2007,**

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**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.

