



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
9083 Middletown Mall  
White Hall, WV 26554

Joe Manchin III  
Governor

Patsy A. Hardy, FACHE, MSN, MBA  
Cabinet Secretary

January 25, 2009

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**Re: -----**

**Case No.: 09-BOR-2132**

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on the hearing held for -----on December 2, 2009. -----appeal was based on the Department of Health and Human Resources' decision to impose a transfer of asset penalty in her Medicaid Long-Term Care case for the period September 2009 through July 2010 with a partial penalty remaining in August 2010.

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 Long-Term Care Program is based on current policy and regulations. Some of the regulations state that the Fair Market Value is an estimate of the value of a resource, if sold at the prevailing price at the time it was actually transferred. A permissible transfer is considered to be for the sole benefit of a spouse, disabled child, or a disabled individual under age 65, if the transfer is arranged in such a way that no individual, except the spouse, child or individual, can benefit from the transferred asset in any way, either at the time of the transfer, or at any time in the future. For non-permissible transfers, the penalty period begins the date in which the individual is receiving institutional care and otherwise qualifies for Medicaid payment of nursing facility care were it not for the imposition of a transfer penalty. (West Virginia Income Maintenance Manual, Chapters 17.10 and Appendix H)

Information presented at the hearing confirms that the Department was correct to impose a transfer of asset penalty in the Claimant's Medicaid Long-Term Care case beginning September 2009 through July 2010 with partial penalty remaining in August 2010.

It is the decision of the State Hearing Officer to **uphold** the Department's decision to apply a transfer of asset penalty to the Claimant's Medicaid Long-Term Care case.

Sincerely,

Thomas E. Arnett  
State Hearing Officer  
Member, State Board of Review

Pc: Erika H. Young, Chairman, Board of Review  
Lori Williams, DHHR

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

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**Claimant,**

**v.**

**Action Numbers: 09-BOR-2132**

**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 25, 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 December 2, 2009 on a timely appeal filed September 30, 2009.

All persons giving testimony were placed under oath.

**II. PROGRAM PURPOSE:**

Long-Term 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 (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:**

., Counsel for Claimant  
, Claimant's daughter  
Lori Williams, Department representative

Presiding at the hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

#### **IV. QUESTION TO BE DECIDED:**

The question to be decided is whether or not the Agency was correct in its decision to impose a transfer of asset penalty in the Claimant's Medicaid Long-Term Care case during the period September 2009 through July 31, 2010 with a partial penalty remaining in August 2010.

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

West Virginia Income Maintenance Manual, Chapters 11.7 and 17.10

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

##### **Department's Exhibits:**

- D-1 Hearing Summary (12/3/09)
- D-2 Correspondence from ----- accompanied by the Claimant's written appeal (9/29/09)
- D-3 Notice of Decision (10/15/09)
- D-4 WV Income Maintenance Manual, Chapter 17, Appendix H (Revised 3/09)
- D-5 Case Comments from RAPIDS for period 9/24/09 through 11/25/09 (5 pages)
- D-6 Verification of transfers

##### **Claimant's Exhibits:**

- C-1 WV Income Maintenance Manual, Chapter 17.10 .B.4 (Revised 8/98)
- C-2 WV Code §2-2-10(bb)
- C-3 Roderick v. Hough, 124 S.E.2d 703
- C-4 W. Va. Const. Art. III §§4. Writ of Habeas Corpus
- C-5 Collins v. Youngblood, 497 U.S. 37
- C-6 Public Citizen v. First National Bank, 480 S.E.2d 538

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

- 1) At issue in this case is the Claimant's eligibility for Medicaid Long-Term Care (Nursing Facility) benefits for the period September 1, 2009 through July 31, 2010 with a partial penalty remaining in August 2010 due to a transfer of asset penalty (11.56 months) being applied to her case.
- 2) As a matter of record, both parties agreed to the following facts: a) The Claimant was admitted to a nursing facility in July 2009, b) An application was completed on behalf of the Claimant for Medicaid Long-Term Care benefits on September 24, 2009, c) The September 2009 application revealed that the Claimant transferred three (3) life insurance policies, and other cash assets on or after 2/8/06 to her two children, valued at \$58,821, d) That pursuant to the WV Income Maintenance Manual, the Department has correctly calculated the asset transfer penalty to be 11.56 months (September 1, 2009 through July 31, 2010 with a small penalty remaining in August 2010).

- 3) The Claimant, by counsel, indicated that she does not agree with the new Medicaid transfer of asset policy that became effective March 2009. In support of the Claimant's position, Exhibits C-1 through Exhibit C-6 were submitted to show the Claimant is being punished via an ex post facto law because the Medicaid policy in place at the time of transfer would have allowed the penalty period to start when the asset was transferred. Thus, the penalty period would have expired and the Claimant would be Medicaid eligible. However, new Medicaid policy has been implemented effective March 2009 (after the transfer took place) and changed the effective date of the penalty. As a result, the Claimant is faced with an 11.56 month penalty period. It should be noted that ex post facto is a criminal concept that has no relevance in this matter.
- 4) Pursuant to WVIMM, Chapter 17.10.B.4, the Claimant's transferred assets are not exempt under the permissible transfer policy.
- 5) Policy found in the West Virginia Income Maintenance Manual (WVIMM), Chapter 17.10.B.3 states that the length of time for which the worker looks back for any resource transfers is the same whether or not a trust fund was involved. The look-back period is 60 months for transfers on or after 2/8/06. The time period begins the month the client is both institutionalized and has applied for Medicaid.
- 6) West Virginia Income Maintenance Manual, Chapter 17.10.B.11 and Chapter 17, Appendix H states that for assets transferred on or after 2/8/06, the transfer of resources penalty results in ineligibility for nursing facility services. The beginning date of each penalty period imposed for any uncompensated transfer of resources is the later of the date on which the individual is eligible for and is receiving an institutional level of care services that would be covered by Medicaid if not for the imposition of the penalty period.
- 7) West Virginia Income Maintenance Manual, Chapter 17.10 states that the Fair Market Value (FMV) is an estimate of the value of a resource, if sold at the prevailing price at the time it was actually transferred. The undisputed value of the amount transferred in this case was \$58,821.

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

- 1) The Claimant's September 2009 application for Medicaid Long-Term Care was approved, however, a transfer of assets penalty period of 11.56 months (September 2009 through July 2010 and remaining penalty in August 2010) was applied due to a transfer of assets that occurred during the established look-back period. Pursuant to Medicaid policy effective March 2009, the penalty period was correctly imposed.
- 2) The Claimant's appeal, as disclosed toward the end of the hearing, is strictly a matter of policy. The Board of Review lacks the authority to change Medicaid policy. Whereas no further relief can be granted to the Claimant, the Department has acted within regulatory guidelines.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the Agency's action in applying a transfer of asset penalty to the Claimant's Medicaid Long-Term Care benefits during the months of September 2009 through July 2010 and remaining penalty in August 2010.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 25<sup>th</sup> Day of January, 2010.**

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**Thomas E. Arnett  
State Hearing Officer  
Member, State Board of Review**