



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

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

March 24, 2016

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 16-BOR-1329 & 16-BOR-1330

Dear Mr. [REDACTED]

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

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.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

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

Encl: Claimant's Recourse to Hearing Decision
Form IG-BR-29

cc: Lynelle Zickefoose, WVDHHR

V.

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

DECISION OF STATE HEARING OFFICER

This is the decision of the State Hearing Officer resulting from a fair hearing for [REDACTED]. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on March 16, 2016, on an appeal filed February 17, 2016

At the hearing, the Respondent appeared by Lynelle Zickefoose, Economic Service Worker, WVDHHR. The Appellants were represented by their son, [REDACTED]. All witnesses were sworn and the following documents were admitted into evidence.

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| D-1 | Chase Loan Statement for the period of November 17, 2015 to December 17, 2015 |
| D-2 | ██████ County property tax receipt for Tax Year 2015 |
| D-3 | Notices of Decision dated February 5, 2016 |

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FINDINGS OF FACT

- 1) On February 5, 2016, the Appellants were notified (D-3) that their Long-Term Care Medicaid application had been denied due to excessive assets.
- 2) Lynelle Zickefoose, Economic Service Worker (ESW) with the Department, testified that the Appellants applied for Long-Term Care benefits in January 2016. ESW Zickefoose stated that the Department received information at that time to indicate that the Appellants' homestead property was under contract, and Ms. Zickefoose determined the countable value of the property to be \$29,637 based on a 2015 property tax receipt and loan information (D-1 and D-2).
- 3) [REDACTED], the Appellants' son, testified that the house was not under contract at the time of the Long-Term Care application. He indicated that an individual had given him a purchase agreement to potentially buy the house for its pay-off value, which would have been below current market value. The offer was not accepted and the individual later purchased the residence in March 2016 for current market value. Mr. [REDACTED] contended that the house was not under contract until March 9, 2016.

APPLICABLE POLICY

West Virginia Income Maintenance Manual Chapter 17.10.C states that a nursing facility resident is entitled to an exclusion of their homestead as a countable asset as long as he has intent to return to his homestead when/if discharged. It is not necessary that the client be medically able to return home to apply the exclusion. It is totally based on the client's intended actions not whether he has the ability. The property to which the person intends to return must be the principal place of residence in which he resided before he went into the nursing home. See Chapter 11.1 for the definition of Principal Place of Residence. If the client's homestead is a multi-unit dwelling, such as an apartment building, the entire property is excluded, not just the portion of the value which corresponds to the portion of the property in which he actually lived. When the client does not have intent to return due to domestic abuse, see Chapter 11.4. The homestead property need not be in West Virginia. The homestead exclusion applies, regardless of the state in which it is located. The client's intent to return to the homestead property does not necessarily affect his West Virginia residency. See Chapter 8 for residency details.

When the client's spouse or dependent relative resides in the primary residence, the homestead property remains excluded, regardless of the client's intent to return. For purposes of the homestead exclusion only, a dependent relative is one who is dependent financially, medically or as otherwise determined dependent upon the institutionalized person: child, stepchild or grandchild; parent, stepparent or grandparent; aunt, uncle, niece or nephew; brother or sister, including relations of the step or half; cousin or in-law.

When the home is rented or vacant this has no bearing on the homestead exclusion, however, when the individual places his home on the market, intent to return no longer exists and the home is not excluded.

When the client is incapable of indicating his intent, his Committee, legal representative or the person handling his financial matters will make the determination. The Worker must record the client's statement or intent in the case record. A written statement may be requested but no action may be taken to deny or stop benefits for failure to provide a written statement when the client has expressed his intent verbally or by gesture.

West Virginia Income Maintenance Manual Chapter 11.3 states that the asset limit for SSI-Related Medicaid is \$2,000 for a one-person Assistance Group and \$3,000 for a two-person Assistance Group.

DISCUSSION

Policy states that an individual must meet an asset test to qualify for the Long-Term Care Medicaid Program, and the asset limit is \$2,000 for a one-person Assistance Group or \$3,000 for a two-person Assistance Group. The Department calculated the Appellants' total assets as \$29,636 at the time of their Long-Term Care application. The Appellants' son testified that the Appellants' residence was not under contract at the time of the Medicaid application, but that an individual had offered him a purchase agreement that was ultimately not accepted. He contended that the house was not listed with a realtor and it was not under contract for sale until March 9, 2016, at which time the buyer agreed to pay current market value as opposed to the pay-off value of the loan.

CONCLUSIONS OF LAW

Based on information provided during the hearing, the Department acted incorrectly in denying the Appellants' Long-Term Care Medicaid application based on excessive assets.

DECISION

It is the decision of the State Hearing Officer to REVERSE the Department's action to deny the Appellants' Long-Term Care Medicaid benefits.

ENTERED this 24th Day of March 2016.

**Pamela L. Hinzman
State Hearing Officer**

