



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

August 19, 2016



RE: [REDACTED] v. WVDHHR
ACTION NO.: 16-BOR-2218

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: Eva Marie Dawson, WVDHHR

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

██████████,

Appellant,

v.

Action Number: 16-BOR-2218

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

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for ██████████. 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 August 11, 2016, on an appeal filed June 29, 2016

The matter before the Hearing Officer arises from the June 24, 2016 decision by the Respondent to deny the Appellant's benefits under the Long-Term Care Medicaid Program.

At the hearing, the Respondent appeared by Eva Marie Dawson, Economic Service Worker, WVDHHR. The Appellant was represented by ██████████, Medicaid Advisor, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- | | |
|-----|---|
| D-1 | West Virginia Income Maintenance Manual Chapter 11.3 |
| D-2 | West Virginia Income Maintenance Manual Chapter 17.10 and 17.10.A |
| D-3 | West Virginia Income Maintenance Manual Chapter 17.10.A.1 |
| D-4 | Long-Term Care Medicaid Application dated June 10, 2016 |
| D-5 | Chase Bank Statement |
| D-6 | West Virginia Income Maintenance Manual Chapter 11.2 |
| D-7 | West Virginia Income Maintenance Manual Chapter 17.10.A.5 |

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the

evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) On June 24, 2016, the Appellant was notified that her Long-Term Care Medicaid application had been denied due to excessive assets.
- 2) Eva Marie Dawson, Economic Service Worker (ESW) with the Department, testified that the Appellant applied for Long-Term Care Medicaid benefits on June 10, 2016 (D-4). ESW Dawson stated that the Department received verification (D-5) that the Appellant's checking account balance was \$2,190.36 as of June 1, 2016, which exceeds the \$2,000 asset limit for Long-Term Care Medicaid benefits.
- 3) ESW Dawson testified that the Appellant had originally applied for Medicaid in January 2013, at which time an Asset Assessment was completed for the Appellant and her community spouse, [REDACTED]. ESW Dawson stated that the Appellant had been placed in a skilled nursing facility in November 2012, and that Asset Assessments are completed to reflect a couple's assets as of the first continuous period of institutionalization. ESW Dawson indicated that the Asset Assessment is completed one time only, so that a community spouse can retain a portion of the couple's combined assets. At the time of the Asset Assessment, Mr. [REDACTED] had 90 days to transfer his attributed assets of \$78,048.51 out of the Appellant's name. Any remaining funds in the Appellant's name after 90 days would be considered as a countable asset in the Appellant's Medicaid case. ESW Dawson stated that verification of the transferred assets was never provided to the Department; therefore, the Appellant's Long-Term Care Medicaid benefits were terminated in July 2013, as her countable assets exceeded the asset limit for the program.
- 4) ESW Dawson testified that an Asset Assessment was not required at the time of the June 2016 application because the Appellant's first continuous period of institutionalization was in 2012 and the Assessment is only completed once.
- 5) [REDACTED], Medicaid Advisor with [REDACTED], testified that the Appellant died on June 10, 2016, and he is only seeking Medicaid payment for the period of June 1, 2016 to June 10, 2016. He contended that the Appellant should have qualified for Long-Term Care Medicaid benefits at the time of the June 2016 application, and her husband should have been granted another 90-day period in which to remove his share of assets from her name.

APPLICABLE POLICY

West Virginia Income Maintenance Manual Chapter 17.10.A (D-2) states that an Asset Assessment for a legally married individual and his/her spouse is completed as of the first

continuous period of institutionalization and is completed one time only. The first continuous period of institutionalization is the date the client first enters the nursing facility and remains for at least 30 days or is reasonably expected to remain for 30 days at the time the individual enters the facility.

Chapter 17.10.A.1 of the Manual (D-3) states that the purpose of the Asset Assessment is to allow the spouse of an institutionalized individual to retain a reasonable portion of the couple's assets to prevent the impoverishment of the community spouse.

West Virginia Income Maintenance Manual Chapter 17.10.A.1 (D-3) states that if an application for nursing facility services is not made when the assessment is completed, the spouse retains the amount attributed to him at the assessment, regardless of the couple's combined assets at the time of application.

West Virginia Income Maintenance Manual Chapter 17.10A.5 (D-7) states that once initial eligibility for Long-Term Care Medicaid has been established, assets that were not counted for the institutionalized spouse must be legally transferred to the community spouse. Assets cannot merely be attributed to the community spouse, but must actually be transferred to the community spouse if they are to be excluded in determining continuing Medicaid eligibility of the institutionalized spouse. Assets legally transferred to the community spouse based on the Asset Assessment are not treated as uncompensated transfers of resources.

To exclude assets attributed to the community spouse, the institutionalized spouse must indicate his intent to transfer the assets to the community spouse, and the transfer must take place within 90 days, unless a longer period is required to take the action.

When the institutionalized spouse obtains an additional asset(s) after the community spouse's share has been calculated and the initial Medicaid eligibility is established, the additional asset(s) is excluded when one of the following conditions exist:

- The new asset(s) combined with the other assets the institutionalized spouse intends to retain, does not exceed the asset limit for one person: and/or
- The institutionalized spouse intends to transfer the new asset(s) to the community spouse who has assets below the previously determined spousal amount. To exclude the additional asset(s), the institutionalized spouse or his representative must promptly report receipt of the new asset(s) and provide the Worker with a written statement that he intends to transfer the new asset(s) to the community spouse within 90 days.
- The Qualified LTCIP Policy has paid benefits to or on behalf of the institutionalized spouse that equal or exceed the amount of the newly acquired countable asset.

The assets of the community spouse may still not exceed the amount determined in the previous Asset Assessment. This criteria would come into play when another asset of equal or greater value than the additional one(s) is no longer owned.

West Virginia Income Maintenance Manual Chapter 11.3 (D-1) states that the asset limit for SSI-Related Medicaid is \$2,000 for a one-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. The Department calculated the Appellant's total assets as \$2,190.36 (checking account balance) at the time of her Long-Term Care Medicaid application in June 2016. The Appellant did not contest the checking account balance.

The Appellant's representative contended that the Appellant's community spouse should be granted another 90-day period in which to transfer a portion of the assets into his name. However, policy states that an Asset Assessment for a legally married individual and his/her spouse is completed as of the first continuous period of institutionalization and is completed one time only. The first continuous period of institutionalization is the date the client first enters the nursing facility and remains for at least 30 days or is reasonably expected to remain for 30 days. Once the initial period for Long-Term Care Medicaid eligibility has been established, assets that were not counted for the institutionalized spouse must be legally transferred to the community spouse. The transfer must take place within 90 days, unless a longer period is required to take the action.

A review of policy reveals that the 90-day transfer of assets period coincides with the one-time Asset Assessment, which was completed during the Appellant's first period of continuous institutionalization in 2012-2013. Policy does not indicate that additional 90-day periods are granted with each reapplication - as the Asset Assessment is completed one time only - and all language associated with this policy addresses *initial* Medicaid eligibility.

Therefore, the Department acted correctly in denying the Appellant's Long-Term Care Medicaid application based on excessive assets in June 2016.

CONCLUSIONS OF LAW

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

DECISION

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

ENTERED this 19th Day of August 2016.

**Pamela L. Hinzman
State Hearing Officer**