



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
2699 Park Avenue, Suite 100  
Huntington, WV 2504

Earl Ray Tomblin  
Governor

Karen L. Bowling  
Cabinet Secretary

January 25, 2016

[REDACTED]  
[REDACTED]  
[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 15-BOR-2011

Dear Ms. [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,

Todd Thornton  
State Hearing Officer  
Member, State Board of Review

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

cc: Kimberly Taylor, Department Representative

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

██████████,

**Appellant,**

v.

**Action Number: 15-BOR-2011**

**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 September 9, 2015, reconvened on October 20, 2015, and reconvened and concluded on November 17, 2015, on an appeal filed May 1, 2015.

The matter before the Hearing Officer arises from the November 25, 2014 decision by the Respondent to deny Medicaid due to excessive assets and the April 20, 2015 decision by the Respondent to approve Medicaid with an eligibility start date of April 1, 2015.

At the hearing, the Respondent appeared by Kimberly Taylor. The Appellant was represented by ██████████. Appearing as witnesses for the Appellant were ██████████ and ██████████. Observing but not participating in the hearing were ██████████, ██████████ and ██████████. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Case Summary
- D-2 Email chain regarding September 2014 Medicaid application
- D-3 Email chain regarding November 2014 Medicaid application
- D-4 Documentation regarding assignment of assets for March 2015 Medicaid application
- D-5 Notice of decision regarding March 2015 Medicaid application, dated April 20, 2015

**Appellant's Exhibits:**

- A-1 Order of Appointment of Guardian and/or Conservator in the Circuit Court of [REDACTED] County, West Virginia, entered February 3, 2015
- A-2 Beneficiary changes for Appellant's life insurance assets
- A-3 Preneed Funeral Contract detailing assignment of assets
- A-4 Notice of decision regarding November 2014 Medicaid application, dated November 25, 2014
- A-5 Social Security Administration letter detailing assignment of Social Security income

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) The Appellant was admitted to [REDACTED], a nursing facility, on June 5, 2014.
- 2) [REDACTED] was appointed as full guardian and full conservator for the Appellant on February 3, 2015. (Exhibit A-1)
- 3) In the interim between admission and Mr. [REDACTED] appointment as guardian and conservator for the Appellant, the Appellant applied for Long Term Care Medicaid (LTC-M) twice and was denied both times.
- 4) In the only notification letter provided by either party for these two denials (Exhibit A-4), the sole basis for denial was excessive assets – specifically, countable assets of \$5,274.32 (\$4,774.32 of which were life insurance assets) in excess of the \$2,000 asset limit for the program.
- 5) Prior to Mr. [REDACTED] appointment as guardian and conservator for the Appellant, the Appellant's attorney-in-fact was responsible for the handling of the Appellant's financial affairs and refused to cooperate with the assignment of the Appellant's life insurance assets to a funeral home.
- 6) The assignment of the Appellant's life insurance assets to a funeral home established asset eligibility for LTC-M for the Appellant, effective April 1, 2015. (Exhibit D-5)

**APPLICABLE POLICY**

WVIMM, Chapter 11.2, reads "A client may not have access to some assets. To be considered an asset, the item must be owned by or available to the client and available for disposition. If the client cannot legally dispose of the item, it is not his asset."

## **DISCUSSION**

The Respondent denied the Appellant's application for LTC-M and, as a result, an August 2014 start-date for LTC-M eligibility. The basis of this denial was excessive assets. The representative for the Respondent contended there were additional factors contributing to this denial, but the only formal denial notification submitted in the hearing confirmed the asset issue as the sole factor.

The Respondent's determination that the Appellant exceeded the LTC-M asset limit hinges on two factors: the value of the Appellant's life insurance policies, and the accessibility of the Appellant's assets. Inaccessible assets are not countable and, in the Appellant's case, the life insurance assets that were ultimately disposed of (through assignment for funeral expenses) were the difference between the Appellant's assets being above or below the program limit.

At the time of the Respondent's November 2014 LTC-M application, he was unable to handle his own financial affairs. The individual responsible for handling the Appellant's financial affairs during this time frame did not cooperate with the application process, rendering the Appellant unable to assign these assets in a way necessary to establish financial eligibility for the program. Not only was this asset assignment clearly in the Appellant's best interest, it was additionally only a formality in establishing eligibility. By failing in his duty to the Appellant in this way, when he was unable to act independently in his own best interest, the individual responsible for handling the Appellant's financial affairs at the time of the November 2014 application effectively blocked the Appellant's access to these assets. The Appellant's life insurance assets were not accessible in November 2014 and should not have been counted in the Respondent's asset determination at the time. As this was the sole basis for denial, the Respondent was incorrect to deny LTC-M coverage to the Appellant in November 2014, with an effective start-date of August 2014.

It should be noted that once action was taken to replace this individual and establish a new guardian and conservator for the Appellant, the required steps to assign the life insurance assets were taken and the Appellant was approved for LTC-M. However, at that time the approval shifted the coverage period and the Respondent failed to consider the effect of asset accessibility on the prior period.

## **CONCLUSIONS OF LAW**

- 1) Because the Appellant was unable to act on his behalf at the time of his November 2014 Medicaid application – and the individual acting on his behalf refused to do so – the Appellant's assets were inaccessible.
- 2) Because the Appellant's assets were inaccessible, these assets were not countable.
- 3) Because the Appellant's assets were not countable, his November 2014 application for Medicaid was denied in error.

- 4) Had the Appellant's November 2014 application for Medicaid been approved, backdating would have allowed an eligibility start-date of August 2014.

### **DECISION**

It is the decision of the State Hearing Officer to **reverse** the Respondent's decision to deny the Appellant's November 2014 application for Long Term Care Medicaid based on excessive assets, and the subsequent decision to set an eligibility start-date in April 2015. The Appellant's eligibility start-date is August 2014.

**ENTERED this \_\_\_\_ Day of January 2016.**

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**Todd Thornton  
State Hearing Officer**