



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

February 22, 2016



RE: [REDACTED] v. WV DHHR
ACTION NO.: 15-BOR-3554

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,

Todd Thornton
State Hearing Officer
Member, State Board of Review

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

cc: Sean Hamilton, Department Representative

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

██████████,

Appellant,

v.

Action Number: 15-BOR-3554

**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 January 20, 2016, on an appeal filed November 25, 2015.

The matter before the Hearing Officer arises from the November 30, 2015 decision by the Respondent to deny Long Term Care (LTC) Medicaid due to excessive assets.

At the hearing, the Respondent appeared by Sean Hamilton. The Appellant was represented by her son, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Notice of decision, dated November 30, 2015
- D-2 Verification of the Appellant's investment assets, dated August 11, 2015
- D-3 Verification of the Appellant's checking account balances for the months of June 2015 through August 2015
- D-4 Verification of the Appellant's savings account balances for the months of June 2015 through August 2015

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, through her son, applied for LTC Medicaid in July 2015.
- 2) The Respondent issued notification to the Appellant on November 30, 2015, indicating that her application for LTC Medicaid was denied due to excessive assets for the program. (Exhibit D-1)
- 3) The Appellant had excessive assets in the form of investment assets in a retirement account. (Exhibit D-2)

APPLICABLE POLICY

West Virginia Income Maintenance Manual (WVIMM), Chapter 11.3, shows the SSI-Related Medicaid asset limit for a one-person assistance group as \$2,000.

WVIMM, Chapter 11.2.A establishes the date of asset eligibility for SSI-Related Medicaid as "...the first moment of the month of application."

WVIMM, Chapter 11.4.HH lists all categories of "pensions and other retirement funds," including traditional pensions, 401(k) plans, and IRA plans, as countable assets for SSI-Related Medicaid, after subtracting "the penalty, if any, that would applied for the early withdrawal of the entire amount" from the cash value of the account or plan.

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 a LTC Medicaid application for the Appellant based on excessive assets. There was no dispute of the amount of the Appellant's investment assets, or of their status as countable assets for the program. The Appellant's son and representative contended that the assets should not be counted for reasons most closely associated with asset accessibility.

The Appellant was suffering from dementia at the time of the LTC Medicaid application, and her son was handling her financial affairs. He was unaware of the Appellant's investment assets and the Appellant was unable to disclose the details of these investments because of her condition. Unfortunately, these facts do not indicate the assets were unavailable to the Appellant for disposition. Because there was nothing preventing legal disposition of these assets, they were countable and excessive and the Respondent was correct to deny the Appellant's application for LTC Medicaid on this basis.

CONCLUSIONS OF LAW

- 1) Because the Appellant's investment assets were accessible, her assets exceeded the asset limit set by policy for LTC Medicaid.
- 2) Because the Appellant had excessive assets for LTC Medicaid eligibility, the Respondent was correct to deny her application for the program.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Respondent's decision to deny the Appellant's July 2015 LTC Medicaid application based on excessive assets for the program.

ENTERED this ____ Day of February 2016.

**Todd Thornton
State Hearing Officer**