

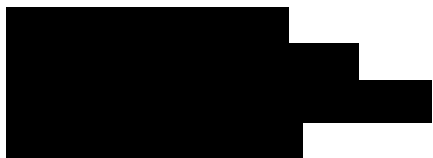


STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
2699 Park Avenue, Suite 100
Huntington, WV 25704

Jim Justice
Governor

Bill J. Crouch
Cabinet Secretary

November 30, 2017



RE: [REDACTED] v. WV DHHR
ACTION NO.: 17-BOR-2048

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: Michael Jackson, Esq., Assistant Attorney General

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

██████████,

Appellant,

v.

Action Number: 17-BOR-2048

**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 5, 2017, on an appeal filed June 28, 2017.

The matter before the Hearing Officer arises from the Respondent's June 13, 2017 decision to deny the Appellant's application for Medicaid, specifically Long Term Care Medicaid.

At the hearing, the Respondent appeared by Michael Jackson, Esq., Assistant Attorney General. Appearing as witnesses for the Respondent were Sean Hamilton and ██████████. The Appellant appeared by ██████████, Esq. Appearing as witnesses for the Appellant were ██████████ and ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1a Notice of Decision, dated June 13, 2017
- D-1b Notice of Decision, dated July 10, 2017
- D-2a Copy of Appellant's Life Insurance Policy (Policy Number 083-112-267) with Physicians Life Insurance Company
- D-2b Copy of Appellant's Life Insurance Policy (Policy Number 083-195-219) with Physicians Life Insurance Company
- D-3 West Virginia Income Maintenance Manual (WV IMM) excerpts: §11.3; §11.2; §17.1

Appellant's Exhibits:

- A-1 Cover sheet for fax from [REDACTED] to the Respondent, dated April 10, 2017
- A-2 Application for Long Term Care Medicaid and Children with Disabilities Community Service Program, dated April 10, 2017
- A-3 Screen print of comments regarding the Appellant's case from the Respondent's data system, entry dates August 12, 2015, through July 7, 2017
- A-4 Verification checklist for SNAP, dated May 22, 2017
- A-5 Copy of Appellant's Life Insurance Policy (Policy Number 083-112-267) with [REDACTED] Insurance Company; Copy of Appellant's Life Insurance Policy (Policy Number 083-112-267) with [REDACTED] Insurance Company; Checking account statements for the Appellant, dated March 28, 2017, May 26, 2017, April 28, 2017
- A-6 WV IMM §1.22 (excerpt)
- A-7 WV IMM §17.1 (excerpt)
- A-8 Phone records for [REDACTED] (redacted), call dates between April 26, 2017, and May 25, 2017
- A-9 WV IMM §2.3 (excerpt)
- A-10 WV IMM §6.2 (excerpt)

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 applied for Long Term Care Medicaid on April 10, 2017. (Exhibits A-1 and A-2)
- 2) On May 22, 2017, the Respondent mailed the Appellant a "verification checklist" to indicate the documentation needed to process the Appellant's application. (Exhibit A-4)
- 3) This verification checklist incorrectly identifies the program as SNAP instead of Long Term Care Medicaid. (Exhibit A-4)
- 4) By notice dated June 13, 2017, the Respondent advised the Appellant that her Long Term Care Medicaid application was denied for the month of May 2017 for excessive assets – specifically, countable assets of \$3082 compared to an asset limit of \$2000. (Exhibit D-1a)
- 5) By notice dated July 10, 2017, the Respondent advised the Appellant that her Long Term Care Medicaid application was denied for the month of June 2018 for excessive

assets – again, for countable assets of \$3082 exceeding a program asset limit of \$2000. (Exhibit D-1b)

- 6) The Appellant had life insurance assets exceeding the \$2000 asset limit in both May 2017 and June 2017.
- 7) The Respondent failed to process the Appellant’s Long Term Care Medicaid application in a timely manner.

APPLICABLE POLICY

The West Virginia Income Maintenance Manual (WV IMM), at §11.3, sets the asset limit for Long Term Care Medicaid as \$2,000 for a single individual.

At §11.4.Z, policy identifies the cash surrender value of life insurance as countable assets for Long Term Care Medicaid.

At §17.1, Long Term Care policy requires the worker to “ensure that the client, or [her] representative, is fully informed of the policies and procedures.” In the subsequent paragraph, this policy indicates the worker must not “suggest or require that the client, or representative, take any specific action in financial matters.”

DISCUSSION

The Respondent denied the Appellant’s application for Medicaid and the Appellant requested this hearing to contest this action.

The Respondent must show by a preponderance of the evidence that the Appellant’s household had assets over the limit allowed by policy. The Respondent clearly proved this in the hearing.

The Respondent did not process the Appellant’s application in a timely manner. Policy presented by the Appellant (WV IMM, §2.3.E – Exhibit A-9) allows for “direct reimbursement for out-of-pocket medical expenses which would have otherwise been paid by Medicaid” in such instances.

If the Respondent’s worker had acted on the Appellant’s application in a timely manner, issued a correct verification checklist, and understood the difference between explaining policy and making recommendations based on that policy, the Appellant may have acted to dispose of the disqualifying assets in a manner allowed by policy. However, that scenario is purely speculative. If the scenario is considered by only altering one factor – processing timeliness – the assets in question would still be valued the same and the result would have been the same.

The Respondent proved that it acted correctly in determining the Appellant was over the asset limit and denying the Appellant’s application for Long Term Care Medicaid application on that basis.

CONCLUSION OF LAW

Because the Appellant had assets over the limit allowed by policy in both May 2017 and June 2017, the Respondent must deny her Long Term Care Medicaid application for those months.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Respondent's denial of the Appellant's application for Long Term Care Medicaid.

ENTERED this ____ Day of November 2017.

Todd Thornton
State Hearing Officer