



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
4190 West Washington Street
Charleston, WV
25313

Jim Justice
Governor

Bill J. Crouch
Cabinet Secretary

June 6, 2017

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 17-BOR-1618

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,

Natasha Jemerison
State Hearing Officer
Member, State Board of Review

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

cc: Miranda Myers, Department Representative
[REDACTED]

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

██████████,

Appellant,

v.

Action Number: 17-BOR-1618

**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 May 23, 2017, on an appeal filed April 5, 2017.

The matter before the Hearing Officer arises from the March 7, 2017 decision by the Respondent to apply an asset transfer penalty to the Appellant's Long-Term Care (LTC) Medicaid benefits.

At the hearing, the Respondent appeared by Miranda Myers, Economic Service Worker. The Appellant was represented by his relative, ██████████. Both participants were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 West Virginia Income Maintenance Manual §17.10
- D-2 Appellant's statement of asset transfer
- D-3 West Virginia Income Maintenance Manual §11.4.C
- D-4 Copy of Department's hearing summary

Appellant's Exhibits:

- A-1 Hotel expenses for ██████████
- A-2 MileagePlus United account activity
- A-3 First National Bank statement for ██████████
- A-4 Discover Card statement for ██████████

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 is a recipient of Long-Term Care (LTC) benefits.
- 2) The Appellant requested backdating of LTC when he applied.
- 3) The Department received a statement from the Appellant indicating that he had given his relative and caregiver, [REDACTED], \$10,500 for past and future travel expenses related to the Appellant's care.
- 4) The Department applied an asset transfer penalty to the Appellant's LTC benefits for March 2017, due to the transfer of \$10,500 from the Appellant to Mr. [REDACTED]

APPLICABLE POLICY

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

WV IMM §11.4.C establishes that the amount of funds deposited into bank accounts, plus any accrued interest is counted as an asset.

WV IMM §17.10 established that personal care services provided to an individual by a relative or friend are presumed to have been provided for free, at the time rendered, when a Personal Care Contract (PCC) did not exist. Therefore, a transfer of resources from an individual to a relative or friend for payment of personal care services is an uncompensated transfer without Fair Market Value (FMV) received for the transferred resource and subject to a penalty, unless a PCC exists between the individual and the caregiver. The terms of the PCC must be in writing between the individual or his authorized representative and the caregiver.

WV IMM §17.10 instructs that the transfer of resources to the relative or friend acting as caregiver must have taken place at the time the personal care services were rendered, and the transfer cannot be for services projected to occur in the future.

WV IMM §17.10 reads that the transfer of resources penalty is ineligibility for nursing facility services and a level of care in any institution equivalent to that of nursing facility services.

DISCUSSION

The Department applied an asset transfer penalty to the Appellant's Long-Term Care benefits for March 2017, because the Appellant transferred \$10,500 to his relative and caregiver, [REDACTED]. Mr. [REDACTED] requested a fair hearing on the Appellant's behalf and represented him in the hearing.

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 (AG). Also, a transfer of assets from an individual to a relative or friend for payment of personal care services is subject to a penalty unless a Personal Care Contract (PCC) exists.

The Appellant's representative, [REDACTED], stated that \$10,500 was transferred to his account from the Appellant's account to cover past and future expenses related to the travel and purchases required to care for the Appellant. Mr. [REDACTED] added that he was not aware of the asset limit prior to the Appellant's LTC benefits approval. The Department's representative, Miranda Myers, stated that because the Appellant and Mr. [REDACTED] did not have a PCC in place, the transfer of the \$10,500 was subject to a transfer penalty. She also stated that per policy, the transfer of resources to a relative or caregiver must take place at the time services are rendered and cannot be used for past or future services. Ms. Myers added that if the Appellant had not transferred \$10,500 to Mr. [REDACTED] the Appellant would have been denied benefits due to being over the asset limit.

Mr. [REDACTED] did not contest the transfer of \$10,500 to his account from the Appellant's account. He also did not dispute the asset limit for a one-person AG. Mr. [REDACTED] stated he did not know the policy requirements for the LTC program. Based on evidence and testimony provided, the agency acted correctly in its decision to determine the Appellant was not eligible for LTC benefits for March 2017 and to apply an asset transfer penalty.

CONCLUSION OF LAW

Because the Appellant transferred \$10,500 to Mr. [REDACTED] when there was no Personal Care Contract in place, the Department correctly applied an asset transfer penalty to the Appellant's LTC benefits.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Department's decision to apply an asset transfer penalty to the Appellant's Long-Term Care (LTC) Medicaid benefits for the month of March 2017.

ENTERED this 6th Day of June 2017.

**Natasha Jemerison
State Hearing Officer**