



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1247
Martinsburg, WV 25402

Jim Justice
Governor

Bill J. Crouch
Cabinet Secretary

June 29, 2017

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 17-BOR-1834

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 Official 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,

Lori Woodward
State Hearing Official
Member, State Board of Review

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

cc: Rachel Hartman, WV DHHR

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

████████████████████,

Appellant,

v.

Action Number: 17-BOR-1834

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

Respondent.

DECISION OF STATE HEARING OFFICIAL

INTRODUCTION

This is the decision of the State Hearing Official 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 June 27, 2017, on a timely appeal filed May 11, 2016.

The matter before the Hearing Officer arises from the April 24, 2017 decision by the Respondent to deny Long Term Care (LTC) Medicaid due to a transfer of assets penalty being applied.

At the hearing the Respondent appeared by Rachel Hartman, Economic Services Supervisor. Appearing as witness for the Respondent was Julie Williams, Economic Services Worker. The Appellant appeared through her representative, ██████████ of ██████████. Appearing as witness for the Appellant was her daughter, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Application for Long Term Care Services, dated March 29, 2017
- D-2 Summary of monetary disbursements from sale of home
- D-3 Receipts for use of money for children ██████████, ██████████, ██████████
██████████
- D-4 Screen print of asset transfers from the Appellant's eRAPIDS case
- D-5 Screen print of asset transfer penalty from the Appellant's eRAPIDS case
- D-6 WV Income Maintenance Manual (IMM), Chapter 17, §17.10.B.4.i (excerpt)
- D-7 IMM, Chapter 17, §17.10.B.4.e (excerpt)
- D-8 Hearing Summary

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 Official sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) The Appellant's daughter, [REDACTED], applied for Long-Term Care (LTC) Medicaid on behalf of the Appellant on March 29, 2017. (Exhibit D-1)
- 2) Because the Appellant underwent a pacemaker implant sometime in 2013, she moved in with Ms. [REDACTED] who had to "keep an eye on her" and "fix her food". The Appellant was 90 years old at that time.
- 3) The Appellant sold her home in August 2014 for the sum of \$49,000. (Exhibit D-4)
- 4) At the time of the sale of her house, the Appellant distributed \$1,225 to each of her three children. (Exhibit D-4)
- 5) Four months later in December 2014, the Appellant distributed \$11,025 to each of her three children. (Exhibit D-4)
- 6) In March 2015, the Appellant distributed \$4,000 each to two of her three children, and then \$4,000 in August 2016 to the other remaining child. (Exhibit D-4)
- 7) After reviewing the transfers the Appellant made to her children from the sale of her home, the Respondent determined that these transfers were made to qualify for Long-Term care services in the amount of \$48,750.
- 8) A transfer of assets penalty was applied making the Appellant ineligible for Medicaid benefits from April 2017 to October 2017. (Exhibit D-5)
- 9) Notice of the transfer of assets penalty and resulting ineligibility until November 2017 was sent to the Appellant on April 24, 2017.
- 10) None of the Appellant's children are considered "disabled children" as defined for the purposes of IMM Chapter 17, §17.10.B.4.a.

APPLICABLE POLICY

West Virginia Income Maintenance Manual (IMM), Chapter 17, §17.10.B.1, explains that for a transfer of assets to be considered for the sole benefit of a spouse, disabled child, or a disabled individual under age 65, the transfer must be in writing and arranged in such a way that no individual, except as listed above, can benefit from the transferred asset(s) in any way, either at the time of the transfer or at any time in the future.

Permissible transfers that do not result in a penalty include transferred resources other than a person's home: 1) to the client's spouse or to another person for the sole benefit of the client's spouse not to exceed the amount determined attributable to the community spouse during the Asset Assessment; 2) from the client's spouse to another person for the sole benefit of the client's spouse not to exceed the amount determined attributable to the community spouse during the Asset Assessment; or 3) to the client's disabled child. (IMM §17.10.B.4.e)

A penalty will not be applied if the transfer of resources was exclusively for a purpose other than to qualify for Medicaid. However, a transfer is assumed to be for the purpose of qualifying for Long-Term Services. The burden of proof is the individuals to prove otherwise. The Worker and Supervisor can make this decision. (IMM §17.10.B.4.i)

DISCUSSION

The Appellant's daughter made an application for Long-Term Care Medicaid (LTC) benefits on March 29, 2017 on behalf of the Appellant. In processing her application, the Respondent found the Appellant had sold her house in August 2014 for the sum of \$49,000. The proceeds from the sale of her house were distributed to her three adult children as follows:

- August 2014 each child received \$1,225 (total of \$,3675);
- December 2014 each child received \$11,025 (total of \$33,075);
- March 2015 two of her three children received \$4,000 each (total of \$8,000);
- August 2016 she gave \$4,000 to the third child.

The total distribution of the money made to the Appellant's three children from the sale of her home in August 2014 to August 2016 equaled \$48,750.

The Respondent found that the transfer of the proceeds of the sale of Appellant's home was subject to a transfer of assets penalty being applied, thus making her ineligible for LTC benefits for the period April 2017 to October 2017. Notice of ineligibility was sent to the Appellant on April 24, 2017.

To avoid the imposition of a transfer penalty, per policy, the Appellant must show that the transfer of resources was not made for the purpose of qualifying for Medicaid. Policy gives the worker and supervisor the responsibility for making this decision.

The Appellant's witness, [REDACTED], testified that in 2013 her mother moved in with her after she received a pacemaker so that she could "fix food for her" and keep an "eye on her". Ms. [REDACTED] maintained that the Appellant was in "good health" and there was no reason to believe she was going into a nursing home. She maintained that it was only the fact that the Appellant fell and broke her leg that prompted her nursing home admission. However, the fact that the Appellant was 90 years old at the time she moved in with her daughter, had pacemaker placement, and remained in the care of Ms. [REDACTED] up until the time she was placed in the nursing facility, casts suspicion on the quality of health of the 90+ year-old Appellant and Ms. [REDACTED] statement that the Appellant was in "good health".

Ms. [REDACTED] also testified that it was always the Appellant's intent that her house be sold and the proceeds to be split between the three children upon her death. However, because she had to sell her house prior to her death, the Appellant wanted to give her children the money now to help with their expenses as some of them were experiencing serious medical issues. Interestingly, however, the evidence submitted to the Respondent to show how the transferred money was used by each child, revealed no payment of expenses in 2014 or anytime soon thereafter. It was not until March 2015 when one of the children actually used the money to purchase a vehicle. Each of the three children purchased vehicles within the March 2015 to March 2016. Again, the evidence presented casts suspicion on the testimony of Ms. [REDACTED] regarding the intent of the Appellant in transferring her money.

The uncorroborated testimony of the Appellant's witness which appears to be in contradiction to the facts in evidence, does not persuade this trier of fact to believe that the transfers of money were not intended to qualify for Medicaid benefits. Moreover, it is not reasonable to assume that a 90-year-old individual in good health would disburse all her assets leaving herself with only \$250 of the \$49,000 from the sale of her house.

After review of the evidence and testimony presented, the preponderance of evidence showed that the decision to apply the transfer penalty for transferring the Appellant's cash assets of \$48,750 from August 2014 to August 2016 was correct.

CONCLUSIONS OF LAW

- 1) The Appellant transferred the proceeds from the sale of her house in August 2014 to three of her adult children from August 2014 to August 2016 in the amount of \$48,750.
- 2) Per policy, a transfer of assets is assumed to be for the purpose of qualifying for Long-Term Services with the burden of proof resting with the Medicaid applicant to prove otherwise. The Worker and Supervisor can make this decision.
- 3) The preponderance of evidence showed that the Respondent correctly applied the transfer of assets penalty to the Appellant's application for Long-Term Medicaid.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** Respondent's action to apply a transfer of assets penalty to the Appellant's application for Long-Term Care Medicaid.

ENTERED this 29th day of June 2017.

Lori Woodward, State Hearing Official