



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

January 9, 2018

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 17-BOR-2656

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: Sean Hamilton, Department Representative

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

██████████,

Appellant,

v.

Action Number: 17-BOR-2656

**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 scheduled for November 2, 2017. The hearing could not be held due to the failure of the Department representative to appear. The hearing was rescheduled for November 16, 2017. The hearing was continued on that date, upon a granted motion for continuance to allow both parties to prepare and submit evidence. Neither party prepared or submitted evidence. This hearing was ultimately held on December 7, 2017.

The matter before the Hearing Officer arises from the Respondent's delay in processing the Appellant's Long Term Care Medicaid application.

At the hearing, the Respondent appeared by Sean Hamilton. The Appellant appeared *pro se*. Appearing as witnesses for the Appellant were ██████████ and ██████████. All witnesses were sworn.

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 (LTC) Medicaid for nursing facility services, sometime in July 2017.
- 2) The Respondent did not process the Appellant's application until sometime in October 2017.
- 3) The Appellant was approved for LTC Medicaid.
- 4) The Respondent's representative testified the Appellant's approval included a "resource amount" of \$2711.10.
- 5) The Respondent's representative testified the initial month of approval for the Appellant included a prorated "resource amount" of \$1626.66.
- 6) The Appellant's testimony did not clearly establish an alternate calculation for either amount.
- 7) The Appellant testified that she has accumulated debt with the nursing facility because of the Respondent's application processing delay.
- 8) There was no testimony indicating the Respondent "failed to request necessary verification" from the Appellant during the application process.
- 9) There was no testimony indicating the Respondent, upon approving the Appellant for LTC Medicaid, failed to make benefits "retroactive to the date eligibility would have been established had the Department acted in a timely manner."

APPLICABLE POLICY

The West Virginia Income Maintenance Manual (WVIMM), Chapter 17, specifies LTC Medicaid policy.

At §17.2, the WVIMM outlines the application process for LTC Medicaid for Nursing Facility Services.

At §17.9, the WVIMM specifies the two-step income process – first, to establish eligibility; then, to determine "...the client's contribution toward his cost of care in the facility...in the post-eligibility process."

At §1.22.J, the WVIMM addresses agency delays in the application process. If the Department failed to request necessary verification, the policy specifies the request procedure and adds, "when the information is received, benefits are retroactive to the date eligibility would have been established had the Department acted in a timely manner." A failure by the Department to act

promptly on information already received also results in the establishment of benefits “...retroactive to the date eligibility would have been established had the Department acted in a timely manner.”

DISCUSSION

The Appellant has appealed the Respondent’s delay in application processing. The Appellant applied for LTC Medicaid for Nursing Facility Services. This application was ultimately approved, but the Appellant requested this hearing because the delay in processing by the Respondent caused the Appellant to accumulate debt with the nursing facility. Neither party could clarify, but it is presumed that the monthly “resource amount” determined by the Respondent in the “post-eligibility process” (but ordinarily included with a notice of decision) is a factor in the amount of debt accumulated by the Appellant and therefore in dispute. The Respondent must show, by a preponderance of the evidence, that it followed the correct procedures regarding agency delays. Because this determination includes the calculation of retroactive benefits the Respondent must show this was correctly determined, by a preponderance of the evidence.

The parties did not submit documentary evidence for hearing, in a hearing category dependent on numerous calculations to determine eligibility and a “resource amount.” The testimony of the Respondent’s representative was marginally more convincing than that of the Appellant in all areas, so the actions of the Respondent are supported by the facts.

The Appellant applied for LTC Medicaid and the Respondent approved this application. There was no dispute of the agency delay in processing. There was no indication from the Appellant that the Respondent failed to follow the procedures specified in WVIMM §1.22.J, to address such delays. The Respondent established – again, purely by testimony – that its determination of the Appellant’s “resource amount” was correct.

CONCLUSIONS OF LAW

- 1) Because the Respondent approved the Appellant for LTC Medicaid, retroactively to the “date eligibility would have been established had the Department acted in a timely manner,” it acted according to the policy regarding agency delays in application process, for the eligibility component.
- 2) Because the Respondent correctly determined the Appellant’s responsibility for her cost of care, retroactively to the “date eligibility would have been established had the Department acted in a timely manner,” it acted according to the policy regarding agency delays in the post-eligibility component.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Respondent's actions regarding a delay in processing for the Appellant's LTC Medicaid application.

ENTERED this ____ Day of January 2018.

**Todd Thornton
State Hearing Officer**