



**STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL**

**Bill J. Crouch**  
Cabinet Secretary

**Board of Review  
416 Adams Street Suite 307  
Fairmont, WV 26554  
304-368-4420 ext. 79326**

**Jolynn Marra**  
Interim Inspector  
General

August 13, 2019

[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.: 19-BOR-1796

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 Board of Review 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 that may be taken if you disagree with the decision reached in this matter.

Sincerely,

Tara B. Thompson  
State Hearing Officer  
State Board of Review

Enclosure: Appellant's Recourse  
Form IG-BR-29

cc: Jill Metz, [REDACTED] County DHHR

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

████████████████████,

**Appellant,**

**v.**

**ACTION NO.: 19-BOR-1796**

**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' (DHHR) Common Chapters Manual. This fair hearing was convened on July 24, 2019 on an appeal filed May 28, 2019.

The matter before the Hearing Officer arises from the April 17, 2019 determination by the Respondent to deny the Appellant's Medicaid Long-Term Care (LTC) application and implement an ineligibility penalty period due to asset transfer.

At the hearing, the Respondent appeared by Jill Metz, ██████████ County DHHR. The Appellant appeared by ██████████, the Appellant's Medical Power of Attorney. Both witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 West Virginia Income Maintenance Manual §§ 24.8.2.A.1 - 24.8.3
- D-2 DHHR Case Comment Records, dated March 6, 2019 through May 31, 2019

**Appellant's Exhibits:**

None

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 following Findings of Fact are set forth.

### **FINDINGS OF FACT**

- 1) On March 5, 2019, the Appellant was admitted into a nursing home facility (Exhibit D-2).
- 2) On March 6, 2019, the Appellant applied for Medicaid Long-Term Care (LTC) benefits (Exhibit D-2).
- 3) On April 17, 2019, the Respondent issued a notice advising the Appellant that she was ineligible for LTC benefits and that an ineligibility period from April 1, 2019 through July 31, 2019 was applied.
- 4) The notice advised that the Appellant was ineligible for LTC because she had transferred assets – without receiving fair compensation – in order to become eligible for benefits.
- 5) The notice advised that the Appellant was required to pay \$4,422.57 to the nursing home in addition to any calculated contribution based on the Appellant's income.
- 6) In 2013, the Appellant was gifted a life estate interest by her former father-in-law, [REDACTED] (Mr. [REDACTED]) (Exhibit D-2).
- 7) On August 24, 2017, the Appellant transferred her life estate to the children of Mr. [REDACTED]. The Appellant received no monetary compensation during the transfer (Exhibit D-2).
- 8) The Appellant transferred her life estate interest because she was moving to an assisted living facility in [REDACTED] and had no intention of returning to the home (Exhibit D-2).
- 9) The deed which gifted the Appellant with the life estate stipulated that the Appellant must transfer the property back to the relatives of the individual who gifted the life estate interest to the Appellant.
- 10) The Appellant's life estate interest ended when the Appellant moved out of the home.
- 11) On March 6, 2019, the Respondent advised the Appellant's representative that the Appellant could not apply for undue hardship waiver until the Appellant "has been approved for nursing home Medicaid and the penalty applied" (Exhibit D-2).

### **APPLICABLE POLICY**

#### **West Virginia Income Maintenance Manual (WVIMM) § 24.8 provides in part:**

Applicants for nursing facility services must meet the asset test for their eligibility coverage groups, except for Modified Adjusted Gross Income (MAGI) groups .

**WVIMM § 24.8.1.A provides in part:**

An asset assessment must be completed as of the first continuous period of institutionalization. The first continuous period of institutionalization is the date the client first enters the nursing facility and remains for at least 30 days or is reasonably expected to remain for 30 days at the time the individual enters the facility. ...If requested by the client or authorized representative, the assessment may be completed prior to application as of the first continuous period of institutionalization.

**WVIMM § 24.8.2 provides in part:**

Under the transfer of resources policy, the Worker must deny coverage of LTC Medicaid services to otherwise eligible institutionalized individuals who transfer (or whose spouses transfer) resources for less than fair market value (FMV)... Whether the transfer is considered permissible depends on the timing of the transfer, whether the client was compensated, for whose benefit the transfer was made and other factors.

**WVIMM § 24.8.2.A.1 provides in part:**

The Fair Market Value (FMV) is an estimate of the value of a resource, if sold at the prevailing price at the time it was actually transferred. For a resource to be considered transferred for FMV, or to be considered transferred for valuable consideration, the compensation received for the resource must be in a tangible form, with intrinsic value.

**WVIMM § 24.8.2.A.6 provides in part:**

The uncompensated value is the difference between the FMV at the time of transfer (less any outstanding loans, mortgages, or other encumbrances on the resource) and the amount received for the resource.

**WVIMM § 24.8.2.A.7 provides in part:**

The look-back period is the length of time for which the Worker looks back for any resource transfers. The look-back period is 60 months, whether or not a trust fund was involved. The look-back time period begins the month the client is both institutionalized and has applied for Medicaid.

**WVIMM § 24.8.2.B provides in part:**

The following types of transfers do not result in a penalty for transferring resources

**WVIMM § 24.8.2.B.6 provides in part:**

When a transfer of resources was exclusively for a purpose other than to qualify for Medicaid, no penalty is applied.

**WVIMM § 24.8.2.B.7 provides in part:**

When the Worker determines the individual is otherwise eligible for LTC services, an undue hardship may exist when a denial of payment for LTC services is due to one or more of the following asset policies:

- Excessive home equity;
- Transfer to a non-permissible trust; and/or,
- A transfer of asset penalty.

.... When the Worker determines the individual is otherwise eligible for LTC services except for one or more of the asset policies listed above to which an undue hardship provision applies, he gives the individual the Notice of Right to Request an Undue Hardship Waiver (DFA-NL-UH-1) and the Fair Hearing Request form (DFA-FH-1) at the time of the eligibility decision, which provides him the opportunity to request a waiver of the denial due to undue hardship. The individual, his authorized representative or a nursing facility staff member with the client's permission, can use these forms to apply for an undue hardship waiver.

**WVIMM § 24.8.2.C provides in part:**

All transfers not specified as permissible result in an application of a penalty.

**WVIMM § 24.8.2.D.2 provides in part:**

The value of a life estate interest is considered a transfer of resources when it is transferred or given as a gift.

**WVIMM § 24.4.1.C.10 provides in part:**

Medicaid eligibility begins on the first day of the month in which eligibility is established. Eligibility may be backdated up to three months prior to the month of application, when all eligibility requirements were met, and the client has medical expenses for which he seeks payment.

**DISCUSSION**

The Appellant requested a fair hearing to review her denial of Medicaid LTC eligibility based on the Respondent's application of an asset transfer penalty. The amount of contribution was not contested by the Appellant. The Appellant did not contest the calculation of the penalty period and

only contested the application of the ineligibility penalty period. The Appellant contended that the transfer of the Appellant's property should not be considered an asset because no monetary exchange occurred during the asset transfer and because the Appellant was required to transfer her life estate interest back to the relatives of the individual who gifted the Appellant with the life estate. The Respondent testified that the Appellant's transfer of life estate interest was an uncompensated transfer and that the value must be considered when a transfer is given as a gift and the individual is not compensated.

The Respondent had to establish that the Appellant's life estate interest transfer was correctly assessed and that the LTC ineligibility period was correctly applied. The Respondent had to prove by a preponderance of evidence that the life estate interest transfer was not a permissible transfer and that the asset was transferred for the purpose of becoming eligible for LTC benefits.

The Appellant's life estate interest ended when the Appellant moved out of the home. The Appellant's representative testified that the deed giving the Appellant the life estate interest specified that when the Appellant moved out of the home, the Appellant's interest in the property ended and must be transferred back to the relatives of the individual who gifted the life estate interest to the Appellant. Neither a copy of the deed nor additional evidence was entered into evidence to rule out the Appellant's claim that the asset transfer was a deed stipulation. The Respondent bears the burden of proof. The Respondent did not contest the Appellant's assertions regarding the stipulations of the life estate deed. The preponderance of evidence established that the Appellant's transfer of her life estate interest occurred pursuant to a deed stipulation and not for the purpose of being a gift to the relatives of Mr. [REDACTED]

Further, no evidence was entered to establish that the 2017 asset transfer occurred for the purpose of establishing the Appellant's LTC eligibility. Policy provides that if the transfer occurs exclusively for reasons other than to qualify for Medicaid, no penalty is applied. As there was no evidence to demonstrate that the transfer of assets occurred for the purpose of qualifying for Medicaid and the transfer can be attributed to deed stipulations, this Hearing Officer finds that the Appellant transferred her life estate exclusively for reasons other than to qualify for Medicaid and, therefore, no penalty should have been applied.

Although the Appellant's representative did not contest the Respondent's denial of the Appellant's entitlement to apply for undue hardship waiver, it should be noted that the evidence demonstrated that the Respondent created undue delay in the Appellant's right for LTC eligibility consideration by denying the Appellant the right to apply for an undue hardship waiver until after the penalty was applied. The Respondent's representative testified that the transfer penalty would have caused hardship for the Appellant to pay for nursing facility care; however, case comments demonstrate that the Appellant was denied the opportunity to apply for undue hardship on the basis that the penalty must be applied before application. Policy provides that if a denial due to a transfer of asset penalty will create a hardship and the Appellant is otherwise eligible, the Respondent worker is required to give the Appellant Notice of the Right to Request an Undue Hardship Waiver and the Appellant's representative is entitled to use the form to apply for a hardship waiver. The Respondent was incorrect to deny the Appellant the opportunity to apply for a hardship waiver.

### **CONCLUSIONS OF LAW**

- 1) To be considered a transfer of resources, the Appellant had to have transferred her life estate interest as a gift.
- 2) The preponderance of evidence demonstrated that the 2017 transfer of the Appellant's life estate interest to the children of Mr. [REDACTED] occurred not as a gift from the Appellant to the children of Mr. [REDACTED] but occurred, instead, as a stipulation of the deed which gifted the life estate to the Appellant.
- 3) Policy provides that when a transfer of resources occurs exclusively for a purpose other than to qualify the individual for Medicaid, no penalty is applied.
- 4) As there was no evidence to demonstrate that the transfer of the Appellant's life estate to the children of Mr. [REDACTED] occurred for the purpose of qualifying for Medicaid and the transfer can be attributed to deed stipulations, the Appellant transferred her life estate exclusively for reasons other than to qualify for Medicaid and, therefore, no penalty should have been applied.
- 5) Because the Appellant's life estate interest transfer was permissible, the Respondent incorrectly applied an asset transfer penalty when determining the Appellant's LTC eligibility.

### **DECISION**

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's denial of the Appellant's Medicaid Long-Term Care (LTC) benefits and the Respondent's subsequent application of a LTC ineligibility penalty period on the Appellant due to a transfer of assets. It is, hereby, **ORDERED** that any lost benefits be retroactive to April 1, 2019.

ENTERED this 13<sup>th</sup> day of August 2019.

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**Tara B. Thompson**  
State Hearing Officer