



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

**Bill J. Crouch
Cabinet Secretary**

**BOARD OF REVIEW
Raleigh County District
407 Neville Street
Beckley, WV 25801**

**Jolynn Marra
Interim Inspector General**

July 11, 2019

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 19-BOR-1895

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,

Kristi Logan
State Hearing Officer
Member, State Board of Review

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

cc: Tammy Turner, [REDACTED] County DHHR

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

██████████,

Appellant,

v.

Action Number: 19-BOR-1895

**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 July 9, 2019, on an appeal filed June 10, 2019.

The matter before the Hearing Officer arises from the May 30, 2019, decision by the Respondent to deny Long Term Care Medicaid benefits for May 2019 and to protest the Respondent's determination of the Appellant's monthly contribution to her cost of care in the nursing facility.

At the hearing, the Respondent appeared by Tammy Turner, Family Support Supervisor. The Appellant appeared by ██████████, Attorney-in-Fact. Both witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Hearing Request Notification Form
- D-2 Notice of Long Term Care Medicaid Denial dated May 30, 2019
- D-3 Notice of Long Term Care Medicaid Approval dated May 30, 2019
- D-4 Application for Long Term Care Medicaid dated May 20, 2019
- D-5 Statutory Form Power of Attorney dated May 2, 2019
- D-6 Medical Power of Attorney dated May 2, 2019
- D-7 ██████████ Pension Plan Paystub
for May 1, 2019, ██████████ Paystub for May 1, 2019, and Checking Account
Statement dated December 3, 2018

- D-8 Verification of [REDACTED] Life Insurance Policy dated May 9, 2019, Verification of Certificate of Deposit, and Checking Account Statements for January 2019 through May 2019
- D-9 West Virginia Income Maintenance Manual §5.4
- D-10 Statement of Funeral Goods and Services dated May 3, 2019
- D-11 Hearing Request dated June 10, 2019
- D-12 West Virginia Income Maintenance Manual Chapter 4 Appendix A
- D-13 West Virginia Income Maintenance Manual §§24.7.2, 24.7.3 and 24.7.7
- D-14 Department's 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 Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) The Appellant applied for Long Term Care Medicaid on May 20, 2019 (Exhibit D-4).
- 2) The Respondent issued notice on May 30, 2019, advising that the Appellant's total countable assets exceeded the allowable limit to receive Long Term Care Medicaid for May 2019 (Exhibit D-2).
- 3) Long Term Care Medicaid for June 2019 and ongoing was approved, and the Appellant's monthly contribution towards her cost of care to the nursing facility was determined to be \$2,653.84 (Exhibit D-3).
- 4) The Appellant's total countable assets as of May 1, 2019 was \$12,323.23 (Exhibits D-7 and D-8).
- 5) On May 3, 2019, the Appellant purchased a Preneed Burial Contract for \$11,181.62 (Exhibit D-10).
- 6) The Appellant's gross monthly income is from Social Security \$1,216.50, Black Lung \$660, [REDACTED] Pension \$880.50 and [REDACTED] Pension \$116.84 for a total of \$2,873.84 (Exhibits D-7 and D-8).

APPLICABLE POLICY

West Virginia Income Maintenance Manual §5.3.1.B states that the asset eligibility determination for SSI-Related Medicaid applications must be made as of the first moment (defined as 12:00 a.m. of the first day) of the month of eligibility. The client is not eligible for any month in which countable assets are in excess of the limit, as of the first moment of the month.

West Virginia Income Maintenance Manual §5.4 states that the asset limit for SSI-Related Medicaid groups is \$2,000 for a one-person assistance group.

West Virginia Income Maintenance Manual §§24.7.2.C and 24.7.2.D states if the client is not currently eligible by having Qualified Medicare Beneficiary (QMB) or full coverage Medicaid, Medicaid eligibility may be established as follows:

- If the client's gross countable monthly income is equal to or less than 300% of the current maximum Supplemental Security Income (SSI) payment for one person and the client is institutionalized, he may be eligible. These clients' contribution toward cost of care is determined in the post-eligibility process. There is no spenddown amount for these clients.
- If the client is not otherwise eligible by having QMB, full coverage Medicaid, or Nursing Facility coverage group, his eligibility as an SSI-Related Medicaid client with a monthly spenddown must be explored. All policies and procedures in effect for other SSI-Related cases apply to these cases, including the determination of a spenddown amount.

When the monthly Medicaid rate for the facility in which the client resides equals or exceeds his monthly spenddown amount, the spenddown is assumed to be met and Medicaid eligibility is established.

West Virginia Income Maintenance Manual §24.7.3 states in determining the client's contribution toward his cost of nursing facility care, the Worker must apply only the income deductions listed below. This is the post-eligibility process. The remainder, after all allowable deductions, is the resource amount, which is at least part of the amount the client must contribute toward his cost of care. Allowable income deductions are:

- Personal Needs Allowance \$50
- Community Spouse Maintenance Allowance (if applicable)
- Family Maintenance Allowance (if applicable)
- Outside Living Expense \$175
- Non-Reimbursable Medical Expenses (including health insurance premiums and spenddown amount)

West Virginia Income Maintenance Manual §27.6 states If the individual is a full Medicaid coverage client or in the Nursing Facility Medicaid coverage group without a spenddown, the resource amount determined in the post eligibility process from above is his total cost contribution. Because the amount of medical expenses used to meet the client's spenddown cannot be paid by Medicaid, the spenddown amount becomes part of the client's contribution toward his cost of care, unless the client has a community spouse. This amount is added to the resource amount determined above to determine the client's total monthly contribution toward the cost of his nursing care.

West Virginia Income Maintenance Manual §4.14.3 states that the only allowable deductions from unearned income in determining a monthly spenddown amount is the \$20 SSI disregard and the Medically Needy Income Level (MNIL) for the appropriate assistance group size (\$200).

DISCUSSION

Pursuant to policy, asset eligibility for Medicaid is determined as of the first day of the month. An individual is not eligible for Medicaid for any month in which countable assets are in excess of the limit, as of the first day of the month. The asset limit for Long Term Care Medicaid is \$2,000.

The Appellant applied for Long Term Care Medicaid in May 2019. As of May 1, 2019, the Appellant's total countable assets were \$12,323.23, which exceeded the allowable limit of \$2,000. Long Term Care Medicaid for May 2019 was correctly denied.

On May 3, 2019, the Appellant paid for a preneed burial, spending her assets below the \$2,000 asset limit. Long Term Care Medicaid was approved effective June 1, 2019. The Appellant's contribution towards her cost of care at the nursing facility was determined as \$2,653.84.

The Appellant's representative, [REDACTED], argued that the Appellant's net income, after her Medicare premium and health insurance premium is deducted, is \$2,280 which is less than her contribution of care. Ms. [REDACTED] argued that the Appellant's gross income should not be considered because over \$300 is counted as income that she does not receive that is expected to be paid to the nursing facility each month. Ms. [REDACTED] did not dispute the amount of the Appellant's gross income.

The Appellant's gross income of \$2,873.84 exceeds the income limit for Long Term Care Medicaid of \$2,313. Pursuant to policy, if an applicant's income exceeds the limit for Long Term Care Medicaid, eligibility may be established by meeting a spenddown. A spenddown is met when an individual incurs non-reimbursable medical bills totaling the spenddown amount. Spenddowns involving Long Term Care Medicaid are presumed to be met each month if the spenddown amount exceeds the monthly cost of care in the nursing facility.

The Appellant's monthly spenddown amount is \$2,653.84 (\$2,873.84 minus the \$20 SSI disregard and the \$200 MINL). The Appellant's spenddown is considered an allowable medical expense from her gross income, in addition to her Medicare premium, health insurance premium, personal needs allowance and outside living expense. These deductions reduced her resource amount to zero. However, because the amount of medical expenses used to meet the client's spenddown cannot be paid by Medicaid, the spenddown amount becomes part of the client's contribution toward her cost of care and the spenddown amount of \$2,653.84 becomes the Appellant's monthly resource amount.

CONCLUSIONS OF LAW

- 1) Pursuant to policy, asset eligibility for Medicaid is determined as of the first day of the month.
- 2) The Appellant's assets exceeded the allowable limit as of the first day of May 2019.
- 3) Long Term Care Medicaid was correctly denied for May 2019.

- 4) The Appellant's gross income amount was \$2,873.84, to which allowable deductions of personal allowance, outside living expense, spenddown amount, Medicare premium and health insurance premium were deducted, leaving a zero resource amount.
- 5) Policy stipulates that any medical expenses used to meet a spenddown cannot be paid for by Medicaid, therefore the monthly spenddown amount is added to resource amount.
- 6) The Appellant's spenddown amount of \$2,653.84 was correctly determined to be her monthly contribution towards her cost of care at the nursing facility.

DECISION

It is the decision of the State Hearing Officer to **uphold** the decision of the Respondent to deny Long Term Care Medicaid for May 2019 and **uphold** the Respondent's determination of the Appellant's monthly resource amount effective June 1, 2019.

ENTERED this 11th day of July 2019.

**Kristi Logan
State Hearing Officer**