



**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**

October 16, 2019

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.:19-BOR-2492/19-BOR-2512

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-2492
19-BOR-2512**

**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 October 15, 2019, on appeals filed October 1, 2019 and October 4, 2019.

The matter before the Hearing Officer arises from the September 10, 2019, decision by the Respondent to terminate the Appellant's Aged and Disabled Waiver Medicaid and the October 1, 2019, decision to impose a penalty for an uncompensated transfer of assets.

At the hearing, the Respondent appeared by Tammy Turner, Family Support Supervisor. The Appellant appeared by her daughter, ██████████. Appearing as a witness for the Appellant was ██████████, her granddaughter. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Hearing Request Notification Form
- D-1a Hearing Request Notification Form
- D-2 Notice of Termination dated September 10, 2019
- D-2a Notice of Termination dated October 3, 2019
- D-3 ██████████ Bank Statements dated August 23, 2019 and August 28, 2019
- D-3a Notice of Transfer Penalty dated October 2, 2019
- D-4 West Virginia Income Maintenance Manual §5.4
- D-4a ██████████ Bank Statements dated June 27, 2019 and July 24, 2019
- D-5 West Virginia Income Maintenance Manual §5.3.4

- D-5a Penalty Calculation
- D-6 Department's Summary
- D-6a West Virginia Income Maintenance Manual §24.8.2.I
- D-7 West Virginia Income Maintenance Manual §24.31.2
- D-8 West Virginia Income Maintenance Manual §5.3.4
- D-9 Department's Summary

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 Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) The Appellant was a recipient of Aged and Disabled Waiver Medicaid.
- 2) The Appellant completed an eligibility redetermination in August 2019.
- 3) The Respondent verified that the Appellant had three (3) bank accounts with BB&T with a combined balance of \$2,409.49 (Exhibit D-3).
- 4) The Respondent notified the Appellant on September 10, 2019, that her countable assets exceeded the allowable limit to continue receiving Aged and Disabled Waiver Medicaid (Exhibit D-2).
- 5) In June 2019, \$21,653.51 was withdrawn from the Appellant's checking account, [REDACTED] (Exhibit D-4a).
- 6) In July 2019, \$2,000 was withdrawn from the Appellant's certificate of deposit, [REDACTED] (Exhibit D-4a).
- 7) The Respondent notified the Appellant on October 2, 2019 that she would be ineligible for Aged and Disabled Waiver Medicaid until January 12, 2020 due to an uncompensated transfer of assets (D-3a).

APPLICABLE POLICY

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

West Virginia Income Maintenance Manual §5.3.4 states a client may not have access to some assets. To be considered an asset, the item must be owned by, or available to, the client and available for disposition. If the client cannot legally dispose of the item, it is not his asset. Examples include:

- Joint ownership: The meaning of such ownership may be indicated in one of the following ways:
 - AND - Joint ownership indicated by "and" between the names of the owners. Unless there is evidence to the contrary, each owner is assumed to own an equal, fractional share of the jointly owned asset.
 - OR - Joint ownership indicated by "or" between the names of the owners. The asset is available to each owner in its entirety.
 - AND/OR - Joint ownership indicated by "and/or" between the names of the owners. The asset is available to each owner in its entirety.

West Virginia Income Maintenance Manual §24.8.2 states under the transfer of resources policy, the Worker must deny coverage of LTC Medicaid services to otherwise eligible institutionalized individuals who transfer resources for less than fair market value (FMV). The 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.

West Virginia Income Maintenance Manual §24.31.2 states when a waiver services client transfers resources without receiving fair compensation, a penalty is applied after advance notice. The penalty period is determined using the following procedure and lasts for the number of whole and/or partial months determined by the following calculation.

The total amount transferred during the look-back period is divided by the State's average monthly nursing facility private pay rate of \$331 per day, or \$9,930 per month.

When the remaining amount of the transfer is less than the average monthly private pay cost of nursing facility care, the agency imposes a penalty for less than a full month. The partial month's penalty is converted to a number of days for which the individual is ineligible for payment for waiver services. The partial month's penalty is determined as follows:

- Step 1: The total amount transferred is divided by the State's average monthly nursing facility private pay rate of \$9,930.
- Step 2: Multiply the number of whole months from Step 1 by the average private pay rate of \$9,930.
- Step 3: Subtract the amount in Step 2 from the total amount of all transfers. The remainder is the amount used to determine the number of days the individual is ineligible for waiver services in the partial month of the penalty period.
- Step 4: The Step 3 amount is divided by the average daily rate of \$331 to determine the number of days of ineligibility in the last month of the penalty period.

DISCUSSION

Pursuant to policy, the asset limit for Aged and Disabled Waiver Medicaid is \$2,000 for a one-person assistance group. The Appellant's total countable assets as of September 1, 2019 were \$2,409.49.

The Appellant's witness, [REDACTED], testified that the Appellant's bank accounts were jointly owned with [REDACTED], the Appellant's granddaughter. Ms. [REDACTED] contended that the money in the accounts belonged solely to Ms. [REDACTED]. Ms. [REDACTED] stated that Ms. [REDACTED] opened the accounts for the Appellant in case of an emergency, and upon learning of the \$2,000 asset limit for Medicaid, the money was withdrawn from the accounts and returned to Ms. [REDACTED].

Although it is the Appellant's contention that the money in jointly owned accounts did not belong to the Appellant, per policy, the Appellant had access to the money, as evidenced by the withdrawals made in June and July 2019, and therefore must be counted as the Appellant's assets. The Respondent correctly terminated the Appellant's Aged and Disabled Waiver Medicaid due to excessive assets.

Policy prohibits the uncompensated transfer of assets for the purpose of making an individual eligible for Aged and Disabled Waiver Medicaid. The Appellant's witness confirmed in her testimony that the \$23,653.51 that was withdrawn from the Appellant's accounts was given to [REDACTED] to ensure the Appellant's assets did not exceed the allowable limit for Medicaid. The Appellant did not receive compensation for the money that was transferred.

To determine the length of ineligibility due to the uncompensated transfer, policy applies the following formula:

- Total amount transferred divided by the state's average monthly cost of nursing home services: \$23,653.51 divided by \$9,930 = 2.38 or 2 full months
- To determine the partial month of ineligibility, the average monthly cost of nursing home services is multiplied by the full months of ineligibility: \$9,930 multiplied by 2 = \$19,860
- The remaining amount is subtracted from the total amount of the uncompensated transfer \$23,653.51 minus \$19,860 = \$3,793.51
- This amount is divided by the average daily cost of nursing home services: \$3,793.51 divided by \$331 = 11.46 days of ineligibility

The Respondent correctly calculated the Appellant's ineligibility for Aged and Disabled Waiver Medicaid as 2 months and 11.46 days.

CONCLUSIONS OF LAW

- 1) The asset limit for Aged and Disabled Waiver Medicaid is \$2,000.
- 2) The Appellant's total countable assets as of September 1, 2019 was \$2,409.49.
- 3) The Appellant's assets exceeded the allowable limit to continue receiving Aged and Disabled Waiver Medicaid.

- 4) Policy prohibits the uncompensated transfer of assets for the purpose of making an individual eligible for Aged and Disabled Waiver Medicaid.
- 5) The Appellant transferred \$23,653.51 to her granddaughter for the purpose of becoming asset eligible for Aged and Disabled Waiver Medicaid.
- 6) The Respondent correctly imposed a penalty for an uncompensated transfer of assets against the Appellant.

DECISION

It is the decision of the State Hearing Officer to **uphold** the decision of the Respondent to terminate the Appellant's Aged and Disabled Waiver Medicaid and to impose a penalty for an uncompensated transfer of assets.

ENTERED this 16th day of October 2019.

**Kristi Logan
State Hearing Officer**