



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

Bill J. Crouch  
Cabinet Secretary

Board of Review  
PO Box 1247  
433 Mid Atlantic Parkway  
Martinsburg, West Virginia 25402

Jolynn Marra  
Interim Inspector General

November 14, 2019

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 19-BOR-2501

Dear [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: Jenny Tingler, BCF, [REDACTED] Co. DHHR

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

██████████,

**Appellant,**

**v.**

**Action # 19-BOR-2501**

**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 October 24, 2019, on a timely appeal filed September 30, 2019.

The matter before the Hearing Officer arises from the Respondent's September 5, 2019 decision to close the Appellant's Long Term Care (LTC) Medicaid benefits.

At the hearing the Respondent appeared by Jenny Tingler, Economic Service Supervisor. The Appellant appeared through her daughter, ██████████. All witnesses were sworn, and the following documents were admitted into evidence:

**Department's Exhibits:**

- D-1 Land deed dated May 18, 1983
- D-2 Notice of denial dated September 5, 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 Hearing Official sets forth the following Findings of Fact.

### **FINDINGS OF FACT**

- 1) The Appellant is a resident of a nursing home who has been receiving WV Long-Term Care (LTC) Medicaid for several years.
- 2) The Appellant owns non-excluded, non-homestead real property valued at \$12,000 which includes a right-of-way access to the road.
- 3) The Appellant disclosed this property upon her application and redeterminations. (Exhibit D-1)
- 4) The Respondent's workers failed to include the Appellant's non-homestead property as an asset on application and redeterminations of the Appellant's LTC eligibility in error.
- 5) The Appellant is a one-person Assistance Group.
- 6) The Appellant is over the asset limit for LTC Medicaid eligibility.
- 7) The Respondent sent notice of LTC Medicaid closure to the Appellant on September 5, 2019. (Exhibit D-2)

### **APPLICABLE POLICY**

All LTC programs require a determination of medical eligibility, as well as a determination of financial eligibility conducted by the Worker. (WV IMM, Chapter 24, §24.1) Applicants for nursing facility services must meet the asset test for their eligibility coverage groups, except for Modified Adjusted Gross Income (MAGI) groups. (WV IMM, Chapter 24, §24.8)

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. (WV IMM, Chapter 5, §5.3.1.B)

WV IMM, Chapter 5, §5.5.39.B.2, states in pertinent part, that the equity in non-homestead property, not otherwise excluded, is an asset. For SSI Medicaid Groups, when the client's non-excluded real property is not used in a trade or business or does not meet the \$6,000 or the \$6,000/6% limitation, the equity in the property is an asset.

WV IMM, Chapter 23, §23.11.5.A, *Nursing Facility*(Code: MLTN)and *Intermediate Care Facility/Individuals with Intellectual Disability (ICF/IID)*(Code: MLTI), explains, in part, that the Department of Health and Human Resources (DHHR) provides Medicaid to institutionalized individuals who would not otherwise be eligible for Medicaid if not in an institution. To qualify, an individual must meet the medical criteria for nursing facility or ICF admission, as well as financial criteria. SSI-Related Medicaid disability guidelines also must be met. The determination of countable assets is the same as for SSI-Related Medicaid, see Chapter 5. The SSI-Related Medicaid asset limit

for one person is used. When both spouses are institutionalized and apply for nursing facility services, the SSI-Related Medicaid asset limit for a couple is used to determine eligibility.

The asset limit for Long-Term Care Medicaid (SSI Medicaid Group) for a one-person Assistance Group is \$2,000. (WV IMM, Chapter 5, §5.4)

### **DISCUSSION**

The Appellant is a resident of a nursing home facility who was receiving WV LTC Medicaid benefits. During the Appellant's eligibility redetermination sometime in August 2019, the Respondent's worker discovered that an agency error had been made in excluding the Appellant's non-homestead real property. The Appellant's real property tax assessment of \$12,000 was used to determine the value of this property. This amount is undisputed.

Policy sets a limit of \$2,000 or less in assets for a one-person assistance group to meet financial eligibility for the WV LTC Medicaid program. When the Respondent added the non-excluded, non-homestead real property as an asset to the Appellant's case, the Appellant became over the asset limit for continued eligibility. The Respondent sent notice to the Appellant on September 5, 2019, that her WV LTC Medicaid benefits were closing due to being over the asset limit.

The Appellant's representative, [REDACTED], did not dispute the fact that the Appellant owned this property, the valuation of the asset, or the categorization of the property as a non-excluded, non-homestead property. The Appellant disclosed her ownership of this property on her initial application for WV LTC Medicaid and on subsequent redeterminations. Ms. [REDACTED] questioned the short timeframe for which she would have to secure private funding to maintain the Appellant in the nursing home or find another housing alternative, especially in light of the fact that it was the agency's error in excluding this asset.

Policy allows a one-person assistance group up to \$2,000 in assets to be eligible for WV LTC Medicaid benefits. It was undisputed that the Appellant's property was categorized as non-excluded, non-homestead real property, with a value of \$12,000. Although the Respondent previously erred in excluding this property, once it was discovered, the Respondent correctly determined that the Appellant was no longer eligible for WV LTC Medicaid and properly issued notice of closure.

### **CONCLUSIONS OF LAW**

- 1) Per policy, an individual's assets in a one-person assistance group must be less than \$2,000 for WV LTC Medicaid eligibility.
- 2) The Appellant owns non-excluded, non-homestead property valued at \$12,000.
- 3) The Appellant was over the asset limit for WV LTC Medicaid program eligibility.

### **DECISION**

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's determination that the Appellant was over the asset limit for continued WV LTC Medicaid eligibility.

**ENTERED this 14<sup>th</sup> day of November 2019.**

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Lori Woodward, State Hearing Officer