



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1027 N. Randolph Ave.  
Elkins, WV 26241

Bill J. Crouch  
Cabinet Secretary

Jolynn Marra  
Interim Inspector General

March 24, 2020

[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.: 20-BOR-1271

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,

Pamela L. Hinzman  
State Hearing Officer  
Member, State Board of Review

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

cc: Board of Review  
Darlene Smith, WVDHHR  
[REDACTED], APS, WVDHHR  
Sheriff of [REDACTED] County

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

██████████,

**Appellant,**

v.

**Action Number: 20-BOR-1271**

**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 March 17, 2020, on an appeal filed February 20, 2020.

The matter before the Hearing Officer arises from the October 29, 2019 and January 7, 2020 decisions by the Respondent to deny the Appellant's benefits under the Long-Term Care Medicaid Program.

At the hearing, the Respondent appeared by Darlene Smith, Economic Services Supervisor, WVDHHR, and Jennifer Nicholas, Economic Service Worker, WVDHHR. The Appellant was represented by ██████████, Business Office Manager, ██████████, and ██████████, Adult Protective Service Worker, WVDHHR, guardian of Appellant. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 West Virginia Income Maintenance Manual Chapter 24.8.2.A.4
- D-2 Electronic mail transmission dated January 8, 2020
- D-3 Long-Term Care Medicaid application dated October 22, 2018 and Pre-Admission Screening form dated October 1, 2018
- D-4 Case Comments dated November 26, 2018
- D-5 Electronic mail transmission from Darlene Smith (undated)
- D-6 Property tax receipts and photographs of properties
- D-7 Land Sale Contract

- D-8 Case Comments dated November 16, 2018
- D-9 Written statement from [REDACTED] County Sheriff [REDACTED] dated September 26, 2019
- D-10 Order Appointing New Guardian and Conservator dated November 26, 2018
- D-11 Order Following Hearing on Guardian Ad Litem's Motion for Payment of Nursing Home Fees dated March 12, 2019
- D-12 Subpoena for Darlene Smith dated January 6, 2020
- D-13 Electronic Mail Transmission dated January 9, 2020
- D-14 Property tax receipts and photographs of properties
- D-15 Electronic Mail Transmission dated January 8, 2020
- D-16 Long-Term Care Medicaid Application form dated October 22, 2018 (duplicate)
- D-17 Order Appointing New Guardian and Conservator dated November 26, 2018 (duplicate)
- D-18 Electronic mail transmission dated February 14, 2020
- D-19 Civil Case Information Statement and Petition to Subject Real Estate to Sale dated February 19, 2020
- D-20 Order Following Hearing on Guardian Ad Litem's Motion for Payment of Nursing Home Fees dated March 12, 2019 (duplicate)

**Appellant's Exhibits:**

- A-1 Physician Determination of Capacity dated November 28, 2018
- A-2 Physician Determination of Capacity dated December 4, 2019
- A-3 Pre-Admission Screening form dated December 20, 2019
- A-4 Application for Adult/Family Medicaid dated December 31, 2019
- A-5 Notice of Decision dated January 7, 2020
- A-6 Order Appointing New Guardian and Conservator dated November 26, 2018
- A-7 Motion to Subject Property and Real Estate to Sale dated October 28, 2019
- A-8 Order Setting Hearing on Motion to Sell Real Estate dated October 29, 2019
- A-9 West Virginia Income Maintenance Manual Chapter 5.3.4

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's former conservator/guardian completed a Long-Term Care Medicaid application for the Appellant in [REDACTED] County on October 22, 2018 (D-3).
- 2) The Appellant, who has been diagnosed with Alzheimer's Disease, was admitted to [REDACTED] nursing facility in November 2018.
- 3) A physician determined that the Appellant lacks mental capacity in November 2018 (A-1) and again in December 2019 (A-2).

- 4) In November 2018, [REDACTED] County Circuit Court appointed the WVDHHR as guardian for the Appellant and the [REDACTED] County Sheriff's Department as conservator for the Appellant (D-10).
- 5) On March 12, 2019, [REDACTED] County Circuit Court directed the [REDACTED] County Prosecuting Attorney to file a petition to allow the sheriff/conservator to sell the Appellant's real property assets (D-11).
- 6) In October 2019, the Appellant's representatives completed a Long-Term Care Medicaid redetermination in [REDACTED].
- 7) The Respondent determined that the Appellant owned several properties in [REDACTED], six of which were determined as countable assets.
- 8) The value of the Appellant's countable property assets was determined to be \$115,066.67, which exceeds the Long-Term Care Medicaid asset limit (D-5, D-6 and D-14).
- 9) The Respondent sent the Appellant a notice on October 29, 2019, indicating that her Long-Term Care Medicaid benefits would be terminated effective December 2019 based on excessive assets.
- 10) On October 28, 2019, the [REDACTED] County Prosecuting Attorney filed a motion in [REDACTED] County Circuit Court to subject the Appellant's real estate to sale (A-7).
- 11) Hearings on the Motion to Sell Real Estate were scheduled for November 2019 (A-8) and again for January 2020, however, the proceedings were continued due to procedural issues.
- 12) The Appellant's representative reapplied for Long-Term Care Medicaid benefits for the Appellant on December 31, 2019 (A-4).
- 13) The Respondent sent the Appellant a notice on January 7, 2020, indicating that Long-Term Care Medicaid benefits were again denied based on excessive property assets (A-5).
- 14) The [REDACTED] County Prosecuting Attorney filed a new Petition to Subject Real Estate to Sale on behalf of the Appellant on February 19, 2020 (D-19); however, no hearing date has been scheduled in regard to the petition.

### **APPLICABLE POLICY**

West Virginia Income Maintenance Manual Chapter 5.4 states that the asset limit for Long-Term Care Medicaid (SSI Medicaid Group) is \$2,000.

West Virginia Income Maintenance Manual Chapter 5.3.4 (A-9) states that to be considered an asset, an 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 of inaccessibility include, but are not limited to, legal proceedings such as probate, liens or items otherwise unavailable due to litigation.

### **DISCUSSION**

Policy states that the asset limit for Long-Term Care Medicaid is \$2,000 for a one-person Assistance Group. Policy also states that to be considered an asset, an 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 of inaccessibility include, but are not limited to, legal proceedings.

The Appellant lacks mental capacity, is mentally unable to sell her own real estate and has a court-appointed conservator.

The Respondent contended that the Appellant's non-excluded real estate is valued at \$115,066.67 and should be considered an accessible asset for Long-Term Care Medicaid purposes. The Respondent maintained that the real estate is a countable resource because the Appellant would be entitled to the resource with action by the conservator. However, the Appellant's conservator has never been granted authority to sell the Appellant's property and cannot legally dispose of the real estate until such permission is granted by Circuit Court.

The [REDACTED] County Prosecuting Attorney has petitioned [REDACTED] County Circuit Court (on behalf of the Appellant's conservator) for authority to sell the Appellant's real estate. Due to procedural delays, that petition is still pending court approval.

As a physician determined that the Appellant lacks mental capacity in November 2018 due to Alzheimer's Disease – and the Appellant's court-appointed conservator is unable to access or dispose of her assets due to ongoing legal proceedings – the Appellant's real estate is considered an inaccessible asset.

### **CONCLUSIONS OF LAW**

- 1) The Appellant lacks mental capacity to sell her own real estate assets.
- 2) The conservator's request to sell the Appellant's property has not yet been granted in Circuit Court.
- 3) The Appellant's non-excluded real estate assets are inaccessible.
- 4) The Respondent's termination and subsequent denial of the Appellant's Long-Term Care Medicaid benefits was incorrect.

### **DECISION**

It is the decision of the State Hearing Officer to REVERSE the Respondent's action to terminate the Appellant's Long-Term Care Medicaid benefits effective December 2019. The Appellant should be granted retroactive benefits beginning December 2019.

**ENTERED this 24<sup>th</sup> day of March 2020.**

---

**Pamela L. Hinzman  
State Hearing Officer**