



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

October 6, 2021



RE: [REDACTED] v. WVDHHR
ACTION NO.: 21-BOR-2010

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
Angela Jennings, WVDHHR

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

[REDACTED],

Appellant,

v.

Action Number: 21-BOR-2010

**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 [REDACTED]. 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 September 29, 2021, on an appeal filed August 30, 2021.

The matter before the Hearing Officer arises from the August 24, 2021 decision by the Respondent to deny the Appellant's benefits under the Long-Term Care Medicaid Program.

At the hearing, the Respondent appeared by Paula Jones, Economic Service Worker, WVDHHR. The Appellant was represented by Alisha Myers, Adult Protective Services Supervisor, WVDHHR, and Lucy O'Dell, Adult Protective Service Worker, WVDHHR. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Notice of Decision dated August 24, 2021
- D-2 Assets Summary
- D-3 Assets Determination Summary
- D-4 West Virginia Income Maintenance Manual Chapter 5.4
- D-5 West Virginia Income Maintenance Manual Chapter 24.8

Appellant's Exhibits:

- A-1 Property tax records from [REDACTED], and [REDACTED]
[REDACTED]

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, who was under state guardianship following an Adult Protective Services (APS) investigation, applied for Long-Term Care Medicaid benefits in August 2021.
- 2) The Appellant's Long-Term Care Medicaid application was denied based on excessive assets (Exhibit D-1).
- 3) The Appellant was married at the time of application, although he had been removed from his wife's care following an APS investigation.
- 4) Countable marital assets included a joint checking account (\$1,672.36) and non-homestead property in [REDACTED] valued at \$88,285 (Exhibits D-2 and D-3).
- 5) The asset limit for a one-person SSI Medicaid Assistance Group is \$2,000 (Exhibit D-4).

APPLICABLE POLICY

West Virginia Income Maintenance Manual Chapter 5.4 states that the maximum allowable assets for a one-person SSI Medicaid Assistance Group is \$2,000 (Exhibit D-4).

West Virginia Income Maintenance Manual Chapter 5.3.4 states that 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 of inaccessibility include, but are not limited to, the following:

- Legal proceedings such as, probate, liens (other than those required for financing the asset). Items encumbered, or otherwise unavailable, due to litigation are not considered assets until the court proceedings are completed and a court decision is reached. The DHHR is required to follow the dictates of the court order.
- Property sold with a land sale contract. The property does not belong to the seller as long as a legal contract is in effect.
- Homestead/non-homestead property being purchased by a land sale contract. The property does not have equity value for the buyer until the terms of the contract are fulfilled.

- Acting as the authorized agent of an organization, such as the treasurer of a church or the president of a community group or town council.
- 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. If the fractional share of the asset is not available to either owner without the consent of the other, and such consent is withheld, the asset is excluded as being inaccessible.

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.

DISCUSSION

Policy dictates 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, 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.

The Appellant’s representative contended that the value of the [REDACTED] property should not be considered as an asset for Long-Term Care Medicaid purposes because the property is only in the Appellant’s wife’s name. The APS representative alleged that the Appellant’s wife has mental health issues and refused to cooperate with requests to dispose of the [REDACTED] property.

While the Appellant’s representatives testified that the [REDACTED] property was inaccessible to the Appellant, who is now deceased, no evidence was provided to demonstrate that attempts had been made to access the property through legal means on the Appellant’s behalf. In addition, no documentation was provided to verify that the Appellant’s wife refused to dispose of the property.

CONCLUSIONS OF LAW

- 1) The asset limit for Long-Term Care Medicaid benefits (SSI Medicaid groups) is \$2,000 for a one-person Assistance Group.
- 2) The Respondent determined that the Appellant’s countable assets exceeded the \$2,000 limit.
- 3) The Respondent’s denial of Long-Term Care Medicaid benefits was correct.

DECISION

It is the decision of the State Hearing Officer to UPHOLD the Respondent's action to deny the Appellant's Long-Term Care Medicaid application.

ENTERED this 6th Day of October 2021.

**Pamela L. Hinzman
State Hearing Officer**