



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN
RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
433 MidAtlantic Parkway
Martinsburg, WV 25404**

**Bill Crouch
Cabinet Secretary**

**Jolynn Marra
Interim Inspector General**

August 12, 2021

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 21-BOR-1780

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, J.D.
Certified State Hearing Official
Member, State Board of Review

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

cc: Ann Hubbard, BCF, [REDACTED] Co. DHHR
[REDACTED]

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

██████████,

Appellant,

v.

Action Number: 21-BOR-1780

**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 August 5, 2021, on a timely appeal filed July 7, 2021.

The matter before the Hearing Officer arises from the Respondent's March 2 and March 24, 2021 denials for Long Term Care (LTC) Medicaid.

At the hearing, the Respondent appeared by Ann Hubbard, Economic Services Supervisor. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was her son and Attorney-in-Fact, ██████████. The witnesses were sworn, and the following documents were admitted into evidence:

Department's Exhibits:

- D-1 Hearing Summary
- D-2 West Virginia Department of Health and Human Resources Application for Long Term Care Medicaid and Children with Disabilities Community Service Program signed and dated December 21, 2020
- D-3 West Virginia Department of Health and Human Resources Pre-Admission Screening signed and dated December 15, 2020
- D-4 ██████████ Life Insurance Company Policy Service Request Beneficiary Change signed and dated January 12, 2021; Preneed Funeral Contract - Assignment of Insurance and/or Annuity Contract signed and dated January 9, 2021
- D-5 ██████████ Bank statement dated October 20, 2020
- D-6 ██████████ Bank statement dated November 20, 2020
- D-7 ██████████ Bank statement dated December 18, 2020

- D-8 Verification Checklist (DFA-6) dated February 19, 2021
- D-9 [REDACTED] Bank statement dated January 20, 2021
- D-10 Denial notice dated March 2, 2021 (for December 2020)
- D-11 Denial notice dated March 24, 2021 (for January 2021)
- D-12 West Virginia Income Maintenance Manual, Chapter 5, §5.4

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 was admitted to the [REDACTED] ([REDACTED]) facility in [REDACTED], West Virginia on November 10, 2020. (Exhibit D-1)
- 2) On February 8, 2021, the Respondent received the Appellant's LTC Medicaid application. (Exhibit D-2)
- 3) The Appellant requested backdating of LTC Medicaid benefits to December 2020.
- 4) The Appellant submitted October 20, November 20, December 18, 2020, and January 20, 2021, bank account statements along with a copy of a pre-need burial contract signed and dated January 9, 2021, and [REDACTED] Life Insurance Company change of beneficiary form signed and dated January 12, 2021. (Exhibits D-4 thru D-7, and D-9)
- 5) The Appellant receives monthly Social Security income. (Exhibit D-5 thru D-7 and D-9)
- 6) The Respondent determined the Appellant's assets for the month of December from the submitted bank statement which showed an account balance of \$3,642.27 as of December 18, 2020. (Exhibit D-7)
- 7) The Respondent subtracted the Appellant's Social Security income of \$975 deposited on December 9, 2020, to make the determination that the Appellant's assets for December 2020 LTC Medicaid eligibility totaled \$2,667.27. (Exhibit D-1)
- 8) On March 2, 2021, the Respondent sent the Appellant notification that she was over the asset limit of \$2,000 for LTC Medicaid eligibility for the month of December 2020 (Exhibit D-10)
- 9) The Respondent determined the Appellant's assets for the month of January from the submitted bank statement which showed a checking account balance of \$3,232.34 as of December 28, 2020. (Exhibit D-9)

- 10) The Respondent deducted the Appellant's Social Security income of \$985 deposited on January 13, 2021 from the December 28, 2020 total, to make the determination that the Appellant's assets for January 2021 LTC Medicaid eligibility totaled \$2,247.34. (Exhibit D-1)
- 11) On March 24, 2021, the Respondent sent the Appellant notification that she was over the asset limit of \$2,000 for LTC Medicaid eligibility for the month of January. (Exhibit D-11)

APPLICABLE POLICY

All LTC Medicaid programs require a determination of medical eligibility, as well as a determination of financial eligibility conducted by the Worker. (WV IMM, Chapter 24)

Applicants for nursing facility services must meet the asset test for their eligibility coverage groups, except for Modified Adjusted Gross Income (MAGI) groups. (West Virginia Income Maintenance Manual (WV IMM), Chapter 24, §24.8)

Medicaid eligibility begins on the first day of the month in which eligibility is established. Eligibility may be backdated up to three months prior to the month of application, when all eligibility requirements were met, and the client has medical expenses for which he seeks payment. (WV IMM, Chapter 24, §24.4.1.C.10)

SSI Medicaid Groups include SSI-Related Medicaid, CDCSP, PAC, QDWI, QMB, SLIMB, and QI1. **The asset eligibility determination for these 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.** Increases in countable assets during one month do not affect eligibility unless retained into the first moment of the following month. [Emphasis added] (WV IMM, Chapter 5, §5.3.1.B)

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. (WV IMM, Chapter 5, §5.3.4)

West Virginia Income Maintenance Manual (WV IMM), Chapter 5, §5.4, states that the asset limit for Long-Term Care Medicaid (SSI Medicaid Group) for an Assistance Group (AG) of one is \$2,000.

DISCUSSION

The Appellant was admitted to [REDACTED] on November 10, 2020. An application for LTC Medicaid was made on February 8, 2021, requesting backdating coverage to the month of December 2020. The Respondent determined that the Appellant was over the allowable asset limit for LTC Medicaid eligibility for the month of December 2020 and January 2021. Notification of the November 2020 LTC Medicaid denial was sent to the Appellant on March 2, 2021, and the December LTC Medicaid denial was sent to the Appellant on March 24, 2021. The Appellant appeals the Respondent's denials.

In evaluating an applicant's asset amount for LTC Medicaid, policy requires that assets be determined as of the first moment of the first day of the month of inquiry. The Appellant submitted her application for LTC Medicaid coverage on February 8, 2021, requesting backdating coverage to December 2020. Thus, by policy the Appellant's assets as of 12:00 a.m. December 1, 2020, must be evaluated to determine asset eligibility for the month of December.

The Respondent's representative, Ann Hubbard, testified that the Appellant's December 18, 2020, bank statement was used in determining the Appellant's total assets for the month of December 2020. The Respondent used the balance as of December 18, 2020 of \$3,642.27. From this amount, the Respondent deducted the Appellant's Social Security income of \$975 which was direct-deposited on December 9, 2020. However, policy requires that the Respondent should have considered the Appellant's assets as of 12:00 a.m. December 1, 2020, not December 18, 2020. The December 2020 bank statement did note a balance of \$3,060.24 as of November 30, 2020. As the Appellant received \$975 per month from the Social Security Administration (SSA), the correct income deduction was used. When applying the correct asset balance as of December 1, 2020 with the SSA income deduction, the amount of \$2085.24 remains over the allowable asset limit for LTC Medicaid eligibility for the month of December 2020.

In evaluation of the Appellant's January assets, the Respondent did use the Appellant's asset balance as of December 28, 2020 of \$3,232.34 shown on her January 18, 2021 bank statement. Ms. Hubbard testified that the January 13, 2021 SSA deposit of \$985 was deducted from that amount to establish that the Appellant's assets for the month of January equaled \$2,247.34, which was over the asset limit of \$2,000. Because the \$985 SSA was deposited on January 13, 2021, this amount was incorrect. The amount of \$975 which was deposited in December would have affected the ending balance as of December 28, 2020. However, the Appellant remains over the allowable asset limit for LTC Medicaid eligibility for the month of January 2021.

It should be noted that at the hearing, the \$600 Federal stimulus payment which was deposited on January 4, 2021 was discussed. In reviewing policy, it is determined that this amount was not eligible as a deduction for January 2021 asset determination as it was deposited after January 1, 2021.

The Appellant's son and Attorney-in-Fact, [REDACTED], testified that due to the pandemic, he was unable to obtain power of attorney over the Appellant until December 30, 2020. Thus, Mr. [REDACTED] argued that he was unable to pay any of the Appellant's outstanding non-auto pay bills which would have reduced her assets for the months of December and January. Mr. [REDACTED] presented no evidence to support what bills, if any, were due which were not paid or whether payment of these bills would have resulted in program eligibility. Moreover, the testimony presented by Mr. [REDACTED] showed that accommodations were made by [REDACTED] to facilitate necessary documentation to be signed by the Appellant.

Although the Respondent incorrectly used amounts to assess the Appellant's assets for LTC Medicaid for the months of December 2020 and January 2021, the corrected amounts nonetheless remain over the allowable \$2,000 asset limit set by policy.

CONCLUSIONS OF LAW

- 1) Policy requires that the asset eligibility determination for LTC Medicaid must be made as of the first moment (defined as 12:00 a.m. of the first day) of the month of eligibility. An applicant is not eligible for any month in which countable assets are in excess of the limit, as of the first moment of the month.
- 2) The December 18, 2020 bank account balance of \$3,642.27 used by the Respondent was incorrect.
- 3) The correct amount for the December 2020 asset calculation should have been the November 30, 2020 amount of \$3,060.24, which after deducting the SSA income of \$975, results in the Appellant remaining over the allowable asset limit for LTC Medicaid eligibility for the month of December.
- 4) Although the Respondent incorrectly deducted the January 9, 2021 amount of \$985 SSA income, the Appellant remains over the allowable asset limit for LTC Medicaid eligibility for the month of January.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to deny the Appellant LTC Medicaid coverage for the months of December 2020 and January 2021.

ENTERED this 12th day of August 2021.

Lori Woodward, Certified State Hearing Officer