



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

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Jolynn Marra
Interim Inspector General

November 18, 2021

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 21-BOR-2002

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 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,

Todd Thornton
State Hearing Officer
Member, State Board of Review

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

cc: Michael Jackson, Esq., Assistant Attorney General

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

██████████,

Appellant,

v.

Action No.: 21-BOR-2002

**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 28, 2021, on an appeal filed August 27, 2021.

The matter before the Hearing Officer arises from the August 19, 2021 decision by the Respondent to deny Medicaid payment for nursing facility services.

At the hearing, the Respondent appeared by Michael Jackson, Esq., Assistant Attorney General. Appearing as a witness for the Respondent was ██████████. The Appellant appeared by ██████████. Appearing as witnesses for the Appellant were ██████████. An affidavit was accepted from ██████████, on behalf of the Appellant, in lieu of testimony. All witnesses were sworn and the following documents were admitted into evidence.

EXHIBITS

Department's Exhibits:

- | | |
|-----|---|
| D-1 | Medicaid application dated July 13, 2021, and supporting documents |
| D-2 | Notices dated August 19, 2021 |
| D-3 | Asset verifications provided regarding the July 13, 2021 Medicaid application |

- D-4 Statement from [REDACTED] (undated)
- Statement from [REDACTED] (undated) with supporting documents
- Statement from [REDACTED], dated June 21, 2021, with supporting documents

Appellant's Exhibits:

- A-1 Screen printout of comments regarding the Appellant's case from the Respondent's data system
- A-2 Correspondence from [REDACTED], dated July 9, 2021
- A-3 Authorized Representative form
- A-4 Durable Power of Attorney
- A-5 Asset Assessment
- A-6 Verification of annuity
- A-7 West Virginia Income Maintenance Manual (WVIMM), Chapter 24 (excerpt)
- A-8 Notice of Decision, dated August 19, 2021
- A-9 Notice from the Respondent, dated August 18, 2021
- A-10 WVIMM, Chapter 24 (excerpt)
- A-11 Email correspondence between [REDACTED]
- A-12 Fair Hearing Request Form
- A-13 Statement from [REDACTED]
- A-14 Medical records regarding the Appellant, dated April 21, 2021, and May 14, 2021
- A-15 Medical records regarding the Appellant, dated May 19, 2021
- A-16 Nursing home admission notes regarding the Appellant
- A-17 Statement of [REDACTED] with supporting documents
- A-18 Statement of [REDACTED] with supporting documents
- A-19 Excerpt from United States Code, 42 U.S.C. §1396p(c)(2)(C)(ii)
- A-20 [REDACTED] Administrative Code 5160:1-6-06(F)
- A-21 Documents related to spending by the Appellant's adult children
- A-22 Medicaid application dated July 13, 2021, and supporting documents

A-23 Excerpt from prior policy, WVIMM §17.10, Appendix A

A-24 Affidavit of [REDACTED], spouse of the Appellant; printed photographs

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 applied for Long Term Care (LTC) Medicaid for Nursing Facility (NF) services, on July 13, 2021. (Exhibits D-1 and A-22)
- 2) The Appellant has a community spouse, [REDACTED].
- 3) The Respondent conducted an asset assessment as part of the Appellant's application process.
- 4) As a result of the asset assessment, the Respondent determined the Appellant made a transfer of resources which was not permissible.
- 5) As a result of the Respondent's asset transfer determination, the Respondent applied a penalty delaying the payment of nursing facility services.
- 6) The Respondent issued three notices to the Appellant on August 19, 2021. (Exhibits D-2 and A-8)
- 7) These notices advise the Appellant that she was approved for Medicaid coverage in July 2021 and August 2021, and that she would be approved for Medicaid coverage from September 2021 ongoing. (Exhibits D-2 and A-8)
- 8) These notices (Exhibits D-2 and A-8) also address the payment of nursing facility services, and read, "Income or assets have been transferred, without receiving fair compensation, in order to become eligible for benefits. You are ineligible for payment of nursing home services because you transferred resources. The number of months of ineligibility is determined by dividing the amount transferred by the average monthly private pay nursing home rate. Any remaining amount is added to the contribution you must pay to the nursing home as a Medicaid recipient. You are ineligible from 2021-07-01 to 2021-11-30 [sic]. You may qualify for payment of your nursing home services for 202112 [sic], but must pay 8850.00 [sic] to the nursing home, in addition to any calculated contribution based on your income."
- 9) On January 15, 2021, the Appellant received \$486,353.71 from the sale of property she inherited after the death of her brother in May 2020. (Exhibit A-24)

- 10) On January 18, 2021, the Appellant gave one-time gifts to her four children and her daughter-in-law, in the amount of \$30,000 each, for a total of \$150,000 in gifts. (Exhibit A-24)
- 11) The Appellant was treated at the hospital emergency room on April 21, 2021, at which time she was diagnosed with edema and cellulitis of the left leg and foot. (Exhibit A-24)
- 12) The Appellant was diagnosed with renal failure on May 19, 2021. (Exhibit A-24)
- 13) The Appellant was evaluated for medical eligibility for nursing home placement on May 24, 2021. (Exhibit A-24)
- 14) Two of the Appellant's children, and the Appellant's daughter-in-law, returned their \$30,000 gifts to the Appellant in full, for a total of \$90,000 returned to the Appellant, subsequent to a June 10, 2021 meeting with the attorney for the Appellant. (Exhibits D-4, A-13, and A-24)
- 15) ██████████, the Appellant's daughter, used the money given to her by the Appellant to pay off an auto loan, a home loan, and for repairs to her home. (Exhibits D-4 and A-17)
- 16) ██████████, the Appellant's daughter, used the money given to her by the Appellant for "charitable giving, credit card payoff, school registration, a furniture purchase, and a vehicle down payment." (Exhibits D-4 and A-18)

APPLICABLE POLICY

West Virginia Income Maintenance Manual (WVIMM), §24.4, addresses the application and redetermination process for Nursing Facility Services. This policy notes that "payment for nursing facility care is a service available to eligible Medicaid clients," and that "nursing facility residents who meet a special income test" may establish eligibility for Medicaid payment of nursing facility services.

WVIMM, §24.8, details asset considerations for Long Term Care eligibility, and notes that "Applicants for nursing facility services must meet the asset test for their eligibility coverage groups..."

WVIMM, §24.8.1, addresses Asset Assessments, and, at §24.8.1.A, policy reads, "When determining eligibility for nursing facility services for an individual who has a community spouse, the Worker must complete a one-time assessment of the couple's combined countable assets, called an Asset Assessment."

WVIMM, §24.8.2, addresses Transfer of Resources, and provides, "Under the transfer of resources policy, the Worker must deny coverage of LTC Medicaid services to otherwise eligible institutionalized individuals who transfer (or whose spouses transfer) resources for the less than fair market value (FMV)."

This section additionally reads, “This section outlines which transfers of resources are allowable (or permissible) and which result in a penalty that delays the applicant’s eligibility for Medicaid coverage of LTC services. Whether the transfer is considered permissible depends on the **timing of the transfer, whether the client was compensated, for whose benefit the transfer was made** and other factors.” (emphasis added)

WVIMM, §24.8.2.B, provides section of Permissible Transfers, and reads, “The following types of transfers do not result in a penalty for transferring resources.”

WVIMM, §24.8.2.B.6, provides:

When a transfer of resources was exclusively for a purpose other than to qualify for Medicaid, no penalty is applied.

NOTE: A transfer is assumed to be for the purpose of qualifying for LTC services. The burden is on the individual to prove otherwise. The Worker and Supervisor can make this decision.

DISCUSSION

The Appellant requested this hearing to appeal the decision of the Respondent to deny Medicaid payment for nursing facility services. The Appellant was approved for Medicaid, but payment of nursing facility services is delayed by a resource transfer penalty imposed by the Respondent. The Respondent must prove by preponderance of the evidence that it correctly imposed the transfer penalty resulting in denial of Medicaid payment for nursing facility services.

Following admission to the hospital emergency room in April 2021, the Appellant received multiple diagnoses which ultimately led to a medical evaluation for her need for nursing facility services. The Appellant was determined have medical need for care in a nursing facility in May 2021. Prior to this date, the Appellant received care in her home.

The Appellant received money from the sale of property she inherited and gave \$30,000 gifts to each of her children and her daughter-in-law, for a total of \$150,000. These gifts were given in January 2021. At the time the gifts were given, the Appellant was receiving care in her home.

An application for Medicaid was submitted on the Appellant’s behalf on July 13, 2021. The Appellant has a community spouse, and the Respondent conducted an asset assessment as part of the application process. The Respondent determined, as a result of this assessment, that the Appellant’s gifts to her children and daughter-in-law, were impermissible transfers of resources. This conclusion is not supported by the reliable testimony and evidence offered at hearing.

Policy regarding asset transfers for LTC Medicaid allows for penalties when an asset transfer is not permissible, but clearly outlines types of transfers which do not result in a penalty for transferring resources. Included among these types are “transfers exclusively for a purpose other

than to qualify for Medicaid.” (WVIMM, §24.8.2.B.6) This policy states that a transfer is “...assumed to be for the purpose of qualifying for LTC services,” and that the burden is on the individual to prove otherwise. This section also notes that the “...Worker and Supervisor can make this decision,” but omits any governing standards or fixed rules to apply. Two examples are provided in this section of policy – one example showing a permissible transfer and one example showing a transfer resulting in a penalty. Neither example provided in WVIMM, §24.8.2.B.6, is identical to the circumstances of the Appellant. Because fixed rules or standards are not explicitly stated in this policy section, and because fixed rules or standards cannot be gleaned from a single example of a permissible scenario, this policy section does not address the criteria to be used by the Respondent worker and supervisor.

Policy from WVIMM, §24.8.2, indicates that “Whether the transfer is considered permissible depends on the timing of the transfer, whether the client was compensated, for whose benefit the transfer was made and other factors.” The Respondent had this information available to them (Exhibits D-4) with the Appellant’s Medicaid application. The timing of the transfer was January 2021, prior to the series of medical emergencies that began in April 2021 and the determination of the Appellant’s medical need for nursing facility care. This factor supports the Appellant’s contention that the transfer of resources was a permissible transfer.

The Appellant was not “compensated” for the transfer of resources, because the transfers were clearly established as gifts occurring before the decline in the Appellant’s health. The Appellant and her spouse could not plan to become eligible for Medicaid nursing facility services before they knew the need would arise. This factor also supports the argument that the Appellant’s transfer was permissible according to policy.

Finally, the information provided with the Appellant’s Medicaid application showed that the transfer was to benefit the Appellant’s children and daughter-in-law, and not to benefit the Appellant. Although WVIMM, §24.8.2, alludes to “other factors” for some of the permissible transfers it covers, WVIMM §24.8.2.B.6, does not identify other factors for that particular permissible transfer category. The timing, compensation, and benefit components of the Appellant’s resource transfers establish that they were permissible. The Appellant has met their burden to show that the transfers in question were permissible transfers, and the Respondent was incorrect to apply a penalty on this basis. The decision by the Respondent to deny Medicaid payment for nursing facility services due to a transfer of resources penalty cannot be affirmed.

CONCLUSIONS OF LAW

- 1) Because the Appellant transferred resources exclusively for purposes other than to qualify for Medicaid, the Respondent must not apply an asset transfer penalty.
- 2) Because the Respondent must not apply an asset transfer penalty, the Respondent was incorrect to deny Medicaid payment for nursing facility services to the Appellant.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's decision to deny payment of Medicaid nursing home services. The Respondent is directed to restore the Medicaid coverage delayed by the resource transfer penalty stemming from the Appellant's July 13, 2021 Medicaid application.

ENTERED this ____ Day of November 2021.

**Todd Thornton
State Hearing Officer**