



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of the Inspector General
Board of Review**

**Jeffrey H. Coben, MD
Interim Cabinet Secretary**

**Sheila Lee
Interim Inspector General**

May 25, 2023



RE: [REDACTED] v. WVDHHR
ACTION NO.: 23-BOR-1628

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,

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

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

cc: Heather Norman, WVDHHR

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

██████████,

Appellant,

v.

Action Number: 23-BOR-1628

**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 May 23, 2023.

The matter before the Hearing Officer arises from the March 31, 2023 decision by the Respondent to terminate Long-Term Care Medicaid benefits effective May 2023.

At the hearing, the Respondent appeared by Heather Norman, Economic Services Supervisor, WVDHHR. Observing was Mariah Daniels, Economic Service Worker, WVDHHR. The Appellant was represented by ██████████, Business Officer Manager, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 West Virginia Income Maintenance Manual Chapter 24.8.1.F
- D-2 Notice of Decision dated March 31, 2023
- D-3 Asset Assessment
- D-4 Notice of Decision dated February 1, 2023
- D-5 Preneed Funeral Contract- Assignment of Insurance and/or Annuity Contract dated April 28, 2023, Certificates of Deposit withdrawal receipts and copies of checks dated April 27, 2023, Division of Motor Vehicles Affidavits of Transfer of Ownership Without Consideration and Certificates of Title
- D-6 West Virginia Income Maintenance Manual Chapter 24.8.1.B

Appellant's Exhibits:

- A-1 Certificates of Deposit withdrawal receipts and copies of checks dated April 27, 2023
- A-2 Division of Motor Vehicles Affidavits of Transfer of Ownership Without Consideration and Certificates of Title
- A-3 Preneed Funeral Contract- Assignment of Insurance and/or Annuity Contract dated April 28, 2023, Funeral Purchase Contract dated April 28, 2023, and life insurance policy specifications

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 was admitted to [REDACTED] on January 12, 2023.
- 2) The Appellant's wife, [REDACTED] applied for Long-Term Care Medicaid benefits on his behalf on January 13, 2023.
- 3) The Respondent completed an Asset Assessment for the Appellant and [REDACTED] (the community spouse), determining that total countable assets were \$21,193.59 (Exhibit D-3).
- 4) The Respondent notified the Appellant on February 1, 2023, that his Long-Term Care Medicaid application was approved (Exhibit D-4).
- 5) The Appellant was afforded 90 days to legally transfer assets to his community spouse to meet the asset limit of \$2,000 for Long-Term Care Medicaid benefits.
- 6) On March 31, 2023, the Appellant was notified that his Long-Term Care Medicaid benefits would be terminated effective May 1, 2023, because his assets were excessive (Exhibit D-2).
- 7) The Respondent received verification on April 28, 2023, that two of the Appellant's Certificates of Deposit had been withdrawn, with the closeout proceeds paid to [REDACTED] in a check for \$17,395.45 (Exhibits D-5 and A-1).
- 8) The Respondent received verification on April 28, 2023, that the titles to three vehicles, including a 1989 Ford Ranger, a 1990 Ford pick-up truck, and a 1988 Ford F-150 truck, were removed from [REDACTED] ownership and titled to [REDACTED] only (Exhibits D-5 and A-2).

- 9) The Respondent received verification on April 28, 2023, that the Appellant had completed an irrevocable Pre-Need Burial Contract with [REDACTED], using life insurance benefits from his [REDACTED] life insurance policy (Exhibits D-5 and A-3).
- 10) The burial contract price was listed as \$11,581, while the assigned life insurance policy value was \$15,000 (Exhibits D-5 and A-3).
- 11) The Respondent was informed that the finalized burial contract would be sent to the Department once it was received. The finalized contract was sent to the Respondent on May 18, 2023 (Exhibits D-5 and A-3).
- 12) At the time of application, the Appellant had two checking accounts, but no verification was provided concerning the ownership or value of the accounts as of May 2023.
- 13) The Appellant passed away on May 17, 2023.
- 14) The Appellant's representative is seeking Long-Term Care Medicaid coverage for the period of May 1, 2023, through May 17, 2023, the date of the Appellant's death.

APPLICABLE POLICY

West Virginia Income Maintenance Manual Chapter 24.8.1.F (Exhibit D-1), states:

Once initial eligibility for Long-Term Care Medicaid has been established, assets that were not counted for the institutionalized spouse must be legally transferred to the community spouse.

Assets cannot merely be attributed to the community spouse, but must actually be transferred to the community spouse if they are to be excluded in determining continuing Medicaid eligibility of the institutionalized spouse. Assets legally transferred to the community spouse based on the Asset Assessment are allowable transfers of resources.

To exclude assets attributed to the community spouse, the institutionalized spouse must indicate his intent to transfer the assets to the community spouse, and the transfer must take place within 90 days, unless a longer period is required to take the action.

Once Medicaid eligibility is established, the assets of the community spouse based on the Asset Assessment are not counted for the institutionalized spouse. In addition, when assets such as the home and attributed assets legally transferred to the community spouse are subsequently transferred by the community spouse, no penalty is applied to the institutionalized spouse.

West Virginia Income Maintenance Manual Chapter 5.4 states that the asset limit for a one-person Assistance Group is \$2,000 for SSI-Related Medicaid purposes.

DISCUSSION

Policy states that to exclude assets attributed to the community spouse for Long-Term Care Medicaid purposes, the institutionalized spouse must indicate his intent to transfer the assets to the community spouse. The transfer must take place within 90 days, **unless a longer period is required to take the action [emphasis added]**.

The Respondent terminated the Appellant's Long-Term Care Medicaid benefits effective May 2023 based on excessive assets.

[REDACTED], Business Office Manager at [REDACTED], assisted the Appellant and his wife with asset transfer issues. Verification of the Certificates of Deposit, vehicle, and life insurance policy transfers was provided to the Department on April 28, 2023, although a finalized burial contract was not provided until May 18, 2023.

At the time of application, two checking accounts were reported for the Appellant; however, the value of the accounts as of May 2023 is unknown. It is also unknown whether the checking accounts were transferred to the Appellant's wife or whether they remained in his name for income deposits.

Information concerning the Appellant's asset transfers was provided prior to termination of the Appellant's Long-Term Care Medicaid benefits, with the exception of the finalized burial contract. While the final burial contract may not have been received within 90 days, policy stipulates that a longer period may be required to complete the action. As the Appellant had completed the required asset transfers as of April 28, 2023, but could not provide his finalized burial contract until May 2023, the Appellant's decision to terminate Long-Term Care Medicaid benefits effective May 2023 cannot be affirmed.

CONCLUSIONS OF LAW

- 1) The Appellant was required to complete asset transfers to his community spouse to maintain Long-Term Care Medicaid coverage for May 2023.
- 2) The Respondent was notified on April 28, 2023, that the Appellant's Certificates of Deposit and vehicles had been transferred to his wife.
- 3) The Respondent was notified that the Appellant completed an irrevocable burial contract on April 28, 2023.
- 4) While the burial contract was not finalized until May 2023, the Appellant's signature on April 28, 2023, established his intent to transfer the asset.

- 5) No documentation was provided concerning the Appellant's checking accounts as of May 2023 to establish whether the accounts were transferred or remained countable assets for the Appellant.
- 6) As policy stipulates that asset transfers take place within 90 days unless a longer period is required to take the action, the Respondent's decision to terminate Long-Term Care Medicaid benefits effective May 2023 cannot be affirmed.
- 7) The Respondent must calculate the Appellant's countable assets, considering all asset transfers, and determine his financial eligibility for Long-Term Care Medicaid for the month of May 2023.
- 8) The Respondent should determine whether the Appellant's checking accounts were transferred or whether the values of the accounts are countable assets for May 2023.

DECISION

It is the decision of the State Hearing Officer to **REVERSE and REMAND** the Respondent's action to terminate Long-Term Care Medicaid benefits based on excessive assets. The Respondent must calculate countable assets and determine the Appellant's eligibility for Long-Term Care Medicaid for May 2023.

ENTERED this 25th day of May 2023.

**Pamela L. Hinzman
State Hearing Officer**