



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

**Martha Yeager Walker  
Secretary**

**Joe Manchin III  
Governor**

**Board of Review  
4190 West Washington Street  
Charleston, West Virginia 25313  
Email: raywoods@wvdhhr.org**

March 14, 2005

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\_\_\_\_\_  
\_\_\_\_\_

Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 10, 2004. Your hearing request was based on the Department of Health and Human Resources' action to deny your mother's Nursing Home Medicaid application as a result of excessive assets.

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.

Eligibility and benefit levels for Nursing Home Care are determined based on current regulations. Some of these regulations specify that the asset limit for the Nursing Home Program is \$2,000 for a one-person assistance group. The asset eligibility determination must be made as of the first moment of the month of application. (WV Income Maintenance Manual Sections 11.2A and 11.3)

The information submitted at the hearing revealed: You had excessive assets for Nursing Home Care.

It is the decision of the State Hearing Officer to uphold the action of the Department to deny Nursing Home Medicaid benefits for the month of June 2004.

Sincerely,

Ray B. Woods, Jr., M. L. S.  
State Hearing Officer  
Member, State Board of Review

cc: State Board of Review  
William Morgan, ESW, DHHR  
\_\_\_\_\_, Claimant's son

# **WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES**

**NAME:** \_\_\_\_\_ on behalf of \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

## **SUMMARY AND DECISION OF THE STATE HEARING OFFICER**

### **I. INTRODUCTION**

This is a report of the State Hearing Officer resulting from a fair hearing concluded on March 14, 2005 for \_\_\_\_\_ on behalf of her mother, \_\_\_\_\_.

This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This fair hearing was originally convened on September 10, 2004 on a timely appeal filed June 25, 2004.

All persons giving testimony were placed under oath.

### **II. PROGRAM PURPOSE**

The program entitled Nursing Home Care is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and Human Resources.

Nursing Home Care is a medical service which is covered by the State's Medicaid Program. Payment for care is made to nursing homes which meet Title XIX (Medicaid) standards for the care provided to eligible recipients. In order to qualify for Nursing Home Care, an individual must meet financial and medical eligibility criteria.

### **III. PARTICIPANTS**

\_\_\_\_\_, daughter of Claimant

\_\_\_\_\_, son of Claimant

\_\_\_\_\_, daughter-in-law of Claimant

Sandy Evans, Policy Services, [REDACTED] Funeral Home

William Morgan, Economic Service Worker, DHHR

Presiding at the hearing was Ray B. Woods, Jr., M. L. S., State Hearing Officer and a member of the State Board of Review.

#### **IV. QUESTION(S) TO BE DECIDED**

Were the Claimant's assets excessive to receive Nursing Home Medicaid for the month of June 2004?

#### **V. APPLICABLE POLICY**

West Virginia Income Maintenance Manual Sections 11.2A, 11.3, 11.4, 2, and 11.5, C, 7

#### **VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED**

##### **DEPARTMENT'S EXHIBITS:**

- D-1 Hearing Summary
- D-2 List of Exhibits
- D-3 WV Income Maintenance Manual Sections 11.2A, 11.3, 11.4 and 11.5
- D-4 Nursing Home Medicaid denial letter dated June 28, 2005
- D-5 Printout of Rapids Nursing Home Asset Eligibility Determination screen
- D-6 Rapids case comments
- D-7 Verification of pre-need burial contract with [REDACTED] Funeral Home

##### **CLAIMANT'S EXHIBITS:**

- C-1 Annual Report from Investors [REDACTED] Life Insurance Co.

#### **FINDINGS OF FACT**

- On May 25, 2004, the Claimant's children applied for Nursing Home Medicaid for the Claimant.
- Mr. Morgan stated the Claimant was ineligible for Nursing Home Medicaid for the month of May 2004 and coverage was requested beginning June 1, 2004.
- Verification was requested concerning the Claimant's pre-need burial contract at [REDACTED] Funeral Home.
- On June 23, 2004, verification was received showing the fund's value as \$3,769.89 (D-7). The verification showed a Notice of Contract Irrevocability was signed by Ms. \_\_\_\_\_ on June 3, 2004.
- Nursing Home Medicaid was denied since the Claimant's assets were excessive as of the first moment of the month of June 2004. Mr. Morgan stated the Claimant's total assets for June 2004 included liquid assets of \$943.89 and burial assets of \$3,769.89 for a total of \$4,713.78. The asset limit for the program is \$2,000.

- On June 28, 2004, the Claimant's daughter was sent a denial letter (D-4) for Nursing Home Medicaid which stated:  
  
"Action: Your 05/25/04 application for Nursing Home Care Coverage has been denied. Reason: The amount of assets is more than is allowed for this benefit."
- Mr. \_\_\_\_\_ stated he does not dispute Mr. Morgan's testimony, but explained that his sister was given incorrect information by the funeral home concerning the irrevocability of the burial fund. Mr. \_\_\_\_\_ said his sister had requested verification of the burial contract and an appointment to obtain the verification was made for June 3, 2004. He stated his sister did not realize that she was signing the Notice of Contract Irrevocability on June 3, 2004, but thought she was obtaining verification of the contract. If he and his sister had known the policy was revocable, Mr. \_\_\_\_\_ said the matter would have been addressed before the end of May 2004. He stated his family had made a good faith effort to assure his mother's asset eligibility.
- Ms. [REDACTED] stated the appointment for Ms. \_\_\_\_\_ was made on June 3, 2004 by an individual no longer employed by the funeral home. She stated the family was given incorrect information by that employee regarding the irrevocability of the fund as a result of the employee's inexperience in dealing with such matters. She stated the fund was actually made irrevocable on June 3, 2004 when Ms. \_\_\_\_\_ simply thought she was obtaining verification of the policy.

### **VIII. CONCLUSIONS OF LAW**

- WV Income Maintenance Manual Section 11.2A (D-3) states:  
"The asset eligibility determination for these applications must be made as of the first moment of the month of application. The client is not eligible for any month in which assets are in excess of the maximum, 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."
- WV Income Maintenance Manual Section 11.3 (D-3) states that maximum allowable assets are \$2,000 for a one-person assistance group.
- WV Income Maintenance Manual Section 11.5, C, 7 (D-3) states:  
"Beginning with applications processed on August 11, 1993, a client may retain a maximum of \$3,000 in burial funds for himself. He may also retain the same amount for his spouse. These funds may be in the form of money set aside for burial (maximum of \$1,500, not commingled with other funds), face value of life insurance policies, revocable or some irrevocable burial trusts or prepaid funeral contracts, etc.  
  
"Burial trusts are treated like any other trust funds, unless all of the following conditions are met:

- The individual signs a contract with the funeral director promising prepayment in return for specific funeral merchandise and services. Such goods and services must be listed.
- The contract is irrevocable.
- The individual pays the agreed upon amount to the funeral director in the form of a direct cash payment, purchase or transfer of a life insurance policy or annuity which is assigned to the funeral director.
- The funeral director, in turn, places the pre-need payment or device into the trust or escrow account which the funeral director establishes himself. If the client establishes the trust or other device himself, the amount may be considered a transfer of resources.
- The client is expected to receive goods and services with a total FMV at least equal to the amount he paid.

“When all of these conditions are met, burial funds are excluded in their entirety for the client and/or his spouse.”

## **IX. DECISION**

Evidence presented during the hearing revealed that Ms. \_\_\_\_\_ had excessive assets for the Nursing Home Care Program.

It is the decision of this State Hearing Officer to uphold the action of the Department to deny the Claimant's Nursing Home Medicaid eligibility for June 2004.

## **X. RIGHT OF APPEAL**

See Attachment.

## **XI. ATTACHMENTS**

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.