



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street West
Charleston, WV 25313**

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

October 17, 2005

Mrs. _____, Power of Attorney

Case Name: _____

Dear Mrs. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 21, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to close your mother's Long Term Care Medicaid case for excessive assets.

In arriving at a decision, the State Hearings 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 for the Long Term Medicaid Program is based on current policy and regulations. Some of these regulations state as follows:

If the client indicates that he has sold a home and does not intend to purchase another home, record the contact and count the net proceeds from the sale as an asset beginning with the month following the month of receipt. (West Virginia Income Maintenance Manual Section 11.2 (E) (2) (b) CLIENT DOES NOT INTEND TO PURCHASE ANOTHER HOME).

The information submitted at your hearing revealed: You sold your mother's home for \$30,000.00 and used part of the proceeds to pay for your personal expenses. The allowable deductions were calculated at \$1,005.50. The remaining balance totaled \$28,994.50 and was over the \$2,000.00 asset limit for the Medicaid Program.

It is the decision of the State Hearings Officer to UPHOLD the PROPOSAL of the Department to close your mother's active Long Term Care Medicaid case.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Sandra Crews, ESW – [REDACTED] DHHR Office

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

_____,
Claimant,

v.

Action Number: 05-BOR-6115

**West Virginia Department of
Health and Human Resources,**

Respondent.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on October 17, for 2005. 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 convened on July 21, 2005 on a timely appeal filed July 5, 2005.

It should be noted here that the claimant's benefits have been continued pending a hearing decision. A pre-hearing conference was held between the parties prior to the fair hearing. Ms. _____ did not have legal representation.

II. PROGRAM PURPOSE:

The Program entitled Long Term Care Medicaid is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

The program entitled Long Term Care Medicaid (nursing facility services) is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources. It 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 and Power of Attorney for _____
Sandra Crews, Economic Services Worker – _____ DHHR Office

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. QUESTIONS TO BE DECIDED:

The question(s) to be decided is: Does Ms. _____ have excessive assets for the Long Term Care Medicaid Program?

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Section 11.2 B WHEN INCOME BECOMES AN ASSET; West Virginia Income Maintenance Manual Section 11.2 (E) (2) (b) CLIENT DOES NOT INTEND TO PURCHASE ANOTHER HOME; West Virginia Income Maintenance Manual Section 11.3 MAXIMUM ALLOWABLE ASSETS - Medicaid; West Virginia Income Maintenance Manual Section 17.10 (B) (1) TRANSFER OF RESOURCES – DEFINITIONS and; West Virginia Income Maintenance Manual Section 17.10 (B) (8) (a) Start of the Penalty; (b) Length of Penalty and; (c) Who is Affected by the Penalty

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 Form IM-FH-1 Fair Hearing and/or conference request form.

D-2 Form IG-BR-29 Hearing/Grievance Record Information.

D-3 General Power of Attorney for _____.

D-4 Verification Checklist.

D-5 Closure Letter.

D-6 Letter notifying of Medicaid reinstatement.

D-7-(1-12) Information provided by client's Power of Attorney.

D-8 Copy of comments from 06/02/05 thru 06/15/05

D-9 Income Maintenance Policy Chapter 11.2 dealing with sale of Homestead Property.

D-10 Portion of Income Maintenance Policy Chapter 17.10 dealing with Asset Transfers.

D-11 Summary

Additional information added 07/21/05 per request from Hearings Officer:

D-12-(1-3) Information received from POA on 07/15/05

D-13 Amended Summary

Claimants' Exhibits:

No additional documentation submitted

VII. FINDINGS OF FACT:

1) This issue involves the proposed closure of the Long Term Care Medicaid case for Ms. _____. Ms. _____ is currently residing in a Nursing Facility. The Department is seeking to close the active case because the sale of the claimant's home places her over the maximum asset limit for the Nursing Home Medicaid Program. Ms. _____'s Daughter and Power of Attorney, Mrs. _____, requested the hearing to protest the denial of certain deductions that included certain debts created by the _____ household.

2) Ms. Sandra Crews submitted the following Hearing Summary:

_____, the authorized representative for _____, was in the office to complete an annual review for Long Term Care Medicaid for Ms. _____ on June 6, 2005. At that time she reported that the client's homestead property had been sold. She stated that the proceeds was used to pay for a pre-need funeral contract for Ms. _____, to pay off _____ for material purchased to make repairs to the home before it could be sold, to pay off a loan that the representative had taken out previously to pay off credit card debts for Ms. _____, and that she planned to use the rest to pay off a car purchased by Ms. _____ in her own name for the purpose of visiting Ms. _____ in the nursing facility. Ms. _____ was informed at this time that Policy would be checked to determine what expenditures could be allowed as deductions from proceeds of the sale and what expenditures, if any, would have to be counted as asset transfers. Worker also explained the penalty process for asset transfers. At that time the case was pended for verification of sale, amount of proceeds, how the money was spent, how much of proceeds if any was remaining, and copy of pre-need contract. A verification checklist was given to the representative.

The following information was received from the representative:

1. Copy of deed showing the sale of the homestead property owned by _____ on 05/24/05 for the amount of \$30,000.00.
2. Copy of receipt for \$1000.70 paid for opening & closing expense for Ms. _____ on 05/31/05.

3. Copy of note showing borrower's name as _____ and amount financed of \$5,150.36. Handwritten note on copy stating "pd in full 5/31/05 from house sale".
4. Statement showing payoff of 1999 ford mustang of \$6,175.20. Handwritten note on the statement stating "5/31/05 paid in full".
5. Copy of lower portion of [REDACTED] account statement showing balance of \$1,338.79. Handwritten note on the statement stating "paid in full 5/30/05."
6. Cash register receipts from [REDACTED] dated in 12/04, 1/05 and 2/05
7. Copy of contract with [REDACTED] dated 12/1/88. The dates in several places on the form had obviously been altered changing dates to 5/31/05.
8. Items dated 3/22/90, 5/22/03 and 9/20/03 concerning payment to the bank for insufficient funds.
9. Copy of contract for purchase of carpet with buyer's names as _____ and _____ dated 03/23/05.
10. Copy of pre-need contract with _____ Funeral Home in the amount of \$6,188.64 dated 02/04/05. Handwritten note on contract stating "paid 5/31/05."
11. Copy of electric bill in Ms. _____'s name dated 5/27/05 for \$4.80. Handwritten note on bill states "2 years of her AEO at \$4.40 to \$4.80 monthly."
12. Also received a letter written by Ms. _____ concerning cost of gas, repairs, care, etc. incurred over the past 19 years in caring for Ms. _____.

The worker made the following evaluations for information received:

1. Proceeds of the sale amounted to \$30,000.00.
2. Expense of \$1,000.70 for opening & closing is an allowable deduction.
3. Note for \$5,150.36 was not in Ms. _____'s name so cannot allow deduction for this expense. If money from proceeds of sale was used, will need to treat as asset transfer.
4. Amount of \$6175.20 to pay off vehicle in _____'s name cannot be used as deduction. If money from proceeds of sale was used, will need to treat as asset transfer.
5. Did not allow deduction for [REDACTED] bill for \$1338.79. When worker inquired whose name was on the account, was told by Ms. _____ the account was in husband [REDACTED] name. Ms. _____ had no responsibility to pay account.
6. Cash register receipts from [REDACTED] were dated prior to receipt of proceeds from sale; if Ms. _____ paid for materials with her own monies without agreement that she would be reimbursed we cannot use as allowable deduction

7. Dates on the contract with _____ Gardens were obviously altered so did not use as allowable deduction.
8. Items dated in the past concerning payment to the bank for insufficient funds are outdated and apparently did not come out of proceeds from the sale of the house.
9. Buyers names on contract for purchasing carpet are _____ and _____. No verification this is expense for client.
10. Called _____ Funeral Home and verified that nothing had been paid on the pre-need. Paperwork provided was price quote only.
11. Only allowed to deduct one month's bill in amount of \$4.80. Prior amounts were paid before proceeds were received.
12. Cannot deduct expenses incurred over the past 19 years in caring for client as there was no indication that an agreement had been made in the beginning for Ms. _____ to be reimbursed in the future.

Worker determined that only allowable deduction to be taken from proceeds of the sale according to verifications received was the opening & closing expense in the amount of \$1,000.70. Therefore, \$30,000.00 minus \$1,000.70 leaves proceeds of \$28,999.30 unaccounted for. Worker entered this amount on asset screen and ran eligibility. Case closed for over asset limit. Worker called Ms. _____ and informed her of the decision and explained that if there is any other information concerning expenses paid that were Ms. _____'s responsibility to pay, she could bring in verification and it would be considered. Also explained again that any monies used to pay expenses that were _____ or _____'s expenses would have to be counted as an asset transfer. Worker explained again the penalty process.

A closure letter was generated on 06/16/05 and was mailed to the client, her authorized representative and the nursing facility. A written Fair Hearing Request signed by _____ was received on 06/21/05 requesting a Fair Hearing and also requesting that Medicaid benefits for Ms. _____ be continued while waiting for a Fair Hearing decision. The case was reopened and benefits are ongoing. Proper notification that Medicaid was reinstated was mailed on 06/22/05. A Fair Hearing has been scheduled for 07/21/05 at 10:30 am.

ADDENDUM: In calculating allowable deductions above, worker failed to include AEP bill for May (due in June) for \$4.80 (#10 above). Added this amount to the deduction of \$1000.70 for opening and closing. The correct amount of allowable deductions as of 06/15/05 is \$1005.50. This leaves a balance of proceeds of \$28,994.50. This amount results in client being over the asset limit for Medicaid.

Information received on 07/15/05 resulted in additional allowable deductions. At the request of the Hearings Officer I am allowing these additional deductions as follows:

1. Premiums for _____ burial for May and June @ \$10.00 per month totaling \$20.00.
2. Expense for personal items purchased for Ms _____ at _____ on 05/26/05 in amount of \$140.00.

3. Pre-need burial contract with _____ Funeral Home in amount of \$6027.97 purchased on 06/27/05.

Total allowable deductions as of this date (07/21/05) are \$7,213.47. Remainder of proceeds is \$30,000.00 - \$7,213.47 = \$22,786.53. Ms. _____ indicates the remainder of the proceeds has been spent to pay off bills that were in _____ and _____'s names and to reimburse Mr. and Mrs. _____ for monies they had spent out of their own funds without a prior agreement for reimbursement. She indicated the total amount had been spent prior to 06/30/05. The amount of \$22,786.53 will therefore be counted as an asset transfer.

3) West Virginia Income Maintenance Manual Section 11.2 B WHEN INCOME BECOMES AN ASSET states, "Money that is counted as income when received, becomes an asset if retained into the month after the month of receipt."

EXCEPTION: The proceeds from the sale of an excluded home are treated differently. See item E below.

4) West Virginia Income Maintenance Manual Section 11.2 (E) (2) (b) CLIENT DOES NOT INTEND TO PURCHASE ANOTHER HOME states,

"If the client indicates that he has sold a home and does not intend to purchase another home, record the contact and count the net proceeds from the sale as an asset beginning with the month following the month of receipt.

If the client initially does not intend to purchase a new home, but changes his mind before the end of the third full month following the month of receipt, the exclusion is applied without an extension."

5) West Virginia Income Maintenance Manual Section 11.3 MAXIMUM ALLOWABLE ASSETS – Medicaid states in part, "The maximum allowable asset limit for a one person assistance group is \$2,000.00."

6) West Virginia Income Maintenance Manual Section 17.10 (B) (1) TRANSFER OF RESOURCES – DEFINITIONS states in part,

"Fair Market Value (FMV): An estimate of the value of a resource, if sold at the prevailing price at the time it was actually transferred.

For a resource to be considered transferred for FMV, or to be considered transferred for valuable consideration, the compensation received for the resource must be in a tangible form, with intrinsic value. *A transfer for love and consideration, for example, is not considered a transfer for FMV. Also, while relatives and family members legitimately can be paid for care they provide to the individual, it is presumed that services provided for free, at the time, were intended to be provided without compensation. Therefore, a transfer to a relative for care provided in the past normally is not a transfer of assets for FMV.* However, an individual may rebut this presumption.

7) West Virginia Income Maintenance Manual Section 17.10 (B) (8) (a) Transfer Penalty – Start of the Penalty states in part,

The transfer of resources penalty is ineligibility for:

- *Nursing facility services, and*
- *A level of care in any institution, equivalent to that of nursing facility services, and*
- *Home and Community Based Waiver services.*

The penalty is applied as follows. The client may remain eligible for Medicaid; services not subject to a penalty are paid.

a. **Start of the Penalty**

The penalty period starts the month in which the resource is transferred, as long as that month does not occur in any other period of ineligibility due to a transfer of resources penalty. If the month the resource is transferred falls into another such penalty period, the penalty period begins the month after the previous penalty period ends.

When a single resource is transferred, or a number of resources are transferred at the same time, the penalty period is determined by adding together the total uncompensated value of the resource(s) and dividing as shown below. When resources are transferred at different times, the following general guidelines are used.

b. **Length of Penalty**

The penalty period lasts for the number of whole months determined by the following calculation:

Total amount transferred during the look-back period divided by the State's average, monthly nursing facility private pay rate (\$112.65/day = \$3,380/month).

When the amount of the transfer is less than the average monthly cost of nursing facility, no penalty is applied until a series of transfers totals more than the average monthly nursing facility rate.

The penalty runs continuously from the first day of the penalty period, whether or not the client leaves the institution.

There is no maximum or minimum number of months a penalty may be applied.

c. **Who is Affected by the Penalty**

The institutionalized client is affected by any transfer described above when he or his spouse or any entity acting on their behalf or at their direction transfers an asset.

VIII. CONCLUSIONS OF LAW:

- 1) The debts created by Mrs. _____'s household are not allowable deductions for the Long Term Care Medicaid Program.
- 2) The allowable deductions from the sale of Ms. _____'s home totaled \$1,005.50. This resulted in a balance of \$28,994.50 which is more than the \$2,000.00 maximum asset limit for the Long Term Care Medicaid Program.

IX. DECISION:

It is the decision of this State Hearing Officer to UPHOLD the PROPOSAL of the Department to close the Long Term Care Medicaid case due to excessive assets.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 17th Day of October, 2005.

**Ray B. Woods, Jr., M.L.S.
State Hearing Officer**