



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

February 21, 2007

Dear Mr. ____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 16 and February 20, 2007. Your hearing request was based on the Department of Health and Human Resources' action to close your Food Stamp Program case effective December 31, 2006 and deny your application for the SSI-Related Medicaid Program.

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 Medicaid and Food Stamp Programs are based on current policy and regulations. One of these regulations specifies in order to be eligible for the Food Stamp and SSI-related Medicaid Programs, the total countable assets cannot exceed \$3,000. [WV Income Maintenance Manual Section 11.3 and 7 CFR 273.8]

The information which was submitted at your hearing revealed that judgments for five (5) liens were ordered against you by the [REDACTED] Municipal Court which total \$16,193.80 and prevents you from selling or otherwise disposing of the real property valued at \$12,500.

It is the decision of the State Hearings Officer to **reverse** the action of the Department to close your Food Stamp Program case and to deny your application for the SSI-Related Medicaid Program.

Sincerely,

Thomas M. Smith
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Louise Hunter, Dept. Hearing Rep.

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

____,

Claimant,

v.

**Action Number: 07-BOR-633 (FS)
07-BOR-634 (Medicaid)**

**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 February 20, 2007 for _____. 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 February 16, 2007 on a timely appeal, filed January 9, 2007. It should be noted that the hearing was originally scheduled for February 14, 2007 but was rescheduled as a telephone conference hearing on February 16, 2006 upon claimant's agreement due to inclement weather. It should also be noted that the hearing was adjourned as the Department's copies of the notification letters contained incorrect dates and corrected copies were mailed to the client and faxed to the State Hearing Officer and the hearing was reconvened on February 20, 2007.

It should be noted that benefits were discontinued for Food Stamps and denied for Medicaid pending the hearing decision.

II. PROGRAM PURPOSE:

The Programs entitled Food Stamps and Medicaid are set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

The purpose of the Food Stamp Program is to provide an effective means of utilizing the nation's abundance of food "to safeguard the health and well-being of the nation's population and raise levels of nutrition among low-income households.". This is accomplished through the issuance of EBT benefits to households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture.

The SSI-Related Medicaid Program is a segment of the Medicaid Program available to individuals who meet the requirement of categorical relatedness by qualifying as either aged disabled, or blind as those terms are defined by the Social Security Administration for purposes of eligibility for SSI.

III. PARTICIPANTS:

_____, Claimant.

Louise Hunter, ESW, DHHR

Presiding at the Hearing was Thomas M. Smith, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the agency was correct in the action to close the claimant's Food Stamp case effective December 31, 2006 and to deny the application for the SSI-Related Medicaid Program based on excessive countable assets.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Sections 11.2, 11.3, 11.4.
Federal Food Stamp Regulations 7 CFR 273.8.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- #1 Copy of real property appraised value.
- #2 Copy of notification letter dated 1-23-07 (3 pages).
- #3 Copy of notification letter dated 1-23-07 (3 pages).
- #4 Copy of pre-hearing conference summary.
- #5 Copy of hearing summary (2 pages).
- #6 Copy of fax with notification letters dated 12-19-06 (7 pages).

Claimant's Exhibits:

- CI-1 Copy of Certificate of Judgment for Lien 11-22-05.
- CI-2 Copy of Certificate of Judgment for Lien 12-2-05.
- CI-3 Copy of Certificate of Judgment for Lien 9-22-05.
- CI-4 Copy of Certificate of Judgment for Lien 10-3-05.
- CI-5 Copy of Certificate of Judgment for Lien 11-5-05.
- CI-6 Copy of deed (4 pages).

VII. FINDINGS OF FACT:

- 1) The claimant was an active recipient of Food Stamps when she applied for the SSI-Related Medicaid Program at [REDACTED] Hospital on 11-13-06.
- 2) The claimant owned real property which had previously been excluded as it was being rented but reported on 11-13-06 that rent was no longer being paid on the property.
- 3) The Department determined that the \$12,500 value of the real property (Exhibit #4) exceeded the \$3000 asset limits for the Food Stamp and Medicaid Programs and notified the claimant on 12-19-06 that the Food Stamp case would be closed effective 12-31-06 and that the SSI-related Medicaid Program application would be denied (Exhibit #6).
- 4) Testimony from the Department purports that the claimant provided verification of liens (Exhibit #CI-1 through #CI-5) against her after the action was taken but the Department still considered the real property to be accessible to the claimant and available for disposal as the liens did not specify that they were against the real property.
- 5) Testimony from the claimant purports that she cannot sell the property due to the liens against the property and that the property is not accessible, that they have several medical bills which exceed the value of the property, that the liens total \$16,193.80, and that they cannot sell the property to pay off the liens.

- 6) West Virginia Income Maintenance Manual ' 11.3 states, in part:

“To be eligible for SSI-related Medicaid Program, the total amount of countable assets cannot exceed \$2,000 for an AG size of one (1). Or \$3,000 for an AG of two (2)”.

“To be eligible for Food Stamps, the total amount of countable assets cannot exceed \$2,000. When at least one AG member is age 60 or over or is disabled according to Section 12.15 B, regardless of the size of the AG, the asset limit is \$3,000.”

- 7) WV Income Maintenance Manual ' 11.2 D states, in part:

“A client may not have access to some assets. To be considered an asset, the 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, the following:

- Legal proceedings such as probate, liens (other than those required for financing the asset). Items encumbered, or otherwise unavailable, due to litigation are not considered assets until the court proceedings are completed and a court decision is reached. The agency is required to follow the dictates of the court.”
- 8) The area of dispute involves whether the real property owned by the claimant is available to the claimant for disposition. The State Hearing Officer finds that the liens ordered by the court (Exhibits #CI-1 through #CI-5) prevent the claimant from selling the property and that the asset is not accessible to the claimant.

VIII. CONCLUSIONS OF LAW:

- 1) Regulations in WV Income Maintenance Manual Section 11.2 D state that to be considered an asset, the item must be owned by or available to the client for disposition. Examples of inaccessibility include legal proceedings such as liens. The liens against the claimant total \$16,193.80 which exceeds the value of the real property (\$12,500).
- 2) The liens against the claimant's real property prevent the asset from being sold or otherwise disposed of and the asset is not accessible to the claimant for disposition.

IX. DECISION:

It is the ruling of this Hearing Officer to reverse the action of the Department to close the Food Stamp Program case and to deny the application for the SSI-Related Medicaid Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 21st Day of February, 2007.

Thomas M. Smith
State Hearing Officer