



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
150 Maplewood Avenue
Lewisburg, WV 24901**

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

November 27, 2007

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 22, 2007. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate benefits under the SSI-Related Medicaid Program.

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 for the SSI-Related Medicaid Program is based on current policy and regulations. Some of these regulations state as follows: In order to be eligible for programs administered by the Division of Family Assistance (DFA), the total amount of countable assets cannot exceed certain amounts. For SSI-Related Medicaid, the asset level for an AG of 1 is \$2,000 and \$3,000 for an AG of 2. It is noted that for SSI-Related Medicaid only: In cases involving a husband and wife who are living together, only one of whom is eligible, the asset level for 2 persons is used for their combined non-excluded assets. (Section 11.3 of the West Virginia Income Maintenance Manual)

The information which was submitted at your hearing revealed that your countable assets in September 2007 exceeded \$3,000.00.

It is the decision of the State Hearing Officer to uphold the proposal of the Department to terminate benefits under the SSI-Related Medicaid Program.

Sincerely,

Margaret M. Mann
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Susan Godby, DHHR

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

_____,

Claimant,

v.

Action Number: 07-BOR-2253

**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 22, 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 October 22, 2007 on a timely appeal, filed October 3, 2007.

It should be noted here that the Claimant's benefits have been continued pending a hearing decision.

II. PROGRAM PURPOSE:

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

SSI Related Medicaid 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
Susan Godby, Department Hearing Representative

Presiding at the hearing was Margaret M. Mann, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether or not the Department is correct in the decision to discontinue the Claimant's medical card because 1) the Period of Consideration (POC) ended and 2) excessive assets.

V. APPLICABLE POLICY:

Sections 1.22N #2, 1.22R #2d, and 11.3 of the West Virginia Income Maintenance Manual Section 780D of the Common Chapters Manual

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Form IG-BR-29 Hearing/Grievance Record Information
- D-2 Notification Letters dated 09/18/2007 & 09/28/2007
- D-3 Sections 1.22N, 1.22R & 11.3 of the West Virginia Income Maintenance Manual
- D-4 Department's Summary
- D-5 Letter dated 07/04/2007 from WV State Tax Department
- D-6 [REDACTED] County Statement of Taxes & Fees Due
- D-7 [REDACTED] County Statement of Taxes Due
- D-8 Old Colony Company GMAC listing for [REDACTED] County home

Claimant's Exhibits:

- C-1 Letter dated 07/04/2007 from WV State Tax Department
- C-2 Letter dated 09/25/2007 from [REDACTED]
- C-3 Notice of Sale and Right to Reinstate dated 09/24/2007
- C-4 Purchase Agreement dated 10/16/2007

VII. FINDINGS OF FACT:

- 1) The Claimant's wife is a recipient of Medicaid based on the fact that she is disabled and a spenddown had been met. The Period of Consideration (POC) was to end 10/31/2007.
- 2) Testimony from the Department's Representative revealed that the Claimant was in the office on 08/28/2007 to apply for food stamps. When the worker completed the application, she discovered that the applicants own non-homestead property in another county. The value of this property is \$169,200. This property may be repossessed by the bank but was counted as an asset at that time. The Department is proposing the Medicaid case be closed due for excessive assets and due to the end of the six month Period of Consideration. The Department's Representative noted that when the case

record was transferred to [REDACTED] County from another county, the amount listed as an asset was low. When the worker verified the information, the amount was higher.

- 3) Two notification letters were entered as evidence by the Department. (Exhibit D-2) The letter dated 09/18/2007 reads in part: Your Medicaid benefits for 'D' will stop. Your last benefits will be received in 09/07. Reason: Your countable assets exceed the maximum allowed of \$2000. The letter dated 09/28/2007 reads in part: Your 04/26/07 application for SSI-Related Medicaid for the Aged, Blind and Disabled has been denied. Reason: Income is more than the net income limit for you to receive benefits. The amount of assets is more than is allowed for this benefit.
- 4) Testimony from the Claimant revealed that they moved to [REDACTED] County from [REDACTED] County. He presented a Pre-Foreclosure/Right to Cure notice from [REDACTED] Credit Corporation dated 09/25/2007 for a default in the payments secured by a Deed of Trust on the property at _____, _____, WV. The total estimated payoff as of 10/04/2007 was \$162,868.87. (Exhibit C-2) They have had an offer to purchase the above property for \$156,000.00. (Exhibit C-4) This agreement is dated 10/15/2007. He will still owe the difference between \$169,000 and \$156,000. They may look at bankruptcy as an option.
- 5) The assessed value of the Jackson County property is \$101,520. (Exhibit D-7) The full value of the property is \$169,200.
- 6) **Section 11.3 of the West Virginia Income Maintenance Manual** reads in part that to be eligible for programs administered by the Division of Family Assistance (DFA), the total amount of countable assets cannot exceed certain amounts. For SSI-Related Medicaid, the asset level for an AG of 1 is \$2,000 and \$3,000 for an AG of 2. It is noted that for SSI-Related Medicaid only: In cases involving a husband and wife who are living together, only one of whom is eligible, the asset level for 2 persons is used for their combined non-excluded assets.
- 7) **Section 1.22 N #2 of the West Virginia Income Maintenance Manual reads in part:**

Spenddown cases are not redetermined and are closed at the end of the 6th month of the POC. The client must reapply for a new POC.
- 8) **Section 1.22 R #2d of the West Virginia Income Maintenance Manual reads:**

Spenddown AG's are mailed a computer-generated letter at adverse action notice deadline of the 6th month to the POC. This letter informs the client that his eligibility will end on the last day of the month and that he must reapply for Medicaid coverage.
- 9) **Section 780D of Common Chapters Manual reads in part:**

The hearing officer's decision must also be based on facts as they existed at the time of the Department's action or proposed action at issue.

VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that the total amount of countable assets cannot exceed certain amounts for the SSI-Related Medicaid Program. The asset level for an AG of 1 is \$2,000 and an AG of 2 is \$3,000. In cases involving a husband and wife who are living together, only one of whom is eligible, the asset level for 2 persons is used for their combined non-excluded assets.
- 2) In this case it was discovered on 08/28/2007 that the Claimant and his spouse owned non-homestead property in ██████████ County. The value of this property is \$169,200. The amount owed on this property is \$162,868.87. The equity in this property is \$6,331.13. This amount exceeds \$3,000.
- 3) The Claimant was notified of case closure in a letter dated 09/18/2007. Later in the month, the Claimant received a pre-foreclosure letter dated 09/25/2007 on the non-homestead property. He later learned in October 2007 that he has a potential buyer for this property.
- 4) Policy also dictates that the hearing officer's decision must also be based on facts as they existed at the time of the Department's action or proposed action at issue.
- 5) Policy provides that spenddown cases are not redetermined and are closed at the end of the 6th month of the POC. Also, the computer generated letter mailed to the client notifies him of case closure and his right to reapply for Medicaid.
- 6) The Department's proposal to terminate benefits because of excessive assets is valid.
- 7) Also, spenddown cases are closed after the 6th month of the POC.

IX. DECISION:

It is the finding of the State Hearing Officer that the Assistance Group had excessive assets in September 2007. The Department is upheld in the proposal to discontinue the medical card under the SSI-Related Medicaid Program. Additionally, had the Claimant met the financial requirements for SSI-Related Medicaid, the Department would have been correct in the decision to terminate benefits after the sixth month of the POC.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 27th Day of November, 2007.

**Margaret M. Mann
State Hearing Officer**