



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
Post Office Box 1736
Romney, WV 26757**

**Joe Manchin III
Governor**

**Martha Yeager Walker
Secretary**

December 3, 2007

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 13, 2007. Your hearing request was based on the Department of Health and Human Resources' decision to deny your Food Stamp application due to 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 Medicaid Program (AFDC-Related) is based on current policy and regulations. One of these regulations state as follows: To be eligible for Food Stamps the amount of countable assets cannot exceed \$2,000.

The information, which was submitted at your hearing, revealed that you possessed non-homestead property with a value in excess of the maximum allowed. This non-homestead property was a countable asset at the time of application.

It is the decision of the State Hearing Officer to uphold the action of the Department to deny your application for Medicaid.

Sincerely,

Sharon K. Yoho
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Cynthia Myers, DHHR

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

_____,

Claimant,

v.

Action Number: 07-BOR- 2274

**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 November 13, 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 November 13, 2007 on a timely appeal, filed September 27, 2007.

II. PROGRAM PURPOSE:

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

The Medicaid categorically related to Aid to Families with Dependent Children (AFDC) Program is designed to provide medical assistance to eligible families with children from the fetal stage to age 18. These dependent children must be deprived of parental support due to the death, continued absence, incapacity, or unemployment of the parents. In addition, the family must meet financial eligibility criteria.

III. PARTICIPANTS:

_____, claimant
Cynthia Myers, DHHR Family Support Supervisor

Presiding at the Hearing was Sharon K. Yoho, 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 the Agency was correct in their actions to deny a Medicaid application.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Policy § 11.1, 11.3 and 11.4

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Notice of denial dated September 26, 2007
- D-2 Deed of Conveyance dated July 23, 2003
- D-3 West Virginia Income Maintenance Manual Policy §11.1
- D-4 West Virginia Income Maintenance Manual Policy §11.3
- D-5 West Virginia Income Maintenance Manual Policy §11.4

VII. FINDINGS OF FACT:

- 1) The claimant made application for Medicaid on September 25, 2007.
- 2) At the time of application, the claimant revealed that she has non-homestead property deeded to her in [REDACTED]. The Department determined this property to have a value of \$25,000. The property was deeded for the payment of \$1. to the claimant by her mother. The mother retains lifetime rights to the property.
- 3) The Deed of Conveyance was made available to the Department and has been entered as evidence (Exhibit D-2). This document states: "That for and in consideration of One (\$1.00) Dollar cash in hand paid and the further consideration of the love and affection which the Grantor has for the Grantee the Grantor does hereby bargain, sell, grant and convey unto the Grantee, reserving unto herself the full use and control of said property during her lifetime," On page three of this document the Affidavit of Value assigns a fair market value of \$25,000.
- 4) The claimant's argument in this proceeding is that the word (control) in the above statement means that her mother retains the control of whether the grantee can sell the property or not. She further believes that her mother does not wish for her to sell the property and therefore she, as a recipient of benefits, would not have access to dispose of this asset.

- 5) This hearing has been held in abeyance for thirteen days to allow time for the claimant to attempt to obtain proof from the District Attorney in [REDACTED] of her claim that she does not have the ability to sell this property. This information was not received by this Hearing Officer and the decision is being made based on evidence and testimony given at the hearing.

6) **West Virginia Income Maintenance Manual § 11.1 – Asset Definitions:**

Assets - Total real and personal property the client has available to meet financial needs, including the value of assets assigned from certain individuals. Assets may be liquid or non-liquid.

7) **West Virginia Income Maintenance Manual § 11.3 – Maximum Allowable Assets:**

To be eligible for programs administered by the Office of Family Support (OFS), the total amount of countable assets cannot exceed the amounts, which are listed in the following chart:

Medicaid - \$2,000 all AG's except as below.

8) **West Virginia Income Maintenance Manual § 11.4 – Life Estates**

Life Estates: Under a life estate, an individual who owns property transfers ownership of the property to another individual, while retaining certain rights to it for the rest of his life, or the life of another person. Generally, a life estate entitles the owner of the life estate to possess, use, and obtain profits from the property for as long as he lives. However, actual ownership of the property has been transferred.

When property is transferred to a client by someone who retains a life estate interest in the property, the transferred property is counted as an asset, unless the client cannot legally dispose of it.

VIII. CONCLUSIONS OF LAW:

- 1) Policy is clear in Chapter 11.4 that transferred property in which someone else retains a life estate interest is counted as an asset, unless the client cannot legally dispose of it. In this situation, the Grantor sold the property to the Grantee for \$1. The Deed of Conveyance (Exhibit D-2) does not identify any restrictions to the selling of the property. It can be concluded that this claimant could sell the property for its fair market value while leaving the value of the life estate in tact for her mother until her death.
- 2) Policy is clear in Chapter 11.1 and 11.3 that real property is treated as an asset and that the maximum asset allow for the Medicaid program is \$2,000.

IX. DECISION:

I rule to **uphold** the agency in its action to deny the claimant's Medicaid application due to excessive countable assets at that time.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 3rd Day of December 2007.

Sharon K. Yoho
State Hearing Officer