



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

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

October 7, 2016

[REDACTED]
[REDACTED]
[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NOS.: 16-BOR-2282; 16-BOR-2283

Dear [REDACTED]:

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matters.

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.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
Form IG-BR-29

cc: Rose Spears, Department Representative

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

██████████,

Appellant,

v.

**Action Numbers: 16-BOR-2282
16-BOR-2283**

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for ██████████. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on August 11, 2016, on an appeal filed July 15, 2016.

The matters before the Hearing Officer arise from the Respondent's July 8, 2016 decision to terminate the Appellant's WV WORKS benefits and the Respondent's July 12, 2016 decision to terminate the Appellant's Medicaid benefits.

At the hearing, the Respondent appeared by Rose Spears. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Case Summary
- D-2 Comments recorded in the Respondent's data system regarding the Appellant's case, entries from June 30, 2016, through July 7, 2016
- D-3 Comments recorded in the Respondent's data system regarding the Appellant's case, entries from July 11, 2016, through July 18, 2016
- D-4 Notice of decision, dated July 8, 2016
- D-5 Address documentation for the Appellant

- D-6 Documentation regarding the real property of the Appellant, from the [REDACTED] County Sheriff's Tax Office
- D-7 West Virginia Income Maintenance Manual (WVIMM) excerpts, §11.3; §16.3

Appellant's Exhibits:

- A-1 Aerial maps and deeds for the Appellant's properties

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) The Appellant is a recipient of WV WORKS and Medicaid.
- 2) The Appellant has properties that were not considered in determining his eligibility for WV WORKS.
- 3) Upon including these properties as countable assets for the Appellant, the Respondent terminated the Appellant's WV WORKS (Exhibit D-4) due to excessive assets for the program.
- 4) The properties for the Appellant are adjacent (Exhibit A-1).
- 5) The Appellant owns a home on one of the two adjacent properties owned by the Appellant, but does not reside in this home.
- 6) The value of the Appellant's properties (Exhibit D-6) exceeds the asset limit for WV WORKS (Exhibit D-7).

APPLICABLE POLICY

The West Virginia Income Maintenance Manual (WVIMM), at §11.4.LL.1, indicates homestead property is not an asset for WV WORKS and AFDC-Related Medicaid, and reads, "The client's homestead is the property on which he lives and which is owned, or is being purchased by him. It is the dwelling and the land on which the dwelling rests, which is not separated by intervening property owned by others. Public rights-of-way which run through the surrounding property and separate it from the home, do not affect this exclusion. Any additional property acquired and not separated from the original acquisition by intervening property owned by others, is also excluded."

WVIMM, §11.3, sets the asset limit for WV WORKS as \$2,000.

WVIMM, §16.3.A, reads (emphasis in original), “IN NO INSTANCE IS MEDICAID COVERAGE UNDER ONE COVERAGE GROUP TO BE STOPPED WITHOUT CONSIDERATION OF MEDICAID ELIGIBILITY UNDER ALL OTHER COVERAGE GROUPS.”

DISCUSSION

The Respondent terminated the Appellant’s WV WORKS and Medicaid benefits and the Appellant requested this hearing to contest these actions.

The Respondent must show by a preponderance of the evidence that the Appellant’s household has excessive assets for the WV WORKS program. The Respondent must additionally show by a preponderance of the evidence that it acted correctly to terminate the Appellant’s Medicaid.

The Appellant owns two adjacent properties. One of these properties has a dwelling. The Appellant is presently residing elsewhere because of structural problems with the dwelling on this property. The evidence and testimony from the Appellant clearly established that there was no intervening property between these two lots. If the Appellant resided in the dwelling, the two properties could be treated as one meeting the homestead exemption for real property assets. However, since the Appellant does not reside in the dwelling the asset must be counted. The Appellant offered no dispute of the Respondent’s determination of the value for these properties, only the determination that they were countable assets.

The Respondent clearly showed that the Appellant had countable assets that were excessive for the WV WORKS program, and acted correctly to terminate the Appellant’s WV WORKS on that basis.

The Respondent failed to demonstrate anything regarding its proposed termination of the Appellant’s Medicaid benefits. Testimony from the Respondent’s representative indicated the termination was based on income. The Respondent did not provide the notification letter for this proposed action as evidence. The Respondent included a letter addressing the proposed Medicaid termination with the initial request for this hearing, but two factors make this document unreliable: the Respondent only provided the first two pages of a four-page document, and the income listed for the Appellant on this notice is zero. The Appellant was unable to dispute the income determination because the Respondent did not address specifics, and for this reason was denied a meaningful appeal of the Respondent’s proposed action. Further confusing the matter was the testimony from the Respondent’s representative that the Appellant simply needed to reapply – making it unclear if the Respondent had correctly considered Medicaid eligibility for the Appellant in all other categories before simply closing his case. For this reason, the Medicaid matter is remanded to the Respondent to request income verification from the Appellant, make a new determination regarding the Appellant’s Medicaid eligibility in all categories, and issue a new notification letter regarding the outcome of that determination. If the determination is unfavorable to the Appellant, he may submit a new request for hearing on the matter.

CONCLUSIONS OF LAW

- 1) Because the Appellant does not reside on the property he owns, this property is a countable asset for WV WORKS.
- 2) Because the value of this property exceeds the asset limit for WV WORKS, the Respondent was correct to terminate the Appellant's WV WORKS benefits.
- 3) Because the Respondent failed to establish that it had properly notified the Appellant of its proposal to terminate his Medicaid benefits, and because the Respondent failed to demonstrate that it met its burden to consider eligibility in all Medicaid categories, it cannot be ascertained if the action is correct and the matter must be remanded to the Respondent to take corrective action.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Respondent's termination of the Appellant's WV WORKS benefits.

It is the decision of the State Hearing Officer to **reverse** and **remand** the Respondent's termination of the Appellant's Medicaid benefits. The Respondent must request income verification from the Appellant, determine Medicaid eligibility for the Appellant in all Medicaid categories, and issue a new notification letter regarding the outcome of this determination. The Appellant retains the right to an appeal on the new determination, if unfavorable.

ENTERED this ____ Day of October 2016.

Todd Thornton
State Hearing Officer