



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
203 East Third Avenue
Williamson, WV 25661

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

November 30, 2016

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 16-BOR-2673

Dear [REDACTED]:

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

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,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

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

cc: Janee Scott, Economic Service Supervisor
[REDACTED], West Virginia Medicaid Advisors, Charleston, WV
[REDACTED], Office of the Sheriff of [REDACTED] County, WV

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

██████████,

Appellant,

v.

Action Number: 16-BOR-2673

**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' (WV DHHR) Common Chapters Manual. This fair hearing was convened on November 17, 2016, on an appeal filed September 16, 2016. During the November 17 hearing, the Appellant's representative asked for and was granted a continuance. The hearing reconvened and was concluded on November 28, 2016.

The matter before the Hearing Officer arises from the September 1, 2016 decision by the Respondent to deny the Appellant's application for Long-Term Care (MLTN) Medicaid.

At the hearing, the Respondent appeared by Janee Scott, Economic Service Supervisor. The Appellant appeared by her representative ██████████ of West Virginia Medicaid Advisors. Appearing as witnesses for the Appellant were ██████████ of the ██████████ County, WV, Sheriff's Office Tax Department, and ██████████. The participants were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Hearing Summary
- D-2 Application for Long-Term Care Medicaid (MLTN), dated August 4, 2016
- D-3 Pre-Admission Screening (PAS), submitted August 11, 2016
- D-4 Order Modifying Appointment of Guardian/Conservator from the Circuit Court of ██████████ County, WV, filing date February 21, 2006
- D-5 Release and Authorization form signed on July 15, 2016, by ██████████ Sheriff of ██████████ County, WV
- D-6 Letter from Social Security Administration verifying Appellant's Social Security benefits

- D-7 Letter from United States Department of Labor verifying Appellant's Black Lung benefits
- D-8 Real Estate purchase agreement, dated September 3, 2013
- D-9 Checking Account statement for Appellant from [REDACTED], dated April 28, 2016
- D-10 Checking Account statement from [REDACTED], dated May 27, 2016
- D-11 Checking Account statement from [REDACTED], dated June 28, 2016
- D-12 Checking Account statement from [REDACTED], dated July 28, 2016
- D-13 Pre-paid Burial Contract from [REDACTED] dated February 9, 2008, also payment receipt in amount of \$6,400
- D-14 [REDACTED] County, WV, Tax Ticket for real property, Account Number 00019423
- D-15 [REDACTED] County, WV, Tax Ticket for real property, Account Number 00019563
- D-16 [REDACTED] County, WV, Tax Ticket for real property, Account Number 00019459
- D-17 Tax ticket for [REDACTED] real property
- D-18 [REDACTED] County, [REDACTED] tax ticket for real property
- D-19 Letter from Department to Appellant, dated September 1, 2016
- D-20 Screen print from Appellant's Medicaid case record showing her total assets
- D-21 Letter from Sheriff of [REDACTED] County, WV, dated July 15, 2016
- D-22 West Virginia Income Maintenance Manual (WV IMM) Chapter 17, §17.10
- D-23 WV IMM Chapter 11, §11.3
- D-24 WV IMM Chapter 11, §11.4.LL.3.c
- D-25 WV IMM Chapter 11, §11.5.A.7
- D-26 Life Insurance and Annuity Verification from Investor's Heritage Life Insurance Company [REDACTED], dated November 17, 2016

Appellant's Exhibits:

- A-1 Letter from Department to Appellant, dated September 1, 2016
- A-2 Irrevocable Assignment of Ownership to Funeral Home statement from Investor's Heritage Life Insurance Company, [REDACTED], dated February 9, 2008
- A-3 Findings and Recommendations of Mental Hygiene Commissioner to the Circuit Court of [REDACTED] County, WV, and Order from the Circuit Court of [REDACTED] County, WV, accepting and adopting the recommendations
- A-4 Checking account balance statements from [REDACTED] for Appellant, for months of April, May, June, July and August 2016
- A-5 Legal advertisements for auctioning of property by Sheriff of [REDACTED] County, WV, on July 1, 2016
- A-6 Cancelled checks written against Appellant's checking account at [REDACTED], from March 22 to August 22, 2016
- A-7 Order of Appointment of Conservator and/or Guardian, from the Circuit Court of [REDACTED] County, WV, dated December 11, 2007
- A-8 Motion to Liquidate Assets made by the Sheriff of [REDACTED] County, WV, to the [REDACTED] County Circuit Court, and Order granting liquidation of certain assets, dated June 14, 2012
- A-9 Pre-paid Burial Agreement between [REDACTED], and Appellant, dated February 9, 2008, and verification from Investor's

Heritage Life Insurance Company, [REDACTED] that the Agreement is irrevocable

A-10 Petition for the Appointment of Co-Conservators and Petition Requesting a Property Bond, and Final Order of Appointment of Co-Conservators, filed in the Circuit Court of [REDACTED] County, WV, dated February 28, 2008

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence, 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) Representatives for the Appellant completed an application for Long-Term Care Medicaid (MLTN) on August 4, 2016 (Exhibit D-2).
- 2) The Department deemed to the Appellant \$12,818.04 in liquid assets, \$4,900 in burial assets and \$29,700 in real property assets. The total value of the assets were listed as \$47,418.04, which was \$45,418.04 above the asset limit for MLTN Medicaid (Exhibit D-20).
- 3) The Department denied the application due to excessive assets, and informed the Appellant of the denial by letter dated September 1, 2016 (Exhibit D-19).
- 4) As of August 1, 2016, the amount of liquid assets in the Appellant's checking account was \$557.36 (Exhibit A-4), with an outstanding check in the amount of \$417.66 (Exhibit A-6, page 9). In consideration of this burden, the Appellant had liquid assets in the amount of \$139.70.
- 5) The Appellant had a pre-paid irrevocable burial agreement between herself and [REDACTED] (Exhibit A-9). The \$4,900 in burial assets was not accessible to her.
- 6) The Appellant's real property assets consist of five parcels of land. Parcel 1, located in [REDACTED] County, WV, is worth \$7,000 (Exhibit D-14). Parcel 2, also located in [REDACTED] County, is worth \$2,200 (Exhibit D-15). Parcel 3, also located in [REDACTED] County, is worth \$500 (Exhibit D-16). Parcel 4, located in [REDACTED] is worth \$3,240 (Exhibit D-17). Parcel 5, located in [REDACTED] is worth \$23,760 (Exhibit D-18). Excluding the most valuable property in [REDACTED] County, Parcel 1 - \$7000, as the Appellant's homestead, the amount of real property assets held by the Appellant is \$29,700.

APPLICABLE POLICY

WV Income Maintenance Manual (WV IMM) Chapter 17, §17.10, reads, "A nursing care client must meet the asset test for his [or her] eligibility coverage group. The asset level for those

eligible by having income equal to or less than 300% of the monthly SSI payment for an individual is the same as for an SSI-Related Medicaid eligible individual.

WV IMM Chapter 11, §11.3, states that the asset limit for SSI-Related Medicaid for an assistance group of one person is \$2,000.

WV IMM Chapter 11, §11.4.LL.3.c, reads, “When the client’s non-excluded real property is not used in a trade or business . . . the equity in the property is an asset.”

WV IMM Chapter 11, §11.2.D reads as follows 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 order.

DISCUSSION

The Appellant’s application for Long-Term Care Medicaid (MLTN) was denied on September 1, 2016, due to excessive assets (Exhibit D-19). According to Medicaid policy, the Appellant could not have more than \$2,000 in assets in order to qualify for this category of assistance.

The Appellant’s representative provided verification that the Appellant had \$139.70 in liquid assets, and that her pre-paid burial account was an irrevocable burial trust. Therefore, the burial account was inaccessible and should not have been included as an asset.

The remaining asset related to the Appellant’s eligibility for MLTN Medicaid is real property. The Appellant owned five parcels of land, three in ██████ County, WV, one in ██████ and one in ██████. The three parcels in West Virginia were valued at \$7,000, \$2,200, and \$500. Since the Appellant is a ██████ County, WV resident, the most valuable of these three parcels is excluded as the Appellant’s homestead and will not be counted toward her eligibility. The parcel in ██████ is valued at \$3,240 and the parcel in ██████ is valued at \$23,760. The value of these assets, excluding the \$7,000 ██████ County parcel, total \$29,700.

The Appellant’s representative submitted into evidence documents from the Circuit Court of ██████ County, WV (Exhibit A-7), to the effect that the Appellant’s business affairs were to be managed by the Sheriff of ██████ County, acting as her Conservator. The Order of Appointment of Conservator reads, “The conservator shall exercise only the authority necessary to compensate

for the protected person's limitations. That the conservator comply with West Virginia code 44A-3-5 and obtain Court approval prior to selling, leasing or encumbering the protected person's real property interest." The Appellant's representative argued that this requirement for the conservator to obtain Circuit Court permission to sell means the real property is not accessible and should not be counted as an asset.

WV Income Maintenance Manual Chapter 11, §11.2.D, states that property is inaccessible when it is "encumbered, or otherwise unavailable, due to litigation." This is not the case with the Appellant's real property. Circuit Court approval is merely a process required before property may be disposed. The Appellant's representative did not provide evidence to show that the Appellant's real property was encumbered or involved in any type of litigation. Therefore, it is accessible.

The Department correctly denied the Appellant's August 4, 2016 application for Long-Term Care Medicaid.

CONCLUSION OF LAW

The Department acted correctly to deny the Applicant's August 4, 2016 application for Long-Term Care Medicaid, pursuant to IMM Chapter 11, §§11.2, 11.3 and 11.4.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Department's decision to deny the Applicant's August 4, 2016 application for Long-Term Care Medicaid.

ENTERED this 30th Day of November 2016.

Stephen M. Baisden
State Hearing Officer