



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL**

Bill J. Crouch
Cabinet Secretary

**Board of Review
416 Adams Street Suite 307
Fairmont, WV 26554
304-368-4420 ext. 79326**

Jolynn Marra
Interim Inspector
General

March 12, 2020



RE: [REDACTED] v. WVDHHR
ACTION NO.: 18-BOR-1687

Dear Mr. [REDACTED]

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

In arriving at a decision, the Board of Review 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 that may be taken if you disagree with the decision reached in this matter.

Sincerely,

Tara B. Thompson
State Hearing Officer
State Board of Review

Enclosure: Appellant's Recourse
Form IG-BR-29

cc: Michael Jackson, Assistant Attorney General

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

██████████,

Appellant,

v.

ACTION NO.: 18-BOR-1687

**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' (DHHR) Common Chapters Manual. This fair hearing was convened on February 26, 2020, on a remand order received December 17, 2019.

The matter before the Hearing Officer arises from the December 17, 2019 Agreed Order in the Circuit Court of ██████████ West Virginia, (Circuit Court) which remanded the Appellant's matter for consideration of whether the Appellant's ██████████ property is an exempt homestead resource based upon the evidence presented to the Circuit Court.

At the hearing, the Respondent appeared by Michael Jackson, Assistant Attorney General. The Appellant appeared by her attorney, ██████████.

Department's Exhibits:

- D-1 DHHR Form IG-BR-29; DHHR Notices, dated May 4, 2018; Typed Correspondence, received on May 7, 2018; General Durable Power of Attorney, dated January 17, 2011
- D-2 DHHR Scheduling Order, dated May 15, 2018
- D-3 Typed Correspondence, dated May 20, 2018
- D-4 Notice of Scheduling Conference, dated May 22, 2018
- D-5 WVDHHR Application for Benefits, received March 30, 2018; Appellant Bank Statements, received March 30 and April 20, 2018; ██████████ Auditor Property Data, current as of April 13, 2018; ██████████, West Virginia Circuit Court Judgement Entry, entered December 22, 2017; West Virginia Income

Maintenance Manual (WVIMM) §§ 5.5.39.A through 5.5.39.B and § 5.1 Principal Place of Residence Definition; DHHR Notices, dated May 4, 2018; Correspondence, received October 6, 2017 and March 30, April 20, May 3, and May 7, 2018; eRAPIDS Case Comments, dated July 23 through August 29, 2013; DHHR Case Summary; DHHR Referral form for Medicaid Aged and Disabled Waiver Program; and Initial Financial Eligibility, received March 26 and March 30, 2018

- D-6 Decision of the State Hearing Officer, dated July 5, 2018
- D-7 Request for Reconsideration, dated July 3, 2019
- D-8 Order Denying Request for Reconsideration, dated July 8, 2019
- D-9 Transcript of Proceeding, transcribed on August 19, 2019

Appellant's Exhibits:

- A-1 Affidavit of [REDACTED], notarized February 18, 2020
- A-2 Affidavit of [REDACTED], notarized May 19, 2019

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 following Findings of Fact are set forth.

FINDINGS OF FACT

- 1) The Appellant is a resident of West Virginia (Exhibit D-6).
- 2) The Appellant owns property, located at [REDACTED] (hereafter, [REDACTED] Property) (Exhibit D-6).
- 3) The Appellant's [REDACTED] property is a dwelling in which she has lived and considers to be her fixed established home (Exhibits D-5 and D-6).
- 4) At the time of the July 5, 2018 Decision of State Hearing Officer in Board of Review Action No. 18-BOR-1687, the Appellant's [REDACTED] Property was found to be a non-homestead property (Exhibit D-6).
- 5) On May 10, 2019, an affidavit—which established that the Appellant intended to return to her [REDACTED] Property— was notarized (Exhibit A-2).
- 6) On July 9, 2019, the Appellant submitted a Request for Reconsideration of the July 5, 2018 Decision of State Hearing Officer to the Board of Review (Exhibit D-7).
- 7) The Appellant's May 10, 2019 affidavit was not submitted to the Respondent or to the Board of Review at the time of the Appellant's July 9, 2019 Request for Reconsideration (Exhibit D-7).
- 8) On July 8, 2019, the Appellant's Request for Reconsideration was denied (Exhibit D-8).

- 9) The Appellant appealed the matter to the Circuit Court and the matter was remanded on December 17, 2019.
- 10) During the hearing, the Appellant provided the Respondent with a copy of the May 10, 2019 affidavit.
- 11) On February 18, 2020, an affidavit—which established that the Appellant intended to return to her [REDACTED] Property— was notarized (Exhibit A-1).

APPLICABLE POLICY

West Virginia Income Maintenance Manual (WVIMM) § 5.1 Definitions, provides in part:

Homestead Property is the dwelling and land on which the dwelling rests, which is not separated by intervening property owned by others. This property does not have to be part of the original purchase. This includes the life estate interest, when it is the life estate holder's home.

Principal Place of Residence is the dwelling the client considers her fixed, established home. The principle place of residence must be a home in which the individual has lived.

WVIMM § 5.5.39.A Homestead Property, provides in part:

The client's homestead is the property on which she lives and which is owned ... by her. The value of structures on the property, other than the client's dwelling, is included in the exemption whether or not they are income producing, except for mobile homes.

SSI Medicaid Groups:

Only one dwelling is established as the client's principal place of residence, and only the principal place of residence is excluded. When an individual leaves her principal place of residence for any reason, but intends to return to it, the home is excluded. The exclusion is based solely on the individual's intent to return, even if the home is vacant or rented. The individual need not have the ability to return to the home but must simply have the intent.

WVIMM § 24.8.3 Homestead Property Exclusion, provides in part:

A nursing facility resident is entitled to an exclusion of her homestead as a countable asset as long as she has intent to return to her homestead when/if discharged. It is not necessary that the client be medically able to return home to apply the exclusion. It is totally based on the client's intended actions, not whether

she has the ability. The property to which the person intends to return must be the principal place of residence in which she resided before she went into the nursing facility The homestead property need not be in West Virginia. The homestead exclusion applies, regardless of the state in which it is located. The client's expressed intent to return to the homestead property does not necessarily affect her West Virginia residence

When the client is incapable of indicating her intent, her legal representative will make the determination. The Worker must record the client's statement or intent in the case record. A written statement may be requested but no action may be taken to deny or stop benefits for failure to provide a written statement when the client has expressed her intent verbally or by gesture.

DISCUSSION

The matter before the Hearing Officer was remanded for a determination of whether the evidence presented to the Circuit Court of [REDACTED] West Virginia (hereafter, Circuit Court), established that the Appellant's [REDACTED] Property is an exempt homestead resource to be considered by the Respondent when making determinations regarding the Appellant's Medicaid eligibility.

During the hearing, the parties agreed that the Appellant's May 2019 affidavit had been provided to the Circuit Court. Although the Appellant indicated in the July 9, 2019 Request for Reconsideration of Action that the Appellant had intended to return to her [REDACTED] Property, no evidence was entered to demonstrate that the Respondent had been advised of the Appellant's intent to return to the [REDACTED] Property. The Request for Reconsideration of Action references an attached affidavit, however, the evidence failed to establish that an affidavit was submitted to the Board of Review or was submitted to the Respondent at the time of the Appellant's July 9, 2019 submission of the Reconsideration of Action.

The copy submitted into evidence of the Appellant's May 2019 affidavit was redacted, however, the Respondent did not dispute that the affidavit verified the Appellant intended to return to her [REDACTED] Property. The Appellant's February 18, 2020 affidavit — submitted during the hearing — was not redacted. The preponderance of evidence established that as of May 10, 2019, the Appellant intended to return to her [REDACTED] Property and that as of the date of the hearing, the Respondent was notified of such intent. The policy provides that when the Respondent is notified of an applicant's intent to return to their principal place of residence, the Respondent is required to record the client's statement in the case record. As the evidence established that the Respondent was notified of the Appellant's May 2019 affidavit of intent during the hearing, the Respondent should act according to policy to record the Appellant's intent in her case record.

CONCLUSIONS OF LAW

- 1) The Appellant's [REDACTED] Property is the Appellant's principal place of residence.
- 2) The Appellant's principal place of residence may be established as a homestead property to be excluded as an asset — for consideration of Medicaid Long-Term Care and SSI-Related Medicaid eligibility— when the Appellant expresses to the Respondent her intent to return to the principal place of residence.
- 3) The preponderance of evidence established that as of May 10, 2019, the Appellant intended to return to her [REDACTED] Property and that as of the February 26, 2020 hearing, the Respondent was notified of such intent.
- 4) Because the preponderance of evidence verified the Appellant's intent to return to her principal place of residence, effective February 26, 2020, the Appellant's [REDACTED] Property must be considered as a homestead property for the consideration of Medicaid eligibility.

DECISION

It is the decision of the State Hearing Officer that the Appellant's property located at [REDACTED], is a homestead property, effective February 26, 2020, for the purpose of the Appellant's Medicaid eligibility consideration.

ENTERED this 12th day of March 2020.

Tara B. Thompson
State Hearing Officer