

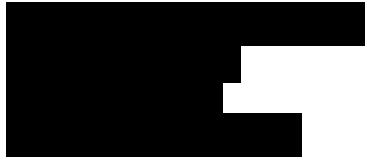


**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of the Inspector General
Board of Review**

**Sherri A. Young, DO, MBA, FAAFP
Interim Cabinet Secretary**

**Christopher G. Nelson
Interim Inspector General**

December 15, 2023



RE: [REDACTED] v. WV DHHR
ACTION NO.: 23-BOR-3552, 23-BOR-3553, 23-BOR-3555

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,

Kristi Logan
Certified State Hearing Officer
Member, State Board of Review

Encl: Recourse to Hearing Decision
Form IG-BR-29

cc: Terry Deel/Jill Easter, [REDACTED] DHHR

Raleigh County DHHR • 407 Neville Street • Beckley, West Virginia 25801
304.256.6930 • 304.256.6932 (fax) • <https://www.wvdhhr.org/oig/bor.html>
Kristi.D.Logan@wv.gov • OIGBOR@WV.GOV

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

████████████████████,

Appellant,

v.

**Action Number: 23-BOR-3552 SNAP
23-BOR-3553 MED
23-BOR-3555 WVW**

**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 December 14, 2023, on an appeal filed on November 29, 2023.

The matter before the Hearing Officer arises from the November 16, 2023, decision by the Respondent to reduce the Appellant's Supplemental Nutrition Assistance Program (SNAP) benefits and to terminate the Appellant's WV WORKS cash assistance benefits and Parent/Caretaker Medicaid benefits.

At the hearing, the Respondent appeared by Terry Deel, Community Services Manager. Appearing as a witness for the Respondent Jill Easter, Family Support Specialist. The Appellant appeared by counsel, ██████████. The witnesses were placed under oath and the following documents were admitted into evidence.

Department's Exhibits:

D-1 The ██████████ Irrevocable Special Needs Trust

Appellant's Exhibits:

None

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 was a recipient of SNAP, WV WORKS cash assistance and Parent/Caretaker Medicaid benefits.
- 2) The Appellant received \$366,974.89 in a settlement from a personal injury lawsuit.
- 3) On October 3, 2023, an irrevocable special needs trust was created on behalf of the Appellant.
- 4) Of the settlement amount, \$66,974.89 was deposited into an account accessible only by her designated Trustee.
- 5) A structured settlement annuity was purchased with the remaining \$300,000 to be paid in monthly sums into the account for the next ten (10) years.
- 6) The trust cannot be revoked, amended, or altered by the Appellant and is solely for the benefit of the Appellant.
- 7) The Trustee has sole and absolute discretion in the disbursement of funds from the trust and will distribute funds solely for the supplemental needs and care of the Appellant.
- 8) The Trustee shall not make payments directly to the Appellant in excess of \$20 per calendar month.
- 9) The trust will cease and terminate upon the death of the Appellant or the depletion of its assets, whichever occurs first.
- 10) The Respondent will be reimbursed to an amount equal to the total amount of medical assistance paid on behalf of the Appellant under the State Medicaid Plan upon her death.
- 11) A copy of the trust was provided to the Respondent on October 30, 2023.
- 12) The Respondent considered the trust as an accessible annuity and attributed \$2,500 as her countable monthly income (\$300,000 divided by 120 months).
- 13) The Respondent issued a notice on November 16, 2023, advising the Appellant that her SNAP benefits would be reduced to \$23 monthly and her WV WORKS cash assistance and Parent/Caretaker Medicaid benefits would be terminated due to excessive income.

APPLICABLE POLICY

Code of Federal Regulations Title 7 §273.8 explains resource eligibility standards for SNAP:

(e)(8) Exclusion from Resources

Resources having a cash value which is not accessible to the household, such as but not limited to, irrevocable trust funds, security deposits on rental property or utilities, property in probate, and real property which the household is making a good faith effort to sell at a reasonable price and which has not been sold. Any funds in a trust or transferred to a trust, and the income produced by that trust to the extent it is not available to the household, shall be considered inaccessible to the household if:

- (i) The trust arrangement is not likely to cease during the certification period and no household member has the power to revoke the trust arrangement or change the name of the beneficiary during the certification period;
- (ii) The trustee administering the funds is either:
 - (A) A court, or an institution, corporation, or organization which is not under the direction or ownership of any household member, or
 - (B) an individual appointed by the court who has court-imposed limitations placed on his/her use of the funds which meet the requirements of this paragraph;
- (iii) Trust investments made on behalf of the trust do not directly involve or assist any business or corporation under the control, direction, or influence of a household member; and
- (iv) The funds held in irrevocable trust are either:
 - (A) Established from the household's own funds, if the trustee uses the funds solely to make investments on behalf of the trust or to pay the educational or medical expenses of any person named by the household creating the trust, or
 - (B) established from non-household funds by a non-household member.

(g) Handling of Excluded Funds

Excluded funds that are kept in a separate account, and that are not commingled in an account with non-excluded funds, shall retain their resource exclusion for an unlimited period of time,

7 CFR §273.9 explains income and deductions for SNAP:

(c) Income Exclusions

(1) Any gain or benefit which is not in the form of money payable directly to the household, including in-kind benefits and certain vendor payments. In-kind benefits are those for which no monetary payment is made on behalf of the household and include meals, clothing, housing, or produce from a garden. A vendor payment is a money payment made on behalf of a household by a person or organization outside of the household directly to either the household's creditors or to a person or organization providing a service to the household.

West Virginia Income Maintenance Manual Chapter 4 explains income for SNAP, WV WORKS and Medicaid:

4.4.4.O Unavailable Income (SNAP)

Income intended for the client but received by another person with whom he does not live, when the individual receiving this income refuses to make it available, is excluded.

4.5.4.L Unavailable Income (WVW)

Income intended for the client but received by another person with whom he does not live, when the individual receiving this income refuses to make it available, is excluded.

4.7.5.J Unavailable Income (Modified Adjusted Gross Income Adult Groups)

Income intended for the client but received by another person with whom he does not live, when the individual receiving this income refuses to make it available, is excluded.

West Virginia Income Maintenance Manual Chapter 5 explains assets for SNAP, WV WORKS and Medicaid:

5.5.46 Trust Funds

In general, if the client has unrestricted access to the principal of the trust, it must be counted as an asset.

SNAP: Any funds in a trust or transferred to a trust, and any income produced by that trust, are considered inaccessible to the AG and excluded if:

- The trust arrangement is not likely to cease before the next redetermination and no AG member has the power to revoke the trust arrangement or change the name of the beneficiary before the next redetermination; and
- The trustee administering the funds is either:
 - A court, or an institution, corporation, or organization that is not under the direction or ownership of any AG member, or
 - An individual appointed by the court who has court-imposed limitations placed on his use of the funds that meet all other fund requirements found in this item; and
- Trust investments made on behalf of the trust do not directly involve or assist any business or corporation under the control, direction, influence of an AG member; and
- The funds held in irrevocable trust are either:
 - Established from the AG's own funds, if the trustee uses the funds solely to make investments on behalf of the trust or to pay education or medical expenses of any person named by the AG creating the trust, or
 - Established from non-AG funds by a non-AG member. When withdrawals are made from a trust fund, see Chapter 4 for policy about treatment of the withdrawal as income. Dividends that the AG has the option of either receiving as income or reinvesting in the trust are not assets. See Chapter 4 for treatment of dividends. A client cannot be required to petition the court for the use of the trust. In addition, this fund cannot be presumed to be available to the client.

WV WORKS, AFDC-Related and SSI Medicaid Groups: For SSI Medicaid, AFDC-Related and SSI Medicaid Groups, this section applies to any trust established on or after August 11, 1993. For trusts prior to August 11, 1993, see Appendix B of this chapter.

- For WV WORKS, this item applies to any trust established on or after January 1, 1997. Trusts established prior to January 1, 1997, are not counted as assets.

Generally, all trusts are counted as assets, regardless of their purpose, restrictions on distributions, or on the trustee's discretion to distribute the funds, whether acted on or not. There are exceptions to this general rule and there is a difference in the treatment of trusts established by a will and those not established by a will. In addition, sometimes revocable and irrevocable trusts are treated differently. Details are found below. If a trust is made up of the client's resources and those of one or more other persons, only the amount established with the client's resources is counted. For purposes of this item, the terms "individual" or "client" include:

- The client
- His spouse
- Any person, including a court or administrative body, with legal authority to act in place of, or on behalf of, the individual or the individual's spouse
- Any person, including a court or administrative body, acting at the direction of, or upon the request of, the individual or the individual's spouse

5.5.46.C Excluded Trusts

In the following four trust situations, the trust is totally excluded. In addition, establishment of these trusts is not treated as an uncompensated transfer of resources, as defined in Chapter 24 and Section 5.7. For excluded trusts 1 and 2 below, the SSA definition of disability is used. Therefore, any person medically approved for or receiving SSI, based on disability, meets the definition, as well as persons who have been determined disabled by the Medical Review Team (MRT). If no disability determination has been made, the case must be submitted for an MRT decision.

1. A trust containing the assets of an individual, under age 65, who is disabled, and which is established for his benefit by a parent, grandparent, legal guardian, or a court. The individual may establish the trust for himself on or after December 13, 2016. The exception continues even after the individual becomes age 65, as long as he continues to be disabled. This is commonly known as a special needs trust. To qualify for the exception, a trust must contain a provision that the State will receive all amounts remaining in the trust upon the death of the individual, up to the total Medicaid payments made on his behalf.

2. A trust that contains the assets of an individual who is disabled and that meets all of the following conditions:

- The trust is established and managed by a non-profit association;
- A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools the funds in these accounts;
- Accounts in the trusts are established solely for the benefit of the disabled individual; and,
- Accounts in the trusts are established by the individual, his parent, grandparent, legal guardian or by a court.
- The trust must include a specific provision that amounts remaining in the individual's account that are not retained by the trust upon the client's death, must be used to reimburse the State for Medicaid and/or WV WORKS payments which were made on the individual's behalf.

West Virginia Income Maintenance Manual Chapter 4 Appendix A list income limits:

SNAP (130% of the Federal Poverty Level) for a two-person assistance group: \$2,137

WVW (100% of the Standard of Need) for a two-person assistance group: \$786

Parent/Caretaker Medicaid (133% FPL) for a two-person assistance group: \$2,186

DISCUSSION

The Appellant was awarded \$366,974.89 in a personal injury settlement. A special needs irrevocable trust was created on behalf of the Appellant with the proceeds from the settlement. Of the total amount awarded to the Appellant, \$66,974.389 was deposited into an account and an annuity was purchased with the remaining \$300,000 to be paid in monthly increments into the trust over 10 years. The Respondent calculated the Appellant's monthly income from the annuity as \$2,500. The Appellant contested the use of the income in determining eligibility for SNAP, WV WORKS cash assistance and Parent/Caretaker Medicaid benefits.

The Respondent's representative testified that according to policy, annuities are countable income for SNAP, WV WORKS and Medicaid benefits. The Appellant's monthly income from the annuity was calculated as \$2,500 (\$300,000 divided by 120 months). The monthly annuity income of \$2,500 was excessive for the Appellant to continue receiving WV WORKS and Parent/Caretaker Medicaid benefits. The Appellant was eligible for the minimum SNAP issuance amount of \$23 as she met the definition of categorical eligibility as a disabled individual.

Counsel for the Appellant argued that the special needs trust was created for the Appellant to supplement her needs that are not covered by public assistance and the money in the trust account cannot be accessed by the Appellant. The Trustee of the Appellant's trust account has sole discretion in the use of the funds on behalf of the Appellant and any expenses paid on behalf of the Appellant is paid directly to the third party providing the services. The Trustee is limited to distributing \$20 a month directly to the Appellant, however, counsel pointed out that even this amount is at the discretion of the Trustee and may not occur on a monthly basis.

Pursuant to federal regulations, resources having a cash value which is not accessible to the household, such as but not limited to, irrevocable trust funds, are excluded in determining SNAP eligibility. Any funds in a trust or transferred to a trust, and the income produced by that trust to the extent it is not available to the household, shall be considered inaccessible to the household if the trust arrangement is not likely to cease during the certification period and no household member has the power to revoke the trust arrangement or change the name of the beneficiary during the certification period and the trustee administering the funds is a court, or an institution, corporation, or organization which is not under the direction or ownership of any household member, or is an individual appointed by the court who has court-imposed limitations placed on his/her use of the funds.

Policy stipulates that income intended for the client but received by another person with whom he does not live, when the individual receiving this income refuses to make it available, is excluded when determining income eligibility for SNAP, WV WORKS and Parent/Caretaker Medicaid benefits. Additionally, policy specifically addresses special needs trusts when determining asset eligibility. Policy defines a special needs trust as a trust containing the assets of an individual, under age 65, who is disabled, and which is established for his benefit by a parent, grandparent, legal guardian, or a court or is established by the individual on or after December 13, 2016. To qualify for the exception, a trust must contain a provision that the State will receive all amounts remaining in the trust upon the death of the individual, up to the total Medicaid payments made on his behalf. The trust that contains the assets of an individual who is disabled must be established

and managed by a non-profit association, separate account is maintained for the beneficiary of the trust, but, accounts in the trusts are established solely for the benefit of the disabled individual; and, accounts in the trusts are established by the individual, his parent, grandparent, legal guardian or by a court and must include a specific provision that amounts remaining in the individual's account that are not retained by the trust upon the client's death, must be used to reimburse the State for Medicaid and/or WV WORKS payments which were made on the individual's behalf.

The irrevocable special needs trust and annuity created for the Appellant cannot be revoked, amended, or altered by the Appellant and is solely for the benefit of the Appellant. The designated Trustee has sole and absolute discretion in the disbursement of funds from the trust and will distribute funds solely for the supplemental needs and care of the Appellant. The Trustee cannot make direct payments to the Appellant in excess of \$20 a month and the trust will terminate upon the death of the Appellant or when the funds are depleted. A provision in the trust states that the Respondent will be reimbursed the total amount of medical assistance paid on behalf of the Appellant under Medicaid.

The annuity purchased with the proceeds of the Appellant's settlement is deposited monthly into the irrevocable special needs trust of which the Appellant has no access to and has no authority to make decisions regarding the disbursement of its funds. Whereas income that is intended for a recipient of SNAP, WV WORKS and Parent/Caretaker Medicaid benefits that is intended for the client but received by another person with whom he does not live, and the individual receiving this income refuses to make it available, is excluded when determining income eligibility for SNAP, WV WORKS and Parent/Caretaker Medicaid benefits, the Respondent's decision to terminate the Appellant WV WORKS and Parent/Caretaker Medicaid and to reduce SNAP benefits cannot be affirmed.

CONCLUSIONS OF LAW

- 1) Pursuant to federal regulations, any funds in a trust or transferred to a trust, and the income produced by that trust to the extent it is not available to the household, shall be considered inaccessible for SNAP purposes.
- 2) Policy excludes income that is received by a non-member of the household that is intended for the recipient if the income is not made available to the recipient.
- 3) The irrevocable special needs trust and annuity created for the Appellant cannot be accessed, revoked, altered or terminated by the Appellant.
- 4) The Respondent was incorrect in its decision to include the annuity income that is deposited into the Appellant's special needs irrevocable trust as countable income.

DECISION

It is the decision of the State Hearing Officer to **reverse** the decision of the Respondent to reduce the Appellant's Supplemental Nutrition Assistance Program benefits and to terminate the Appellant's WV WORKS cash assistance and Parent/Caretaker Medicaid benefits.

ENTERED this 15th day of December 2023.

Kristi Logan
Certified State Hearing Officer