April 8, 2025

[redacted]

RE: [redacted] v. WVDOHS
ACTION NO.: 25-BOR-1562

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 Human Services. 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: Recourse to Hearing Decision
Form IG-BR-29

cc: Sara Pemberton, Department Representative

WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW

[redacted],

Appellant,

v. **Action Number: 25-BOR-1562**

WEST VIRGINIA DEPARTMENT OF
HUMAN SERVICES
BUREAU FOR FAMILY ASSISTANCE,

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for [redacted]. This hearing was held in accordance with the provisions found in Chapter 700 of the Office of Inspector General Common Chapters Manual. This fair hearing was convened on March 27, 2025, upon a timely appeal filed on January 15, 2025.

The matter before the Hearing Officer arises from the January 10, 2025 decision by the Respondent to deny Medicaid benefits for failure to verify information.

At the hearing, the Respondent appeared by Sara Pemberton. The Appellant appeared pro se, by her daughter, [redacted]. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

D-1 Verification checklist dated September 30, 2024

D-2 Notice of decision dated November 13, 2024

D-3 Verification checklist dated November 21, 2024

D-4 [redacted] signed August 16, 2021

D-5 Verification checklist, dated December 4, 2024

D-6 Notice of decision dated January 10, 2025

D-7 West Virginia Income Maintenance Manual (WVIMM), Chapter 7 (excerpt)

D-8 WVIMM, Chapter 5 (excerpt)

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 applied for Medicaid, specifically Long-Term Care, or Nursing Facility Medicaid.

2) The Respondent needed additional information to process the Appellant's Medicaid application.

3) The Respondent issued a verification checklist, dated September 30, 2024 (Exhibit D-1), requesting this information.

4) The first verification checklist (Exhibit D-1) provided a due date of October 10, 2024, for submission of the necessary items.

5) The Appellant did not provide the necessary items by the due date listed on the first verification checklist (Exhibit D-1).

6) The Respondent issued a notice dated November 13, 2024 (Exhibit D-2) advising the Appellant that her Medicaid application was denied because she "did not turn in all requested information."

7) The Respondent discovered it did not request verification of a burial contract and issued a new verification checklist (Exhibit D-3) to request this information.

8) The second verification checklist (Exhibit D-3) had a mailing date of November 21, 2024, and a due date of November 30, 2024.

9) The Respondent discovered it already had the necessary burial contract (Exhibit D-4) on file but needed an itemized statement of goods and services to be received through that contract.

10) The Respondent issued a third verification checklist (Exhibit D-5) for the remaining verifications needed to process the Appellant's Medicaid application.

11) The third verification checklist (Exhibit D-5) had a mailing date of December 4, 2024, and a due date of December 14, 2024.

12) The Appellant did not provide the necessary verification items by December 14, 2024.

13) The Respondent issued a notice of decision dated January 10, 2025 (Exhibit D-6) denying the Appellant's Medicaid application because the Appellant "did not turn in all requested information."

14) The applicable verification checklists and notices (Exhibits D-1, D-2, D-3, D-5, and D-6) were mailed directly to the Appellant.

15) The Appellant did not designate an authorized representative with the Respondent in conjunction with this Medicaid application.

16) The Respondent properly notified the Appellant by delivering the applicable verification checklists and notices (Exhibits D-1, D-2, D-3, D-5, and D-6) directly to the Appellant.

APPLICABLE POLICY

The West Virginia Income Maintenance Manual (WVIMM), Chapter 5, addresses assets. At §5.6.3, this policy addresses special asset circumstances for Medicaid, and at §5.6.3.D the policy provides, in pertinent part:

> A client may retain a maximum of $3,000 in burial funds for himself. He may also retain the same amount for his spouse. These funds may be in the form of money set aside for burial (maximum of $1,500, not comingled with other funds), face value of life insurance policies, revocable or some irrevocable burial trusts or prepaid funeral contracts, etc.
>
> Burial trusts are treated like any other trust funds, unless all of the following conditions are met:
>
> • The individual signs a contract with the funeral director promising prepayment in return for specific funeral merchandise and services. Such goods and services must be listed.
>
> • The contract is irrevocable.
>
> • The individual pays the agreed-upon amount to the funeral director in the form of a direct cash payment, purchase, or transfer of a life insurance policy or annuity that is assigned to the funeral director.
>
> • The funeral director, in turn, places the pre-need payment or device into the trust or escrow account that the funeral director establishes himself. If the client

establishes the trust or other device himself, the amount may be considered a transfer of resources. See Chapter 24.

• The client is expected to receive goods and services with a total CMV at least equal to the amount he paid.

When all of these conditions are met, burial funds are excluded in their entirety for the client and/or his spouse.

…

WVIMM, Chapter 7, addresses verification. At §7.2.3, this policy explains client responsibilities in the verification process, noting "the primary responsibility for providing verification rests with the client," and that "it is an eligibility requirement that the client cooperate in obtaining necessary verifications," and finally, that "failure of the client to provide necessary information…results in the denial of the application…"

WVIMM, Chapter 1, §1.6.5, provides in part:

Authorized Representatives

The applicant may designate an authorized representative to act on his behalf. Such a designation must be in writing and include the applicant's signature.

Authority for an individual or entity to act on behalf of an applicant or beneficiary accorded under state law, including but not limited to, a court order establishing legal guardianship or a power of attorney, must be treated as a written designation by the applicant or beneficiary of authorized representation.

The power to act as an authorized representative is valid until the applicant or beneficiary modifies the authorization to the DOHS.

The authorized representative is responsible to the same extent as the client being represented, including confidentially of any information regarding the client provided by the agency and agreeing to the terms of the Rights and Responsibilities.

Examples of documents the applicant may submit with the Medicaid application to verify he has designated an authorized representative include, but are not limited to:

• Single Streamlined Application (DFA-SLA-1, Appendix C)

• Application for Long Term Care Medicaid and Children with Disabilities Community Service Program (DFA-MA-1)

• Durable power of attorney (POA) and/or medical power of attorney documentation, unless limited in scope

• Court orders designating a guardian or conservator (signed by court)

• Healthcare surrogate documentation for an incapacitated applicant (signed by physician and surrogate)

DISCUSSION

The Appellant requested a fair hearing to contest the decision of the Respondent to deny her application for Medicaid for failure to verify information. The Respondent must demonstrate by a preponderance of the evidence that it correctly denied the Appellant's Medicaid application on this basis.

The Appellant applied for Medicaid, specifically Long-Term Care, or Nursing Facility Medicaid. The policy for this type of Medicaid defines burial funds as an asset requiring special treatment. In order to determine the asset amount, the Respondent must have the information outlined in WVIMM §5.6.3.D. Policy sets the client responsibility for providing this information. Policy requires the Department to properly request the information.

The Respondent issued three verification checklists. The first omitted the request for the burial asset information. The second omitted the necessary details surrounding the burial asset. Finally, the third verification checklist properly requested the information the Respondent needed to process the Appellant's application. Although the Respondent clearly erred in its initial requests of the Appellant, these errors gave the Appellant additional time to comply with an unchanged effective application date if she had complied. Because the Appellant did not comply with the final, correct verification checklist, the Respondent denied her application in a notice dated January 10, 2025.

The Appellant, represented at the hearing by her daughter, did not dispute failing to comply with the request. The first reason offered for this was insufficient time. The time set to comply is set by policy, and the Board of Review cannot change policy or make policy exceptions. Although it added to the time ultimately required by the Respondent to issue a final decision on the case, the Appellant was afforded more time to provide the necessary verifications because of the Respondent's errors.

The second reason offered by the Appellant's daughter regarding the unverified information was that she should have been noticed instead of, or in addition to the Appellant herself. Policy at §1.6.5 outlines the necessary procedures and documents for establishing an authorized representative on cases. The Appellant's daughter testified she documented she was the Appellant's authorized representative in 2021. The Respondent's representative testified the Department did not have the necessary documents on file to establish the Appellant's daughter as her authorized representative. The testimony of the Appellant's daughter is unconvincing as it implies a three-year period prior to the disputed actions in which the Appellant's daughter should have discovered other Respondent communications directed solely to the Appellant. Because the Appellant did not designate an authorized representative, the direct communication from the Respondent to the Appellant is appropriate and sufficient.

Because the Appellant was required to provide information needed to process her Medicaid application, and the Respondent properly requested this information, and the Appellant did not provide the required information, the Respondent's decision to deny the Appellant's Medicaid application is affirmed.

CONCLUSION OF LAW

Because the Appellant was properly notified of information needed to process her Medicaid application and failed to provide this information by the set deadline, the Respondent must deny her Medicaid application.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the decision of the Respondent to deny the Appellant's Medicaid application due to unverified information.

ENTERED this _____ day of April 2025.

_____

Todd Thornton
State Hearing Officer