



September 19, 2025

[REDACTED]

RE: [REDACTED] v. WVDOHS
ACTION NO.: 25-BOR-2588

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 ensure 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: Sean Hamilton, Department Representative
Drema Berry, Department Representative
[REDACTED] Appellant Representative

**WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW**

[REDACTED],

Appellant,

v.

Action Number: 25-BOR-2588

**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 September 9, 2025, upon a timely appeal filed on August 1, 2025.

The matter before the Hearing Officer arises from the June 24, 2025 decision by the Respondent to deny the Appellant's Long Term Care Medicaid application for nursing facility services.

At the hearing, the Respondent appeared by Bryce Legg. The Appellant was not present but was represented by his authorized agents from [REDACTED]. All witnesses were placed under oath and the following documents were admitted into evidence.

EXHIBITS

Department's Exhibits:

- D-1 Verification checklist, dated April 9, 2025
- D-2 Notice of denial, dated June 24, 2025
- D-3 Letter from [REDACTED] to the Appellant, dated February 29, 2024

Appellant's Exhibits:

- A-1 Fax cover page and case summary
- A-2 Consent form, signed February 18, 2025
- A-3 Email
Medicaid application, signed February 27, 2025
- A-4 Email
- A-5 Hearing Request form, signed April 10, 2025
- A-6 Verification checklist, dated April 9, 2025 (excerpt)
- A-7 Email
- A-8 Email
- A-9 Email
- A-10 Notice of decision, dated April 11, 2025
- A-11 Email
Letter from [REDACTED], dated January 17, 2025
Bank statements (excerpts)
- A-12 Email
- A-13 Email
- A-14 Notice of denial, dated June 24, 2025
- A-15 Hearing request form, signed July 17, 2025
- A-16 West Virginia Income Maintenance Manual policy excerpt
- A-17 Statement from [REDACTED] dated September 3, 2025

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 Medicaid coverage under the Adult Group category in a one-person assistance group (AG).
- 2) The Respondent mailed the Appellant a letter (Exhibit A-10) dated April 11, 2025, which read in part, “Your Adult Medicaid benefits will stop. You will not receive this benefit after 2025-04-30.”
- 3) The letter (Exhibit A-10) provided the basis for this action as, “Your income is above the income limit for this type of assistance.”
- 4) The Appellant received \$53,792.59 in unearned income in 2024, or \$4,482.71 monthly. (Exhibits D-3, A-10)
- 5) The Appellant was admitted to a nursing facility on February 17, 2025.
- 6) On February 27, 2025, while receiving Medicaid under the Adult Group category, the Appellant applied for Long Term Care Medicaid for nursing facility coverage.
- 7) The Respondent mailed the Appellant a letter (Exhibit D-1) dated April 9, 2025, titled “Verification Checklist.”
- 8) This letter (Exhibit D-1) reads, in part, “You need to provide documentation listed on the following pages for us to determine your eligibility for the programs listed.”
- 9) The letter (Exhibit D-1) reads, in part, “Provide records for [REDACTED] account ending 7225 for January 2025 through April 2025. Provide [REDACTED] payment and full policy details.”
- 10) The Appellant did not provide the requested verification of the trust policy details.
- 11) The Respondent issued a notice, dated June 24, 2025 (Exhibit D-2), advising the Appellant’s Medicaid application was denied due to excessive assets, excessive income, and because the Appellant “...did not turn in all requested information.”

APPLICABLE POLICY

West Virginia Income Maintenance Manual § 24.4.1.B, provides (emphasis added):

When the individual is a client under a coverage group which provides full Medicaid coverage at the time he is determined to need nursing facility services, his Medicaid eligibility has already been determined; **however, the transfer of resources, trusts and annuities provisions outlined in Section 24.8 apply.** These additional eligibility requirements for payment of nursing facility services apply to all Medicaid clients, including SSI, Deemed SSI, and Modified Adjusted Gross Income (MAGI) coverage group clients, and require the client to submit an additional application form for payment of nursing facility services.

West Virginia Income Maintenance Manual, § 24.8.2.B.3, provides, in part:

When the client or his spouse transfers resources to a trust that is excluded from consideration as an asset, no penalty is applied...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 trusts established by a will are treated differently from those not established by a will. In addition, sometimes revocable and irrevocable trusts are treated differently...

West Virginia Income Maintenance Manual, § 5.5.46, provides, in part:

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

WV WORKS, AFDC-Related and SSI Medicaid Groups:

For SSI Medicaid, AFDC-Related and SSI Medicaid Groups, M-WIN, CDGS, PAC, QDWI, QMB, SLIMB, and QI-1, this section applies to any trust established on or after August 11, 1993...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...

West Virginia Income Maintenance Manual, § 7.3, provides, in part:

...The table below identifies items to be verified, which programs require verification, when information must be verified, and possible sources of verification.

West Virginia Income Maintenance Manual, § 7.3.70, notes the verification requirements for a trust fund or similar device, including burial trusts. For “All programs subject to an asset test,” this information must be verified “At application; prior to initial approval; when client reports establishment of a trust,” and notes possible sources of verification as “written agreement.”

DISCUSSION

The Appellant requested a hearing to appeal the Respondent’s denial of his Medicaid application for nursing facility services. The Respondent must show, by a preponderance of the evidence, that it correctly denied the Appellant’s Medicaid application on this basis.

The Appellant was a recipient of Adult Group Medicaid based on erroneous approval that did not include the Appellant’s income from trust payments. The Appellant was admitted to [REDACTED] [REDACTED], a nursing facility, and applied for Long Term Care Medicaid to pay for his nursing facility stay. The Respondent requested verification of the Appellant’s assets and income (Exhibit D-1) and terminated the Appellant’s Adult Group Medicaid (Exhibit A-10) upon discovery of excessive income for that Medicaid category. The decision by the Respondent to terminate the Appellant’s Adult Group Medicaid had an effective date of May 1, 2025, and the Appellant requested the fair hearing on August 1, 2025. (Evidence provided included an unsubmitted fair hearing request with a date of July 17, 2025, and an unsubmitted fair hearing request form with a date of April 10, 2025. Neither form has a date stamp or other indicators of the time of delivery other than a fax transmission date of September 2, 2025, for both documents. The Board of Review did not receive a hearing request prior to August 1, 2025.) The issue regarding the termination of the Appellant’s Adult Group Medicaid is not timely for appeal. The Appellant’s representatives noted repeated emails to the Respondent and contended there was a delay in application processing. Any delay was mooted by the application denial at the time of the only hearing request. These factors do not affect the Appellant’s verification burden.

Representatives for the Appellant argued that the Appellant’s eligibility for Adult Group Medicaid meant that he was not required to verify the assets as requested on the verification checklist for the Appellant’s Long Term Care Medicaid application. Not only was the Appellant ineligible for Adult Group Medicaid because of trust payment income that was not considered when the Appellant was erroneously approved for Adult Group Medicaid, but policy still requires verification for trusts. Because of the various possible treatments of trusts under policy, the “full policy details” requested by the Respondent were necessary to determine the Appellant’s potential eligibility. Policy includes a table of verification requirements and possible verification sources. For trusts, the table lists a “written agreement.” The Appellant provided letters from [REDACTED] the Executive Director of [REDACTED] [REDACTED], the trustee of the trust

in question. Policy does not allow for letters of assurance (Exhibit A-11) that “...the beneficiary’s interest in the trust...cannot be anticipated, assigned, or otherwise encumbered...” to be substituted for the full policy details included in the written trust agreement. This letter clearly references such a written agreement, but one was not provided by the Appellant in conjunction with the Long Term Care Medicaid application. The Respondent correctly denied the Appellant’s application for Long Term Care Medicaid for failure to verify information necessary to determine his eligibility.

CONCLUSIONS OF LAW

- 1) Because applicants for Long Term Care Medicaid for nursing facility services must verify trust details, the Respondent correctly issued a verification checklist to the Appellant requesting this information to process his application.
- 2) Because the policy outlining verification sources for a trust notes a written agreement, the Respondent correctly required the Appellant to provide “full policy details” on its verification checklist.
- 3) Because the Appellant did not provide the “full policy details” requested, the Respondent correctly denied the Appellant’s Long Term Care Medicaid application.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent’s denial of the Appellant’s Long Term Care Medicaid application for nursing facility services.

ENTERED this _____ day of September 2025.

Todd Thornton
State Hearing Officer