



February 26, 2026

[REDACTED]

RE: [REDACTED] v. WV DoHS/BFA
ACTION NO.: 25-BOR-3509

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 people 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,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

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

cc: Leane Soard, WV DoHS

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

[REDACTED]

Appellant,

v.

Action Number: 25-BOR-3509

**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 West Virginia Office of Inspector General Common Chapters Manual. This fair hearing was convened on February 18, 2026.

The matter before the Hearing Officer arises from the December 19, 2025, decision by the Respondent to deny Long-Term Care Medicaid benefits.

At the hearing, the Respondent appeared by Leane Soard, Economic Service Worker Senior, WV DoHS. The Appellant was represented by her daughter, [REDACTED]. All witnesses were placed under oath, and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Notice of Decision dated December 19, 2025
- D-2 West Virginia Income Maintenance Manual Chapters 24.8.2.B.3 And 5.5.46
- D-3 The [REDACTED] Irrevocable Trust documentation
- D-4 [REDACTED] Management Account Statement for [REDACTED] Irrevocable Trust for period of April 1, 2025, through June 30, 2025

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 Long-Term Care Medicaid in September 2025.
- 2) The Appellant was admitted to [REDACTED] nursing facility on October 23, 2025.
- 3) The Appellant's Long-Term Care Medicaid application was denied effective October 2025 due to excessive assets.
- 4) The Appellant is named as a grantor and co-beneficiary in [REDACTED] Irrevocable Trust with her sister, [REDACTED] (Exhibit D-3).
- 5) The trust fund had an ending account balance of \$24,951.20 as of June 30, 2025 (Exhibit D-4).
- 6) The Appellant passed away on November 15, 2025.
- 7) The Respondent sent the Appellant a Notice of Decision on December 19, 2025, notifying that the Appellant's assets were excessive to receive Long-Term Care Medicaid (Exhibit D-1).
- 8) Portions of the trust fund document are illegible and the Respondent indicated it does not have a more legible copy.

APPLICABLE POLICY

West Virginia Income Maintenance Manual Chapter 24.8 states that applicants for nursing facility services must meet the asset test for their eligibility coverage groups, except for Modified Adjusted Gross Income (MAGI) groups.

West Virginia Income Maintenance Manual Chapter 24.4.1.C.10 states that Medicaid eligibility begins on the first day of the month in which eligibility is established.

West Virginia Income Maintenance Manual Chapter 5.4 states that the asset limit for a one-person Assistance Group for SSI Medicaid Groups is \$2,000.

West Virginia Income Maintenance Manual Chapter 5.3.1.B states that for SSI Medicaid Groups, the asset determination must be made as of the first moment (defined as 12:00 a.m. of the first day) of the month of eligibility. The client is not eligible for any month in which countable assets are in excess of the limit, as of the first moment of the month.

West Virginia Income Maintenance Manual Chapter 1.6.11.E states that death of an individual does not interfere with approval of a Medicaid application. If an application is made prior to an

individual's death, the application is processed as usual and approved, if eligible.

West Virginia Income Maintenance Manual Chapter 5.5.46 addresses trust fund assets and states:

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

For SSI Medicaid, AFDC-Related and SSI Medicaid Groups, M-WIN, CDCS, PAC, QDWI, QMB, SLIMB, and QI-1, 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

West Virginia Income Maintenance Manual Chapter 5.5.46.A addresses trusts established by a will and states that a trust is treated as an asset only to the extent that it is available to the client. Clauses included in a trust that limit the trustee's use of the funds (e.g., exculpatory clauses) are recognized and the amount of funds affected by such exculpatory clauses is excluded. Irrevocable trusts are excluded, regardless of the amount. There is no penalty for the placement of funds in an irrevocable trust.

West Virginia Income Maintenance Manual Chapter 5.5.46.B, Trusts Not Established by a Will:

When the following two conditions are met, the trust policy contained below in this item is applied. If the two conditions are not met, the fund is treated as any other bank account.

1. An individual has established a trust when his resources were used to form all or part of the corpus of the trust.

2. Any of the following persons established the trust for the individual by any vehicle other than by will:
 - Individual
 - Individual's spouse
 - A 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
 - A person, including any court or administrative body, acting at the direction of, or upon the request, of the individual or the individual's spouse.

West Virginia Income Maintenance Manual Chapter 5.5.46.C addresses 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. See Section 13.8.

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.

NOTE: When an individual is approved for Medicaid and/or WV WORKS and has an excluded trust, the State must be the beneficiary. The Worker must fax a copy

of the trust document and the client's name, case number and the name of the power-of-attorney or representative, if applicable, to the current contract agency for Estate Recovery. Information about this agency is in Chapter 24, Appendix E.

3. Burial trusts that meet all of the following conditions:

- The individual signs a contract with the funeral director promising prepayment in return for specific funeral merchandise and services.
- 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 a 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 and Section 5.7.

4. A trust established with a settlement or funds received from the following:

- Factor VIII or IX Concentrate Blood Products Litigation, MDL 986, No. 93-C7452, ND of Illinois
- Ricky Ray Fund
- Walker v. Bayer Settlement

West Virginia Income Maintenance Manual Chapter 5.5.46.E addresses Irrevocable Trusts and states:

Once the Worker determines the trust was not established by a will and does not meet one of the exceptions above, the following rules apply:

- If there are any circumstances under which payments from the trust could be made to the client or for his benefit, that portion of the corpus, or the interest, is an asset.
- If payments are made from the available corpus, or interest, to the client or for his benefit, the amount is treated as income.

West Virginia Income Maintenance Manual Chapter 5.5.46.E.1, Payment for the Client's Benefit, states:

Throughout the Irrevocable Trusts section "payments made on behalf of the client" or "for his benefit" means payments of any kind to another entity, such that the client derives some benefit from the payment. This may include, but is not limited to, clothing; television; payments for services or care rendered, whether medical or personal; payments to maintain a home, etc. Any payment for the benefit of the client is counted, even if it is not customarily counted in determining Medicaid and/or WV WORKS eligibility. In determining whether payments can or cannot be made from a trust, take into account any restrictions on payments, such as use restrictions, exculpatory clauses, limits on trustee discretion, etc., that may be

included in the trust.

Payment for the Client's Benefit Example 1: A trust provides that the trustee can disburse only \$1,000 out of a \$20,000 trust. Only the \$1,000 is treated as a payment that could be made to the client or for his benefit. The remaining \$19,000 is treated as an amount that cannot, under any circumstances, be paid to, or for the benefit of the individual.

In determining whether payments can or cannot be made from a trust, the Worker must take into account restrictions included in the trust on how payments can be made; the Worker must not take into account when payments can be made. When a trust provides, in some manner, that a payment can be made, even though that payment may be sometime in the future, the trust must be treated as providing that payment can be made from the trust.

Payment for the Client's Benefit Example 2: A trust contains \$50,000 that the trustee can disburse only in the event that the grantor needs a heart transplant. The full amount is payment that could be made under some circumstances, even though the likelihood of payment is remote if the client does not have heart problems.

DISCUSSION

Policy states that the countable assets of a one-person Long-Term Care Medicaid Assistance Group must not exceed \$2,000. The worker may determine first-of-the-month account balances by using bank statements, passbooks, check registers, other bank-issued documents, and account transaction history. Chapter 5.5.46 of the West Virginia Income Maintenance Manual provides extensive information on the consideration of trust funds, including how to treat funds that were or were not established by a will, the types of excluded trusts, revocable and irrevocable trusts, and trust payments made for the client's benefit.

The Respondent's representative, Economic Service Worker Leanne Soard, testified that the Appellant's application was denied because the Respondent determined that funds in the [REDACTED] Irrevocable Trust were accessible to the Appellant. Ms. Soard referred to Chapter 24.8.2.B.3 of the West Virginia Income Maintenance Manual, which concerns asset transfers and excluded trusts, contending that in order for a trust to be excluded as an asset, the state must be named as the beneficiary upon death of the individual up to the total of Medicaid payments made on the individual's behalf.

The Appellant's daughter, [REDACTED], who serves as trustee of the trust fund, testified that the state misclassified the Appellant's trust as a "special needs trust." She contended that the trust was not created under any special needs stipulations. The trust was set up by the Appellant's father with the Appellant's father's assets. While both the Appellant and the Appellant's sister are listed as grantors or beneficiaries, neither funded nor contributed to the trust. [REDACTED] stated that Article 6 of the trust documentation states that the trust is not subject to the claims of creditors or

the legal process, and that the fund also contains stipulations concerning government benefits. She indicated that the Appellant could not access or remove money from the trust. [REDACTED] testified that no monies have been removed from the trust fund and the balance should be approximately the same as it was in June 2025. [REDACTED] testified that she has full legal control over the trust fund and cannot be mandated to distribute money from it.

The trust documentation provided during the hearing is illegible in part and the Respondent's representative indicated during the hearing that she had no copy of higher quality. As the document cannot be read in its entirety, the Hearing Officer cannot decipher all stipulations to determine whether the trust should be considered as an accessible asset. It is also unclear how the Respondent determined asset accessibility if a more legible copy of the trust document was unavailable.

The Respondent must request a legible copy of the trust fund documentation, review it thoroughly, and determine whether the trust is an accessible asset after considering the manner in which the fund was established and all stipulations contained within the document in accordance with Chapter 5.5.46 of the Income Maintenance Manual.

CONCLUSIONS OF LAW

- 1) Policy states that the asset limit for Long-Term Care Medicaid for a one-person Assistance Group is \$2,000.
- 2) Based on information provided during the hearing, the Hearing Officer cannot determine whether the Appellant's trust fund should be considered as an accessible or excluded asset since portions of the trust documentation are illegible.
- 3) The Respondent must obtain a readable copy of the trust document, review applicable policy regarding the consideration of trust funds, and determine whether the trust is a counted or excluded asset.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the issue of denial of Long-Term Care Medicaid benefits. The matter is **REMANDED** to the Respondent for a determination of eligibility after a legible copy of the trust document has been obtained and thoroughly reviewed. The Respondent shall provide notification to the Appellant of its findings following the review.

ENTERED this 26th day of February, 2026.

**Pamela L. Hinzman
State Hearing Officer**