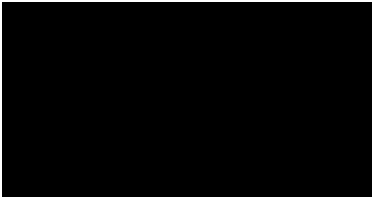




March 18, 2026



RE: [REDACTED] v. WVDoHS
ACTION NO.: 26-BOR-1206

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
[REDACTED] Appellant Representative

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

██████████

Appellant,

v.

Action Number: 26-BOR-1206

**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 ██████████. 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 3, 2026, upon a timely appeal filed on January 29, 2026.

The matters before the Hearing Officer are: 1) the untimely request for hearing related to the Respondent's termination of the Appellant's Long Term Care/Nursing Facility Medicaid benefits, outlined in a February 12, 2025 notice; and, 2) the timely request for hearing related to the Respondent's denial of the Appellant's application for Long Term Care/Nursing Facility Medicaid benefits, outlined in a January 9, 2026 notice.

At the hearing, the Respondent appeared by Sean Hamilton. The Appellant was not present but was represented by ██████████ her nursing facility representative from ██████████. Testifying on the Appellant's behalf were ██████████ and ██████████ also employed by ██████████. Mr. Hamilton testified on the Respondent's behalf. All witnesses were sworn and the following documents were admitted into evidence.

EXHIBITS

Department's Exhibits:

D-1	Consent form, dated March 12, 2021 Signature page excerpts, signed by ██████████ assorted dates
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- D-2 Notice of decision, dated June 8, 2022
- D-3 Petition for Guardianship/Conservatorship, dated August 24, 2023
- D-4 Notice of decision, dated June 17, 2024
- D-5 Notice of decision, dated February 12, 2025
- D-6 Petition for Guardianship/Conservatorship, dated November 7, 2025
- D-7 Long Term Care Medicaid application form, October 31, 2025
- D-8 Letter from the Respondent's Adult Protective Services (APS) division, dated February 18, 2026

Appellant's Exhibits:

- A-1 Health Care Surrogate form, dated March 11, 2021
- A-2 Email chain between employees of the Respondent and employees of the Appellant's nursing facility
- A-3 Petition for Guardianship/Conservatorship, dated November 7, 2025
- A-4 Verification checklist, dated December 11, 2025
West Virginia Income Maintenance Manual (excerpt)
- A-5 Verification checklist, dated December 29, 2025
- A-6 Email between employees of the Respondent and employees of the Appellant's nursing facility
- A-7 Email chain between employees of the Respondent and employees of the Appellant's nursing facility
- A-8 Email chain between employees of the Respondent and employees of the Appellant's nursing facility
- A-9 Notice of decision, dated January 9, 2026
- A-10 Email between employees of the Respondent and employees of the Appellant's nursing facility
- A-11 Verification checklist, dated January 28, 2026
West Virginia Income Maintenance Manual (excerpt)

- A-12 Hearing request form, dated January 29, 2026
- A-13 Email between employees of the Respondent and employees of the Appellant’s nursing facility
- A-14 Email between employees of the Respondent and employees of the Appellant’s nursing facility
- A-15 (None/omitted)
- A-16 Email between employees of the Respondent and employees of the Appellant’s nursing facility

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 admitted to [REDACTED] a nursing facility, on March 5, 2021.
- 2) The Appellant was a recipient of Supplemental Security Income (SSI) benefits from the Social Security Administration (SSA) in March 2021.
- 3) The Appellant is married.
- 4) The Appellant applied for Long Term Care/Nursing Facility Medicaid on March 16, 2021.
- 5) The Appellant was approved for Long Term Care/Nursing Facility Medicaid in conjunction with the March 2021 application.
- 6) The approval of the Appellant’s March 2021 application was without an “asset assessment” of the Appellant’s “community spouse” due to the Appellant’s receipt of SSI benefits.
- 7) In March 2021, the Appellant (Exhibit D-1) completed a form giving employees of the Heritage Center authorization to act on her behalf in the Medicaid application and review process.
- 8) An employee of the [REDACTED] (Exhibit D-1) completed the eligibility reviews required to redetermine Medicaid eligibility for the Appellant in 2021, 2022, and 2023.
- 9) The Appellant ceased to receive SSI benefits from the SSA in or around June 2022.

- 10) Neither the Appellant nor an agent of the Appellant completed a required review of the Appellant's Medicaid benefits in or around February 2025.
- 11) The Respondent mailed the Appellant a notice (Exhibit D-5) dated February 12, 2025, advising her that her Nursing Facility Medicaid benefits would stop, effective March 1, 2025, because she did not complete a review.
- 12) The Appellant, through a [REDACTED] agent, applied for Long Term Care/Nursing Facility Medicaid on October 31, 2025. (Exhibit D-7)
- 13) On November 7, 2025, a petition for guardianship/conservatorship (Exhibit D-6) was filed in the Circuit Court of [REDACTED] County, West Virginia, listing the Appellant as the protected person.
- 14) The Appellant provided the Respondent a copy of the November 7, 2025 petition (Exhibit D-6) on the same date. (Exhibit A-2, November 7, 2025 email)
- 15) The Respondent issued two verification checklists (Exhibits A-4 and A-5), requesting information needed to process the Appellant's October 2025 application.
- 16) The first verification checklist (Exhibit A-4), dated December 11, 2025, advised the Appellant to provide asset information by December 21, 2025, or the Appellant's application would be denied.
- 17) The second verification checklist (Exhibit A-5), dated December 29, 2025, advised the Appellant to provide additional asset information by January 7, 2026, or the Appellant's application would be denied.
- 18) The Respondent issued a notice (Exhibit A-9), dated January 9, 2026, stating the Appellant's Long Term Care/Nursing Facility Medicaid application was denied because the Appellant "...did not turn in all requested information."
- 19) The Appellant requested a hearing (Exhibit A-12) in writing on January 29, 2026, to appeal the Respondent's denial of her Medicaid application.
- 20) At the hearing, the Appellant's agent added the second appeal issue of backdated Medicaid eligibility.
- 21) The Board of Review does not have the authority to extend backdating periods beyond those prescribed by policy, or to otherwise modify policy or create policy exceptions.
- 22) No other hearing request was submitted to the Board of Review regarding the backdating issue or appealing the termination of the Appellant's Medicaid in February 2025 (Exhibit D-5), within 90 days of the effective date of that termination.

APPLICABLE POLICY

West Virginia Income Maintenance Manual § 7.2.4, provides, in part:

The Worker has the following responsibilities in the verification process:

- At application, redetermination, and anytime a DFA-6 is used, the Worker must list all required verification known at the time. The Worker should only request additional verification if information provided is incomplete or additional information is necessary to determine eligibility...

West Virginia Income Maintenance Manual, § 5.3.4, provides, in part:

A client may not have access to some assets. To be considered an asset, the item must be owned by, or available to, the client and available for disposition. If the client cannot legally dispose of the item, it is not his asset.

Examples of inaccessibility include, but are not limited to, the following:

- Legal proceedings such as, probate, liens (other than those required for financing the asset). Items encumbered, or otherwise unavailable, due to litigation are not considered assets until the court proceedings are completed and a court decision is reached. The DOHS is required to follow the dictates of the court order.

For Medicaid only: Assets may be marked as inaccessible for clients who are currently declared incapacitated by a physician and have no legal financial power of attorney.

- If a petition for conservatorship has not been filed with a court, assets must be excluded as inaccessible as of the first day of the month of application, for a period not to exceed 30 days. Assets must also be excluded up to three months prior to the month of application, when requested, but not prior to the date of the physician-declared incapacity.
- If a petition for conservatorship is filed with a court, assets must be excluded as inaccessible until the court appoints a conservator or denies the petition for conservatorship

Verification of the physician declaration of incapacity and/or petition filed must be provided prior to entering the asset exclusion. Advanced notice of adverse action is required after an asset accessibility exclusion period ends...

West Virginia Income Maintenance Manual, § 24.4.1.C.3, provides, in part:

...If a Medicaid client loses eligibility and does not receive payment for nursing facility services for one month, he must reapply and is subject to the current application requirements unless the loss of eligibility or payment was due to a delay or error caused by the Department of Human Services (DOHS)...

West Virginia Income Maintenance Manual, § 24.4.1.C.10, provides, in part:

➤ Medicaid Eligibility

Medicaid eligibility begins on the first day of the month in which eligibility is established. Eligibility may be backdated up to three months prior to the month of application, when all eligibility requirements were met, and the client has medical expenses for which he seeks payment...

Common Chapters Manual, Chapter 700, § 710.16.B.1, provides:

B. Hearing Request Time Limits

1. The time limit for requesting a hearing shall be 90 days from the effective date of the action. For Summer EBT the time limit for requesting a hearing shall be within 90 days after the end of the summer operational period.

DISCUSSION

The Appellant is contesting the decision of the Respondent to deny the Appellant's application for Medicaid due to unverified information. The Respondent must show, by a preponderance of the evidence, that it correctly denied the application on this basis.

At the start of the hearing, a second hearing issue was introduced. The Appellant was receiving the type of Medicaid in question – Long Term Care (LTC) Medicaid for nursing facility services - for several years after admission to [REDACTED] a nursing facility. The Respondent terminated the Appellant's LTC Medicaid, effective March 1, 2025. The Appellant reapplied for LTC Medicaid on October 31, 2025. The denial of this application is the first issue. The Appellant's request for additional backdating in conjunction with the October 31, 2025 application is the second issue.

Under certain conditions, policy allows for up to three months of backdating (i.e., starting the date of Medicaid coverage prior to the date of application). The Board of Review is unable to create policy or policy exceptions. There is no policy provision for additional backdating. A timely hearing request related to the termination of Medicaid, effective March 1, 2025, could have been heard to address the coverage gap without involving backdating. However, hearing requests before the Board of Review must be submitted within 90 days of the effective date of the negative action

(May 30, 2025). Neither the written hearing request, submitted on January 29, 2026, nor the verbal request on the day of the hearing, were within this timeframe. The Board of Review cannot extend the backdating provisions in conjunction with the October 2025 application and cannot hear an untimely appeal of the March 2025 termination.

The Appellant is a married, incapacitated individual residing in [REDACTED] a nursing facility. The Appellant received SSI from the Social Security Administration. The Respondent's representative testified the Appellant was not required to complete an "asset assessment" because at the time of her initial application she was receiving SSI. The Appellant gave consent to [REDACTED] employees to perform duties related to establishing and maintaining her Medicaid eligibility, including required eligibility reviews. The Appellant did not complete an eligibility review in 2025, and the Respondent properly notified the Appellant of Medicaid termination. The failure of the Appellant or her representatives to complete this review was not "...a delay or error caused by the Department of Human Services." (WVIMM § 24.4.1.C.3) The Appellant reapplied for Medicaid in October 2025. The Respondent correctly characterized this as a new application (WVIMM, § 24.4.1.C.3), and the gap in Medicaid coverage from March 2025 was not due to any delay or error on the part of the Respondent. The Respondent issued notices requesting additional information from the Appellant to determine her Medicaid eligibility. The additional information was not provided, and the Respondent denied the application for that reason.

The Appellant contended that the Respondent's action is incorrect because her assets are inaccessible. The only information requested by the Respondent to determine her Medicaid eligibility was for various assets. Testimony from the Appellant's facility representatives indicated that in past eligibility reviews, the facility was able to obtain necessary verifications from financial institutions by providing written consent, or with verbal consent over the phone. The facility has been unable to obtain those verifications for the Appellant's October 2025 Medicaid application.

The Appellant is married and her spouse was not present for the hearing. The parties offered unreliable speculation on the Appellant's spouse but agreed that he has not assisted the Appellant in the application process. Evidence was shown that multiple petitions were made to appoint a guardian or conservator for the Appellant, but only speculation was offered regarding the outcome of these petitions. Only one of these petitions, filed on November 7, 2025 (Exhibit D-6), affects the accessibility of the Appellant's assets.

The Appellant made a new application for Medicaid on October 31, 2025. At that time, a petition had not been filed, and the first bullet point shown in the applicable policy section (WVIMM § 5.3.4) applies. If the petition status had remained unchanged, this policy section would provide a limited time period of asset exclusion. However, a petition for guardianship/conservatorship was filed on November 7, 2025, and no credible evidence was offered to show that the court has either appointed a conservator or denied the petition. The November 2025 petition (Exhibit D-6) includes the required physician declaration of incapacity. For these reasons, the second bullet point from the same policy section became applicable, and the assets of the Appellant are excluded by policy until a court action triggers a change in the asset treatment.

The only information requested in the Respondent's two verification checklists to the Appellant was asset related. Policy limits the Respondent to requesting information only when information is incomplete or additional information is necessary to determine eligibility. Because the assets should have been treated as inaccessible, the Respondent may not request verification of the Appellant's assets. Because the Appellant's application was denied solely for failure to verify this information, the Respondent's action cannot be affirmed.

The reliable testimony and evidence offered at the hearing showed that the Respondent incorrectly denied the Appellant's Medicaid application for failure to verify information about assets that were not needed to determine Medicaid eligibility due to an asset accessibility exclusion period the Respondent failed to recognize. The Appellant had no basis in policy for requesting more than three months of backdated coverage from the October 31, 2025 new application date. The case is remanded to the Respondent to approve the Appellant's Medicaid application and apply the appropriate backdating period, if any, in conjunction with that approval.

CONCLUSIONS OF LAW

- 1) Because a petition for guardianship/conservatorship naming the Appellant as a protected person was filed with the appropriate court and provided to the Respondent with the required physician documentation, the Appellant meets the criteria for an asset accessibility exclusion.
- 2) Because the Appellant's assets are excluded, the Respondent does not need asset information to determine the Appellant's eligibility while this exclusion remains in effect.
- 3) Because the Respondent's verification checklists outlined no areas of verification needed other than assets, those notices are invalid while the Appellant's asset exclusion remains in effect.
- 4) Because the Appellant is not required to verify unnecessary information in conjunction with her Medicaid application, the Respondent's denial of her Medicaid application cannot be affirmed.
- 5) Because there is no policy provision allowing Medicaid application backdating greater than three months, this cannot be ordered.
- 6) Because there was no timely hearing request submitted to appeal the Respondent's February 12, 2025 termination of Medicaid, this matter could not be heard to address the Appellant's Medicaid coverage gap.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's denial of the Appellant's application for Long Term Care Medicaid. The case is **REMANDED** to the Respondent to approve the Appellant's October 31, 2025 Medicaid application with the appropriate backdating within policy limits.

ENTERED this ____ day of March 2026.

**Todd Thornton
State Hearing Officer**