



April 2, 2024

[REDACTED]

RE: [REDACTED] v. WV DEPARTMENT OF HUMAN SERVICES BUREAU
FOR FAMILY ASSISTANCE
ACTION NO.: 23-BOR-3500

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,

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

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

cc: Michael Jackson, Assistant Attorney General
Gregory Tingler, Esquire

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

[REDACTED]

Appellant,

v.

Action Number: 23-BOR-3500

**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 19, 2024, on an appeal filed on November 15, 2023.

The matter before the Hearing Officer arises from the September 1, 2023, decision by the Respondent to deny the Appellant's application for Long Term Care Medicaid due to excessive assets.

At the hearing, the Respondent appeared by Michael Jackson, Assistant Attorney General. Appearing as witnesses for the Respondent were Katherine Hartwell, Economic Service Worker and Melissa Blake, Community Services Manager. The Appellant appeared by counsel, [REDACTED]. Appearing as witnesses for the Appellant were [REDACTED] Sheriff of [REDACTED]; [REDACTED] Tax Deputy; and [REDACTED]. All witnesses were placed under oath and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Application for Long Term Care Medicaid received August 14, 2023, and Designation of Authorized Representative
- D-2 Asset Verification System Report
- D-3 West Virginia Income Maintenance Manual §5.3.4
- D-4 West Virginia Income Maintenance Manual §5.5.39.B
- D-5 West Virginia Income Maintenance Manual §6.3.6

- D-6 West Virginia Income Maintenance Manual §24.8.2.I
- D-7 West Virginia Income Maintenance Manual §24.8.3
- D-8 Case Comments from January 2023 through August 2023

Appellant's Exhibits:

- A-1 Order Granting Petition for Appointment of Guardian/Conservator dated July 18, 2023

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] on or around June 14, 2022 (Exhibit D-1).
- 2) On July 6, 2023, a hearing was held in the Circuit Court of [REDACTED], West Virginia, regarding the Appellant (Exhibit A-1).
- 3) The Appellant was declared a Protected Person by the Mental Hygiene Commissioner (Exhibit A-1).
- 4) The Respondent was appointed as guardian of the Appellant and the Sheriff of [REDACTED] was appointed as conservator of the Appellant (Exhibit A-1).
- 5) An application for Long Term Care Medicaid was submitted by [REDACTED] to the Respondent on August 14, 2023 (Exhibit D-1).
- 6) The application identified the Respondent's Adult Protective Services division and [REDACTED] as the Appellant's authorized representative (Exhibit D-1).
- 7) The application did not contain information regarding the Appellant's income or assets, however, two months of backdated coverage was requested (Exhibit D-1).
- 8) Income Maintenance Worker Katherine Hartwell processed the application for the Appellant on August 24, 2023.
- 9) Worker Hartwell requested information regarding the Appellant's income and assets via email from [REDACTED] and Adult Protective Services.
- 10) Adult Protective Services advised Worker Hartwell that the Appellant owned several pieces of property and a checking account (Exhibit D-8).

- 11) Worker Hartwell utilized the Asset Verification System to determine the Appellant's assets.
- 12) The Asset Verification System report indicated that the Appellant owned six pieces of real property, thirteen vehicles and two checking accounts (Exhibit D-2).
- 13) The Respondent issued a notice of denial on September 1, 2023, advising that the Appellant's application for Long Term Care Medicaid had been denied due to excessive assets.

APPLICABLE POLICY

West Virginia Income Maintenance Manual Chapter 7 explains verification requirements:

7.2.1 When Verification is Required

Verification of a client's statement is required when:

- Policy requires routine verification of specific information.
- The information provided is questionable. To be questionable, it must be:
 - Inconsistent with other information provided; or
 - Inconsistent with the information in the case file; or
 - Inconsistent with information received by the Department of Human Services (DOHS) from other sources; or
 - Incomplete; or
 - Obviously inaccurate; or
 - Outdated.
- Past experience with the client reveals a pattern of providing incorrect information or withholding information. A case recording must substantiate the reason the Worker questions the client's statement.
- The client does not know the required information.

7.2.2 When Verification is not Required

Verification is not required from the individual when:

- It is known that the individual does not have access to the requested information.
- The information is known, or available to the Department of Human Services (DOHS).
- The client's response is a negative statement unless his statement is questionable.

For Medicaid Coverage Groups and West Virginia Children's Health Insurance Program (WVCHIP) Only: Being homeless, a victim of a natural disaster, or a victim of an emergency situation are all considered as limiting an individual's compliance with obtaining verifications. Once citizenship and non-citizen status are verified, an eligibility decision is made for these individuals on available information alone.

7.2.3 Client Responsibilities

The primary responsibility for providing verification rests with the client. It is an eligibility requirement that the client cooperate in obtaining necessary verifications... The

client is expected to provide information to which he has access and to sign authorizations needed to obtain other information. Failure of the client to provide necessary information or to sign authorizations for release of information results in denial of the application or closure of the active case, provided the client has access to such information and is physically and mentally able to provide it.

7.3.4 Worker Responsibilities

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.
- If the client is unsuccessful in obtaining information, or if physical or mental limitations prevent his compliance, and there is no one to assist him, the Worker must document attempts to obtain the verification.
- The Worker must accept any reasonable documentary evidence as verification and must not require a specific kind or source of verification.

West Virginia Income Maintenance Manual Chapter 6 explains the use of data exchange systems:

6.3.6 Asset Verification System (AVS)

The Asset Verification System (AVS) must be used to verify assets for Medicaid applicants and clients who qualify based on being aged, blind or disabled, including Long Term Care Medicaid.

AVS is used at initial application, redetermination and a client reported change during the certification period. AVS must not be accessed at any other time, or for any Medicaid category not listed above. Authorization to use AVS to verify assets is a condition of eligibility for Medicaid and is part of the Rights and Responsibilities. Failure to give consent and authorize the release of information results in Medicaid denial/closure. Bank account information received from the AVS is considered verified for the Medicaid program. However, when information received in the AVS results in ineligibility, the client must be afforded the opportunity to rebut the AVS information prior to any negative case action. Real property and vehicle information received from AVS is not considered verified for the Medicaid program and will require the worker to follow-up with the client to verify the availability and value of the asset if this has not already been provided by the client.

West Virginia Income Maintenance Manual Chapter 5 explains asset eligibility:

5.3.4 Accessibility of Assets

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.

5.4 Maximum Allowable Assets

The asset limit for SSI-Related Medicaid (Long Term Care Medicaid) is \$2,000 for a one-person assistance group.

5.5.4 Bank Accounts and Certificates of Deposit

Countable assets for SSI-Related Medicaid. The current month's income deposited in accounts is not counted as an asset for that month.

5.5.39.A Homestead Property

The client's homestead is the property on which he lives, and which is owned, or is being purchased by him. It is the dwelling and the land on which the dwelling rests, which is not separated by intervening property owned by others. Public rights-of-way that run through the surrounding property and separate it from the home do not affect this exclusion. Any additional property acquired and not separated from the original acquisition by intervening property owned by others is also excluded.

SSI-Related Medicaid: Only one dwelling is established as the client's principal place of residence, and only the principal place of residence is excluded. When an individual leaves his principle place of residence for any reason, but intends to return to it, the home is excluded. The exclusion is based solely on the individual's intent to return, even if the home is vacant or rented. The individual need not have the ability to return to the home but must simply have the intent.

5.5.39.B Income Producing Non-Homestead Property

All real property currently used in a trade or business is excluded, regardless of value or rate of return. The property must be in current use or been in use, with a reasonable

expectation that the use will resume within 12 months of last use. The 12-month period can be extended for an additional 12 months if nonuse is due to a disabling condition. Verification of the condition is not required. The exclusion ends as of the date the person changes his intent to resume the self-support enterprise or employment for which he uses the property.

5.5.39.B.1 Other Non-Homestead Property

The equity in property, not otherwise excluded, is an asset.

5.5.41 Recreational Vehicles

Recreational vehicles are considered personal property. The current market value (CMV) must be used when determining equity.

5.5.48 Vehicles

The owner of a vehicle is generally the individual to whom it is titled. However, when the title of a vehicle is not in the client's name, but the client states he is the owner, the vehicle is counted as the client's asset. If the title is in the client's name, and he indicates the vehicle no longer belongs to him, and the name on the title has not been changed, the vehicle is presumed to be his, unless he can prove otherwise. Only those vehicles of members of the assistance group, individuals who are disqualified or excluded by law and who would otherwise be required to be included, are considered when determining vehicle assets. A leased vehicle, in which the individual has no equity and which he cannot sell, is excluded. The trade-in value is usually used as the CMV for AFDC-Related, SSI Medicaid Groups, and WV WORKS.

5.5.48.C Vehicles and SSI-Related Medicaid

One vehicle is excluded as an asset for these coverage groups regardless of value, when it is used for transportation of the assistance group (AG) or a member(s) of the AG's household. For SSI-related policy, vehicles used for transportation include, but are not limited to, cars, trucks, motorcycles, boats, snowmobiles, animal-drawn vehicles, and animals. A temporarily disabled vehicle, normally used for transportation, also meets the criteria. The following do not meet the definition of a vehicle for SSI-related Medicaid groups:

- A vehicle with a junked title
- A vehicle only used for recreational purposes, such as a boat or snowmobile.

When there is more than one vehicle, the vehicle exclusion is always applied in a manner that benefits the AG. The car with the highest value may not be the vehicle used for transportation; however, it may be excluded for that reason, if it is to the AG's advantage.

- Step 1: Exclusion Based on Use: One vehicle is totally excluded, regardless of its value, when it is used for transportation of the AG or a member(s) of the AG's household.
- Step 2: Determining CMV of all non-excluded vehicles. The equity value of any other vehicle(s) that is not excluded in Step 1 is an asset, unless the vehicle(s) is excluded by other policy, such as property essential to self-support. The listed

trade-in value of the vehicle is used to determine equity value, unless one of the following conditions exist:

- The client disagrees with the listed value.
- The vehicle value is not listed.

In either of these situations, the client is responsible for obtaining one estimate at his expense on form DFA-V-1, Vehicle Estimate, or providing similar documentation that contains the necessary information to establish CMV. If the DOHS has no objection to the client's estimate, it is accepted as the value used in determining equity. The listed value is not used once an estimate has been obtained.

DISCUSSION

Policy stipulates that the asset limit for Long-Term Care Medicaid is \$2,000 for a one-person assistance group. The Respondent denied the Appellant's application for Long-Term Care Medicaid when it determined the Appellant's non-excluded real property assets were \$52,000.

An emergency petition for the appointment of a guardian and conservator was filed on behalf of the Appellant on January 12, 2023. The Sheriff of [REDACTED] was appointed as conservator and the Respondent was appointed as guardian of the Appellant on July 19, 2023 (Exhibit A-1).

Pursuant to policy, an asset must be owned by, or available to, the client and available for disposition to be considered a countable asset. If the client cannot legally dispose of the item, it is not his asset. Legal proceedings such as probate, liens, items encumbered, or otherwise unavailable due to litigation are not considered assets until the court proceedings are completed and a court decision is reached. 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.

[REDACTED], West Virginia, testified that the Respondent's Adult Protective Services division filed a petition for the assignment of guardianship and conservatorship of the Appellant when [REDACTED] had been unable to contact the Appellant's son and then guardian, [REDACTED], regarding his care and payment to the facility. [REDACTED] testified that when he was appointed conservator of the Appellant, he transferred the Appellant's checking account into his name on behalf of the Appellant and discovered that [REDACTED] who was a signor for the account, had stolen over \$250,000 from the Appellant's account. [REDACTED] stated that the Appellant has two houses and approximately 20 acres of land in [REDACTED] West Virginia.

[REDACTED] testified that he visited the [REDACTED] properties to take inventory of the residences and found that [REDACTED] was residing in one of the homes, located at [REDACTED]. The second home, located across the street at [REDACTED] was occupied by an associate of [REDACTED]. Eviction proceedings were initiated to have [REDACTED] removed from the premises. During the eviction proceedings in [REDACTED] [REDACTED] appeared by his attorney, who presented a deed to the Appellant's property that had been signed over to [REDACTED], after the Appellant's declaration as a Protected Person. The eviction proceeding was continued to allow for [REDACTED] to contest the

deed transfer in Circuit Court. The deed transfer was overturned by the [REDACTED] [REDACTED] was arrested for financial exploitation. On December 5, 2023, the [REDACTED] evicted [REDACTED] from the Appellant's property.

In January 2024, [REDACTED] stated the Appellant's property was appraised to determine fair market value and a realtor was contacted to place the property on the market for sale. [REDACTED] contended that before the property can be listed for sale, the contents of both houses must be cleared and auctioned off. [REDACTED] testified that he is currently in contact with a company clear the Appellant's houses and an auction house to sell off any items of value.

[REDACTED], Tax Deputy of [REDACTED], testified that there is one mortgage for the Appellant's two houses and adjoining property. [REDACTED] contended that she has contacted [REDACTED], the lien holder of the Appellant's property, multiple times to determine the amounts owed on the mortgage. [REDACTED] stated that despite providing [REDACTED] with the court order documenting [REDACTED] as conservator of the Appellant, she has received no information regarding the balance of the mortgage for the property.

The application for Long Term Care Medicaid for the Appellant requested backdated coverage to June 2023. In accordance with policy, 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. Conservatorship of the Appellant was not granted until July 19, 2023, therefore any assets attributed to the Appellant would have been inaccessible in June and July 2023. Credible testimony from [REDACTED] indicated that [REDACTED] transferred the deed to the Appellant's property into his name after his declaration as a Protected Person in July 2023. Although a specific date was not provided in [REDACTED] testimony regarding the Circuit Court's ruling to overturn the deed transfer, testimony indicated that the deed transfer was overturned prior to the December 5, 2023, eviction proceeding. The Appellant's property was inaccessible for disposal in August, September, October, and November 2023.

[REDACTED] gained access to the Appellant's property once [REDACTED] was evicted in December 2023, however, testimony from [REDACTED] indicated that the mortgage company has been uncooperative in releasing information regarding a lien on the property, which is necessary to dispose of the property. Policy excludes any asset that is encumbered due to legal proceedings, therefore, the Appellant's property continues to be inaccessible in the eligibility determination of Long Term Care Medicaid.

Policy states vehicles are a countable asset for Long Term Care Medicaid. The Asset Verification System indicated the Appellant owned several vehicles. [REDACTED] confirmed that the Appellant owned vehicles, however, counsel for the Appellant prevented [REDACTED] from providing further testimony regarding vehicles owned by the Appellant. Although any vehicle titled to the Appellant prior to the appointment of conservatorship would have been inaccessible, without a complete evaluation of the vehicles owned by and available to the Appellant, a determination of asset eligibility for Long Term Care Medicaid cannot be established.

Whereas the Appellant's real property assets are currently inaccessible for disposal and have been inaccessible since June 2023, the month that Long Term Care Medicaid backdated coverage was

requested, the Respondent's decision to deny the Appellant's application due to excessive real property assets cannot be affirmed. The case is hereby remanded to the Respondent for a full determination of the Appellant's countable assets.

CONCLUSIONS OF LAW

- 1) The asset limit for a one-person assistance group for Long Term Care Medicaid is \$2,000.
- 2) An asset must be owned by, or available to the client and available for disposition to be considered a countable asset. If the client cannot legally dispose of the item, it is not his asset.
- 3) The Appellant's real property assets have been unavailable for disposal since June 2023.
- 4) There was no testimony presented regarding the number of vehicles titled in the Appellant's name, current market values, equity owned, or the accessibility of these vehicles.
- 5) A determination of asset eligibility cannot be made for Long Term Care Medicaid without information regarding additional assets for the Appellant.

DECISION

It is the decision of the State Hearing Officer to **reverse** the action of the Respondent to deny the Appellant's application for Long Term Care Medicaid due to excessive real property assets. The matter is **remanded** to the Respondent for a full determination of the Appellant's countable assets.

ENTERED this 2nd day of April 2024.

Kristi Logan
Certified State Hearing Officer