



June 18, 2024

[REDACTED]

RE: [REDACTED] v. WVDOHS
ACTION NO.: 24-BOR-2030

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: Misty Fielder, Department Representative
[REDACTED]

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

██████████,

Appellant,

v.

Action Number: 24-BOR-2030

**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 May 21, 2024, upon a timely appeal filed on April 23, 2024.

The matter before the Hearing Officer arises from the April 22, 2024 decision by the Respondent to deny the Appellant financial eligibility for Long-Term Care Medicaid/Nursing Facility benefit in the month of March 2024.

At the hearing, the Respondent appeared by Misty Fielder. The Appellant appeared by representative ██████████ WV Medicaid Advisors. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Notice of decision, dated April 22, 2024
- D-2 Not admitted*
- D-3 Not admitted*
- D-4 Not admitted*
- D-5 Not admitted*

- D-6 [REDACTED] Bank checking account statement for the Appellant in the month of February 2024
- D-7 Email dated April 1, 2024; [REDACTED] Bank checking account statement for the Appellant in the month of March 2024; unspecified document; copy of a check to [REDACTED], dated February 28, 2024
- D-8 Letter from [REDACTED], dated February 13, 2024
Assignment of Insurance Proceeds, effective date February 28, 2024
- D-9 Letter from [REDACTED] Insurance Company, dated February 12, 2024
Assignment of Insurance Proceeds, effective date February 28, 2024
- D-10 Copy of a check from [REDACTED] to the Appellant, dated March 7, 2024
Copy of a check from [REDACTED] Insurance Company, dated February 29, 2024
- D-11 Certificate Information and Policy documents regarding the Appellant's policy [REDACTED] of the United States of America ([REDACTED])
- D-12 Blank document from [REDACTED]

Appellant's Exhibits:

- A-1 Not admitted*

*The parties submitted proposed exhibits which included applicable policy. The Hearing Officer took judicial notice of applicable policy and law at the time of the action in question and did not admit policy excerpts as evidence. A second request was made during the hearing for the record to be kept open for the Appellant to submit additional evidence. This request was denied because the intent of the proposed evidence submission was to show situations similar to the Appellant's – not to submit information directly regarding the Appellant's case – and because there was no reason offered as to why this information could not have been submitted prior to the hearing.

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 Medicaid for Nursing Home benefit (LTC-M).

- 2) The Respondent denied the Appellant's application for coverage in the month of March 2024.
- 3) The Respondent approved the Appellant's application for coverage in the month of April 2024.
- 4) The Respondent issued a notice (Exhibit D-1), dated April 22, 2024, which provided the basis for denial as, "[t]he amount of assets is more than is allowed for this benefit."
- 5) The notice (Exhibit D-1) additionally listed the Appellant's countable assets as \$6254.32, and the applicable asset limit as \$2000.
- 6) The Respondent calculated the Appellant's countable checking account balance as \$1228.76 for the month of March 2024, by taking the Appellant's listed balance from the bank for the last day of February 2024 (Exhibit D-6) and subtracting a \$2500 check (Exhibit D-7) written from the Appellant to [REDACTED] on February 28, 2024.
- 7) The Appellant owned two insurance policies: a policy from [REDACTED] Life Insurance ([REDACTED]) and a policy from [REDACTED] Insurance Company ([REDACTED]).
- 8) The Appellant's [REDACTED] policy had a cash surrender value of \$5025.56 as of February 8, 2024. (Exhibit D-8)
- 9) The Appellant's [REDACTED] policy had a cash surrender value of \$3621.45 as of February 12, 2024 (Exhibit D-9).
- 10) The Appellant assigned the proceeds from his [REDACTED] policy (Exhibit D-8) and his [REDACTED] policy (Exhibit D-9) to the [REDACTED] of the United States of America ([REDACTED]) with effective dates for both on February 28, 2024.
- 11) The Appellant received a check from his [REDACTED] policy on February 29, 2024 (Exhibit D-10), which he endorsed as 'payable to' [REDACTED].
- 12) The Appellant received a check from his [REDACTED] policy on March 7, 2024 (Exhibit D-10), which he endorsed as 'payable to' [REDACTED].
- 13) The Respondent did not count the Appellant's [REDACTED] policy as an asset because it was endorsed to [REDACTED] by the end of the month in February 2024.
- 14) The Respondent counted the Appellant's [REDACTED] policy as an asset because it was endorsed to [REDACTED] on March 7, or after the end of the month in February 2024.

- 15) The Respondent counted the Appellant's assets for the month of March 2024 as: a checking account with a balance of \$1228.76, and the [REDACTED] policy cash surrender value.
- 16) The Respondent determined the Appellant's assets were over the \$2000 asset limit with either the cash surrender value verified by the insurance company on February 8 (Exhibit D-8) (\$5025.56 policy value; \$6254.32 total countable assets), or with the check amount issued March 7 (Exhibit D-10) (\$5046.67 policy value; \$6275.43 total countable assets), presumably the cash surrender value at that time.
- 17) The Appellant assigned his [REDACTED] policy to [REDACTED] with an effective date of February 28, 2024, and could not legally collect the funds erroneously issued to him by the insurance company.
- 18) The [REDACTED] policy cash surrender value was not accessible to the Appellant because he could not legally collect those funds.
- 19) The [REDACTED] policy was not an asset for the Appellant in March 2024 because it was inaccessible.
- 20) The Appellant had countable assets of \$1228.76 for March 2024, and was under the \$2000 asset limit.

APPLICABLE POLICY

The West Virginia Income Maintenance Manual (WVIMM), Chapter 23, §23.11.5, addresses specific Medicaid requirements for Long-Term Care Medicaid, and provides, in part, "...The determination of countable assets is the same as for SSI-Related Medicaid, see Chapter 5..." This section, and §5.4 – Maximum Allowable Assets – note a \$2000 asset limit for SSI-Related Medicaid.

The WVIMM, at §5.5, provides a list of "...items that are considered in determining asset eligibility..." with a table indicating if the item is an asset for programs, including SSI-Related Medicaid. At §5.5.27, this table shows that the cash surrender value of life insurance is considered an asset for SSI-Related Medicaid, and provides, in part (emphasis added):

...

SSI Medicaid Groups: If the face value of all life insurance policies for one individual totals \$1,500 or less, the cash surrender values are not counted as an asset. If the face value of all life insurance policies for an individual is in excess of \$1,500, the cash surrender values are counted as an asset. The life insurance policy must be owned by the client or by a person whose assets are deemed to him to be counted. **If the consent of another individual is needed to surrender a policy for its full cash surrender value, and the consent cannot be obtained, the policy is not an asset. Assignment of a life insurance policy to another individual means consent of that individual is required before it can be cashed.**

...

The WVIMM, Chapter 5, §5.1, includes definitions for the asset chapter, and provides, in part (emphasis added):

...

ACCESSIBILITY OF ASSETS A client may not have access to certain assets. In order to be considered an asset, the asset must be owned by, or available to, the client. If the client **cannot legally dispose** of the asset, **it is not treated as an asset.**

...

DISCUSSION

The Appellant is contesting the determination by the Respondent that the Appellant had excessive assets for Long-Term Care Medicaid (LTC-M), and the resulting denial of the Appellant's application for LTC-M/Nursing Facility benefits in the month of March 2024. The Respondent must prove, by a preponderance of the evidence, that its determination of excessive assets was correct.

The Appellant applied for LTC-M and was denied in the month of March 2024 for excessive assets. The Appellant was approved for ongoing LTC-M, effective April 2024. There was no testimony or evidence of other factors preventing program eligibility besides assets. The type of Medicaid in question is considered SSI-Related Medicaid for asset purposes, resulting in an asset limit of \$2000 for the Appellant, and the consideration of the cash surrender value of life insurance as an asset under the conditions noted in policy. The Appellant had a checking account with a balance for March 2024 that was under this asset limit. The sole factor in deciding the Appellant's asset eligibility is the treatment of an insurance policy as a countable asset.

The Appellant had two insurance policies ([REDACTED] with a cash surrender value. He assigned these policies to [REDACTED] with an effective date of February 28, 2024 (Exhibits D-8 and D-9). [REDACTED] issued checks to the Appellant directly, instead of to [REDACTED]. The Appellant endorsed these checks to [REDACTED]. The Respondent worker considered the asset not countable for the Appellant at the time of the respective check endorsements. For the [REDACTED] policy, the Appellant signed the check over to [REDACTED] on February 29, 2024, resulting in this policy not being counted as an asset for the Appellant in March 2024. But because the Appellant received and signed the [REDACTED] policy check over to [REDACTED] after the first day of March 2024, it was considered an asset and resulted in the Appellant's asset ineligibility for that month.

The reliable evidence and testimony in the record shows that the [REDACTED] policy should not have been counted as an asset, and the Appellant was eligible for LTC-M benefits in March 2024. The Appellant entered into a contract with [REDACTED] with an effective date of February 28,

2024. This assignment makes the asset inaccessible to the Appellant, as of that effective date, not the date of any check endorsement. The Appellant did receive checks – apparently in error – from both insurance companies. He could have cashed these checks, but not only did he not do so, he could not have done so legally. The accessibility of assets definition from policy clearly requires an asset to not only be disposable, but legally disposable.

The Respondent noted a date provided by [REDACTED] (Exhibit D-11) showing a March 22, 2024 “date of issue” for the policy resulting from the Appellant’s assignment of his two previous policies, but without expert testimony from an [REDACTED] employee, this is less convincing than the February 28, 2024, effective date of the two assignment documents (Exhibits D-8 and D-9). The apparent error of [REDACTED] – which could have been simple miscommunication – in issuing checks to the Appellant, and the delay of [REDACTED] in establishing a date of issue, do nothing to change the fact the Appellant entered into an agreement with an effective date of February 28, 2024. Because the only way for the Appellant to have accessed the assets in question after February 28, 2024, would be to break a legal agreement initiated that date, the assets cannot be legally disposed of or counted as an asset after that date.

Because the Appellant did not have access to his [REDACTED] policy after the February 28, 2024, assignment date, the asset was accessible. With the sole countable asset of a \$1228.76 checking account balance for the month of March 2024, the Appellant is asset eligible for Medicaid. The Respondent’s decision to deny Medicaid benefits for the month of March 2024 cannot be affirmed.

CONCLUSIONS OF LAW

- 1) Because the Appellant assigned both of his insurance policies to another party on February 28, 2024, these policies were inaccessible to the Appellant as of that date.
- 2) Because the Appellant’s insurance policies were inaccessible as of February 28, 2024, they were not countable assets as of that date.
- 3) Because the Appellant’s only asset was a checking account balance of \$1228.76 as of the beginning of March 2024, he was not over the \$2000 asset limit for Long-Term Care Medicaid in the month of March 2024.
- 4) Because the sole basis for the Respondent’s denial of Long-Term Care Medicaid was excessive assets, the Respondent must approve Long-Term Care Medicaid for the Appellant in the month of March 2024.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the decision of the Respondent to deny the Appellant Long-Term Care Medicaid in the month of March 2024. The Respondent must approve Long-Term Care Medicaid for the Appellant for the month of March 2024.

ENTERED this _____ day of June 2024.

**Todd Thornton
State Hearing Officer**