



August 9, 2024

[REDACTED]

RE: [REDACTED] v. WV DOHS  
ACTION NO.: 24-BOR-2496

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,

Lori Woodward, J.D.  
Certified State Hearing Officer  
Member, State Board of Review

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

cc: Amanda Stowers, WVDOHS/BFA

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

████████████████████,

**Appellant,**

**v.**

**Action Number: 24-BOR-2496**

**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 July 30, 2024.

The matter before the Hearing Officer arises from the June 11, 2024 decision by the Respondent to apply a transfer of assets penalty to the Appellant's Long-Term Care Medicaid/Nursing Facility (LTC) benefit resulting in ineligibility for July 2024.

At the hearing, the Respondent appeared by Amanda Stowers, with the Bureau for Family Assistance. The Appellant was represented by his mother, ██████████. Appearing as a witness for the Appellant was his sister, ██████████. The witnesses were placed under oath and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Copy of signed Hearing Request (DFA-FH-1)
- D-2 Copy of PATH Case Comments: March 31, 2018, April 24, 2018, April 25, 2018, September 4, 2018, September 12, 2022, September 23, 2022, July 6, 2022, August 4, 2022, September 6, 2022, from September 15, 2020, September 23, 2020, August 7, 2020, September 4, 2020
- D-3 June 6, 2024 email from ██████████ June 5, 2024 email from ██████████; June 17, 2024 email thread between BFA Long Term Care Unit, DoHS and ██████████
- D-4 ██████████ Bank account summary
- D-5 Written verification of rent payment statements provided for the Appellant's Supplemental Nutrition Assistance Program (SNAP)

- D-6 Notice of transfer penalty (ED12), dated June 11, 2024
- D-7 [REDACTED] Bank Statement for account [REDACTED] dated September 29, 2023

**Appellant's Exhibits:**

- A-1 [REDACTED] Bank Agreement for joint account [REDACTED] with survivorship for [REDACTED], signed and dated September 19, 2002; [REDACTED] Bank Agreement for joint account [REDACTED] with survivorship for [REDACTED], signed and dated December 15, 2011
- A-2 [REDACTED] Bank Statements for account [REDACTED] dated December 31, 2021, March 31, 2022, June 30, 2022, September 15, 2023
- A-3 Written statement to Amanda Stowers from [REDACTED], undated
- A-4 [REDACTED] Bank Statement account [REDACTED] dated November 15, 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 a nursing facility in September 2023.
- 2) In October 2023, a LTC Medicaid application was submitted on behalf of the Appellant.
- 3) On December 27, 2024, a verification for bank statements for October and November 2023 were requested by the Respondent's worker, which were due by January 6, 2024.
- 4) The Appellant was added as a joint account holder with the right of survivorship to his mother's bank account [REDACTED] in 2011 soon after his father passed away. (Exhibit A-1)
- 5) [REDACTED] withdrew \$14,921.82 from bank account [REDACTED] in September 2023 (Exhibit D-7)
- 6) The Appellant and his mother had another jointly held bank account [REDACTED] in which the Appellant's Social Security benefits were deposited. (Exhibit A-4)
- 7) As of November 15, 2023, the Appellant had a total balance of \$2,193.99 in account [REDACTED]. (Exhibit A-4)
- 8) On June 11, 2024, the Respondent sent the Appellant notification (ED12) that a transfer penalty had been applied for July 2024 resulting in ineligibility for July 2024 and an additional \$2,724 payment was applied in addition to any calculated contribution based on his income for subsequent months. (Exhibit D-6)

## APPLICABLE POLICY

**WV IMM, Chapter 5, §5.3.4, ACCESSIBILITY OF ASSETS, 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.

...

- Joint ownership: The meaning of such ownership may be indicated in one of the following ways:
  - AND - Joint ownership indicated by "and" between the names of the owners. Unless there is evidence to the contrary, each owner is assumed to own an equal, fractional share of the jointly owned asset. If the fractional share of the asset is not available to either owner without the consent of the other, and such consent is withheld, the asset is excluded as being inaccessible.
    - For SNAP only: The consent must be withheld by an individual(s) who is not a member of the applicant's AG in order for the asset to be considered inaccessible.
  - OR - Joint ownership indicated by "or" between the names of the owners. The asset is available to each owner in its entirety.
  - AND/OR - Joint ownership indicated by "and/or" between the names of the owners. The asset is available to each owner in its entirety.

**WV IMM, Chapter 24, §24.8.2.I, Treatment of Jointly-Owned Resources:** Jointly owned resources include resources held by an individual in common with at least one other person by joint tenancy, tenancy in common, joint ownership or any similar arrangement. **Such a resource is considered to be transferred by the individual when any action is taken, either by the**

**individual or any other person that reduces or eliminates the individual's ownership or control of the asset.** Under this policy, merely placing another person's name on an account or resource as a joint owner might not constitute a transfer of resources, depending upon the specific circumstances involved. In such a situation, the client may still possess ownership rights to the account or resource and, thus, have the right to withdraw all of the funds at any time. The account, then, still belongs to the client. However, **actual withdrawal of funds from the account, or removal of all or part of the resource by another person, removes the funds or property from the control of the client, and, thus, is a transfer of resources.** In addition, if placing another person's name on the account or resource actually limits the client's right to sell or otherwise dispose of it, the addition of the name constitutes a transfer of resources. [Emphasis added]

**If either the client or the other person proves that the funds withdrawn were the sole property of the other person, the withdrawal does not result in a penalty.** [Emphasis added]

#### **WV IMM, Chapter 7, §7.2, VERIFICATION PROCESS:**

**WV IMM, Chapter 7, §7.2.4, WORKER RESPONSIBILITIES, 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.** [Emphasis added]
- 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. Verification may be submitted in person, by mail, by fax, or electronically.

**WV IMM, Chapter 24, §9.2.1 DFA-6, NOTICE OF INFORMATION NEEDED:** The DFA-6 may be used during any phase of the eligibility determination process. At the time of application, it is given or mailed to the applicant to notify him of information or verification he must supply to establish eligibility. When the DFA-6 is mailed at the time of application, the client must receive the DFA-6 within five working days of the date of application.

If the client fails to adhere to the requirements detailed on the DFA-6, the application is denied or the deduction disallowed, as appropriate. The client must be notified of the subsequent denial by form DFA-NL-A.

This form also notifies the client that his application will be denied, or a deduction disallowed, if he fails to provide the requested information by the date specified on the form. The Worker determines the date to enter to complete the sentence, "If this information is not made available to this office by ..." as follows.

#### **WV IMM, Chapter 24, §24.4.1.C, Nursing Facility Coverage Group and SSI-Related/Monthly Spenddown Group**

**WV IMM, Chapter 24, §24.4.1.C.7, Agency Delays, in part:** If the DOHS failed to request necessary verification, the Worker must immediately send a verification checklist or form DFA-6 and DFA-6a, if applicable, to the client and note that the application is being held pending. When the information is received, benefits are retroactive to the date eligibility would have been

established had the DOHS acted in a timely manner. If the DOHS simply failed to act promptly on the information already received, benefits are retroactive to the date eligibility would have been established had the DOHS acted in a timely manner.

**WV IMM, Chapter 24, §24.8.2.B, Permissible Transfers, in part:** The following types of transfers do not result in a penalty for transferring resources.

**WV IMM, Chapter 24, §24.8.2.B.6, Transfer Was Not to Qualify for Medicaid:** When a transfer of resources was exclusively for a purpose other than to qualify for Medicaid, no penalty is applied. NOTE: A transfer is assumed to be for the purpose of qualifying for LTC services. The burden is on the individual to prove otherwise. The Worker and Supervisor can make this decision.

### DISCUSSION

The Appellant was admitted to a nursing facility sometime in September 2023. In October 2023, an application for LTC Medicaid was made on the Appellant's behalf. On December 27, 2023, a verification request was made for bank account statements for the months of October and November 2023, due by January 6, 2024. On or about June 11, 2024, the Respondent's worker determined that a transfer of assets penalty should be applied to the Appellant's July 2024 LTC eligibility with a subsequent amount of \$2,724 to be added to the Appellant's resource amount to future months of eligibility. A notification of this penalty was sent to the Appellant on June 11, 2024. The Appellant's representative brings this appeal, averring that she was the sole owner of the withdrawn money.

The Respondent bears the burden of proof to show by a preponderance of evidence that it correctly applied an asset transfer penalty against the Appellant.

The Respondent determined that there was a transfer of \$14,921.82 made in September 2023 from a jointly held bank account with the Appellant's mother, [REDACTED]. It appears that the Respondent previously approved the Appellant's October 2023 application and later discovered the September 2023 transfer, thus applying a transfer of assets penalty for the Appellant's July 2024 eligibility.

The Respondent's representative, Amanda Stowers, testified that she was not the worker who processed the Appellant's LTC Medicaid application or made the transfer penalty determination in this case. Ms. Stowers stated that in looking through the case comments, the processing worker determined that the money in bank account [REDACTED] was the result of the monthly rent payments made by the Appellant to his mother. This conclusion is perplexing and unsupported by the evidence. None of the evidence entered into the record reflects this contention. The evidence presented by Ms. Stowers only showed that the Appellant made monthly rent payments to his mother. If the money in the account represented the monthly rent payments made by the Appellant to his mother, then it would strengthen the Appellant's contention that the withdrawn money was hers and not the Appellant's.

With regard to jointly held assets, policy explicitly provides the opportunity to prove that transferred resources were the sole property of another person, which would result in no applied

penalty for the withdrawal. The testimony showed that the Respondent did not send a request for information regarding this September 2023 withdrawal prior to applying the transfer penalty. Ms. Stowers testified that the only request for verification sent to the Appellant was in December 2023 for his October and November 2023 bank statements. The evidence failed to show that the Respondent's worker sent any request for information regarding the September 2023 withdrawal of funds prior to applying the transfer penalty.

Through this hearing process, the Appellant was given the opportunity to establish ownership of the withdrawn money. The preponderance of evidence showed that the \$14,921.82 withdrawn in September 2023 was owned by [REDACTED]. The testimony presented did show that the Appellant was added to his mother's already existing bank account [REDACTED] soon after his father passed away. [REDACTED] testified that she added the Appellant to her account in the event she was physically unable to access her account. [REDACTED] contends that the money she withdrew in September 2023 was hers alone, not the Appellant's. [REDACTED] and the Appellant's witness testified that [REDACTED] pays the income tax on the account in question. [REDACTED] asserted that she was the one who had worked most of her life and accumulated the savings reflected in the bank account. It is also noted that the Appellant and his mother have another jointly held bank account [REDACTED] in which the Appellant's Social Security benefits were deposited. The evidence entered into the record showed that as of November 15, 2023, the Appellant had a total balance of \$2,193.99 in that account. The evidence showed that the Appellant's bank account [REDACTED] was used for his benefit as his Social Security benefits were deposited into that account. The credible testimony showed that the withdrawn money at issue was more likely than not [REDACTED] accumulated wealth, and not the Appellant's.

The Respondent's worker had the responsibility of requesting verification of the ownership of the withdrawn money so as to give the Appellant an opportunity to show that those monies were the sole ownership of his mother. This was not done. It is noted that Ms. Stowers entered an email chain between individuals who were not present at the hearing. Not only does the email chain fail to satisfy the verification process required by policy, it also is deemed to be unreliable hearsay and was not considered in this decision.

The Respondent failed to show by a preponderance of evidence that it followed policy in applying the transfer of assets penalty against the Appellant for his July 2024 LTC Medicaid ineligibility and subsequent additional payments for future eligibility. It was established at the hearing that [REDACTED] was more likely than not the sole owner of the withdrawn money in question. Thus, although the September 2023 withdrawal was made in the same month as the Appellant's nursing facility admission, it was not made exclusively for the purpose of establishing LTC Medicaid eligibility for the Appellant. No transfer of assets penalty should have been made against the Appellant's July LTC Medicaid eligibility and subsequent eligibility months.

### **CONCLUSIONS OF LAW**

- 1) Policy requires that jointly owned resources be considered to be transferred by the individual when any action is taken, either by the individual or any other person, that reduces or eliminates the individual's ownership or control of the asset.

- 2) Policy allows an opportunity to prove that the funds withdrawn were the sole property of the other person, thus resulting in no penalty being applied.
- 3) Policy requires that when additional information is necessary or is questionable, the Respondent's worker must send a verification request (DFA-6).
- 4) The Respondent failed to prove by a preponderance of evidence that a DFA-6 was sent to the Appellant requesting information regarding the September 2023 withdrawal of funds.
- 5) The Appellant was not given an opportunity to show ownership of the withdrawn funds prior to the Respondent applying the transfer penalty.
- 6) The evidence and credible testimony provided at the hearing established that [REDACTED] had the sole ownership of the withdrawn money and was not withdrawn solely for the purpose of establishing LTC Medicaid eligibility for the Appellant.
- 7) The Respondent's decision to apply the transfer penalty cannot be affirmed.

### **DECISION**

It is the decision of the Hearing Officer to **REVERSE** the Respondent's determination to apply a transfer of assets penalty against the Appellant's July 2024 LTC Medicaid eligibility.

**ENTERED this 9<sup>th</sup> day of August 2024.**

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Lori Woodward, Certified State Hearing Officer