



February 4, 2025



RE: [REDACTED] v. DoHS/BFA  
ACTION NO.: 24-BOR-3895

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,

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

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

cc: Tracy Grassi, Long Term Care Unit

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

[REDACTED],

**Appellant,**

**v.**

**Action Number: 24-BOR-3895**

**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 January 22, 2025.

The matter before the Hearing Officer arises from the December 10, 2024, decision by the Respondent to deny the Appellant's application for an Undue Hardship Waiver.

At the hearing, the Respondent appeared by Tracy Grassi, Long Term Care Unit. The Appellant appeared by [REDACTED]. Appearing as a witness for the Appellant was [REDACTED]. The witnesses were placed under oath and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Hearing Summary
- D-2 Application for Long Term Care Medicaid dated October 1, 2024
- D-3 [REDACTED] dated June 6, 2022
- D-4 Cancelled Check dated June 16, 2022
- D-5 Cancelled Check dated July 22, 2022
- D-6 Cancelled Check dated July 24, 2022
- D-7 Cancelled Check dated January 4, 2023
- D-8 West Virginia Income Maintenance Manual §24.31
- D-9 Notice of Decision dated November 22, 2024

- D-10 Application for Undue Hardship Waiver dated November 22, 2024
- D-11 Hearing Request dated December 17, 2024
- D-12 Notice of Decision for Request for Undue Hardship dated December 10, 2024

**Appellant's Exhibits:**

- A-1 Hearing Summary
- A-2 Letter from [REDACTED] dated January 14, 2025
- A-3 [REDACTED] Resident Statement dated January 15, 2025
- A-4 [REDACTED] Resident Statement dated January 15, 2025
- A-5 30-Day Notice of Transfer or Discharge dated January 13, 2025

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 July 24, 2024.
- 2) The Appellant applied for Long Term Care Medicaid on October 1, 2024 (Exhibit D-2).
- 3) The Appellant sold her home in June 2022 for \$121,998.77 (Exhibits D-2 and D-3).
- 4) From the proceeds from the sale of the home, the Appellant gifted \$38,000 to her son to purchase a vehicle for his disabled daughter and \$41,000 to her daughter for the care she provided to the Appellant for the previous four years (Exhibits D-1, D-4, D-5, D-6, D-7 and A-1).
- 5) The Appellant paid \$14,820 to [REDACTED] for her care in September 2024, depleting the remaining proceeds from the sale of her home (Exhibit A-1).
- 6) The Respondent applied an asset transfer penalty against the Appellant for the uncompensated transfer of \$79,000 to her children (Exhibit D-1).
- 7) The Appellant is ineligible for Long Term Care Medicaid benefits from October 1, 2024, until the penalty expires in April 2025 (Exhibit D-1).
- 8) The Appellant applied for an Undue Hardship Waiver on November 22, 2024, citing that the application of the asset transfer policy would endanger her health and safety (Exhibit D-10).
- 9) The Respondent sent a notice of denial to the Appellant on December 10, 2024, advising that the application was denied as no evidence exists to satisfy the requirements that the denial of undue hardship would result in the deprivation of medical care to the extent that

the individual's health or life would be endangered or deprivation of the client to obtain food, shelter, clothing, or other necessities of life (Exhibit D-12).

- 10) On January 13, 2025, [REDACTED] issued a 30-Day Notice of Discharge to the Appellant for her failure to pay or have paid by Medicare or Medicaid for her stay at the facility (Exhibit A-5).
- 11) As of January 2025, the Appellant owed [REDACTED] over \$55,000 and will incur a total balance of \$87,000 by April 2025, when the asset transfer penalty expires (Exhibits A-3 and A-4).

### **APPLICABLE POLICY**

West Virginia Income Maintenance Manual Chapter 24 explains Long Term Care Medicaid eligibility:

#### **24.8.2 Transfer of Resources**

Under the transfer of resources policy, the Worker must deny coverage of Long Term Care (LTC) Medicaid services to otherwise eligible institutionalized individuals who transfer (or whose spouses transfer) resources for less than fair market value (FMV). The current asset and income transfer policy governs transfers made after February 8, 2006, and applies to payments made for institutional care on or after March 1, 2009. This section outlines which transfers of resources are allowable (or permissible) and which result in a penalty that delays the applicant's eligibility for Medicaid coverage of LTC services. Whether the transfer is considered permissible depends on the timing of the transfer, whether the client was compensated, for whose benefit the transfer was made and other factors.

##### **24.8.2.A.5 Valuable Consideration**

Valuable consideration means that an individual receives in exchange for his or her right or interest in a resource some act, object, service, or other benefit which has a tangible and/or intrinsic value to the individual that is roughly equivalent to or greater than the value of the transferred resource.

##### **24.8.2.A.6 Uncompensated Value**

The uncompensated value is the difference between the FMV at the time of transfer (less any outstanding loans, mortgages, or other encumbrances on the resource) and the amount received for the resource.

##### **24.8.2.A.7 Look-Back Period**

The look-back period is the length of time for which the Worker looks back for any resource transfers. The look-back period is 60 months, whether or not a trust fund was involved. The look-back time period begins the month the client is both institutionalized and has applied for Medicaid.

#### **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. 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.

#### **24.8.2.B.7 Denial Would Result in Undue Hardship**

When the Worker determines the individual is otherwise eligible for LTC services, an undue hardship may exist when a denial of payment for LTC services is due to one or more of the following asset policies:

- Excessive home equity;
- Transfer to a non-permissible trust; and/or,
- A transfer of asset penalty.

For undue hardship to exist, the denial must result in:

- Depriving the individual of medical care to the extent that the individual's health or life would be endangered; or
- Depriving him of the ability to obtain food, clothing, shelter or other necessities of life.

#### **Application for Undue Hardship Waiver**

The Application for an Undue Hardship Waiver (DFA-UH-5) must be attached to the DFA-NLUH-1. The DFA-UH-5 is the application for the waiver. It must be completed and returned to the Worker within 13 days of notice of the eligibility decision. Upon receipt, the Worker immediately mails, emails, or faxes it to the Bureau for Medical Services (BMS) Policy Unit for distribution to the Undue Hardship Waiver Committee. The DFA-UH-5 must include a signature of the individual for whom the waiver is filed when the LTC facility is completing the request. It must include an explanation of any efforts made to resolve the asset issue that resulted in the LTC services denial. Documentation that supports these attempts must be attached. Details regarding the individual's undue hardship must be explained. If the DFA-UH-5 is not returned complete and timely, no additional notice occurs, and the negative eligibility decision and any penalty applied remains. An individual who resides in a facility and requests an Undue Hardship Waiver is eligible for payment of up to 30 bed-hold days from the date the DFA-UH-5 is received by the BMS Policy Unit until a decision is made by the Committee. The Committee has 60 days to make a decision concerning the Waiver request. Denial of payment of LTC services due to excessive home equity is not subject to payment of bed-hold days.

#### **Decision for Request of Undue Hardship Waiver**

If the waiver request is not appropriate for the Committee, it is returned to the local office which made the eligibility decision. The individual is notified of the Committee's decision via the Decision for Request of Undue Hardship Waiver form (DFA-NL-UH-2). The Committee forwards the DFA-NL-UH-2 to the individual, with a copy to the Supervisor and Worker. The decision of the Committee to deny the request can be overturned by a State Hearings Officer, therefore a DFA-FH-1 is sent. ***The local office must notify the BMS Policy Unit when a hearing request regarding the Committee's***

*decision is received and also advise the Regional Attorney. A member of the Committee will be available, via telephone, to participate in a Fair Hearing regarding the denial of the DFA-UH-5, but not to discuss the ineligibility for LTC services for reasons other than those related to excessive home equity, trust, and/or transfer issues.*

### **DISCUSSION**

Policy states that when an individual is otherwise eligible for Long Term Care services, an undue hardship may exist when a denial of payment for Long Term Care services is due to a transfer of asset penalty. For undue hardship to exist, denial must result in depriving the individual of medical care to the extent that the individual's health or life would be endangered or depriving the individual of the ability to obtain food, clothing, shelter or other necessities of life. The Respondent's Bureau for Medical Services denied the Undue Hardship Waiver because no evidence existed to satisfy the requirements that the denial of undue hardship would result in the deprivation of the Appellant of medical care to the extent that the individual's health or life would be endangered or deprivation of the Appellant to obtain food, shelter, clothing, or other necessities of life.

██████████, representative for the Appellant, testified that the Appellant moved in with her daughter when her health declined, and she was unable to live alone. ██████████ contended that the Appellant sold her home in 2022, after residing with her daughter for several years, when the upkeep of the home became too much to manage. ██████████ stated that in 2022, the Appellant's family could not have predicted that the Appellant would require a nursing facility placement, purporting that gifting her children money from the sale of the home was not with the intention of becoming asset eligible for Medicaid.

██████████ stated that the Appellant's monthly income is \$2,000 and because of the asset transfer penalty, she has incurred a balance with the nursing facility. ██████████ testified that the nursing facility has issued a notice of involuntary discharge to the Appellant due to non-payment of her account. ██████████ provided a letter from ██████████ with the nursing facility, indicating that the Appellant requires two-person assistance with a Hoyer lift to transfer, total assistance with bathing, dressing, grooming, and is unable to maneuver her wheelchair or reposition herself while in bed. ██████████ opined that discharging the Appellant to a lesser level of care would be detrimental to the Appellant and result in an extensive decline in her health (Exhibit A-2).

The Respondent's Bureau for Medical Services reviews applications for and determines eligibility for Undue Hardship Waivers. The Respondent's policy provides that a member of the Undue Hardship Committee will be available for the hearing to provide testimony regarding the denial. The Respondent failed to ensure the attendance of a member of the Undue Hardship Committee for the hearing.

The Appellant's monthly income of \$2,000 is insufficient to cover the \$12,000 monthly cost of her stay in the nursing facility. ██████████ will discharge the Appellant to the community on February 13, 2025, due to non-payment. The Appellant continues to meet a nursing facility level

of care and discharging her to a lesser level of care will be detrimental to the Appellant's health and will pose a risk to her safety as documented by her attending physician. The Appellant meets the criteria for an Undue Hardship Waiver.

Whereas the Appellant's health and safety will be endangered if she is discharged to a lesser level of care and the denial of the Undue Hardship Waiver would deprive the Appellant of necessary medical care, the Respondent's decision to deny the waiver cannot be affirmed.

### **CONCLUSIONS OF LAW**

- 1) Policy states that undue hardship may exist when a denial of payment for Long Term Care services is due to a transfer of asset penalty.
- 2) For undue hardship to exist, denial must result in depriving the individual of medical care to the extent that the individual's health or life would be endangered or depriving the individual of the ability to obtain food, clothing, shelter or other necessities of life.
- 3) The Respondent imposed an asset transfer penalty against the Appellant from October 2024 through April 2025.
- 4) The Appellant does not have the means to pay privately for her care in the nursing facility.
- 5) The Appellant will be discharged from the nursing facility on February 13, 2025, due to non-payment.
- 6) The Appellant continues to meet a nursing facility level of care and discharge to a lesser level of care would be detrimental to her health.
- 7) The denial of the Undue Hardship Waiver will deprive the Appellant of necessary medical care.
- 8) The Respondent's denial of the Undue Hardship Waiver cannot be affirmed.

### **DECISION**

It is the decision of the State Hearing Officer to **reverse** the decision of the Respondent to deny the Appellant's application for an Undue Hardship Waiver.

**ENTERED this 4<sup>th</sup> day of February 2025.**

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**Kristi Logan**  
**Certified State Hearing Officer**