



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
PO Box 6165  
Wheeling, WV 26003

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

October 10, 2007

[REDACTED]

RE: [REDACTED]

Dear Mr. [REDACTED]:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 28, 2007. Your hearing request was based on the Department of Health and Human Resources denial of an application for Mrs. [REDACTED] for the Aged/Disabled (HCB) Title XIX Waiver Services Program.

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 Health and Human Resources. These same laws and regulations are used in all cases to assure that all persons are treated alike.

Eligibility for the Aged/Disabled Waiver Program is based on current policy and regulations. One of these regulations specifies that for the Aged/Disabled Waiver Program, the client's monthly gross non-excluded income must be equal to or less than 300% of the SSI payment. (West Virginia Income Maintenance Manual section 17.24.

Information submitted at the hearing revealed that Mrs. [REDACTED]'s monthly gross income (\$2013) exceeds the maximum income level of \$1869 .

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to deny the application for the Aged/Disabled Waiver Program.

Sincerely,

Melissa Hastings  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Tanner, DHHR

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES  
BOARD OF REVIEW**

█  
**Claimant,**

**v.**

**Action Number: 07-BOR-2219**

**West Virginia Department of  
Health and Human Resources,**

**Respondent.**

**DECISION OF STATE HEARING OFFICER**

**I. INTRODUCTION:**

This is a report of the State Hearing Officer resulting from a fair hearing concluded on September 28, 2007 for █. This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This fair hearing was convened on September 28, 2007 on a timely appeal filed April 26, 2007. Note: This hearing was previously scheduled on June 28, 2007. Following the issuance of an abandonment letter, claimant's representative provided good cause for failure to appear and the hearing was rescheduled.

It should be noted here that the Claimant's benefits have been denied pending a hearing decision.

**II. PROGRAM PURPOSE:**

The program entitled Aged/Disabled Waiver is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

Under Section 2176 of the Omnibus Budget Reconciliation Act of 1981, states were allowed to request a waiver from the Health Care Financing Administration (HCFA) so that they could use Medicaid (Title XIX) funds for home and community-based services. The program's target population is individuals who would otherwise be placed in an intermediate or skilled nursing facility (if not for the waiver services). Services offered under the Waiver Program will include: (1) chore, (2) homemaker and (3) case management services. West Virginia has been offering the Waiver Services Program since July, 1982 to those financially eligible individuals who have been determined to need ICF level care but who have chosen the Waiver Program services as opposed to being institutionalized.

**III. PARTICIPANTS:**

██████████ – Claimant’s son and representative

██████████ – Program Coordinator ██████████

Lisa Tanner – DHHR representative

Presiding at the hearing was Melissa Hastings, State Hearing Officer and a member of the State Board of Review.

**IV. QUESTIONS TO BE DECIDED:**

The question(s) to be decided is whether the Agency was correct in its decision to deny the Claimant's application for the Aged/Disabled Waiver (HCB) Program.

**V. APPLICABLE POLICY:**

West Virginia Income Maintenance Manual section 17.24 and Appendix A of Chapter 10

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department’s Exhibits:**

- D-1 Notice of Decision dated April 4, 2007 addressed to Claimant
- D-2 Verification of monthly pension check from ██████████ for Claimant dated January 31, 2007
- D-3 Verification of monthly Social Security for Claimant from the SSA Benefit Details screen of the RAPIDS computerized system
- D-4 The Alternative LTC Eligibility Determination sheet from the RAPIDS computerized System
- D-5 West Virginia Income Maintenance Manual sections 17.24 and Appendix A of Chapter 10

**Claimant’s Exhibits**

None

**VII. FINDINGS OF FACT:**

1) An application for the Aged/Disabled Waiver Program was filed April 23, 2007 for the Claimant.

2) At the time of application Claimant’s income was verified as follows:

- \$ 610 Pension from ██████████ (D2)
- \$1403 Social Security (D3)

\$2013 Total monthly income

- 3) West Virginia Income Maintenance Manual § 17.24 (D5) states:  
The client's monthly gross non-excluded income is compared to 300% of the maximum SSI payment for a single individual.
- 4) West Virginia Income Maintenance Manual §Appendix A of Chapter 10 (D5) shows that the maximum SSI amount for a single individual is \$623 per month.
- 5) 300% of \$623 equals \$1869 which would be the gross non-excluded income limit for the Claimant.
- 6) Claimant's representative indicates that his mother has met the medical eligibility requirements for the Aged/Disabled Program Services. She suffers from several medical conditions which make her disabled. Claimant's representative indicates that he understands that his mother's income exceeds the maximum allowable levels but is requesting an exception or special consideration be given to her as he feels that by allowing her to participate in the Aged/Disabled Waiver Program rather than going to a nursing home, it would save the state money. Claimant's representative is willing to sign estate recovery forms giving the state the rights to his mother's home in exchange for approval for the Aged/Disabled Waiver Program.

### **VIII. CONCLUSIONS OF LAW:**

- 1) Policy requires that individuals applying for the Aged/Disabled Waiver Program meet a financial eligibility requirement as well as a medical eligibility requirement.
- 2) As part of the financial eligibility requirement an applicant's gross non-excluded income cannot exceed 300% of the current SSI income level. (WV Income Maintenance Manual section 17.24)
- 3) Evidence and testimony are clear that Claimant's non-excluded gross monthly income exceeds 300% of the current SSI income level
- 4) A review of the regulations indicates that there are no exceptions/hardship provisions permitted for the income eligibility test.

### **IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the Agency's decision to deny the Claimant's application for the Aged/Disabled, Title XIX (HCB) Waiver Program.

### **X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 10th Day of October, 2007.**

---

**Melissa Hastings  
State Hearing Officer**