



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
Post Office Box 2590  
Fairmont, WV 26555-2590

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

August 15, 2008

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Mr. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 29, 2008. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for benefits and services under the Medicaid Aged/Disabled Title XIX (Home & Community-Based) Waiver 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.

The Aged /Disabled (HCB) Title XIX Waiver Services Program is granted to those individuals who meet all eligibility requirements. One of these requirements is that the individual must qualify financially. In order for an individual to qualify financially, the client's monthly gross non-excluded income cannot exceed 300% of the maximum SSI payment for a single individual (\$1911 monthly). [West Virginia Income Maintenance Manual, Chapter 17.24 & Chapter 10, Appendix A].

The information submitted at your hearing reveals that your gross monthly non-excluded income exceeds the maximum allowed to receive benefits and services through the Medicaid Aged & Disabled Waiver Services Program.

It is the decision of the State Hearing Officer to **uphold** the Department's action in denying your application for benefits and services through the Medicaid Aged and Disabled, Title XIX (HCB), Waiver Services Program.

Sincerely,

Thomas E. Arnett  
State Hearing Officer  
Member, State Board of Review

Pc: Erika H. Young, Chairman, Board of Review  
[REDACTED] Esq.  
Lori Williams, ESW, DHHR

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

\_\_\_\_\_,  
**Claimant,**

v.

**Action Number: 08-BOR-1509**

**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 August 15, 2008 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 July 29, 2008 on a timely appeal filed June 5, 2008.

**II. PROGRAM PURPOSE:**

The Program entitled Medicaid Title XIX Waiver (HCB) 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 daughter / POA  
\_\_\_\_\_  
Esq.  
Lori Williams, ESW, DHHR

Presiding at the Hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

**IV. QUESTIONS TO BE DECIDED:**

The question to be decided is whether the Department was correct in denying the Claimant's application for benefits and services through the Aged/Disabled Waiver (HCB) Program based on excessive income.

**V. APPLICABLE POLICY:**

West Virginia Income Maintenance Manual, Chapter 17.24 & Chapter 10, Appendix A.

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

**Department's Exhibits:**

- Exhibit 1 Hearing Summary
- Exhibit 2 Notice of Decision dated 6/3/08
- Exhibit 3 Information from VA Website regarding Aid and Attendance (A&A)
- Exhibit 4 WVIMM Chapter 10.3 (income)
- Exhibit 5 Page 9 of the signed application - with calculation of Aid and Attendance provided by \_\_\_\_\_, VSCM
- Exhibit 6 Rapids computer system "Case Comments" including dates 5/8/08 through 7/9/08

**Claimant's Exhibits:**

- Exhibit A US Department of Veterans Affairs – Improved Disability Benefits Pension Rate Table – Effective 12/1/07.

**VII. FINDINGS OF FACT:**

- 1) On May 2, 2008, the Claimant's daughter / POA, \_\_\_\_\_, completed an application on behalf of the Claimant for benefits and services through the Medicaid Aged and Disabled Waiver Services Program.

- 2) On or about June 3, 2008, the Claimant was notified via a Notice of Decision (Exhibit 2) that his application for benefits and services through the Aged & Disabled Waiver Services Program, hereinafter ADW, was denied. This notice states, in pertinent part:

Action: Your 5/2/08 application for Home and Community Based Wavier Medicaid has been denied.

Reason: Income is more than the gross income limit for you to receive benefits.

You did not turn in all requested information.

- 3) According to the calculations found in Exhibit 6, the Claimant's gross monthly income is as follows:

\$383.17 – Pension PEIA

\$780.40 - VA Pension (total amount of VA benefit is \$1,554, however \$774 was reported by the VA as Aid & Attendance which does not count as a financial resource).

1049.40 - Social Security

2212.97 - Countable monthly income

The Claimant is eligible for a \$20 disregard. **Total countable monthly income is \$2,192.97**

- 4) The amount of the Claimant's gross monthly income is uncontested, however, the amount of the Claimant's Veterans pension (\$1554 monthly) that should be counted toward eligibility is in dispute. The Claimant contends that his pension is received in one check as an Aid and Attendance (A & A) benefit. Furthermore, the Claimant contends that the evidence submitted by the Department to explain the breakdown does not meet verification standards typically required by the Department.
- 5) The Department contends that they rely on the Department of Veteran Affairs to provide a breakdown of the amount of each benefit payment. The Department's representative submitted Exhibit 5 into evidence and purported that the hand-written calculations were provided by a VA representative in the Huntington, WV Office and that this information was confirmed by telephone conversation. The Department reported that there is currently no other way to distinguish the VA benefit amounts.
- 6) Exhibit 3 states that Aid and Attendance (A & A) is a benefit paid in addition to monthly pension. This benefit may not be paid without eligibility to pension. This indicates that both benefits are determined and awarded separately. In addition, Exhibit 4 further indicates that A&A benefits are paid separately and states that any portion of the VA benefit which is paid as an Aid and Attendance allowance is excluded.
- 7) The West Virginia Income Maintenance Manual (WVIMM), Chapter 17.24 provides income guidelines for the Home and Community Based Waiver Program states that income must be equal to or less than 300% of the SSI payment.

- 8) West Virginia Income Maintenance Manual, Chapter 10, Appendix A reveals that 300% of the maximum SSI payment for a single individual is determined by multiplying the SSI amount (\$637) x 3 = \$1911. The maximum gross monthly non-excluded income cannot exceed \$1911.
- 9) The West Virginia Income Maintenance Manual, Chapter 4.1,A states that the primary responsibility for providing verification rests with the client. 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.
- 10) Policy found in the West Virginia Income Maintenance Manual, Chapter 1.2, E. states that it is the client's responsibility to provide information about his circumstances so the worker is able to make a correct decision about his eligibility. When the client is not able to provide the required verification, the worker must assist him.
- 11) Chapter 4.1,B of the West Virginia Income Maintenance Manual states that the Worker must accept any reasonable documentary evidence as verification and must not require a specific kind or source of verification, if the client's verification is reasonable. Verification may be submitted in person, by mail, fax or electronically.

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

- 1) In order to be financially eligible to receive benefits and services through the Aged & Disabled Waiver Services Program, the applicant's monthly gross non-excluded income must be equal to or less than 300% of the maximum SSI payment (AG of 1 \$1911).
- 2) While the Claimant questioned the method of verification relied upon by the Department, policy stipulates that it is the client's responsibility to provide verification when possible and that the Department must assist when the client is unable. While the method used to secure verification of the A&A amount from the Department of Veterans Affairs may not be typical, policy indicates that the worker must accept any reasonable documentary evidence and it can be submitted by fax.
- 3) The Claimant's Aid and Attendance portion of his VA benefit was verified and excluded in accordance with the regulations.
- 4) The Claimant's gross monthly non-excluded income of \$2,212.97 (less the \$20 disregard) clearly exceeds the maximum allowable limit for a one person AG (\$1911). Based on the evidence, the Claimant is not financially eligible to participate in the Medicaid Aged & Disabled Waiver Services Program.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the action of the Department in denying your application for benefits and services through 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 15<sup>th</sup> Day of August, 2008.**

---

**Thomas E. Arnett  
State Hearing Officer**