



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
227 Third St.
Elkins, WV 26241

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

February 10, 2006

_____ for _____

Dear Mrs. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 10, 2006. Your hearing request was based on the Department of Health and Human Resources' calculation of your Community Spouse Maintenance Allowance (CSMA).

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 Medicaid Long-Term Care Program is based on current policy and regulations. Some of these regulations state as follows: When the institutionalized individual has a spouse living in the community, a portion of his income may be deducted for the support of the spouse at home. To determine the CSMA, the income of the community spouse is subtracted from a Spousal Maintenance Standard (SMS). (West Virginia Income Maintenance Manual Chapter 17.9)

Information presented during your hearing revealed that the Agency accurately calculated the maintenance allowance you receive in conjunction with your husband's Long-Term Care benefits.

It is the decision of the State Hearing Officer to **uphold** the Department's determination of your Community Spouse Maintenance Allowance.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Rita Hayner, Economic Services Supervisor, DHHR

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

_____ for _____,

Claimant,

v.

Action Number: 05-BOR-6953

**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 February 10, 2006 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 January 10, 2006 on a timely appeal filed November 3, 2005. It reconvened telephonically on February 8, 2006.

II. PROGRAM PURPOSE:

The program entitled Long-Term Care is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

Long-Term Care is a medical service which is covered by the State's Medicaid Program. Payment for care is made to nursing homes which meet Title XIX (Medicaid) standards for the care provided to eligible recipients. In order to qualify for Nursing Home Care, an individual must meet financial and medical eligibility criteria.

III. PARTICIPANTS:

January 10, 2006

_____, Claimant's wife

Rita Hayner, ESS, DHHR (participating telephonically)

February 8, 2006 (All parties participating telephonically)
_____, Claimant's wife
Gary Smith, Economic Service Worker

Presiding at the hearing on both dates was Pamela L. Hinzman, 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 determination of the Community Spouse Maintenance Allowance in conjunction with the Claimant's Long-Term Care benefits.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Chapter 17.9
WVDHHR Common Chapters Manual Appendix E

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Nursing facility patient liability information
- D-2 Copies of Rapids income screens

Claimant's Exhibits

- C-1 Information concerning monthly expenses

VII. FINDINGS OF FACT:

- 1) The Claimant was approved for Long-Term Care coverage in August 2005.
- 2) The Department completed post-eligibility calculations to determine the Community Spouse Maintenance Allowance as \$267.72. Mr. and Mrs. _____ had gross, non-excluded income of \$4,216.05 and \$1,336.28, respectively. Mrs. _____ did not dispute the recorded income.
- 3) The Agency calculated the Community Spouse Maintenance Allowance as follows:
$$\begin{aligned} & \$1,604 \text{ (150\% of the Federal Poverty Level for two persons or minimum} \\ & \text{Spousal Maintenance Standard) minus } \$1336.28 \text{ (Mrs. } ______ \text{'s income) =} \\ & \$267.72 \text{ (Community Spouse Maintenance Allowance).} \end{aligned}$$
- 4) Mrs. _____ testified that she believes guidelines should be changed so that she can keep more of her husband's income to help meet living expenses. Her shelter costs include homeowner's insurance of \$54 per month and property taxes averaging \$9 per

month. In addition, her utilities include: natural gas budget- \$165 per month; electric- \$95 per month; combined water/sewer/garbage- \$81 per month; telephone- \$102 per month; television cable- \$62.75 per month. Mrs. _____'s supplemental health insurance was \$153.40 per month at the time of the Long-Term Care application and her husband's supplemental insurance was \$135.14 per month. (Those expenses have since increased). She also pays automobile insurance of \$63 per month, automobile taxes averaging \$9 per month and life insurance of \$45 per month. The Medicare premium deducted from her Social Security income is \$78.20. These expenses total \$1,052.49. Mrs. _____ testified that she also has travel expenses to Parkersburg to visit her husband in the long-term care facility.

5) West Virginia Income Maintenance Policy Chapter 17.9 D states:

When the institutionalized individual has a spouse living in the community, a portion of his income may be deducted for the support of the spouse at home. To determine the CSMA, the income of the community spouse is subtracted from a Spousal Maintenance Standard (SMS) which is either:

- The minimum SMS. This is 150% of the monthly FPL for 2 persons; or
- The minimum SMS, increased by excess shelter/utility expenses, but not exceeding the maximum SMS.

See Chapter 10, Appendix A for the minimum and maximum Spousal Maintenance Standard amounts.

The remainder is the amount of the institutionalized spouse's income which can be used to meet his community spouse's needs. The determined amount must actually be paid to the community spouse for the deduction to be applied. If the client contributes less than the determined amount, only the amount actually contributed to the community spouse is deducted. If he has been ordered by a court or a Hearings Officer to contribute more to his spouse, the higher amount is deducted.

6) Policy in Chapter 17.9 D provides information concerning calculations used in determining the amount of the CSMA.

The CSMA is determined by adding the community spouse's actual shelter costs to the amount of the current Food Stamp SUA, which is listed as \$272 in Chapter 10, Appendix B. The shelter cost must be from the home the institutionalized spouse and the community spouse shared prior to institutionalization, and in which the community spouse continues to reside. It must have been the client's principal place of residence. Shelter costs include rent or mortgage payments, interest, principal, taxes, insurance and required maintenance charges for a condominium or cooperative.

If total shelter and utility costs exceed 30% (\$481.20) of the minimum SMS (\$1,604), the \$481.20 is deducted from these shelter/utility expenses. Any remainder is added to the minimum SMS. (The amount cannot exceed the maximum SMS, which is \$2,489 according to Chapter 10, Appendix A.)

The community spouse's gross non-excluded income is then subtracted from either the minimum SMS (\$1,604) or, if applicable, the minimum SMS with excess shelter/utility costs as determined above. This amount is subtracted from the income of the institutionalized spouse to meet the needs of the community spouse.

- 7) WVDHHR Common Chapters Manual, Appendix E states:

If it is established that the community spouse needs income above levels otherwise provided by the minimum monthly maintenance needs allowance due to exceptional circumstances resulting in significant financial duress, there shall be substituted an amount adequate to provide such additional income as necessary.

VIII. CONCLUSIONS OF LAW:

- 1) Policy is clear that the Department must complete calculations to determine the Community Spouse Maintenance Allowance when an institutionalized individual has a spouse living in the community.
- 2) Based on Mrs. _____'s monthly income of \$1336.28, the Department accurately calculated the Community Spouse Maintenance Allowance as \$267.72 per month based on policy found in West Virginia Income Maintenance Manual Chapter 17.9. The calculations are as follows:

Step 1: \$61 (Claimant's monthly shelter cost) + \$272 (utility expenses-current Food Stamp Standard Utility Allowance) = \$333

Step 2: Compare total shelter/utility costs (\$333) to 30% of minimum Spousal Maintenance Standard (\$1,604 x 30% = \$481.20) Shelter/utility costs (\$333) do not exceed 30% of minimum Spousal Maintenance Standard (\$481.20).

Step 3: No remainder from Step 2 is added to the minimum Spousal Maintenance Standard of \$1,604 since shelter/utility costs do not exceed 30% of the minimum Spousal Maintenance Standard.

Step 4: Mrs. _____'s gross, non-excluded income is \$1,336.28.

Step 5: \$1,604 (minimum Spousal Maintenance Standard) - \$1,336.28
(Mrs. _____'s income) = \$267.72 total Community Spouse
Maintenance Allowance.

- 3) 3) The Department's calculation of a \$267.72 Community Spouse Maintenance Allowance is correct based on information presented during the hearing.
- 4) Common Chapters Manual, Appendix E stipulates that the Hearing Officer may grant a greater monthly maintenance allowance due to exceptional circumstances resulting in significant financial duress. No evidence was presented during the hearing to demonstrate that exceptional circumstances result in Mrs. _____ incurring significant financial duress. Mrs. _____ receives \$1,604 per month, which includes her gross unearned income and the Community Spouse Maintenance Allowance. The expenses she addressed during the hearing total \$1,052.49. Therefore, the amount of the Community Spouse Maintenance Allowance, as determined by the Department, cannot be altered because significant financial duress has not been demonstrated.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency's calculation of the Community Spouse Maintenance Allowance.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 10th Day of February, 2006.

**Pamela L. Hinzman
State Hearing Officer**