



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

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

June 23, 2006

_____ for

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 18, 2006. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for the Medicaid, Long-Term Care 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.

Medicaid, Long-Term Care services are provided to eligible Medicaid individuals who reside in a nursing care or ICF/MR facility. In order to participate in this program, applicants are required to meet medical and financial criteria. The ES-6, Verification Checklist, 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 an ES-6 is used, the Worker must list all required verifications known at the time unless information received after the RAPIDS verification notice or additional verification is needed. The ES-6 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. If the client fails to adhere to the requirements detailed on the ES-6, the application is denied or the deduction disallowed, as appropriate. (West Virginia Income Maintenance Manual, Chapter 4.1 & 6.2)

Information submitted at the hearing reveals that the Department incorrectly denied your application based on failure to verify requested information. The evidence reveals that the Department failed to put the verification request in writing on a Verification Checklist (ES-6) or specify when the information needed to be provided.

It is the decision of the State Hearing Officer to **reverse** the Agency's action in denying your November 15, 2005 application based on a failure to verify requested information.

Sincerely,

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

cc: Chairman, Board of Review
Jennifer Samples, ESW, DHHR

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

____,

Claimant,

vs.

Action Number 06-BOR-1171

West Virginia Department of Health & Human Resources,

Respondent.

SUMMARY AND DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on June 23, 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 originally convened on May 18, 2006 on a timely appeal filed February 16, 2006.

II. PROGRAM PURPOSE:

The Program entitled **Medicaid Long-Term Care** (nursing facility services) is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

Nursing Home 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 standards for the care provided to eligible recipients. In order to qualify for Nursing Home Care, an individual must meet both financial and medical eligibility criteria.

III. PARTICIPANTS:

_____, Counsel for the Claimant
_____, Claimant's son
Jennifer Samples, ESW, DHHR Representative
Kortni Stewart, ESW, DHHR (observing)

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

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Department was correct in its action to deny the Claimant's application for participation in the Medicaid, Long-Term Care Program.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 4.1, 6.2 & 11.3

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits

- D-1 DFA-FH-1, WVDHHR Pre-Hearing Conference and/or Fair Hearing Request Form dated 2/16/06.
- D-2 Correspondence from _____ dated 2/16/06
- D-3 IG-BR-29, Hearing/Grievance Record Information
- D-4 IG-BR-40, Hearing Scheduling Notice dated 3/3/06
- D-5 ____ Overview (as of October 31, 2005) Snapshot Date Assets
- D-6 Verification Checklist dated 11/15/05
- D-7 Correspondence from _____ dated 2/16/06 (Duplicate of D-2)
- D-8 Notice of Decision dated 1/26/06

VII. FINDINGS OF FACT:

- 1) On or about November 15, 2005, ____ completed an application for Medicaid, Long-Term Care (nursing facility) services for his father, ____, hereinafter Claimant.
- 2) The Department issued ____ an ES-6 Verification Checklist on the date of application (Exhibit D-6) and requested that the listed verifications be provided to the Department in order to establish eligibility for Nursing Home Care Coverage. This notice goes on to say – If this information is not made available to this office by 12/15/05 your eligibility for benefits and/or deductions cannot be established or continued. It should be noted that Exhibit D-6 does not include a request to verify Certificates of Deposit.
- 3) Due to a shortage of staff and heavy caseloads, the Department indicated that work did not resume on the case until January 3, 2006. At that time it was discovered that the date of redemption and the amount received for Certificates of Deposit #____ and #____ were not verified. The Worker contacted ____ via telephone on January 3, 2006 and requested verification of the aforementioned Certificates of Deposit.
- 4) On or about January 26, 2006, the Claimant was notified via a Notice of Decision that his November 15, 2005 application for Nursing Home Care Coverage was denied. The reason provided states – The amount of assets is more than is allowed for this benefit. You did not turn in all requested information.

- 5) Counsel for the Claimant contends that in accordance with the West Virginia Income Maintenance Manual and fair due process, the Department must notify the Claimant/applicant in writing of any additional verification requirements. Policy requires that this request be specified on a Verification Checklist (ES-6) that includes a date by which it must be provided. Counsel asserts that an ES-6 was not issued to the Claimant specifying what needed to be verified or when it was to be provided and that the application would be denied if the information was not timely provided.
- 6) The Department presented Exhibit D-2/D-7 to confirm that the Claimant's representatives were aware of the need to verify additional information, however, this correspondence affirms Counsel's claim that it was unclear exactly what information was needed. Mr. _____ states – "_____ was not sure exactly what you wanted, so I told him that I would call you and find out."
- 7) West Virginia Income Maintenance Manual, Chapter 11.3 provides a list of the Maximum Allowable Assets for the Medicaid Program. This section of policy was included in Exhibit D-8 and affirms the Worker's need to verify the Certificates of Deposit.
- 8) West Virginia Income Maintenance Manual, Chapter 4.1.A (CLIENT RESPONSIBILITY) states – 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.
- 9) West Virginia Income Maintenance Manual, Chapter 4.1.B (WORKER RESPONSIBILITIES) states - At application, redetermination and anytime an ES-6 is used, the Worker must list all required verification known at the time. The client must not be required to verify a few items at a time, unless information received after the RAPIDS verification notice or ES-6 is issued calls for additional verification.
- 10) West Virginia Income Maintenance Manual, Chapter 6.2.A provides policy regarding NOTIFICATION OF ACTION TAKEN ON AN APPLICATION. This section of policy includes some of the follow pertinent information:

The ES-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 ES-6 is mailed at the time of application, the client must receive the ES-6 within five (5) working days of the date of application.

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

- 11) The Department cited West Virginia Income Maintenance Manual, Chapter 1.22.H, (Exhibit D-6) which states additional information is due 30 days from the date of application, however, Chapter 1.22.J. (AGENCY DELAYS) states that if the Department failed to request necessary verification, the Worker must immediately send a verification checklist or form ES-6 and ES-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 Department acted in a timely manner.

VIII. CONCLUSIONS OF LAW:

- 1) In order to qualify for benefits and services through the Medicaid, Long-Term Care Program, policy requires eligible individuals to meet medical and financial eligibility criteria.
- 2) In order for the Department to determine if an individual meets the eligibility criteria, the Department uses an ES-6, Verification Checklist, to secure information and verify that the eligibility criteria is met. The ES-6 can be issued at the time of application or at anytime of the eligibility determination process.
- 3) In this case, an ES-6 was issued on the date of application (November 15, 2005) requesting verification of several items so that the Claimant's eligibility could be determined. All of the information requested on the November 15, 2005 ES-6 was provided, however, when the Department resumed work on the case in January 2006, the Worker realized that additional verifications were required. In accordance with existing policy, the Department should have issued an additional ES-6 Verification Checklist that specified what verifications were required and the date by which they must be provided. While Exhibit D-2/D-7 (Correspondence from _____ dated February 16, 2006) confirms that the Claimant's representatives were aware of the verbal request for additional information, this evidence also confirms the confusion resulting from the verbal request.

IX. DECISION:

After reviewing information presented during the hearing and the applicable policy and regulations, it is the ruling of the State Hearing Officer to **reverse** the Agency's action in denying the Claimant's November 15, 2005 application for Medicaid, Long-Term Care Program, based on a failure to verify requested information.

X. RIGHT OF APPEAL

See Attachment.

XI. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

ENTERED this 23rd day of June 2006,

**Thomas E. Arnett
State Hearing Examiner**