



State of West Virginia  
**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

Joe Manchin III  
Governor

Office of Inspector General  
Board of Review  
PO Box 6165  
Wheeling WV 26003

Martha Yeager Walker  
Secretary

September 13, 2007

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

Dear Mrs. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 6, 2007. Your hearing request was based on the Department of Health and Human Resources denial of a non-reimbursable expense deduction and/or an increase to the personal needs allowance for meal feeding in determining Mrs. \_\_\_\_\_ contribution towards the cost of her care in the nursing facility.

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. Individuals eligible for coverage under this group must qualify medically and financially. In determining the client's contribution toward his cost of nursing facility care, the Worker must apply only specified income deductions. This is the post-eligibility process. The remainder, after all allowable deductions, is the resource amount, which is at least part of the amount the client must contribute toward his cost of care. (West Virginia Income Maintenance Manual § 17.9 D)

The information which was submitted at your hearing revealed that the agency utilized all allowable deductions and disregards in computation of the nursing care resource.

It is the decision of the State Hearing Officer to **uphold** the Agency's denial of the meal feeding expense as a non-reimbursable medical expense and also to deny an increase in the personal needs allowance to pay this expense.

Sincerely,

Melissa Hastings  
State Hearing Examiner  
Member, State Board of Review

cc: Chairman, Board of Review  
Heater, DHHR

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

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

vs.

Action Number 07- BOR- 1130

West Virginia Department of Health & Human Resources,  
Respondent.

DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on September 6, 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 6, 2007 on a timely appeal filed April 17, 2007. Note: This hearing was scheduled previously on May 24, 2007; June 14, 2007 and August 10, 2007. Continuances were granted on all previously scheduled dates at either the request of the agency or the claimant.

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:

\_\_\_\_\_, claimant's son and representative

\_\_\_\_\_, claimant's daughter-in-law

Lisa Heater, WVDHHR Hearing Representative

Presiding at the hearing was Melissa Hastings, 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 agency correctly denied the claimant a non-reimbursable medical expense deduction and/or an increase in the personal needs allowance to pay for meal feeding expenses.

**V. APPLICABLE POLICY:**

West Virginia Income Maintenance Manual § 17.15 and 17.9

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

Department's Exhibits:

- D -1 Notification letter dated January 16, 2007
- D -2 Statement from [REDACTED] MD dated June 14, 2006
- D -3 Letter from Melva Farris, Economic Service Worker dated October 25, 2006
- D-4 Cancelled Checks June 2006 through November 2006

Claimant's Exhibits

None

**VII. FINDINGS OF FACT:**

- 1). Claimant's family discussed expenses the family was incurring for paying someone to feed claimant at the nursing home. Claimant refuses to eat. Staff at the nursing facility does not take the time to work with her to enable her to eat. Family paid an individual to come in twice a day to feed claimant. Each feeding takes approximately 1 ½ hour. Testimony from claimant's representative indicates that the Economic Service Worker advised them a statement that these feedings were necessary would be required from claimant's physician before consideration could be given to allowing any type of deduction for this expense.
- 2). A note (D2) was received by the department dated June 14, 2006 from [REDACTED] MD indicating the need for someone to come and feed claimant twice per day.
- 3) On October 25, 2006 the Economic Service Worker sent a letter (D3) to the claimant's representative advising

In order to give you a deduction for the payments you have made to have someone assist in feeding your mother, I need proof of the expenditures and what the expense was for. The hand-written list I received from you on

10/12 would not pass an audit if our quality assurance department pulled your Mom's file.

4) Claimant's representative responded to the request by providing copies of checks (D4) from June 2006 through November 2006 made out to \_\_\_\_\_.

5) Upon receipt of the cancelled checks, testimony from the agency's representative indicates that an eligibility evaluation was made to determine if the meal feeding expense could be allowed as either a non-reimbursable medical expense or for an increase in the personal needs allowance. A determination was made that this expense was not allowable and the claimant's representative was notified on November 16, 2007 of the denial (D1).

6) West Virginia Income Maintenance Manual § 17.9 D states in part: In determining the client's contribution toward his cost of nursing facility care, the Worker must apply only the income deductions listed below. This is the post-eligibility process. The remainder, after all allowable deductions, is the resource amount, which is at least part of the amount the client must contribute toward his cost of care.

Only the following may be deducted from the client's gross, non-excluded income in the post-eligibility process:

a. Personal Needs Allowance

This amount is subtracted from income to cover the cost of clothing and other personal needs of the nursing facility resident. The monthly amount deducted is \$50.

b. Community Spouse Maintenance Allowance (CSMA)

c. Family Maintenance Allowance (FMA)

d. Outside Living Expenses (OLE)

e. Non-Reimbursable Medical Expenses

When the client is Medicaid eligible certain medical expenses which are not reimbursable may be deducted in the post-eligibility process. Incurred medical expenses, including nursing facility costs (except for nursing facility costs for clients with a community spouse), for which the client will not be reimbursed, are subtracted from his remaining income. Non-reimbursable means the expense will not be or has not been paid to the provider or reimbursed to the client by any third-party payer, such as, but not limited to, Medicare, Medicaid, private insurance or another individual. The incurred expense must be the responsibility of the client.

(3) The following expenses cannot be used as a deduction for non-reimbursable medical.

- **Medical expenses incurred during a period of Medicaid eligibility which are covered by Medicaid**

7) West Virginia Income Maintenance Manual § 17.15 states in part: Each nursing care patient is entitled to an allowance to meet his personal expenses.

B. Charges Not Permitted

Nursing facilities may not charge a resident for the following items and services

Required dietary services

C. Charges Permitted

The following lists examples of items and services that the nursing facility may charge to the resident's personal need allowance.

Non-covered special care services, such as privately hired nurses or aides.

## VIII. CONCLUSIONS OF LAW:

- 1) WVDHHR policy indicates that receipt of a deduction against a nursing home resident's income for non-reimbursable medical expenses cannot be permitted if the expense involved occurred during a time period in which the resident was a Medicaid recipient and the expense was for an item covered by Medicaid.
- 2) WVDHHR policy indicates that there is an allowable deduction against a nursing home resident's income for personal needs. The allowable amount is \$50. There is no exception given for any higher deduction.
- 3) WVDHHR policy indicates that there are specific charges that are not permitted to be charged by the nursing facility against a resident's personal needs allowance. One of them is required dietary services.
- 4) WVDHHR policy indicates that there are specific charges that are permitted to be charged by the nursing facility against a resident's personal needs allowance. One of them is non-covered special care services, such as privately hired nurse or aides.

## IX. DECISION:

After reviewing the information presented during the hearing and the applicable policy and regulations, it is the ruling of the State Hearing Officer to **uphold** the Department's decision to deny a non-reimbursable deduction for meal feeding expenses to the claimant's income when determining the claimant's resource amount. In addition, the Department's decision to deny an increase in the personal needs allowance is also **upheld**. Policy is clear however that the claimant's monthly personal needs allowance can be utilized to assist in paying a private aide to assist the claimant.

## X. RIGHT OF APPEAL

See Attachment.

## XI. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

ENTERED this 13<sup>th</sup> day of September 2007,

---

Melissa Hastings  
State Hearing Examiner

## **CLAIMANT'S RECOURSE TO ADMINISTRATIVE HEARING DECISION**

**For**

**Public Assistance Hearings,  
Administrative Disqualification Hearings, and  
Child Support Enforcement Hearings**

### **A. CIRCUIT COURT**

Upon a decision of a State Hearing Officer, the claimant will be advised he may bring a petition in the Circuit Court of Kanawha County within four months (4) from the date of the hearing decision.

The Court may grant an appeal and may determine anew all questions submitted to it on appeal from the decision or determination of the State Hearing Officer. In such appeals a certified copy of the hearing determination or decision is admissible or may constitute prima facie evidence of the hearing determination or decision. Furthermore, the decision of the circuit Court may be appealed by the client or petitioner to the Supreme Court of Appeals of the State of West Virginia.

### **B. THE UNITED STATE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

If you believe you have been discriminated against because of race, color, national origin, age, sex or handicap, write immediately to the Secretary of the United States Department of Health and Human Services, Washington, D.C. 20201.

### **C. THE UNITED STATE DEPARTMENT OF AGRICULTURE**

If you believe you have been discriminated against because of race, color, national origin, age, sex or handicap, write immediately to the Secretary of the Department of Agriculture, Washington, D.C. 20250.

