



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

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

August 14, 2008

Dear Ms. _____:

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' determination that you are not eligible to receive a 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). Among the requirements listed to determine the amount of the CSMA is that the shelter costs must be from the home the institutionalized spouse and the community spouse shared prior to institutionalization, and in which the community spouse continues to live. (West Virginia Income Maintenance Manual Chapter 17.9)

Information presented at your hearing reveals that policy neither defines the term "community spouse" nor excludes a separated spouse from CSMA. Therefore, the calculations required to determine the amount of the CSMA must be completed without credit being given to the community spouse for shelter costs.

It is the decision of the State Hearing Officer to **reverse** the Department's determination that you are ineligible to receive Community Spouse Maintenance Allowance as a separated spouse.

Sincerely,

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

cc: 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-1510

**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 13, 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 an appeal filed May 20, 2008.

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:

_____, Claimant
_____, 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(s) to be decided is whether the Agency was correct in its determination that the Claimant is not eligible for Community Spouse Maintenance Allowance (a portion of her separated spouse's income) who is a current recipient of Medicaid Long-Term Care (nursing facility) Program benefits.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 17

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Hearing Summary
- D-2 WVIMM Chapter 17.6, 17.9, & 17.10
- D-3 Case Comments dated 1/17/08

Claimant's Exhibits

- A WVIMM 11.1
- B WVIMM 17.10
- C Food Stamp calculations
- D 42 U.S.C., Chapter 7 § 416 (Social Security)
- E Petition for Modification in the Family Court of Marion County, WV
- F WVIMM Chapter 17.9
- G WVIMM, Chapter 10, Appendix A

VII. FINDINGS OF FACT:

- 1) The Claimant and her spouse were legally separated by an Order in the Family Court of ██████ County, Civil Action No. 81-C-949 (date of entry unknown) in 1981 resulting in the Claimant being awarded spousal in the amount of \$150 per month. The Claimant and her spouse have not resided together since that time.
- 2) The Claimant's spouse, by his Guardian, West Virginia Department of Health and Human Resources', hereinafter Department, Adult Protective Services (APS) unit, was placed in a nursing facility with payment being subsidized through the Medicaid Long-Term Care Program.
- 3) At the request of the Department, the Claimant participated in an asset assessment for her spouse's eligibility but refused to apply for benefits on his behalf. Pursuant to Medicaid (Long-Term Care) policy found in the West Virginia Income Maintenance Manual, Chapter 17.6, notification of the client's eligibility determination was sent to the client's representative.

- 4) The Claimant, by counsel, contends that she is now entitled to some of her spouse's income through the Community Spousal Maintenance Allowance (CSMA) provision in the Medicaid Long-Term care policy beginning the month in which the appeal was filed - May 2008. She noted that the Department assessed her assets as a spouse (see Exhibit D-3) when determining eligibility for her husband and that a "community spouse" is not clearly defined by policy. The Claimant contends that if her assets would have been in excess of the maximum allowable amount, she would have been expected to use those assets to pay for his nursing home care. Accordingly, policy should be applied consistently and she should be eligible to receive the CSMA.
- 5) The Department contends that the Claimant is not eligible for the CSMA as she and her spouse were legally separated since 1981, they did not share a home prior to institutionalization and the Claimant does not reside in the community home. The Department also noted an example provided in policy (see WVIMM, Chapter 17.9, page 27) - Example: Married Individual Without Community Spouse, Medically Needy that provides a similar situation (spouses separated for ten years) and indicates the client is not eligible for the Family Maintenance Allowance (FMA) because he does not have a community spouse.
- 6) Counsel for the Claimant cited 42 U.S.C., Chapter 7 §416, definition of a wife relating to Social Security benefits. While research has not yielded a legally binding citation, this citing is not relevant to the CSMA provision for Medicaid Long-Term Care benefits.
- 7) 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.

The following steps are used to determine the amount of the CSMA {emphasis added}.

Step 1: Add together the actual shelter cost and the amount of the current Food Stamp Heating/Cooling Standard (HCS). See 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 live. 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.

Step 2: Compare the total of the costs in Step 1 to 30% of the minimum SMS. See Chapter 10, Appendix A. When the shelter/utility costs exceed 30% of the minimum SMS, subtract the 30% amount from the shelter/utility costs.

Step 3: Add the remainder from Step 2 to the minimum SMS. This amount, not to exceed the maximum SMS, is used in Step 5. See Chapter 10, Appendix A.

Step 4: Add together the community spouse's gross, nonexcluded earned and unearned income.

Step 5: Subtract the Step 4 amount from the amount determined in Step 3 and if there are any cents, round the resulting amount up. This is the amount subtracted from the income of the institutionalized spouse for the needs of his community spouse. If the Step 4 amount is equal to or greater than the Step 3 amount, no deduction is allowed.

NOTE: The amount used from Step 3 cannot exceed the maximum SMS.

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) The definition of a "community spouse" is not clearly defined in the Medicaid regulations. Although policy provides an example with a similar situation (spouses are separated and not living together when the client is institutionalized), this example addresses FMA only.

- 3) The Claimant, who is a separated spouse, is recognized by policy as a spouse when determining available assets, and therefore, part of the financial eligibility determination. The policy relied upon by the Department in its determination that the Claimant is ineligible for the CSMA is related only to the calculations required to establish the amount of the CSMA. (Although it should be noted that a determination could be made that there is insufficient income remaining for a CSMA payment).
- 4) Pursuant to the requirements of the West Virginia Income Maintenance Manual, the Claimant must be reviewed for eligibility of CSMA. This decision, however, cannot award an amount as the calculations are not available and were not part of the appeal. Therefore, the Department is directed to complete the calculations and will not consider shelter costs in determining the CSMA amount. The Claimant's CSMA will be effective May 2008 (From the month of the appeal) and shall be no less than the \$150 monthly spousal support amount ordered by the Marion County Family Court. Should the Claimant disagree with the CSMA calculations/amount, a new appeal would need to be filed to address that issue.
- 5) In the absence of policy that clearly defines a "community spouse" or excludes a separated spouse from access to the CSMA, the Department must complete calculations to determine the Community Spouse Maintenance Allowance when an institutionalized individual has a spouse living in the community.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Agency's determination that a separated spouse is ineligible for 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 14th Day of August, 2008.

**Thomas E. Arnett
State Hearing Officer**