



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
Post Office Box 1736
Romney, WV 26757**

**Joe Manchin III
Governor**

**Martha Yeager Walker
Secretary**

October 15, 2008

c/o _____

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 25, 2008. Your hearing request was based on the Department of Health and Human Resources' decision to increase the resource amount, which you must pay for your Nursing Facility care.

In arriving at a decision, the State Hearings 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 Long Term Care program is based on current policy and regulations. Some of these regulations state as follows: If the client's gross, non-excluded income exceeds \$1,911, eligibility is determined by calculations of a spenddown amount.

The information, which was submitted at your hearing, revealed that your income did exceed \$1911, and the Agency accurately calculated your spenddown amount as your contribution amount for Nursing Facility care.

It is the decision of the State Hearings Officer to uphold the action of the Department to increase the contribution amount for your care.

Sincerely,

Sharon K. Yoho
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Paul Denchy, DHHR

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

by _____,

Claimant,

v.

Action Number: 08-BOR-1992

**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 October 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 September 25, 2008 on a timely appeal, filed August 12, 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.

It 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's Power of Attorney
Paul Dency, Income Maintenance Supervisor

Presiding at the Hearing was Sharon K. Yoho, 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 their calculations of the claimant's contribution resource amount and the withholding of this amount from the payment issued to the Nursing Home.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, chapter § 17.9

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 Notification letter dated May 28, 2008

VII. FINDINGS OF FACT:

- 1) The Claimant was an active recipient of Medicaid assisted nursing facility care. A review of the Claimant's case detected an increase in income. A new resource amount was calculated in the Claimant's case. A notice dated May 28, 2008 notified the Claimant's power of attorney (POA) and the nursing facility. The POA requested a hearing on August 12, 2008.
- 2) The Claimant's income comes from a monthly Federal Pension of \$1900. and Social Security of \$212.40 for a total of \$2112.40. From this gross monthly income, Medicare of \$85.40, private insurance premium of \$134.66 and WV tax of \$10. is deducted. This results in available income of \$1882.34. The Department has calculated a resource amount of \$1892.40, which must be paid to the nursing facility monthly. The amount was derived from the calculations of a spenddown amount.
- 3) The Department applied the non-excluded gross income of \$2112.40 to 300% of the SSI payment for one person, which is \$1911. and determined that the gross income exceeded this amount. The Department then proceeded to calculate what the Claimant's spenddown amount would be. A \$20. income disregard was subtracted from the gross income and \$200. Minimum Income Level (MNIL) for one person was subtracted to produce a monthly spenddown level of \$1892.40, which becomes the resource amount.
- 4) The Claimant's POA objects to the Department's requirement that this nursing home patient pay in excess of income readily available to her. This Claimant's premium to Blue Cross Blue Shield (BCBS) medical insurance, which does not pay for nursing facility care is hindering her ability to pay for the care that she needs.

- 5) The POA is not the Claimant's legal guardian, nor does she wish to be named her guardian. She is not a family member and the burden, which she has taken on as POA, is becoming increasingly difficult. The Claimant is not mentally able to complete the process necessary to discontinue the BCBS and only a legal guardian can do this. The Department is planning to offer the Claimant's POA some guidance in finding a solution to this problem.
- 6) The Agency calculated the Claimant's resource contribution amount as follows:
- | | |
|--|---------------------------|
| Client's gross monthly non-excluded income | \$2112.40. |
| | -20.00 SSI Inc. disregard |
| | -200.00 MNIL |
| Client's spenddown and resource amount | =1,892.40 |
- 7) West Virginia Income Maintenance Policy § 17.9 C:
Financial Eligibility for nursing facility services is determined in any of the following four ways, in the following priority order:
1. QMB Eligible Recipient
 2. Client is a Medicaid Recipient
 3. Gross Income Test (comparison to 300% of SSI payment)
 4. SSI-Related Medicaid Test: If the client is not eligible under items 1, 2, or 3 above, his eligibility as an SSI-Related Medicaid client must be explored another way to receive financial assistance for the cost of nursing facility services.

All policies and procedures in effect for other SSI-Related cases apply to these cases, including the determination of a spenddown amount, if applicable. When the monthly Medicaid rate for the facility in which the client resides equals or exceeds his monthly spenddown amount, the spenddown is assumed to be met and Medicaid eligibility is established.

VIII. CONCLUSIONS OF LAW:

- 1) Policy is clear that the Department has the obligation to do calculations to determine if the client would have a resource obligation to pay for her Nursing Home care. The Department followed policy as outlined in 17.9 C. When it was determined that the Claimant did not qualify under Qualified Medicaid Benefit Eligibility, Medicaid Recipient Eligibility or under the Gross Income Test, the Department determined the Spenddown amount and therefore the resource amount.
- 2) Item 4. in Policy 17.9 C provides that eligibility is established for the amount that exceeds the monthly spenddown amount. This clearly shows that the spenddown amount is the amount which the client is required to pay monthly.

IX. DECISION:

It is hereby ruled that the Department was correct in their actions to calculate the Nursing Home resource amount of \$1,892.40. The action of the Department is **upheld**.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 15th Day of October 2008.

Sharon K. Yoho
State Hearing Officer