



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
9083 Middletown Mall
White Hall, WV 26554**

**Joe Manchin III
Governor**

**Patsy A. Hardy, FACHE, MSN, MBA
Cabinet Secretary**

January 6, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 20, 2009. 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 that 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). 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. (West Virginia Income Maintenance Manual Chapter 17.9 and WVDHHR Common Chapters Manual 71.21.C)

Information presented at the hearing reveals that your exceptional circumstance has resulted in financial duress. As a result, you are eligible for a substituted monthly CSMA amount of \$747.

It is the decision of the State Hearing Officer to authorize a substituted Community Spouse Maintenance Allowance amount. The Claimant's CSMA will be increased to \$747 retroactively to November 1, 2009.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Lori Williams, WVDHHR

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

-----,

Claimant,

v.

Action Number: 09-BOR- 2142

**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 January 6, 2010 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 convened on November 20, 2009 on a timely appeal filed October 27, 2009.

II. PROGRAM PURPOSE:

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
-----, witness for the Claimant
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. QUESTION TO BE DECIDED:

The question to be decided is whether or not 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 and Chapter 10, Appendix A and Appendix B

West Virginia DHHR Common Chapters Manual Section 710.21 C

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- Exhibit-1 Hearing Summary
- Exhibit-2 West Virginia Income Maintenance Manual, Chapter 17.9 and Chapter 10, Appendix A and B
- Exhibit-3 Screen Print [from RAPIDS] of EIRA - Nursing Facility Patient Liability Determination
- Exhibit-4 Screen Print [from Rapids] of EISI - Spousal Impoverishment Income Allocation Budget
- Exhibit-5 Case Comments dated October 27, 2009
- Exhibit-6 -----'s expenses (17 pages)

VII. FINDINGS OF FACT:

- 1) The Claimant's husband was admitted to [REDACTED] Center, a nursing home facility, on April 17, 2009. The Claimant has been deemed eligible for Community Spouse Maintenance Allowance, hereinafter CSMA, pursuant to regulatory requirements found in the WV Income Maintenance Manual, Chapter 17.
- 2) Testimony presented by the Department's representative, Lori Williams, reveals that the CSMA was calculated in accordance with the existing policy and the determination was made that the Claimant was eligible for \$379.60 per month.
- 3) The Claimant contends that the calculations used in determining the CSMA does not take into account several other expenses incurred by her on a monthly basis. Specifically, her shelter/utility costs exceed the amount credited and her monthly prescription costs are in excess of \$360. The Claimant testified that she has not been purchasing three different medications on a regular basis (Vytorin, Actos and Insulin) because they cost her in excess of \$200 per month. She further testified that she has been reusing needles three and four times to save money. Because she has not been buying these medications, she is unable to provide verification of the costs. According to the calculations provided in Exhibit-6, the Claimant's monthly expenses are \$1,474.50. Claimant's current income is \$1,442.40 + 379.60 (CSMA) = \$1822.

This leaves \$347.50 remaining monthly, however, this calculation does not include unverified medication expenses, groceries, toiletries, gasoline or any other household expenses.

- 4) The Department’s representative acknowledged that the Claimant has additional expenses that are clearly not a luxury, and not credited in the income deduction provisions in policy. The Department’s representative noted that the Claimant pays taxes and insurance on her home and had to finance the installation of a French drain to fix recurring water damage on her foundation. While the Department noted that \$360 in monthly prescription expenses were claimed, only \$147 per month can be verified.

Shelter costs - \$89.93 (taxes and insurance)
 Actual monthly utility costs - \$476.78
 Actual monthly (verified) projected prescription costs - \$147.00
 Bank loan for French drain - \$200 per month (actual payment owed per testimony provided by Claimant)

- 5) Applying actual monthly costs to the existing calculation provisions in policy, the following CSMA calculations are both reasonable and rational - not a luxury. Not all of the expenses provided – car insurance, medical insurance, life insurance, and credit card debt – are credited:

Shelter cost-----	\$89.83
French drain (additional shelter cost) -----	\$200.00
Actual utilities -----	\$476.78
Prescription costs -----	<u>\$147.00</u>
	\$913.71

Expenses	\$913.71 (Step #1)
Less 30% of SMS	<u>\$546.60</u> (Step #2)
	\$367.11
Add SMS	<u>\$1,822.00</u>
	\$2,189.11 (Step #3)
Less CS Gross income	<u>\$1,442.40</u> (Step #4)
CSMA =	\$746.71 – Rounded up \$747.00 (Step #5)

- 6) West Virginia Income Maintenance Policy Chapter 17.9 D states, in pertinent part:

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 following steps are used to determine the amount of the CSMA:

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.

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, non-excluded 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.

- 7) West Virginia Income Maintenance Manual Chapter 10, Appendix A states that the Minimum SMS is \$1822, while the maximum SMS is \$2,739.
- 8) WVDHHR Common Chapters Manual Section 710.21 C 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 requires the Department to complete calculations and determine the CSMA when an institutionalized individual has a spouse living in the community.
- 2) The Department's initial CSMA calculation was determined to be \$379.60, however, the WV DHHR Common Chapters Manual allows for a provision wherein the Hearing Officer may grant a greater monthly maintenance allowance due to exceptional circumstances resulting in significant financial duress.
- 3) The fact that the Claimant has been unable to purchase needed medication and reusing needles clearly demonstrates significant financial duress. While the Claimant could not be credited for several of the monthly expenses verified, legitimate necessities credited support the discretionary provision in Common Chapters Manual and an increase in her monthly CSMA amount to \$747. The substituted CSMA amount is necessary for the Claimant to remain an independent community spouse. Because the Claimant's appeal was not filed until October 27, 2009, the CSMA increase will be applied retroactively to November 1, 2009 – the month the change would have been effective with current verified expenses.

IX. DECISION:

It is the decision of the State Hearing Officer to authorize a substituted Community Spouse Maintenance Allowance amount. The Claimant's CSMA will be increased to \$747 retroactively to November 1, 2009.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 6th Day of January, 2010.

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