



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General

Board of Review
P.O. Box 1736
Romney, WV 26757

Earl Ray Tomblin
Governor

Michael J. Lewis, M.D., Ph. D
Cabinet Secretary

March 9, 2011

-----for -----

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your mother's hearing held March 3, 2011. Your hearing request was based on an incorrect income amount used to determine your mother's Long-Term Care contribution amount.

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 (Nursing Facility) Services are based on current policy and regulations. Some of these regulations state that once Medicaid eligibility is established, the client's contribution toward the cost of care in the facility is determined in the post-eligibility process. Those medically needy individuals who have no spenddown meet the requirement of Medicaid eligibility. Individuals whose income exceeds 300% of the maximum SSI Payment must meet a spenddown in order to qualify for Long-Term Care Medicaid. Because the amount of medical expenses used to meet the spenddown cannot be paid by Medicaid, the spenddown amount becomes part of the client's contribution toward the cost of care. (West Virginia Income Maintenance Manual, Chapter 17.9)

The information which was submitted at your hearing reveals that the Department correctly utilized gross monthly income to determine your mother's contribution toward the cost of nursing facility care.

It is the decision of the State Hearing Officer to Uphold the proposal of the Department to increase the amount of your mother's monthly financial contribution toward the cost of nursing facility care from \$1895.00 to \$2441.00.

Sincerely,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Dana Branson, ESW

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

-----,

Claimant,

v.

Action Number: 11-BOR-470

**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 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 March 3, 2011 on a timely appeal, filed January 14, 2011.

It should be noted here that the Claimant's benefits under the Long-Term Care program continue at the previous level of determination pending a decision from the State Hearing Officer.

II. PROGRAM PURPOSE:

The program entitled Long Term Care Medicaid (nursing facility services) 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 Attorney-In-Fact
-----, Claimant's daughter
Dana Branson, Economic Service Worker

Presiding at the hearing was Eric L. Phillips, State Hearing Officer and a member of the Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department was correct in its calculation of the Claimant's Long-Term Care contribution amount.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual § 17.9

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Notice of Decision dated February 7, 2011
- D-2 Notice of Contribution to the Cost of Care dated January 6, 2011
- D-3 Computer printout of case comments dated February 7, 2011
- D-4 Computer printout of contribution calculation
- D-5 Notice of Annuity Adjustment
- D-6 West Virginia Income Maintenance Manual Chapter 17.9

Claimants' Exhibits:

- C-1 Notice of Contribution to the Cost of Care dated February 4, 2009
- C-2 Letter from Office of Customer Services dated November 12, 2010
- C-3 Notice of Annuity Adjustment

VII. FINDINGS OF FACT:

- 1) On January 6, 2011, the Claimant, along with her nursing care facility, was issued Exhibit D-2, Notice of Contribution to the Cost of Care. This notice is a corrected notice and documents that the Claimant's contribution toward the cost of care through the Medicaid Long-Term Care program was increasing from \$1895.00 toward \$2441.00 effective January 2011.
- 2) The Claimant, through her representatives, appealed the Department's proposal to increase the amount of her contribution toward the cost of care disputing the gross income amount being used in the calculation of the contribution.
- 3) Both parties agree, as a matter of record, that the Claimant's gross monthly income is derived from her annuity of \$2344.00 from the United States Office of Personnel Management and a gross monthly Social Security benefit of \$317.50. Exhibit D-4, Computer printout of contribution calculation documents a total monthly gross income of \$2661.50.
- 4) Dana Branson, Economic Service Worker testified that the amount of the Claimant's contribution toward the cost of nursing facility care is based on gross monthly income of \$2661.50, and because her gross income exceeds 300% of the current maximum SSI payment for one person of \$2022.00, the Claimant is required to meet a spenddown provision in order

to establish Medicaid eligibility. Ms. Branson testified that the Claimant is entitled to only \$220 in income deductions. These deductions include a \$20.00 income disregard and the \$200.00 Medically Needy Income Limit for one individual.

- 5) -----, the Claimant's Attorney-In-Fact testified that he, along with his sister, met with the Department to determine his mother's initial contribution to her cost of care and indicated that they were not informed that gross monthly income amount was to be used in the calculations. -----presented Exhibit C-1, Notice of Contribution to the Cost of Care from February 4, 2009 which documents a change in the amount of \$1877.81 to \$1895.81. ----- purported that his mother's income has not increased since 2009, but she has experienced a decrease in total income due to increased health insurance premiums. -----presented Exhibit C-3, Notice of Annuity Adjustment to demonstrate the increase in his mother's health insurance premiums. -----testified that his mother's care was based on the calculations from 2009 and the change in the contribution amount has resulted in increased out-of-pocket expenses.
- 6) WV Income Maintenance Manual, Chapter 17.9, provides information regarding financial eligibility and states that when an applicant is not a recipient of full Medicaid coverage, eligibility is determined by comparing the client's gross non-excluded monthly income to 300% of the current maximum SSI payment for one person (\$2,022). To be Medicaid eligible, the client's income must be equal to or less than 300% of the SSI payment. Once Medicaid eligibility is established in this manner, the client's contribution toward his cost of care is determined in the post-eligibility process. There is no spenddown amount for persons determined eligible in this way.

However, if the individual's income exceeds 300% SSI payment (\$2,022), eligibility can be established and financial assistance received for the cost of nursing facility services based on SSI-Related Medicaid. All policies and procedures in effect for other SSI-Related cases apply to these cases, including the determination of a spenddown amount, if applicable.

In determining the client's contribution toward the cost of nursing facility care, the worker must apply only allowable income deductions, including a \$50 deduction for personal needs and a deduction for non-reimbursable medical expenses - this is called 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 the cost of care.

If the client's resource amount exceeds the amount of the spenddown, the resource amount is added to the spenddown to determine the client's total contribution toward nursing care. However, if the spenddown amount exceeds the resource amount, the resource amount is \$0.00 and the spenddown is the amount of the client's contribution toward the cost of care.

Because the amount of medical expenses used to meet the client's spenddown cannot be paid by Medicaid, the spenddown amount becomes part, if not exclusively, the amount of the client's contribution toward the cost of care.

- 7) According to Exhibit D-4, the Claimant's contribution amount was determined as follows:

\$2344.00 Annuity from United States Office of Personnel Management
\$ 317.50 Social Security Income
\$2661.50 Gross Monthly income
- 200.00 MNIL
- 20.00 SSI Disregard
\$2441.50 Spenddown amount

Resource Amount Calculations
\$2661.50 Gross Monthly Income
- 50.00 Personal Needs Allowance
- 96.50 Medicare premium (non-reimbursable medical expenses)
- 187.18 Health insurance premium (non-reimbursable medical expenses)
\$2327.82 Remainder

The Claimant's spenddown amount of \$2441.50 is greater than the resource amount calculation; therefore, the Claimant has no resource amount and her total contribution is \$2441.50, the amount of her spenddown.

VIII. CONCLUSIONS OF LAW:

- 1) Policy requires that an individual's gross monthly income is used to establish financial eligibility for participation in the Medicaid Long-Term Care Program. If the individual's gross monthly income exceeds 300% of the maximum SSI payment amount, a spenddown is applied to the case. If the client's calculated resource amount exceeds the amount of the spenddown, the spenddown and resource amount are added together to establish the client's total contribution toward nursing care. If the spenddown exceeds the resource amount, the spenddown is the amount of the client's contribution toward the cost of care.
- 2) Evidence and testimony revealed that the gross monthly income amount must be utilized when determining the monthly contribution toward the cost of nursing facility care. The evidence reveals that the Claimant's monthly gross income exceeds 300% of the maximum SSI payment for one individual and the spenddown provision must be applied. The Claimant's spenddown amount exceeds the resource amount and the amount of spenddown is the client's required contribution toward nursing facility care. Based on the evidence and testimony presented during the hearing, the Department correctly calculated the Claimant's monthly contribution toward the cost of nursing facility care by utilizing monthly gross income.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the Department's proposal to increase the amount of the Claimant's contribution toward the cost of care provided through the Medicaid Long-Term Care (Nursing Facility) program to \$2441.00.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ day of March, 2011.

**Eric L. Phillips
State Hearing Officer**