



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Joe Manchin III
Governor

Office of Inspector General
Board of Review
PO Box 29
Grafton WV 26354
February 20 2007

Martha Yeager Walker
Secretary

c/o _____

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 6, 2006. Your hearing request was based on the Department of Health and Human Resources computation of your nursing home resource- that portion of the nursing facility cost for which you are responsible.

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 allowed all applicable deductions and disregards in computation of the nursing care resource.

It is the decision of the State Hearing Officer to **uphold** the Agency's computation of that portion of the nursing facility cost for which the claimant is responsible.

Sincerely,

Ron Anglin
State Hearing Examiner
Member, State Board of Review

cc: Chairman, Board of Review
[REDACTED] County DHHR, Stacy North
[REDACTED]

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

_____,
Claimant,

vs.

Action Number 06- BOR- 3190

West Virginia Department of Health & Human Resources,
Respondent.

SUMMARY AND DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on February 20, 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 originally convened on December 6, 2006 on a timely appeal filed October 25, 2006.

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:

_____, spouse to claimant

_____ counsel to claimant

Stacy North, FSS, WVDHHR

Presiding at the hearing was Ron Anglin, 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 determined the claimant's nursing home resource- that portion of the nursing home cost for which the claimant is responsible.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual § 17.9

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

E -1- WVIMM 17.9

E -2- Notification, 8/31/06

E -3- Financial computations

Claimant's Exhibits

C-1 Notification effective 7/06- Consolidated Retirement Board (____)

C-2 Notification effective 7/06- Consolidated Retirement Board (____)

C-3 State Code 48-29-201- 49-29-303

VII. FINDINGS OF FACT:

1) October 25, 2006 a hearing was requested by the claimant concerning the claimant's determined financial contribution to the cost of nursing facility care.

2) The claimant's hearing request was received by this examiner October 26, 2006 and a hearing was convened December 6, 2006. The claimant was provided a 30 day period following the hearing to submit a written argument. This argument was received January 5, 2007.

3) During the hearing, Exhibits as noted in Section VI were presented.

4) Testimony was heard from the individuals listed in section III above.

5) Testimony on behalf of the agency indicates that the agency is unable to allow a deduction from the nursing resource for a health insurance premium paid by the claimant's spouse for medical coverage in which the claimant is included. The agency asserted that non-reimbursable medical expenses may be deducted from an eligible individual's remaining income however such expense must be the expense "of the client". The claimant's spouse is the policy holder and is responsible for payment of the premiums.

6) Exhibit E-3 reveals that the agency allowed deductions from the claimant's gross income of \$2522.62 of a \$50.00 personal care allowance and \$88.50 for his Medicare premium with a resource amount of \$2384.12.

7) Exhibit C-2 reveals that the claimant's income as of July 2006 consisted of \$1089.12 in retirement with a total of \$229.41 in deductions- federal and state tax, PEIA life insurances. SSD is noted as \$1345.

8) Testimony of behalf of the claimant reveals that the claimant's current income is insufficient to meet the agency computed portion of the NH payment. The at-home spouse must pay \$179.42 from her income to meet the nursing cost. The PEIA premium for medical insurance can be carried by only one of 2 retired spouses. The current premium paid by the at-home spouse is \$263 which provides coverage for both. Claimant's position is that the medical insurance premium should be allowed as a non-reimbursed medical expense when determining the NH resource.

9) 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
- 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.**

VIII. CONCLUSIONS OF LAW:

1) Policy reveals that in determining the client's contribution toward his cost of nursing facility care, the Worker must apply only specified income deductions. Testimony presented indicates the deduction in question is a medical insurance premium paid for both spouses by the at-home spouse.

2) Policy provides that 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.

3) 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. Evidence presented is clear in that the medical insurance premium in question is not, at this point, the responsibility of the claimant and therefore cannot be allowed as a deduction in computation of the claimant' payment to the nursing facility.

IX. DECISION:

After reviewing the information presented during the hearing and the applicable policy and regulations, I am ruling to **uphold** the agency's determination in not allowing a deduction from the claimant's obligation to the nursing facility, for the medical insurance premium paid by the claimant's spouse. Based on evidence presented, the agency's determination and computation are in compliance with prevailing policy and regulations.

X. RIGHT OF APPEAL

See Attachment.

XI. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

ENTERED this 20th day of February 2007,

RON ANGLIN
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.

