



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

July 31, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 15, 2006. Your appeal was based on the Department of Health and Human Resources' proposed termination of Medicaid Special Pharmacy Program based on excessive income.

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.

Current Medicaid regulations state that individuals who have received a transplanted organ and who are not eligible for Medicaid due solely to failure to meet a spenddown, may have the cost of anti-rejection drugs paid by the Department. To qualify, it must be established that the client does not have sufficient income available to pay for the medication. (West Virginia Income Maintenance Manual, Chapter 16.1)

Information submitted at the hearing reveals that your income exceeds the maximum allowable income for participation in the Special Pharmacy Program.

It is the decision of the State Hearing Examiner to **uphold** the Department's proposal to terminate benefits received through the Medicaid Special Pharmacy Program.

Sincerely,

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

cc: Chairman, Board of Review
Lori Williams, ESW, DHHR

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

_____,

Claimant,

v.

Action Number 06-BOR-1357

West Virginia Department of Health & Human Resources,

Respondent.

DECISION OF THE STATE HEARING EXAMINER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on July 31, 2006 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 June 15, 2006 on a timely appeal filed March 8, 2006.

II. PROGRAM PURPOSE:

The program entitled Medicaid is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and Human Resources.

The 1965 Amendments to the Social Security Act established, under Title XIX, a Federal-State medical assistance program commonly known as Medicaid. The Department of Health and Human Resources administers the Medicaid Program in West Virginia in accordance with Federal Regulations. The Bureau for Medical Services is responsible for the development of regulations to implement Federal and State requirements for the program. The Department of Health & Human Resources processes claims for reimbursements to providers participating in the program.

III. PARTICIPANTS:

_____, Claimant
Lori Williams, ESW, DHHR

Presiding at the hearing was Thomas E. Arnett, 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 is correct in proposing termination of the Claimant's participation in the Medicaid Special Pharmacy Program based on excessive income.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 16

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibit(s):

- D-1 Hearing Summary
- D-2 Fair Hearing Request
- D-3 Special Pharmacy MEMO
- D-4 Special Pharmacy Denial letter
- D-5 WV Income Maintenance Manual, Chapter 16.1
- D-6 Case Comments (1page)
- D-7 E-mail message from [REDACTED] dated 2/9/06

Claimant's Exhibit(s):

- C-1 Income information / expenses
- C-2 Correspondence from [REDACTED] R.PH, Medicaid Pharmacist, dated 3/14/06

VII. FINDINGS OF FACT:

- 1) On or about March 8, 2006, the Claimant was notified by the Department (D-4) that her application for Medicaid through the Special Pharmacy Program was denied effective 2/9/06. This letter states – "Your income exceeds the income limit for this program."
- 2) The procedure to apply for this program requires the local Department Worker to fax a Special Pharmacy Consideration request (D-3) to the program evaluator. The program evaluator, [REDACTED] responded to the request in an e-mail dated February 9, 2006 (D-7), and notified the local Department Worker that the request was denied due to excessive income. This notice explains how the excessive income amount was determined and states:

I have contacted BMS and verified that Medicare Part B has paid on some of these drugs which you have submitted, thus we considered only 20 percent of her expenses. Also, please note that we only consider drugs related to her transplant for this part of the Special Pharmacy Program, not all prescriptions which she may be taking.
- 3) The Special Pharmacy Denial calculation page is attached to Exhibit D-4. This document provides an explanation of the income guidelines and includes income calculations. This document states:

Income eligibility for special approval of immunosuppressant drugs is determined by subtracting the out-of-pocket costs of the applicant's medication from the household's gross monthly income. If the remaining income is equal to or less than 100% FPL (Federal Poverty Level) for the household size, the applicant is eligible. If the remaining income is greater than 100% FPL the applicant is ineligible.

The Calculations are as follows:

Number in household - 1
100% Federal Poverty Level for # in HH (1) - \$817
Total earned / unearned income - \$1324
Monthly Cost of Medication - \$341.79
Remaining Amount (income) \$982.52

Since the remaining amount after subtracting prescription cost is greater than 100% FPL (\$817), _____ is not income eligible for Special Drug Approval.

4) The Claimant confirmed that she is a member of a 1-person household and that her monthly income noted in Exhibit D-4 (calculation sheet) is correct (see Exhibit C-1). The Claimant also confirmed that Medicare pays 80% of the cost for anti-rejection medications, however, the \$341.79 monthly medication cost cited by the Department only considers the immunosuppressant/anti-rejection drugs and she must take several other medications due to side effects directly related to her transplant and anti-rejection medications. She contends that these medications should be considered when determining out-of-pocket expenses because she was not on any medication until she became ill.

5) WV Income Maintenance Manual, Chapter 16.1(A) SPECIAL APPROVAL, IMMUNOSUPPRESSANT DRUGS FOR TRANSPLANT PATIENTS:

Individual who have received a transplant organ and who are not eligible for Medicaid due solely to failure to meet a spenddown, may have the cost of anti-rejection drugs paid by the Department. To qualify, it must be established that the client does not have sufficient income available to pay for the medication.

6) The West Virginia Income Maintenance Manual, Chapter 16.1(A) states:

NOTE: Medicare pays for 80% of the cost of immunosuppressant drugs for 3 years after a transplant. When Medicare participates in the payment of the drug(s), the Worker must indicate only the amount for which the client is responsible after Medicare pays its portion. Only this amount is used to determine eligibility and is subsequently paid by the Department.

VIII. CONCLUSIONS OF LAW:

1) The policy that governs the West Virginia Medicaid Program allows for special approval (payment) of immunosuppressant drugs for transplant patients. As a condition of eligibility,

it must be established that the client does not have sufficient income available to pay for the medications.

- 2) Policy provides that the applicant's out-of-pocket costs for medications are subtracted from the household's gross monthly income. If the remaining income is equal to or less than 100% FPL for the house hold size, the applicant is eligible. If the remaining income is greater than 100% FPL the applicant is ineligible.
- 3) Policy states that when Medicare is paying 80% of the anti-rejection drug costs, only the amount for which the client must pay (after Medicare pays its portion) is considered for eligibility and subsequently paid by the Department. The Claimant confirmed that Medicare is currently paying 80% of her anti-rejections medications.
- 4) The evidence submitted by the Department reveals that policy for the Special Pharmacy Program was implemented correctly and that the Claimant's remaining monthly income (\$982.52) exceeds 100% of FPL for a household of one (\$817). The Claimant's income exceeds the maximum allowable income for participation in the Special Pharmacy Program.

IX. DECISION:

It is the decision of the State Hearing Examiner to **uphold** the Department's proposal to terminate benefits received through the Medicaid Special Pharmacy Program.

X. RIGHT OF APPEAL:

See Attachment.

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29

ENTERED this 31st Day of July 2006.

Thomas E. Arnett
State Hearing Examiner