



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

December 11, 2006

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 7, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to close your SSI Medicaid Program case.

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 SSI Medicaid Program is based on current policy and regulations. One of these regulations is that individuals who are incarcerated or on home confinement are considered to be a resident of an institution and, therefore, not eligible for Medicaid (WV Income Maintenance Manual Section 8.2 B, 2) and an offender ordered to undergo home incarceration is responsible for providing his own food, housing, clothing, medical care and other treatment expenses and is eligible to receive government benefits allowable for persons on probation, parole, and other conditional discharge from confinement or incarceration (WV Code 62-11B-8).

The information which was submitted at your hearing revealed that you are on home confinement and are considered as institutionalized and therefore not eligible for the Medicaid Program.

It is the decision of the State Hearings Officer to uphold the proposal of the Department to close your SSI Medicaid Program case.

Sincerely,

Thomas M. Smith
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Karen Nelson, Dept. Hearing Rep.

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

_____,

Claimant,

v.

Action Number: 06-BOR-3268

**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 December 7, 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 convened on December 7, 2006 on a timely appeal, filed November 13, 2006. It should be noted that the hearing was originally scheduled for November 28, 2006 but was rescheduled at claimant's request.

It should be noted that the claimant's benefits have been continued pending the results of this hearing.

II. PROGRAM PURPOSE:

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

The amendment to the Social Security Act which established SSI and subsequent rules and regulations gave the states the same options regarding Medicaid coverage for SSI recipients. West Virginia elected to cover all SSI recipients and to accept SSA's determination process for SSI Medicaid. Consequently there is no application or eligibility determination process for SSI Medicaid. Instead the Department depends upon SSA for the information needed to open and close SSI Medicaid cases.

III. PARTICIPANTS:

_____, Claimant.
_____, Claimant's mother.
_____, Claimant's girlfriend.
Karen Nelson, ESW, DHHR.

Presiding at the Hearing was Thomas M. Smith, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the agency was correct to propose closing the SSI Medicaid Program case due to claimant being on home confinement.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Section 8.2 B, 2.
Federal Regulations 43 CFR 435.1009
WV State Code 62-11B-8.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- A. Copy of hearing summary.
- B. Copy of system generated notification letter dated 11-13-06 (2 pages).
- C. Copy of worker generated notification letter dated 11-9-06.
- D. Copy of WV Income Maintenance Manual Section 8.2 B (2 pages).

Claimant's Exhibits:

CI-1 Copy of letter from _____ M. D. dated 11-20-06.

VII. FINDINGS OF FACT:

- 1) The claimant was a recipient of the SSI Medicaid Program when his mother (Ms. _____) called in November, 2006 in regard to a Food Stamp review and reported that the claimant was on home confinement and would be for several months.
- 2) The caseworker (Ms. Nelson) took action to close the claimant's SSI Medicaid Program case due to the claimant being on home confinement and based the decision on WV Income Maintenance Manual Section 8.2 B, 2 (Exhibit #D).
- 3) The claimant was notified in writing of the proposal to close the SSI Medicaid Program case effective 11-30-06 on 11-9-06 by a worker-generated letter (Exhibit #C) and on 11-13-06 by a system-generated letter (Exhibit #B) and the claimant requested a hearing on 11-13-06 after speaking with the caseworker and supervisor.

- 4) Testimony from Ms. _____ purported that she based her decision to close the SSI Medicaid Program case on the statement of the claimant and his mother that he was on home confinement and did not have anything in writing regarding the home confinement.
- 5) The claimant presented a letter from his doctor (Exhibit #CI-1) which showed medical problems including panic disorder, depressive disorder, alcohol abuse in remission, and seizure disorder. Testimony from the claimant purported that he receives SSI benefits, that he has been on home confinement since July 27, 2006 and will be for 7 ½ more months, that he has numerous medical problems and needs to keep the medical card.
- 6) Testimony from Ms. _____ purported that her son is telling the truth and needs to keep the medical card.
- 7) Testimony from Ms. _____ - purported that she has witnessed numerous medical problems with the claimant and that he needs the medical card to continue.
- 8) WV Income Maintenance Manual Section 8.2 B, 2 states, in part:

"B. MEDICAID.....

2. Institutional Status

An individual must not be a resident of a public or private institution, defined as follows:

Public Institution: Institution which provides shelter, custody and care, and for which a governmental unit has responsibility or exercises administrative control.

NOTE: Individuals who are incarcerated or on home confinement are considered to be a resident of an institution and, therefore, not eligible for Medicaid.

Private Institution: Non-governmental Institution which provides shelter, custody and care, and which is required by State law to have a license to operate.

An individual is not a resident of an institution under the following circumstances:

a. Educational or Training Institution.....

b. General Medical Institution....."

- 9) Federal Regulations under 42 CFR 435.1009 states, in part:

"Definitions relating to institutional status.

For the purpose of FFP, the following definitions apply:

In an institution refers to an individual who is admitted to live there and receive treatment or services provided there that are appropriate to his requirements.

Inmate of a public institution means a person who is living in a public institution. An individual is not considered an inmate if—

(a) He is in a public educational or vocational training institution for purposes of securing education or vocational training;

(b) He is in a public institution for a temporary period pending other arrangements appropriate to his needs.....

Institution means an establishment that furnishes (in single or multiple facilities) food, shelter, and some treatment or services to four or more persons unrelated to the proprietor."

- 10) State Regulations under WV Code 62-11B-8 states, in part:

"Offender responsible for certain expenses.

An offender ordered to undergo home incarceration under section four of this article is responsible for providing his own food, housing, clothing, medical care and other treatment expenses. The offender is eligible to receive government benefits allowable for persons on probation, parole or other conditional discharge from confinement or incarceration."

- 11) The area of dispute involves whether an individual on court-ordered home confinement is considered as institutionalized and therefore not eligible for Medicaid benefits. The State Hearing Officer finds that the regulations in WV Income Maintenance Manual Section 8.2 B, 2 clearly state that an individual who is on home confinement is considered to be a resident of an institution and not eligible for Medicaid benefits. WV Code 62-11B-9 states that an offender ordered to undergo home incarceration must provide for his own medical care, among other things, and is eligible to receive government benefits allowable for persons on probation, parole or other conditional discharge from confinement or incarceration. In this case, the government benefit (Medicaid) is not allowable under the regulations contained in WV Income Maintenance Manual Section 8.2 B, 2 and the claimant cannot receive Medicaid benefits. While the regulations in WV Income Maintenance Manual Section 8.2 B, 2 do not appear to follow the Federal definition of institutionalization listed in 20 CFR 435.1009, that definition is for purposes of FFP and may not restrict the State to its use. In any case, the Department (State of West Virginia) excludes persons on home confinement from Medicaid eligibility and is correct to do so.

VIII. CONCLUSIONS OF LAW:

- 1) WV Income Maintenance Manual Section 8.2 B, 2 clearly states that an individual must not be a resident of a public or private institution, with a public institution defined as a place which provides shelter, custody and care, and for which a government unit has responsibility or exercises administrative control. That section also states that

individuals who are incarcerated or on court-ordered home confinement are considered as institutionalized and not eligible for the Medicaid Program.

- 2) WV Code 62-11B-9 states that an offender ordered to undergo home incarceration must provide for his own medical care and is eligible to receive government benefits allowable for persons on probation, parole or other conditional discharge from confinement or incarceration. Medicaid benefits have been determined by the State of West Virginia as a non-allowable benefit for persons on home confinement.
- 3) The federal definition of institutionalization in 20 CFR 435.1009 pertains to FFP.

IX. DECISION:

It is the ruling of this Hearing Officer to **uphold** the proposal of the Department to close the SSI Medicaid Program case.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 11th day of December, 2006.

Thomas M. Smith
State Hearing Officer