



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

Earl Ray Tomblin
Governor

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

March 29, 2011

Attn: -----

Re: ----- Case No.: 11-BOR-657

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on the hearing held on March 28, 2011. Your client's appeal was based on the Department of Health and Human Resources' proposal to increase the amount of the financial contribution toward the cost of nursing facility care provided through the Medicaid Long-Term Care (Nursing Facility) Program.

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) Program 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. Single individuals and couples, when both spouses are institutionalized, receive a \$175 deduction from income for maintenance of a home when a physician has certified in writing that the individual, or in the case of a couple, either individual, is likely to return to the home within 6 months. The amount may be deducted for up to 6 months. (West Virginia Income Maintenance Manual, Chapter 17.9)

Information submitted at the hearing reveals that the Department was correct in its proposal to increase your client's amount of financial contribution from \$920.29 to 1095.29 (\$175 increase) effective March 2011 as she no longer qualified for the Outside Living Expense (OLE) income deduction of \$175 per month.

It is the decision of the State Hearing Officer to **uphold** the Department's proposal to increase the amount of your monthly financial contribution toward the cost of nursing facility care from \$920.29 to 1095.29 effective March 2011.

Sincerely,

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

Pc: Erika H. Young, Chairman, Board of Review

Susan Layman, ESW, DHHR

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

-----,

Claimant,

v.

Action Number: 11-BOR-657

**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 28, 2011 on a timely appeal filed February 28, 2011.

It should be noted that the Claimant contribution amount has remained unchanged pending the hearing decision.

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 Son
-----, Legal Assistant, [REDACTED]
Susan Layman, Economic Service Worker (ESW), WVDHHR

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 Department was correct in its proposal to increase the amount of the Claimant's financial contribution toward the cost of nursing facility care subsidized by the Medicaid Long-Term Care (Nursing Facility) Program.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 17.9
Code of Federal Regulations - 42 CFR §435.725

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- Exhibit-1 West Virginia Income Maintenance Manual (WVIMM), Chapter 17.9
- Exhibit-2 Notice of Decision (2/16/11)
- Exhibit-3 Notice of Contribution to the cost of care (2/16/11)
- Exhibit-4 Long-Term Care Income Eligibility (calculation sheet for March 2011 benefits)
- Exhibit-5 Notice of Contribution to the cost of care (2/28/11)
- Exhibit-6 Long-Term Care Income Eligibility (calculation sheet for April 2011 benefits)

VII. FINDINGS OF FACT:

- 1) On or about February 16, 2011, the Claimant was advised via a Notice of Decision (Exhibit-2) that her contribution toward the cost of care through the Medicaid Long-Term Care Program was going to increase from \$920.29 to \$1095.29 (an increase of \$175) per month effective March 2011. The notice goes on to indicate – “You are required to contribute more money to the cost of your care because you income has increased.”
- 2) The Claimant, through her representative, appealed the Department's proposal to increase the amount of her contribution toward the cost of care as -----, Claimant's son, testified that she does not have enough money remaining in her account to pay the utilities at her home.
- 3) As a matter of record, both parties agree that the Claimant was admitted to the nursing facility in March 2010 and that she served a penalty period through September 2010. Medicaid began subsidizing payment of long-term care effective October 1, 2010. At question in this case is when the Claimant's Outside Living Expense (OLE) deduction of \$175 per month expired. The only month effected by this decision is the March 2011 contribution amount as the Department indicated the OLE continued in error through February 2011 and additional medical expenses have been reported that will reduced the Claimant's contribution amount effective April 1, 2011 (See Exhibit-6).
- 4) The Claimant, through her representatives, contends that the \$175 per month OLE deduction should not have started until Medicaid began subsidizing the Claimant's long-term care costs. Because the Claimant was in a penalty period from March 2010 through September 2010, the 6-month OLE should have started October 1, 2010 and lasted through March 2011.

- 5) The Department's representative contends that there is an initial financial eligibility process and a post-eligibility financial process for the Medicaid Long-Term Care Program. The Claimant was allowed to receive an OLE deduction of \$175 per month toward the cost of her care for maintenance of her home because her physician certified that she was likely to return to her home within 6 months. According to the Department representative, the OLE deduction should have been removed effective September 2011 because income eligibility, and the 6-month period, begins the month of admission to the long-term care facility. However, because a case coding error was not identified until a review was completed in February 2011, the OLE deduction was not removed until March 2011.
- 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.
- 7) WV Income Maintenance Manual, Chapter 17.9.D.1.d., explains the post-eligibility process and states that single individuals and couples, when both spouses are institutionalized, receive a \$175 deduction from income for maintenance of a home when a physician has certified in writing that the individual, or in the case of a couple, either individual, is likely to return to the home within 6 months. The amount may be deducted for up to 6 months. When both spouses are institutionalized, only one spouse may receive the OLE. They may choose which spouse receives the deduction.

VIII. CONCLUSIONS OF LAW:

- 1) The regulations that govern the Medicaid Long-Term Care Program state that single individuals and couples, when both spouses are institutionalized [emphasis added], receive a \$175 income deduction for maintenance of their home when a physician has certified in writing that the individual, or in the case of a couple, either individual, is likely to return to the home within 6 months. The amount may be deducted for up to 6 months. While there is only one person in the Claimant's assistance group, policy goes on to state that when both spouses are institutionalized [emphasis added], only one spouse may receive the OLE.
- 2) The policy cited by the Department clearly indicates the physician must certify that the individual is likely to return to their home within 6 months of institutionalization in order to qualify for the OLE income deduction. While the Claimant's representatives contend that the 6-month OLE should not have been applied until October 1, 2010 (when Medicaid began to subsidize the Claimant's long-term care), there were no regulations cited to support this position. The OLE income deduction is based solely on the medical prognosis provided by a physician for the 6 month period that follows institutionalization.

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 from \$920.29 to \$1095.29 effective March 2011.

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.

Thomas E. Arnett
State Hearing Officer