



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
P.O. Box 1736  
Romney, WV 26757

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

February 7, 2007

\_\_\_\_\_  
c/o \_\_\_\_\_

Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 11, 2007 regarding the Department of Health and Human Resources' termination of a Personal Care Home resource deduction previously allowed in their payment agreement.

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.

A resource deduction may be considered only when the client has a special need, the deduction would prevent a higher level of care and when there are no other resources to pay the costs for which the resource deductions is being granted. (Chapter 34,000 Social Services Manual, Personal Care Homes)

Information submitted for this hearing is sufficient to substantiate that the claimant did not meet the criteria necessary for the Department to continue the previous resource deduction.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to discontinue the resource deduction.

Sincerely,

Sharon K. Yoho  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Betty Johnston, DHHR

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

\_\_\_\_\_

**Claimant,**

v.

**Action Number: 06-BOR-2955**

**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 January 11, 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 hearing was convened on January 11, 2007 on a timely appeal filed September 11, 2006.

**II. PROGRAM PURPOSE:**

Personal Care Homes (PCH) are residential settings for adults that provide supervision, support, protection and security in a group living setting. A (PCH) offers direct hands-on nursing care of no more than two (2) hours of nursing care per day. The (PCH) provider must be licensed by the Department of Health and Human Resource's Office of Health Facilities Licensure and Certification. The DHHR offers Personal Care Home services and associated services, including pre-admission evaluation, placement, supportive services, supervision and discharge planning, to adults who are no longer able to remain in their own home and require an alternate living arrangement requiring 24 hour awake care due to physical, mental, or emotional limitations.

**III. PARTICIPANTS:**

\_\_\_\_\_, Claimant's daughter-in-law  
Betty Johnston, Social Service Coordinator, DHHR  
John Woodford, Adult Services Consultant, DHHR  
Pat Brown, Adult Protective Service Worker, DHHR

Presiding at the hearing was Sharon K. Yoho, State Hearing Officer and a member of the State Board of Review.

**IV. QUESTIONS TO BE DECIDED:**

The question(s) to be decided is whether the Department was correct in their termination of the resource deduction previously given for the cost of Medical Insurance for the claimant.

**V. APPLICABLE POLICY:**

WV Social Service Manual Chapter 34,000 (B.1.a.)

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

D-1 WV Social Service Manual Chapter 34,000 (B.1.a.)

D-2 Client / Provider Grievance request dated September 11, 2006

**Claimant's Exhibits:**

C-1 Letter from US Office of Personnel Management dated November 16, 2006

C-2 Federal Employees Open Season Health Benefits Guide

**VII. FINDINGS OF FACT:**

- 1) The claimant is a resident of the [REDACTED] Personal Care Home. The Department opened an Adult Residential Services case on August 16, 2005 to assist with subsidized payment for the claimant's care.
- 2) The Department, in August 2005, allowed a resource deduction when calculating the claimant's subsidy amount. This resource deduction was for the cost that the claimant was paying for Blue Cross Blue Shield health insurance through her husband's past employer. The claimant had not yet signed up for Medicare Part B and therefore had a need for prescription coverage that was being provided by this insurance plan.
- 3) In July 2006 the claimant's Medicare Part B plan went into effect and the Department began paying the claimant's premium for that plan. They recalculated the subsidy amount for the Personal Care Home excluding the cost of the Blue Cross Blue Shield health insurance.
- 4) The claimant's daughter-in-law objects to the Department removing the resource deduction since the premium is being deducted from the claimant's pension check and therefore; she does not receive this income to use toward her care at the Personal Care Home.

- 5) The daughter-in-law testified that she was not able to drop the medical insurance until the Open Enrollment period which started in November, 2006 to take affect in January, 2007. During the period following the Medicare Part B enrollment and January when the medical insurance ended, the claimant did benefit from having the secondary insurance for co-pays and co-insurance costs.
- 6) The claimant's daughter-in-law did not have written proof with her at the hearing to show that she could not drop the insurance outside of the Open Enrollment period. The claimant's hearing request, Exhibit D-2, dated September 11, 2006 asks the Department to reconsider assistance until Open Season will allow them to drop the federal BC/BC coverage. The hearing record was left open for her to provide written proof that she was not able to drop the coverage outside of the Open Season Enrollment period. She provided Exhibit C-1 and Exhibit C-2 both of which deal with changes during the Open Enrollment period. Exhibit C-1 is a letter dated November 16, 2006 to the claimant c/o daughter-in-law in response to information requested by the claimant's daughter-in-law. This letter explains the method to follow when canceling coverage inside of the Open Enrollment period.
- 7) Exhibit C-2 is an Open Season Health Benefits Guide. This guide addresses cancellation during the Open Season period which is from November 13, 2006 and December 11, 2006. It does not address procedures for canceling coverage outside of the Open Season period.
- 8) WV Social Services Manual Chapter 34,000 B.1.a. states:

Resource Deductions - In unique situations the client may be allowed to keep a portion of his/her monthly resources rather than using these to pay for his/her care. Granting a resource deduction may be considered only when the following criteria are met:

  - client has a special need (if a medical need – must be documented by their physician);
  - granting the deduction would prevent the client from moving to a higher level of care; and
  - there are no other resources to pay the costs for which the resource deduction is being granted.

When it has been determined by the social worker that these three criteria are met, the social worker may show that a resource deduction is being granted.

## **VIII. CONCLUSIONS OF LAW:**

- 1) Personal Care Home policy stipulates that in order for the Department to consider a resource deduction, three criteria must exist. Prior to July 2006 when the claimant did enroll in Medicare part B, she did have a special need of prescription drug coverage. Secondly, if she did not have the medication this coverage provided, she could have been faced with moving to a higher level of care. Thirdly, there was no other resource available to provide for the BC/BS premium. The Department was correct to allow the resource deduction prior to July 2006. Once the Medicare part B prescription coverage came into effect, the client no longer had the special need. The Department, instead of allowing the resource deduction to continue, began paying the premium for the Medicare part B coverage for the claimant.

- 2) Evidence and testimony did not conclude that the claimant's daughter-in-law made attempts to discontinue the BC/BS coverage due to the special circumstance occurring outside of the Open Season Enrollment period. Exhibit C-1 dated November 16, 2006 indicates that her efforts to discontinue the coverage began after the Open Season Enrollment period began on November 13, 2006.
- 3) Based on information submitted during the hearing and the documents supplied during the period in which the record was held open, the State Hearing Officer concludes that the Department's decision to discontinue the resource deduction was correct.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the Department's action to terminate the Claimant's resource deduction.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 7th Day of February, 2007.**

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**Sharon K. Yoho**  
**State Hearing Officer**