



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

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

September 5, 2006

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 27, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services under the Medicaid, Aged/Disabled Title XIX (Home & Community-Based) Waiver 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.

The Aged /Disabled (HCB) Title XIX Waiver Services Program is granted to those individuals who continue to meet all eligibility requirements. One of these requirements is that the individual must qualify financially. In order for an individual to qualify financially, the client's monthly gross non-excluded income cannot exceed 300% of the maximum SSI payment for a single individual. [West Virginia Income Maintenance Manual, Chapter 17.24].

The information submitted at your hearing reveals that your gross monthly non-excluded income exceeds the maximum allowed to receive benefits and services through the Medicaid, Aged & Disabled Waiver Services Program.

It is the decision of the State Hearing Officer to **uphold** the Department's proposal to terminate your benefits and services under the Aged/Disabled Title XIX (HCB) Waiver Program.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Hubbard, DHHR
Shears, WV Legal Aid

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

_____,

Claimant,

v.

Action Number: 06-BOR-1589

**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 July 27, 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 July 27, 2006 on a timely appeal, filed March 6, 2006.

It should be noted here that the Claimant's benefits and services through the Medicaid, Title XIX Waiver, (HCB) Program have continued pending a hearing decision.

II. PROGRAM PURPOSE:

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

Under Section 2176 of the Omnibus Budget Reconciliation Act of 1981, states were allowed to request a waiver from the Health Care Financing Administration (HCFA) so that they could use Medicaid (Title XIX) funds for home and community-based services. The program's target population is individuals who would otherwise be placed in an intermediate or skilled nursing facility (if not for the waiver services).

Services offered under the Waiver Program will include: (1) chore, (2) homemaker and (3) case management services. West Virginia has been offering the Waiver Services Program since July, 1982 to those financially eligible individuals who have been determined to need ICF level care but who have chosen the Waiver Program Services as opposed to being institutionalized.

III. PARTICIPANTS:

Claimant's Witness:

_____, Claimant
_____, Case Manager, Senior Life Services of _____ County
_____, Claimant's homemaker

Department's Witness:

Ann Hubbard, DHHR

Claimant was represented by Shirley Shears of Legal Aid

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 to be decided is whether the Claimant continues to be financially eligible for benefits and services under the Aged/Disabled Waiver (HCB) Program.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 17.24 & Chapter 10, Appendix A.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Detailed earned income, computer screen
- D-2 WV Income Maintenance Manual, Appendix A Income Chart
- D-3 Notification letter dated April 5, 2006
- D-4 WV Income Maintenance Manual, Chapter 17.24
- D-5 Notification of continued benefits pending hearing

Claimant's Exhibits:

- C-1 Request for hearing dated February 27, 2006
- C-2 Wage verification for August 2005 thru August 2006

VII. FINDINGS OF FACT:

- 1) On February 22, 2006 a required desk review was completed on Mr. _____'s Home and Community Based Waiver Medicaid case.
- 2) The claimant's previous months earned income verification was supplied by the claimant for this desk review. These pays were dated 1/27/06 with a gross pay

amount of \$538.49 and dated 2/10/06 with a gross pay amount of \$500.78. A monthly amount was calculated by obtaining an average pay of \$519.64 and multiplying by 2.15 to produce a monthly amount of \$1117.23.

- 3) The claimant's Social Security income was determined by the Department to be \$799.50 per month.
- 4) The combined income of \$1916.70 was compared to the Income Chart (Exhibit D-2). An SSI amount of \$603 was multiplied by 3 to obtain a 300% total of \$1809. The Department determined that Mr. _____'s gross income exceeded the \$1809 allowable income for the Aged Disabled Waiver Program.
- 5) The Department sent a denial letter to the claimant on April 5, 2006. This notice advised the claimant his gross income is more than the gross income limit for him to receive benefits.
- 6) Mr. _____ testified that he doesn't always make the same amount of income and that the pays that were used were some of his highest pays. The claimant was given until August 15th to supply to the Hearing Officer a years worth of pay verifications so that a more realistic average could be determined.
- 7) The average of pays 6 months prior to the review date in February produced an average monthly income of \$482.59 and a monthly income of \$1037.57 was calculated. This amount added to the Social Security income amount brought his total gross monthly income to \$1837.07. This income was also in excess of the allowable \$1809. An average of the 6 months earnings since the review date produced an even higher average monthly income.
- 8) West Virginia Income Maintenance Manual, Chapter 17.24 (Income eligibility for the Home and Community Based Waiver Program) states that the client's monthly gross non-excluded income is compared to 300% of the maximum SSI payment for a single individual.
- 9) West Virginia Income Maintenance Manual, Chapter 10, Appendix A reveals that 300% of the maximum SSI payment for a single individual is determined by multiplying the SSI amount (\$579) x 3 = \$1737. The maximum gross monthly non-excluded income cannot exceed \$1737.

VIII. CONCLUSIONS OF LAW:

- 1) The Claimant was an active recipient of benefits and services through the Aged & Disabled Waiver Services Program. When the Department completed a required review of his financial eligibility his income was determined to be excessive for the program.
- 2) In order to be financially eligible to receive benefits and services through the Aged & Disabled Waiver Services Program, the client's monthly gross non-excluded income cannot exceed 300% of the maximum SSI payment for a single individual (\$1809. per month). Mr. _____'s income did exceed this amount based on the two pays

that the Department used to determine countable income and it would have exceeded the allowable amount had they averaged the previous 6 months.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the proposal of the Agency to terminate your benefits and services under the Aged/Disabled Title XIX (HCB) Waiver Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision
Form IG-BR-29

ENTERED this 5th Day of September, 2006.

**Sharon K. Yoho
State Hearing Officer**