



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
150 Maplewood Avenue
Lewisburg, WV 24901**

**Joe Manchin III
Governor**

**Martha Yeager Walker
Secretary**

February 27, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 13, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate services under the Aged/Disabled Home and Community Based Services Waiver (ADW) 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.

Eligibility for the Aged/Disabled Home and Community Based Services Waiver (ADW) Program is based on current policy and regulations. Some of these regulations state as follows: The determination of which income to count is the same as SSI-Related Medicaid. No income is deemed to the client. The client's gross non-excluded income is compared to 300% of the maximum SSI payment for a single individual. There is no post-eligibility process for this coverage group. (Section 17.24 of the West Virginia Income Maintenance Manual)

The information which was submitted at your hearing revealed that your gross non-excluded income exceeds the allowable amount for the ADW Program.

It is the decision of the State Hearing Officer to uphold the proposal of the Department to terminate services under the Aged/Disabled Home and Community Based Services Waiver (ADW) Program.

Sincerely,

Margaret M. Mann
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Deidra Zankowitz, DHHR

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

_____,
Claimant,

v.

Action Number: 05-BOR-6493

**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 13, 2005 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 13, 2005 on a timely appeal, filed August 22, 2005. It should be noted that this hearing was originally scheduled for October 25, 2005. It was rescheduled at the claimant's request to December 13, 2005.

It should be noted here that the claimant's benefits have been continued pending the hearing decision.

II. PROGRAM PURPOSE:

The Program entitled Aged/Disabled Home and Community Based Services Waiver (ADW) is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

The Aged/Disabled Home and Community-Based Services Waiver (ADW) Program is defined as a long-term care alternative which enables the individual to remain at or return home rather than receiving nursing facility (NF) care. The program provides eligible individuals with a range of services comparable to those services provided in a nursing facility. Specifically, ADW program services include assistance with personal hygiene, nutritional services which include food preparation and feeding, arrangement for medical and nursing care, medication administration, and environmental maintenance necessary for clients to remain in their homes.

III. PARTICIPANTS:

_____, Claimant

_____, Claimant's Daughter

_____, CM, Americare Management Services, Inc.

Deidra Zankowitz, Department Hearing Representative

Presiding at the Hearing was Margaret M. Mann, 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 the decision to terminate the claimant's benefits under the ADW Program because financial requirements were not met.

V. APPLICABLE POLICY:

Sections 17.24, 10.3 AAA, 10.3 MMM and Chapter 10, Appendix A of the West Virginia Income Maintenance Manual

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Case Comments from 08/13/05 through 10/20/05
- D-2 UMWA Income Verification
- D-3 Medicaid Denial/Closure Notice dated 08/17/05
- D-4 Fair Hearing Request
- D-5 Income Maintenance Income Chart
- D-6 Section 17.24 of the West Virginia Income Maintenance Manual

Claimant's Exhibits:

- C-1 Letter dated 08/05 from UMWA 1985 Construction Workers Pension Plan
- C-2 Bank One Account information dated 10/08/05 through 11/07/05
- C-3 UMWA 1985 Construction Workers Pension Plan Receipt dated 10/01/05
- C-4 Copy of UMWA Pension check dated 09/01/05

VII. FINDINGS OF FACT:

- 1) The claimant is a recipient of ADW services.
- 2) A case review was completed 08/15/05.
- 3) The case worker, Deidra Zankowitz, requested verification of the claimant's income from UMWA. She received a statement from UMWA verifying that the claimant's gross monthly income is \$797.42. \$381.00 is withheld for an insurance premium. The

net amount of \$416.42 is what the Department had been considering as income, not the gross amount of \$797.42.

- 4) Ms. Zankowitz testified that the claimant's total gross monthly income is \$1,897.62.
- 5) The income includes UMWA of \$797.42, Black Lung of \$562.80, and Social Security of \$538.20. (D-2) The income limit for 2005 Medicaid Waiver is \$1,737.00.
- 6) A closure notice was sent to the claimant dated 08/17/05. Reason: Income is more than the gross income limit for you to receive benefits. (D-3)
- 7) Testimony from Ms. [REDACTED] revealed that the income the Department is considering is correct. The insurance premium of \$381 has never been counted against the claimant. Ms. [REDACTED] does not receive the money. They have been unable to obtain a letter from Acordia where in the beginning the claimant agreed never to receive the money. She would have no medical insurance without it. It is the understanding of the claimant that the waiver she signed years ago precludes her going back and getting the \$381 as income.
- 8) A letter dated August 2005 from [REDACTED], UMWA 1985 Construction Workers Pension Plan shows claimant's monthly gross pension amount of \$797.42 less health insurance co-premium of \$381.00. Net income: \$416.42. (D-2 & C-1)
- 9) Section 17.24 of the West Virginia Income Maintenance Manual reads that the determination of which income to count is the same as SSI-Related Medicaid. No income is deemed to the client. The client's gross non-excluded income is compared to 300% of the maximum SSI payment for a single individual. There is no post-eligibility process for this coverage group.
- 10) Appendix A, Chapter 10, of the West Virginia Income Maintenance Manual shows the maximum SSI for one person is \$579. Nursing Homes 300% SSI - \$1,737. This policy is dated 10/05.
- 11) Section 10.3 AAA of the West Virginia Income Maintenance Manual reads that pensions are considered unearned income for the SSI-Related Medicaid Program. Count gross.
- 12) Section 10.3 MMM of the West Virginia Income Maintenance Manual reads that RSDI is unearned income. Count the amount of the client's entitlement. This includes any amount deducted for Medicare, if applicable.

VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that the client's gross non-excluded income is compared to 300% of the maximum SSI payment for a single individual. Gross income must be considered for pensions and RSDI.

- 2) The claimant's gross pension income from the UMWA 1985 Construction Workers Pension Plan is \$797.42. The claimant's gross income from RSDI is \$538.20. The claimant's gross income from Black Lung is \$562.80.
- 3) The total gross income is \$1,898.42.
- 4) The allowable income for a one person AG for the Home and Community Based Waiver Program is \$1,737.
- 5) The claimant's gross monthly income of \$1,898.42 exceeds \$1,737.
- 6) Testimony received on behalf of the claimant does not clearly demonstrate any changes to the conclusions reached by the Department.

IX. DECISION:

It is the finding of the State Hearing Officer that the claimant has excessive gross income for the ADW Program. The Department is upheld in the decision to terminate benefits. The action described in the notification letter dated August 17, 2005 will be taken.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 27th Day of February, 2006.

**Margaret M. Mann
State Hearing Officer**