



**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**

January 24, 2007

Dear Ms. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 11, 2006. 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
[REDACTED], Esquire
Sandy Crews, DHHR

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

Claimant,

v.

Action Number: 06-BOR-3267

**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 11, 2006 for [REDACTED]. 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 11, 2006 on a timely appeal, filed March 16, 2006. It should be noted that this hearing was originally scheduled for September 21, 2006. It was rescheduled at the Claimant's request to November 14, 2006. The Claimant's witness was not available at that time and hearing was rescheduled for December 11, 2006.

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
██████████, Esquire, ██████████
██████████ Friend of the Claimant
██████████ Friend of the Claimant
Sandy Crews, 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, 10.1, 10.2, 10.3 AAA, 10.3 MMM, 10.3 YYY and Chapter 10, Appendix A of the West Virginia Income Maintenance Manual

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Listing of evidence for 2005 hearing
- D-2 Hearing Decision on hearing held on 12/13/2005
- D-3 Hearing Reconsideration Request dated 03/14/2006
- D-4 Letter dated 03/16/2006 from Erika Young, Chairman, Board of Review
- D-5 Scheduling Notices
- D-6 Case Comments dated 02/28/2006 through 10/20/2006
- D-7 Department's Summary

VII. FINDINGS OF FACT:

- 1) The claimant is a recipient of ADW services.
- 2) A case review was completed 08/15/05. At that time, the case was determined to be ineligible based on excessive income. A hearing on the matter was held on December 13, 2005 and the Department was upheld in the matter. The decision was issued February 27, 2006. (D-2)
- 3) The Claimant's gross income was \$797.42 from ██████████ \$381.00 was withheld as an insurance premium and this amount had been included when calculating the income. When this income was added to the Claimant's gross income from Social Security of \$538.20 and Black Lung of \$562.80, the Claimant's income was excessive for the

ADW Program. At the time the decision was made, the allowable income limit was \$1737.00 (2005). The Claimant's gross income was \$1898.42. (D-2)

- 4) On March 14, 2006 a letter was sent to the Chairman of the Board of Review concerning the above decision from an attorney with [REDACTED]. (D-3) A request was made for the above hearing decision to be reversed as new information had come to light which showed that the health insurance benefit should not be considered income for the Claimant.
- 5) The Chairman of the Board of Review remanded the case back to the State Hearing Officer on March 16, 2006 in order for a new hearing to be held on the issue of the amount of the [REDACTED] funds to be counted as monthly income. (D-4) This hearing was held December 13, 2006.
- 6) The Department has reviewed the new information and still contends the \$381.00 should be considered as income to the Claimant. The Department used the analogy of a Medicare premium that is deducted from Social Security prior to an individual receiving a Social Security check. The gross amount is considered when determining eligibility. In this case, the premium never goes into the bank account but is considered in the gross amount when the information was provided by the [REDACTED]
- 7) The Claimant's argument is that the [REDACTED] pension is paid from a trust fund called "Pension Plan". The health insurance benefit is paid from a different trust called the "Benefit Trust". The Pension Plan is better funded than the Benefit Trust. The law does not allow funds to be transferred between trust funds. A plan was put in place whereby a pension supplement is paid to a pension recipient which is equal in amount to the health insurance benefit monthly premium cost plus any tax which the person would have to pay on the additional income. The plan is effectively a transfer of funds from one Trust to the other Trust.
- 8) The Claimant's argument continues that the \$381.00 is not available income. If she gets the money, it must go for payment of the health insurance benefits or the money stops. If the Claimant chooses not to have health care, she doesn't get the money. The money goes through the Claimant to pay for the health insurance because federal law does not permit transfer of money between the Pension Plan and the Benefit Trust. This is different than Social Security. The amount figured is based on what an individual has put into it. If an individual chooses to have Medicare, the money is taken out, nothing is added. The \$381.00 will never be available to the Claimant.
- 9) The Question and Answer brochure defines the Pension Supplement. It reads in part under #1 "The [REDACTED] and the [REDACTED] have now agreed that, if you are a retiree or the surviving spouse of a retiree and began receiving health benefits from the 1978 Retired Construction Workers Benefit Trust after February 7, 2002, you will receive a monthly Pension Supplement ("Pension Supplement") starting January 1, 2006 but only if you elect to remain covered by the Benefit Trust. The Pension Supplement is intended to offset the cost of the Co-Premium that you will now be required to pay to keep your retiree health benefit coverage from the Benefit Trust. The Pension Supplement will remain in effect only as long as it continues to be necessary to require payment of a co-premium to the Benefit Trust." Under #3 it reads "The Pension Plan is better funded than the Benefit Trust, but

federal law prohibits a direct transfer of money from the Pension Plan to the Benefit Trust. Therefore, [REDACTED] and the [REDACTED] agreed to use the Pension Supplement and Co-Premium as a way to get more money into the Benefit Trust to maintain retiree benefits without really costing you any money.” Under #4 it reads “The amount of the Pension Supplement is more than the amount of the Co-Premium to help you pay any income taxes that may be due on the Pension Supplement.” (D-3)

- 10) It is noted in the memorandum dated 10/18/2005 (D-3) that “The pension supplement will be automatically reflected in your January, 2006 pension check. Your co-premium obligation will commence at the same time. It should be pointed out that this pension supplement will contribute only as long as it remains necessary to require a co-premium to the Benefit Trust.”
- 11) The Claimant receives \$416.42 from the [REDACTED] which is deposited in her bank account. The amount of her required Co-Premium is \$381.00. This amount is automatically deducted from the Pension Supplement in the Claimant’s monthly pension check. (D-3)
- 12) Testimony from the Claimant revealed she is receiving the [REDACTED] pension based on the fact her husband was a coal miner. Sometime in 2005 she was told she had to pay a premium for her health insurance benefits. She was not sent an additional amount of money to pay for that premium. The money does not come to her or go into her bank account. The Claimant was told there was some money being paid for the health insurance benefits. The money has never come to her. The extra money that is paid is equal to the health insurance premium. She has the same amount of money she had prior to the [REDACTED] passing this money through her to pay for the health insurance.
- 13) 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.
- 14) Section 10.2 of the West Virginia Income Maintenance Manual reads in part that income is defined as any and all monies received from any source.
- 15) Appendix A, Chapter 10, of the West Virginia Income Maintenance Manual shows the maximum SSI for one person is \$603. Nursing Homes 300% SSI - \$1,809. This policy is dated 01/06. 100% SSI in 01/07 is \$1869.
- 16) 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.
- 17) 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.

- 18) Section 10.1 of the West Virginia Income Maintenance Manual defines a third-party payment as payments made on behalf of the AG by a person who is not a member of the AG. To qualify as a third-party payment, there must be an identifiable payment on behalf of the AG, rather than on behalf of the payer. Section 10.3 YYY shows that third-party payments are not counted as income for SSI-Related Medicaid.

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. Income is defined as any and all monies received from any source.
- 2) Policy also states that third-party payments are not counted as income for the SSI-Related Medicaid Program. A third-party payment is defined as payments made on behalf of the AG by a person who is not a member of the AG. To qualify as a third-party payment, there must be an identifiable payment on behalf of the AG, rather than on behalf of the payer.
- 3) The amount in dispute in this case is the \$381.00 that is being sent through the Claimant as a "Pension Supplement" in order for her to maintain health benefits. Testimony and evidence received on behalf of the Claimant revealed that the [REDACTED] Pension Plan is better funded than the Benefit Trust, but federal law prohibits a direct transfer of money from the Pension Plan to the Benefit Trust. There was an agreement to use the "Pension Supplement" and Co-Premium as a way to get more money into the Benefit Trust to maintain retiree benefits without costing the Claimant any money. It is noted in the explanation that this "pension supplement" will contribute only as long as it remains necessary to require a co-premium to the Benefit Trust. It is also noted when answering questions about the "pension supplement" that the amount of the pension supplement is more than the amount of the Co-Premium to help pay any income taxes that may be due on the Pension Supplement.
- 4) The amount of the Claimant's pension (\$416.42) has remained the same before the "pension supplement" and will remain the same after the funding issue is resolved. However, while the funding issue is being resolved, the Claimant is receiving a "pension supplement" of \$381.00. This "pension supplement" is being used to maintain the Claimant's health coverage. It is subject to income tax.
- 5) The State Hearing Officer did consider whether this "pension supplement" could be considered a third party payment. However, the fact that this payment is considered a supplement to the Claimant's regular pension and the fact it is subject to being taxable income, it is determined that the \$381.00 should be considered non-excluded income when determining the Claimant's financial eligibility for the ADW Program.
- 6) The Claimant's gross income at the time of the original appeal in 2005 was \$1898.42. The allowable limit at that time was \$1737. The 2007 allowable limit is \$1869.

IX. DECISION:

It is the finding of the State Hearing Officer that the \$381.00 "Pension Supplement" must be considered as income when calculating the Claimant's gross income for the ADW Program. The Department is upheld in the decision to terminate the Claimant's benefits because of excessive income. There is no change to the decision originally made on this case February 27, 2006. The proposed action to terminate benefits because of excessive income will be taken.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 24th Day of January, 2007.

Margaret M. Mann
State Hearing Officer