



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

December 14, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held December 13, 2011. Your hearing request was based on the Department of Health and Human Resources' action to terminate your benefits and services provided under the Medicaid Aged and Disabled, Title XIX (Home and 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 and Chapter 10, Appendix A].

Information submitted at your hearing reveals that your gross monthly non-excluded income (\$2,065.14) exceeds the maximum income allowed (\$2,022) to receive benefits and services through the Medicaid Aged and Disabled Waiver Services Program.

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

Sincerely,

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

Pc: Erika H. Young, Chairman, Board of Review
Murriel Hylton, ESS, WVDHHR

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

-----,

Claimant,

v.

Action Number: 11-BOR-2066

**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 December 13, 2011 on a timely appeal filed September 29, 2011.

II. PROGRAM PURPOSE:

The ADW Program is defined as a long-term care alternative that provides services that enable an individual to remain at or return home rather than receiving nursing facility (NF) care. Specifically, ADW services include Homemaker, Case Management, Consumer-Directed Case Management, Medical Adult Day Care, Transportation, and RN Assessment and Review.

III. PARTICIPANTS:

-----, Claimant

Murriel Hylton, Economic Services Supervisor (ESS), WVDHHR Representative

Presiding at the hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

It should be noted that this hearing was convened via telephone conference call.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Department was correct in its decision to terminate the Claimant's benefits and services through the Medicaid Aged and Disabled Waiver Program based on excessive income.

V. APPLICABLE POLICY:

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

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- DHS-1 Copy of Form IG-BR-29
- DHS-2 Copy of Claimant's Hearing Request (DFA-FH-1) - filed on September 29, 2011
- DHS-3 Copy of Notice of Decision dated September 20, 2011
- DHS-4 West Virginia Income Maintenance Manual (WVIMM), Section 17.24
- DHS-5 Department's Hearing Summary

VII. FINDINGS OF FACT:

- 1) On or about September 20, 2011, the Claimant was notified via a Notice of Decision (DHS-3) that his benefits and services through the Aged and Disabled Waiver Services Program, hereinafter ADW Program, were terminated effective September 30, 2011. This notice states, in pertinent part:

Action: Your Home and Community Based Waiver Medicaid benefits will stop. You will not receive this benefit after September 2011.

Reason: Income is more than the gross income limit for you to receive benefits.

Your income has increased.

- 2) The Department presented evidence to indicate the Claimant underwent a financial eligibility review on September 19, 2011 to determine continued eligibility for ADW Program services. The Claimant's gross monthly non-excluded income (countable monthly income amount without any deductions) was determined to be \$2,065.14 (\$1367.50 SSA + \$697.64 Private Disability Insurance). The Department contends that pursuant to policy found in the West Virginia Income Maintenance Manual, the Claimant's monthly gross non-excluded income was compared to 300% of the maximum SSI payment for a single individual. To be Medicaid-eligible, his income must be equal to or less than 300% of the SSI payment. Because the Claimant's gross monthly income exceeded 300% of the SSI amount (\$2,022), financial eligibility for continued participation in the Medicaid ADW Program could not be established.

- 3) The Claimant contends that he must pay \$96.50 per month out of his Social Security benefits for his Medicare Premium and that he only receives \$1,271 per month, not \$1367.50. Therefore, he asserts that his monthly income is actually \$1,968.15 and below \$2,022 maximum income limit.

- 4) West Virginia Income Maintenance Manual, Chapter 17.24 states as follows:

The determination of which income to count is the same as SSI-Related Medicaid. See Chapter 10. No income is deemed to the client. The client's monthly gross non-excluded income [emphasis added] is compared to 300% of the maximum SSI payment for a single individual. To be Medicaid-eligible, his income must be equal to or less than 300% of the SSI payment. There is no post-eligibility process for this coverage group.

EXAMPLE: When the current maximum SSI payment is \$674, the client's gross, non-excluded income must be equal to or less than \$2,022, to be Medicaid-eligible.

- 5) West Virginia Income Maintenance Manual, Chapter 10, Appendix A, reveals that 300% of the maximum SSI payment for a single individual is \$2,022.

VIII. CONCLUSIONS OF LAW:

- 1) In order to be financially eligible to receive benefits and services through the Medicaid Aged and Disabled Waiver Services Program, the client's monthly gross non-excluded income must be equal to or less than 300% of the maximum SSI payment (\$2,022).
- 2) While the Claimant contends that his Medicare Premium amount should be deducted from his monthly income, policy clearly indicates that there are no income deductions when determining financial eligibility for ADW Program benefits (monthly gross non-excluded income). The evidence submitted in this case demonstrates that the Claimant's verified gross monthly non-excluded income of \$2,065.14 clearly exceeds the maximum allowable income limit for a 1-person assistance group (\$2,022).
- 4) Whereas the Claimant's income exceeds the maximum allowable monthly income limit, continued financial eligibility for participation in the ADW Program cannot be established.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the action of the Department to terminate the Claimant's benefits and services under the Medicaid Aged and 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 ____ Day of December, 2011.

**Thomas E. Arnett
State Hearing Officer**