



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
Post Office Box 2590
Fairmont, WV 26555-2590

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

April 15, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 9, 2008. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for 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 & Chapter 10, Appendix A].

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 action in denying your application for benefits and services under the Medicaid Aged/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
Krista Mancino, ESW, DHHR

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

_____,
Claimant,

v. Action Number: 08-BOR-1065

**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 April 15, 2008 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 April 9, 2008 on a timely appeal, filed March 14, 2008.

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 son / POA
Krista Mancino, ESW, DHHR

Presiding at the Hearing was Thomas E. Arnett, 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 Department was correct in denying the Claimant's application for benefits and services through the Aged/Disabled Waiver (HCB) 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:

- Exhibit 1 Hearing Summary
- Exhibit 2 Notice of Decision dated 1/28/08
- Exhibit 3 WVIMM Chapter 17.24
- Exhibit 4 WVIMM Chapter 10, Appendix A
- Exhibit 5 Alternative LTC Eligibility Determination
- Exhibit 6 Referral Form for Medicaid Aged and Disabled Waiver Program – Personal Options.

VII. FINDINGS OF FACT:

- 1) On or about January 28, 2008, the Claimant was notified via a Notice of Decision (Exhibit 2) that her application for benefits and services through the Aged & Disabled Waiver Services Program, hereinafter ADW, was denied. This notice states, in pertinent part:

Action: Your 1/24/08 application for Home and Community Based Wavier Medicaid has been denied.

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

The amount of assets is more than is allowed for this benefit.

- 2) The Department presented evidence to indicate the Claimant was found medically eligible to participate in the ADW Program (Exhibit 6), however, a review of her financial eligibility (income and assets) conducted on January 24, 2008 revealed that the Claimant's income was in excess of the maximum allowable income for an assistance group (AG) of one.
- 3) The Claimant's representative did not dispute the Department's income calculations, however, he indicated that he is his mother's primary caregiver and that he needs assistance. His mother does not want to be placed in a nursing home and he was of the understanding that this arrangement would be beneficial to the State of West Virginia because the cost of nursing home care would be more.
- 4) The Claimant's gross monthly (countable) income was determined as follows (see Exhibit 5):

Social Security	\$1059.40
UMW Pension	\$ 407.01
Black Lung Pension	<u>\$ 584.80</u>
Total monthly income:	\$2051.21
- 5) The West Virginia Income Maintenance Manual (WVIMM), Chapter 17.24 provides income guidelines for the Home and Community Based Waiver Program states – To be Medicaid-eligible, his income must be equal to or less than 300% of the SSI payment.
- 6) 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 (\$637) x 3 = \$1911. The maximum gross monthly non-excluded income cannot exceed \$1911.

VIII. CONCLUSIONS OF LAW:

- 1) The Claimant applied for benefits and services through the Aged & Disabled Waiver Services Program and a financial eligibility review was conducted on January 24, 2008.
- 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 must be equal to or less than 300% of the maximum SSI payment (AG of 1 \$1911)
- 3) While the evidence indicates that the Claimant qualifies medically for a nursing facility level of care, the Claimant's verified gross monthly non-excluded income of \$2051.21 clearly exceeds the maximum allowable limit for a one person AG (\$1911).
- 4) Whereas the Claimant exceeds the maximum allowable monthly income limit, financial eligibility cannot be established for participation in the ADW Program cannot be established.

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 15th Day of April, 2008.

**Thomas E. Arnett
State Hearing Officer**