



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

Earl Ray Tomblin  
Governor

Rocco S. Fucillo  
Cabinet Secretary

July 18, 2012

-----  
-----  
-----

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held July 16, 2012. Your hearing request was based on the Department of Health and Human Resources' decision to terminate your financial eligibility for the Aged and Disabled 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.

Financial eligibility for the Aged and Disabled Waiver program is based on current policy and regulations. These regulations provide that the client's monthly gross non-excluded income is compared to 300% of the maximum SSI payment for a single individual. To be Medicaid-eligible, income must be equal to or less than 300% of the SSI payment (West Virginia Income Maintenance Manual Chapter 17.24).

The information which was submitted at your hearing revealed that your income was less than 300% of the maximum SSI payment for a single individual.

It is the decision of the State Hearing Officer to **reverse** the action of the Department to terminate your financial eligibility for the Aged and Disabled Waiver program.

Sincerely,

Eric L. Phillips  
State Hearing Officer  
Member, State Board of Review

cc: Erika Young-Chairman, Board of Review  
Paula Salcedo-Economic Service Worker

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

**IN RE:**     -----,

**Claimant,**

**v.**

**ACTION NO.: 12-BOR-1357**

**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 July 16, 2012 on a timely appeal, filed May 21, 2012.

**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  
-----, Claimant's representative  
Paula Salcedo, Economic Service Worker-DHHR

Presiding at the hearing was Eric L. Phillips, State Hearing Officer and a member of the Board of Review.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether or not the Department was correct in its decision to terminate the Claimant's financial eligibility for the Aged and Disabled Waiver program.

**V. APPLICABLE POLICY:**

West Virginia Income Maintenance Manual Chapter 17.24

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 Income Verification dated April 1, 2012
- D-2 Computer printout of unearned income
- D-3 Computer printout of financial eligibility
- D-4 Notice of Decision dated May 3, 2012
- D-5 West Virginia Income Maintenance Manual Chapter 17.24

**VII. FINDINGS OF FACT:**

- 1) The Claimant submitted a recertification review on March 22, 2012, in order to maintain her financial eligibility for the Aged and Disabled Waiver program.
- 2) Paula Salcedo, Economic Service Worker, testified that the Department utilized the Claimant's total gross benefit amount of \$1107.59 from her pension from Verizon (Exhibit D-1) and her monthly Social Security income of \$1030.90 (Exhibit D-2), to determine a monthly gross income of \$2138.49.
- 3) Ms. Salcedo indicated that the Claimant's total monthly income of \$2138.49 exceeded the income limit established by policy of \$2094.00 (Exhibit D-3). Ms. Salcedo indicated that the Claimant's recertification review for benefits was subsequently denied and she was issued a Notice of Decision (Exhibit D-4) on May 3, 2012, which documented that benefits would be terminated effective May 2012, because the Claimant's income had increased and exceeded the gross income limit.
- 4) -----, Claimant's representative and daughter, contends that the Claimant receives a monthly pension from Verizon in the amount of \$838.14 (Exhibit D-1). ----- indicated that her mother typically receives \$838.14, but received a quarterly reimbursement on her April 1, 2012, income verification in the amounts of \$89.70 for "Med B" and \$179.75 for "concessn svc ntx" for a total April 2012, gross monthly income of \$1107.59. ----- explained that her mother receives the \$179.75 as a reimbursement for her telephone utilities and \$89.70 as a reimbursement for Medicare. ----- indicated that these reimbursements are received every

four months and in order to gain an accurate picture of her mother's monthly income, these reimbursements should be divided quarterly and added to her monthly pension of \$838.14.

- 5) West Virginia Income Maintenance Manual Chapter 17.24 documents in pertinent part:

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 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.

- 6) West Virginia Income Maintenance Manual Chapter 10 Appendix A documents that 300% of the SSI payment equals \$2094.00.

### **VIII. CONCLUSIONS OF LAW:**

- 1) Policy requires that in order to be financially eligible for the Aged and Disabled Waiver program, an individual's total monthly gross non-excluded income is compared to 300% of the maximum SSI payment for a single individual. To be considered eligible, this income must be equal to or less than \$2094.00.
- 2) Testimony revealed that the Claimant receives certain concessions to her monthly gross retirement pension for Medicare and phone utilities on a quarterly basis. This testimony is considered credible because a review of the Claimant's year-to-date income outlined on submitted income verification supports testimony that these concessions were not received on a regular basis. Therefore, the Claimant's total monthly income should be adjusted to reflect the receipt of these quarterly payments.
- 3) The Claimant's total quarterly concessions of \$269.45 divided by three equals \$89.81. The Claimant's total monthly gross income should be calculated as \$838.14 monthly pension, \$89.81 concessions and \$1030.90 Social Security income, for a total of \$1958.85. Because the Claimant's total monthly gross income of \$1958.85 is less than 300% of the maximum SSI payment for a single individual, the Department was incorrect in its decision to terminate the Claimant's financial eligibility for the Aged and Disabled Waiver program.

### **IX. DECISION:**

It is the decision of the State Hearing Officer to **reverse** the action of the Department which terminated the Claimant's financial eligibility for the Aged and Disabled 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 July 2012.**

---

**Eric L. Phillips**  
**State Hearing Officer**