



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
9083 Middletown Mall
White Hall, WV 26554

Joe Manchin III
Governor

Patsy A. Hardy, FACHE, MSN, MBA
Cabinet Secretary

July 16, 2010

-----for

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held on June 23, 2010. Your appeal was based on the Department of Health and Human Resources' proposal to increase the amount of your financial contribution toward the cost of nursing facility care provided through the Medicaid Long-Term Care (Nursing Facility) 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.

Medicaid Long Term Care (Nursing Facility) Services are based on current policy and regulations. Some of these regulations state that once Medicaid eligibility is established, the client's contribution toward the cost of care in the facility is determined in the post-eligibility process. Those Medically Needy individuals who have no spenddown meet the requirement of Medicaid eligibility. Individuals whose income exceeds 300% of the maximum SSI Payment must meet a spenddown in order to qualify for Long-Term Care Medicaid. Because the amount of medical expenses used to meet the spenddown cannot be paid by Medicaid, the spenddown amount becomes part of the client's contribution toward the cost of care. (West Virginia Income Maintenance Manual, Chapter 17.9)

Information submitted at the hearing reveals that the Department was correct in its proposal to increase the amount of your financial contribution due to an increase in income.

It is the decision of the State Hearing Officer to **uphold** the Department's proposal to increase the amount of your monthly financial contribution toward the cost of nursing facility care from \$1,872.10 to \$1,933.80.

Sincerely,

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

Pc: Erika H. Young, Chairman, Board of Review
Theresa Copley, ESW, DHHR

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

-----,

Claimant,

v.

Action Number: 10-BOR-1271

**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 June 23, 2010 on a timely appeal filed May 3, 2010.

It should be noted that the Claimant contribution amount has remained unchanged pending the hearing decision.

II. PROGRAM PURPOSE:

The program entitled Long Term Care Medicaid (nursing facility services) is a medical service which is covered by the State's Medicaid Program. Payment for care is made to nursing homes which meet Title XIX (Medicaid) standards for the care provided to eligible recipients. In order to qualify for Nursing Home Care, an individual must meet financial and medical eligibility criteria.

III. PARTICIPANTS:

-----, Claimant's son / Attorney-in-Fact
Theresa Copley, ESW, DHHR

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

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department was correct in its proposal to increase the amount of the Claimant's financial contribution toward the cost of nursing facility care subsidized by the Medicaid Long-Term Care (Nursing Facility) Program.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 17.9

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- Exhibit 1 Hearing Summary (June 23, 2010)
- Exhibit 2 WV Income Maintenance Manual, Chapter 17.9
- Exhibit 3 Verification of Claimant's gross monthly income
- Exhibit 4 WV Income Maintenance Manual, Chapter 10, Appendix A (Income Limits)
- Exhibit 5 Nursing Facility Patient Liability Determination (EIRA from RAPIDS)
- Exhibit 6 NH3 – Notice of Contribution to the Cost of Care – 3/18/10
- Exhibit 7 Correspondence from [REDACTED] dated 4/8/10

Claimant's Exhibits:

- C-1 Changes in Claimant's contribution amount for period of October 26, 2009 through April 1, 2010.

VII. FINDINGS OF FACT:

- 1) On or about March 18, 2010, the Claimant received notice (Exhibit 6) that her contribution toward the cost of care through the Medicaid Long-Term Care Program was going to increase from \$1,872.10 to \$1,933.80 per month effective May 2010 due to an increase in income.
- 2) The Claimant, through her representative, appealed the Department's proposal to increase the amount of her contribution toward the cost of care as she does not have enough money remaining (after income deductions) to pay the proposed increase.
- 3) As a matter of record, both parties agree that the Claimant's gross monthly income is based on the following monthly payment amounts (See Exhibit 3):
 - \$870.80 Social Security
 - \$1,283.00 Pension from NALC
 - 2,153.80 – Gross monthly income

- 4) The Claimant's son/representative contends that his mother's net monthly income is \$1,793.30. The Claimant's net income was determined as follows - \$2,153.80 (Gross monthly income), less \$151.80 (Medicare premium), less \$147.00 (private medical insurance), less \$61.70 (taxes taken from her pension). This causes the Claimant to be \$140.50 short of the required contribution amount, and when adding the personal needs allowance of \$50 per month, the Claimant's income falls short of the \$1,933.80 contribution amount by \$190.50 per month.
- 5) The Department's representative testified that the amount of the Claimant's contribution toward the cost of nursing facility care is based on gross monthly income (\$2,153.80), and because her gross income exceeds 300% of the maximum SSI monthly income amount (\$2,022), she must meet a spenddown in order to establish Medicaid eligibility. As a result, the Claimant is entitled to only \$220 in income deductions – (\$20 SSI disregard and \$200 from the MNIL - Monthly Needy Income Limit found in Appendix A of Chapter 10 in the WV Income Maintenance Manual - See Exhibit 4).
- 6) WV Income Maintenance Manual, Chapter 17.9, provides information regarding financial eligibility and states that when an applicant is not a recipient of full Medicaid coverage, eligibility is determined by comparing the client's gross non-excluded monthly income to 300% of the current maximum SSI payment for one person (\$2,022). To be Medicaid eligible, the client's income must be equal to or less than 300% of the SSI payment. Once Medicaid eligibility is established in this manner, the client's contribution toward his cost of care is determined in the post-eligibility process. There is no spenddown amount for persons determined eligible in this way.

However, if the individual's income exceeds 300% SSI payment (\$2,022), eligibility can be established and financial assistance received for the cost of nursing facility services based on SSI-Related Medicaid. All policies and procedures in effect for other SSI-Related cases apply to these cases, including the determination of a spenddown amount, if applicable.

In determining the client's contribution toward the cost of nursing facility care, the worker must apply only allowable income deductions, including a \$50 deduction for personal needs and a deduction for non-reimbursable medical expenses - this is called the post-eligibility process. The remainder, after all allowable deductions, is the resource amount, which is at least part of the amount the client must contribute toward the cost of care.

If the client's resource amount exceeds the amount of the spenddown, the resource amount is added to the spenddown to determine the client's total contribution toward nursing care. However, if the spenddown amount exceeds the resource amount, the resource amount is \$0.00 and the spenddown is the amount of the client's contribution toward the cost of care.

Because the amount of medical expenses used to meet the client's spenddown cannot be paid by Medicaid, the spenddown amount becomes part, if not exclusively, the amount of the client's contribution toward the cost of care.

- 7) According to the calculations prescribed in policy, the Claimant's contribution amount is determined as follows:

\$ 870.80	Social Security Income
<u>\$1283.00</u>	Pension from NALC
\$2153.80	Gross Monthly income
- 200.00	MNIL
- <u>20.00</u>	SSI Disregard
\$1933.80	Spenddown Amount

Resource Amount Calculations – Gross income less allowable deductions.

\$2153.80	Gross Monthly Income
- <u>50.00</u>	Personal Needs Allowance
\$2103.80	Remainder
- <u>151.80</u>	Medicare premium (non-reimbursable medical expenses)
\$1952.00	Remainder
- <u>147.00</u>	Health insurance premium (non-reimbursable medical expenses)
\$1805.00	Remainder
- <u>1933.80</u>	Spenddown (non-reimbursable medical expense)
0.00	Resource Amount.

The client has no resource amount, so her total contribution is \$1933.80 – the amount of her spenddown. The Department cannot pay any part of the \$1,933.80 because it is the client's spenddown and she is, by definition, liable for it.

VIII. CONCLUSIONS OF LAW:

- 1) Policy requires that an individual's gross monthly income is used to establish financial eligibility for participation in the Medicaid Long-Term Care Program. If the individual's gross monthly income exceeds 300% of the maximum SSI payment amount, a spenddown is applied to the case. If the client's calculated resource amount exceeds the amount of the spenddown, the spenddown and resource amount are added together to establish the client's total contribution toward nursing care. If the spenddown exceeds the resource amount, the spenddown is the amount of the client's contribution toward the cost of care.
- 2) Evidence reveals that applying a spenddown in the Claimant's Medicaid Long-Term Care case is correct as her gross monthly income exceeds 300% of the maximum SSI payment amount. Because the Claimant's spenddown exceeds the resource amount, no additional fees are added and the amount of the spenddown is the client's required contribution toward the cost of nursing facility care. Based on the evidence, the Department has accurately calculated the monthly contribution toward the cost of nursing facility care to be \$1,933.80.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's proposal to increase the amount of the Claimant's contribution toward the cost of care provided through the Medicaid Long-Term Care (Nursing Facility) Program to \$1,933.80.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ Day of July, 2010.

Thomas E. Arnett
State Hearing Officer