



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
416 Adams St.
Fairmont, WV 26554

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

June 30, 2016



RE: [REDACTED] v. WVDHHR
ACTION NO.: 16-BOR-1992

Dear Ms. [REDACTED]

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

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.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

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

Encl: Appellant's Recourse to Hearing Decision
Form IG-BR-29

cc: Misty Fielder, WVDHHR
[REDACTED], POA

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

██████████,

Appellant,

v.

Action Number: 16-BOR-1992

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for ██████████. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on June 29, 2016, on an appeal filed May 23, 2016.

The matter before the Hearing Officer arises from Respondent's May 13, 2016 determination of Appellant's eligibility for Medicaid Long-Term Care (Nursing Facility) benefits and her resource (monthly cost of care) amount.

At the hearing, Respondent appeared by Economic Service Worker (ESW) Misty Fielder. The Appellant was represented by her daughter/Power of Attorney (POA), ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 E-mail to Nursing Facility dated 4/6/16
- D-2 Approval Notice dated 5/13/16 (Includes Resource amounts for April & May 2016)
- D-3 Cost of Care Notice dated 5/12/16
- D-4 Incorrect Budget Calculation for April 2016
- D-5 Corrected Budget Calculation for April 2016
- D-6 Corrected Cost of Care Notice dated 5/13/16
- D-7 Incorrect Budget Calculation for May 2016
- D-8 Corrected Budget Calculation for May 2016
- D-9 West Virginia Income Maintenance Manual §17.9.B, C and D

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) Appellant was placed in [REDACTED], hereinafter [REDACTED] in February 2016 and was a private pay resident through March 2016.
- 2) On April 6, 2016, Respondent's representative, Misty Fielder, responded to [REDACTED] E-mail (D-1) and advised that Appellant was determined to be financially eligible for Medicaid Long-Term Care benefits effective April 2016, and that Appellant's resource amount (monthly cost of care) was determined as follows: April 2016 (\$757.77) and May 2016 (\$716.77). As a matter of record, Respondent noted that this e-mail was provided only to [REDACTED] as an estimate and was not an official notice and Appellant's application had not yet been approved. Respondent further noted that this estimate failed to include all of the Appellant's gross monthly income.
- 3) On May 13, 2016, Appellant was notified (D-2) that her application for Medicaid Long-Term Care benefits was approved, however, the Appellant's resource amount was determined as follows: April 2016 (\$1,716.77) and May 2016 (\$1,716.77). Respondent acknowledged, however, that the budget calculations for April 2016 (D-4) and May 2016 (D-7) were incorrect because these calculations did not give the Appellant a deduction of 104.90 for her Medicare Part B monthly premium.
- 4) Appellant's budget was recalculated to include the \$104.90 Medicare Part B monthly premium (in addition to the monthly personal needs allowance of \$50 and the outside living expense deduction of \$175), and the determination was made that her monthly resource amount for April 2016 (D-5 - \$1,611.87) - prorated from April 6, 2014 - was \$1,343.25 and May 2016 (D-8 - \$1,611.87), as indicated in Exhibit D-6.
- 5) Appellant's daughter/representative initially questioned the calculation of the gross monthly income, but acknowledged the calculations were correct. Appellant daughter argued that she did not believe it was fair because she already has a bill at [REDACTED] in excess of \$13,000 for February and March 2016, and she has also had to pay some of the Appellant's other expenses.

APPLICABLE POLICY

Policy found in §17.9.D provides that the client's cost of care (resource amount) is determined by applying allowable deductions and disregards to the client's gross income. The remainder of the client's income is used to determine the client's total cost of care. Income disregards and deductions include: personal needs allowance (\$50), community spouse maintenance allowance

(requires calculations if client qualifies), family maintenance allowance (requires calculations if client qualifies), outside living expenses (\$175), and certain non-reimbursable medical expenses may be deducted, including the Medicare Part B premium (\$104.90). To determine the resource amount when the client has not resided in the facility for a full calendar month, the client's total monthly resource amount is divided by the actual number of days in the calendar month. This will establish a daily cost of care. The daily cost of care is then multiplied by the number of actual days the client resided in the facility to arrive at the cost of care for the partial month.

DISCUSSION

Pursuant to the West Virginia Income Maintenance Manual (WVIMM), §17.9, a client's monthly cost of care (resource amount) is based on the individual's remaining income after all applicable deductions and disregards are applied. To determine the resource amount when the client has not resided in the facility for a full calendar month, the client's total monthly resource amount is divided by the actual number of days in the calendar month. This will establish a daily cost of care. The daily cost of care is then multiplied by the number of actual days the client resided in the facility to arrive at the cost of care for the partial month.

Evidence submitted in the case confirms that the Appellant's gross monthly income (\$1,941.77) was subject to the following deductions: \$50 (personal needs allowance), \$175 (outside living expense) and \$104.90 (Medicare Part B premium). The Appellant's remaining gross monthly income, as calculated by Respondent, is \$1,611.87. Whereas the month of April was prorated beginning April 6, 2016, the following calculations are used: (\$1,611.87 divided by 30 days = 53.73 per day) 25 days x \$53.73= \$1,343.25. As a result, Appellant's resource amount for April 2016 is \$1,343.25. Because these same calculations are used for May 2016 (but not prorated) the Appellant's resource amount was correctly determined to be \$1,611.87. While Appellant's representative indicated that she did not believe she should have to pay the additional amounts beyond what was included in the initial "unofficial" E-mail, there are no provisions in policy that would allow the Respondent to knowingly disregard the regulations that govern the Medicaid Long-Term Care Program – including an erroneous monthly resource calculation amount.

CONCLUSION OF LAW

The evidence confirms that while the Respondent's initial calculations of the Appellant's monthly resource amount for April and May 2016 were erroneous, a review of the corrected calculations confirms that the monthly resource amount for April 2016 (\$1,343.25) and May 2016 (\$1,611.87) is accurate.

DECISION

It is the decision of the State Hearing Officer to UPHOLD Respondent's determination of Appellant's Medicaid Long-Term Care Program monthly resource amount for April and May 2016.

ENTERED this ____ Day of June 2016.

**Thomas E. Arnett
State Hearing Officer**