



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL**

**Bill J. Crouch
Cabinet Secretary**

**BOARD OF REVIEW
4190 Washington Street, West
Charleston, West Virginia 25313
304-746-2360
Fax – 304-558-0851**

**Jolynn Marra
Interim Inspector General**

June 30, 2020

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.:20-BOR-1800

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,

Danielle C. Jarrett
State Hearing Officer
Member, State Board of Review

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

cc: Sara Pemberton, Department Representative

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

██████████,

Appellant,

v.

Action Number: 20-BOR-1800

**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 July 21, 2020, on an appeal filed June 18, 2020.

The matter before the Hearing Officer arises from the June 18, 2020 Respondent's determination of the Appellant's contribution for Long-Term Care (LTC) Medicaid effective April 1, 2020 and July 1, 2020.

At the hearing, the Respondent appeared by Sara Pemberton, Department Representative, WVDHHR. Appearing as a witness for the Respondent was Misty Fielder, Economic Service Worker, WVDHHR. The Appellant appeared through her representative, ██████████. Appearing as a witness for the Appellant was ██████████, the Appellant's friend. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Notice of Decision, dated March 6, 2020
- D-2 Notice of Decision, dated June 4, 2019
- D-3 Notice of Decision, dated June 28, 2019
- D-4 Notice of Decision, dated February 10, 2020
- D-5 Social Security Administration (SSA) Award Letter
- D-6 Humana Medicare Billing Notice, dated December 11, 2018; ██████████
Insurance Company Billing Notice, dated February 28, 2019; and Humana
Verification of Enrollment, dated December 9, 2018
- D-7 Notice of Decision, dated June 18, 2020
- D-8 West Virginia Income Maintenance Manual (WV IMM) §§ 24.7.3 through 24.7.4
- D-9 WV IMM §§ 4.14.4.J.3 through 4.14.4.M

- D-10 WV IMM § 4.3
D-11 WV IMM §§ 24.7.5 through 24.7.7
D-12 WV IMM §§ 10.4.2.E through 10.4.4.A
D-13 eRAPIDS computer system screenshot printout of Unearned Income, dated February 7, 2020
D-14 [REDACTED] Annuity Statement, dated April 2, 2019
D-15 Humana Low Income Subsidy Rider Notice, dated December 12, 2018
D-16 [REDACTED] Billing Statement, dated March 1, 2019 through June 30, 2019

Appellant's Exhibits:

None

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) The Appellant is a resident of [REDACTED] (Nursing Facility) and receives Long-Term Care (LTC) Medicaid.
- 2) In January 2020, the Appellant's gross monthly Social Security benefit amount increased to \$910. (Exhibits D-5 and D-13)
- 3) The Appellant receives a monthly annuity payment in the amount of \$261.34. (Exhibit D-14)
- 4) On March 6, 2020, the Respondent acted upon a BENDEX system alert and issued notice to the Appellant that due to the increase in income her patient responsibility would increase from \$661.52 to \$1,026.44, effective April 1, 2020. (Exhibit D-1)
- 5) BENDEX alerts regarding an increase in Medicare premiums were not included in the Appellant's April 1, 2020 patient responsibility calculations.
- 6) Effective April 1, 2020, the patient responsibility was calculated based on the Appellant's total gross monthly income of \$1,171.34. (Exhibits D-5, D-13, and D-14)
- 7) Effective April 1, 2020, the Appellant was assessed with deductions for a Personal Needs Allowance (PNA) in the amount of \$50 and a Medicare insurance premium in the amount of \$94.90. (Exhibits D-1 and D-15)
- 8) Effective April 1, 2020, the Appellant's remaining \$364.92 remedial deduction was exhausted and the increase in her Social Security benefit amount was added, resulting in an increase in the Appellant's resource amount.

- 9) On June 16, 2020, the Nursing Facility notified the Respondent they believed the resource amount was in error and provided a copy of the Appellant's SSA award notice for review. (Exhibit D-5)
- 10) On June 18, 2020, after review of the submitted SSA award notice, the Respondent issued notice of decision advising the Appellant that her patient responsibility amount payable to the Nursing Facility would decrease from \$1,026.44 to \$1,003.04, effective July 1, 2020. (Exhibit D-7)
- 11) Effective June 1, 2020, calculations of patient responsibility included a PNA deduction in the amount of \$50, and a health insurance premium deduction in the amount of \$118.30, leaving the Appellant's patient responsibility of \$1,003.04. (Exhibit D-7)

APPLICABLE POLICY

WV IMM § 1.2.4, states the client's responsibility is to provide complete and accurate information about his or her circumstances so that the worker can make a correct determination about his or her eligibility.

WV IMM § 1.14.3 explains the Worker must enter the State Data Exchange (SDX) information for approval within 45 days of the date on which the client first appears on data exchange, or the referral from SSA or the Bureau of Medical Services (BMS) Buy-In Unit is received.

WV IMM § 6.3.4 reads through data exchange, SSA provides the Department of Health and Human Resources (DHHR) with information on pensions; earnings; net earnings from self-employment; Retirement, Survivors, and Disability Insurance (RSDI); SSI; and other related benefit information through SSA.

WV IMM § 6.3.4.A.1 explains that the Beneficiary and Earnings Data Exchange (BENDEX) occurs daily. Information received includes RSDI amounts and Medicare eligibility and premiums. This information is not subject to independent verification for any program.

WV IMM § 10.4.3.A.2 reads that all other changes that results in an increase in benefits, changes are made as follows: if the next issuance date is more than 10 days after the date the change is reported, the change is effective the month following the report month; and if the next issuance date is within 10 days of the date of the change is reported, the change is effective two months after the report month. The 10-day period includes the date of the report and takes the staggered benefit issuance date into consideration.

WV IMM § 10.4.3.B explains that when the reported change results in a decrease in benefits, the change is effective the following month, if there is time to issue advance notice. If not, the change is effective two months after it occurs.

WV IMM § 24.7.3 explains in determining the client's contribution towards his cost of nursing facility care, the Worker must apply only the income deductions listed. This is 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 towards his cost of care.

WV IMM § 24.7.3.A.1 explains this amount is subtracted from income to cover the cost of clothing and other personal needs of the nursing facility resident. For most residents, the monthly amount deducted is \$50.

WV IMM § 24.7.3.A.5 explains certain non-reimbursable medical expenses for the eligible client only may be deducted in the post-eligibility process. These expenses are sometimes referred to as “remedial expenses.” Non-reimbursable means the expense will not be or has not been paid to the provider or reimbursed to the client by any third-party payer, such as, but not limited to, Medicare, Medicaid, private insurance or another individual. A non-reimbursable medical expense may be permitted only for services provided in the month of application and the three months prior to the month of application.

WV IMM § 24.7.6 reads if the individual is a full Medicaid coverage client or in the Nursing Facility Medicaid coverage group without a spenddown, the resource amount determined in the post eligibility process from above is his total cost contribution.

DISCUSSION

The Appellant is a resident of [REDACTED] and receives LTC Medicaid. The issue on appeal arises from the Respondent’s finding that the Appellant’s responsibility amount payable to the Nursing Facility increased from \$661.52 to \$1,026.44, effective April 1, 2020, and a subsequent decrease to \$1,003.04, effective July 1, 2020. The Appellant’s representative argued the Appellant’s resource amount exceeded her actual income and did not provide her the \$50 PNA. The Appellant’s representative did not contest the calculation of the Appellant’s income.

In January 2020, the Appellant’s Social Security benefit amount increased to \$910. The Respondent received a BENDEX alert and calculated the Appellant’s April 1, 2020 resource amount based on the increase in her Social Security benefit amount. It is unknown why the Respondent did not include the increase in her Medicare premium at that time. Policy indicates that the BENDEX alert includes any change in Social Security benefit amount as well as Medicare premium changes. Policy also requires the worker to update case information within 45 days of the received alert.

In February 2020, the remaining balance owed on the remedial of \$394.91, was less than the resource amount for one month. As a result, the Appellant’s resource increased from \$0 to \$661.52, effective March 1, 2020. The Respondent testified the remedial was paid in full in the month of March 2020. The issue regarding the increase effective March 1, 2020, was not timely received and therefore, not the subject of appeal before the Board of Review.

On March 6, 2020, the Respondent issued notice to the Appellant that due to the increase in income, her patient responsibility would increase from \$661.52 to \$1,026.44, effective April 1, 2020. The Respondent explained the increase was also due to the removal of the \$394.91 remedial deduction. The resource calculation effective April 2020 was based on the gross income of \$1,171.34 and deductions for a PNA of \$50 per month and a health insurance premium in the

amount of \$94.90. When the Respondent calculated the Appellant's April resource amount, it failed to include the increase in her Medicare premium costs.

On June 16, 2020, the Nursing Facility notified the Respondent they believed the resource amount was in error and provided a copy of the Appellant's SSA award notice for review. The Respondent testified the Nursing Facility did not report the increase in premiums until June 2020, and therefore, the Appellant was not entitled to the increased deductions until July 1, 2020, the month following report month. On June 18, 2020, notice was issued advising the Appellant that her patient responsibility amount payable to the Nursing Facility would decrease from \$1,026.44 to \$1,003.34, effective July 1, 2020. However, policy is clear that BENDEX alerts include changes to income as well as Medicare premiums and must be acted upon within 45 days of receipt. Evidence shows that the Respondent acted upon a BENDEX alert in January 2020, when adding the increase in Social Security benefit amount to the Appellant's calculations effective April 2020, but failed to include the increased premium at that time. Because the BENDEX alert requires no additional verification per policy, the increase in Medicare premium costs should have been included when calculating the April 2020 resource amount.

CONCLUSIONS OF LAW

- 1) The Appellant's total gross income of \$1,171.34 was correctly calculated by the Respondent and must be used in the calculation of total contribution to Long-Term Care.
- 2) The Respondent failed to apply the appropriate Medicare premium deductions when calculating the Appellant's resource amounts for the months of April through June 2020, as required by policy when acting upon BENDEX alerts.
- 3) The Respondent correctly applied the allowable deductions when determining the Appellant's total contribution of \$1,003.04, effective July 1, 2020.

DECISION

It is the decision of the State Hearing Officer that the Respondent erred in its calculation of the Appellant's total resource contribution for the months of April through June 2020, and therefore, **REVERSES** the determination the Appellant owed \$1,026.44, per month beginning April 1, 2020. It is further the decision of the State Hearing Officer that the Respondent's determination of the Appellant's total recourse contribution effective July 1, 2020, in the amount of \$1,003.04, is correct and shall be applied retroactively beginning April 1, 2020.

ENTERED this _____ day of July 2020.

Danielle C. Jarrett
State Hearing Officer