



March 26, 2024

[REDACTED]

RE: [REDACTED] v. WV DOHS
ACTION NO.: 24-BOR-1458

Dear [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 HUMAN SERVICES. 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,

Lori Woodward, J.D.
Certified State Hearing Officer
Member, State Board of Review

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

cc: Ann Hubbard/Peter VanKleeck, WVDOHS/BFA

**WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW**

[REDACTED]

Appellant,

v.

Action Number: 24-BOR-1458

**WEST VIRGINIA DEPARTMENT OF
HUMAN SERVICES
BUREAU FOR FAMILY ASSISTANCE,**

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for [REDACTED]. This hearing was held in accordance with the provisions found in Chapter 700 of the Office of Inspector General Common Chapters Manual. This fair hearing was convened on March 20, 2024.

The matter before the Hearing Officer arises from the February 8, 2024 decision by the Respondent to determine the amount of the patient responsibility for his long-term care.

At the hearing, the Respondent appeared by Peter VanKleeck, Family Support Supervisor. The Appellant appeared *pro-se*. The witnesses were placed under oath and the following documents were admitted into evidence.

Department's Exhibits:

None

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) On February 8, 2024, the Respondent issued a determination regarding the Appellant's patient responsibility, including the amount for community spouse maintenance allowance for Long-Term Care Medicaid.
- 2) The Appellant appeals the Respondent's calculations in determining the amounts in the February 8, 2024 determination, especially with respect to mortgage payments and medical bills.
- 3) The Respondent's representative stipulated that the agency erred in not requesting verification for consideration of possible allowed deductions.

WV IMM, Chapter 24, §24.7.3, Post-Eligibility Process, in part: In determining the client's contribution toward his cost of nursing facility care, the Worker must apply only the income deductions listed below. 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 toward his cost of care. The client's spenddown amount, if any, as determined above, is added to the resource amount to determine the client's total contribution toward his nursing care, except when there is a community spouse. In cases with a community spouse, the spenddown is not added to the computed resource amount. The spenddown is used only to compare to the nursing facility's Medicaid cost of care to determine eligibility. See Section 24.7.6.

WV IMM, Chapter 24, §24.7.3.A, Income Disregards and Deductions: Only the items in the following sections may be deducted from the client's gross income in the post-eligibility process.

WV IMM, Chapter 24, §24.7.3.A.1, Client's Personal Needs Allowance (PNA): 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. However, for an individual who is receiving the reduced Veterans Affairs (VA) pension of \$90, the monthly PNA is \$90. Similarly, an individual receiving SSI will have his monthly allocation reduced to \$30, which is his monthly PNA if he is in the facility for at least three months.

WV IMM, Chapter 24, §24.7.3.A.2, Community Spouse Maintenance Allowance (CSMA): When the institutionalized individual has a spouse living in the community, a portion of his income may be deducted for the support of the spouse at home. The community spouse must be included as part of the case and his living expenses taken into consideration to calculate the CSMA. To determine the CSMA, the income of the community spouse is subtracted from a Spousal Maintenance Standard (SMS) which is either:

- The minimum SMS. This is 150% of the monthly FPL for 2 persons; or
- The minimum SMS, increased by excess shelter/utility expenses, but not exceeding the maximum SMS.

See Chapter 4, Appendix A for the minimum and maximum Spousal Maintenance Standard amounts.

The remainder is the amount of the institutionalized spouse's income which can be used to meet his community spouse's needs.

For the deduction to be applied, the determined amount must actually be paid to the community spouse. If the client contributes less than the determined amount, only the amount actually contributed to the community spouse is deducted. If he has been ordered by a court or a Hearings Officer to contribute more to his spouse, the higher amount is deducted.

The following steps are used to determine the amount of the CSMA:

- Step 1: Add the actual shelter cost and the amount of the current SNAP Heating/Cooling Standard (HCS). See Chapter 4, Appendix B. The shelter cost must be for the home the institutionalized spouse and the community spouse shared prior to institutionalization, and in which the community spouse continues to live. It must have been the client's principal place of residence. **Shelter costs include rent or mortgage payments, interest, principal, taxes, insurance and required maintenance charges for a condominium or cooperative.** [Emphasis added]
- Step 2: Compare the total of the costs in Step 1 to 30% of the minimum SMS. See Chapter 4, Appendix A. When the shelter/utility costs exceed 30% of the minimum SMS, subtract the 30% amount from the shelter/utility costs.
- Step 3: Add the remainder from Step 2 to the minimum SMS. This amount, not to exceed the maximum SMS, is used in Step 5. See Chapter 4, Appendix A.
- Step 4: Add together the community spouse's gross, countable earned and unearned income.
- Step 5: Subtract the Step 4 amount from the amount determined in Step 3 and if there are any cents, round the resulting amount up. This is the amount subtracted from the income of the institutionalized spouse for the needs of his community spouse.

If the Step 4 amount is equal to or greater than the Step 3 amount, no deduction is allowed.

If the calculated CMSA is less than the minimum SMS or the Community Spouse will experience extreme financial duress, a fair hearing can be requested by the client, community spouse or authorized representative to obtain more of the institutionalized spouse's income and/or assets. See Common Chapters Manual, Chapter 700, Section 710.27.

WV IMM, Chapter 24, §24.7.3.A.5, Non-Reimbursable Medical Expenses (NRME), in part: 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.

DISCUSSION

The Appellant appealed the Respondent's February 8, 2024 determination of the Appellant's monthly patient responsibility for his long-term care, specifically in its calculation of the

community spouse maintenance allowance. The Respondent's representative, Mr. VanKleeck, conceded that the Respondent erred in not requesting verification of information needed in its determination of the Appellant's monthly patient responsibility and community spouse maintenance allowance. Specifically, the worker failed to consider the Appellant's community spouse's shelter costs in determining the community spouse maintenance allowance. Mr. VanKleeck testified that the Respondent will properly issue verification requests, and a new determination will be made as to the Appellant's monthly patient responsibility and the amount of community spouse maintenance allowance will be made.

CONCLUSIONS OF LAW

- 1) Policy instructs that in determining the client's contribution toward his cost of nursing facility care, the worker must apply only the income deductions as listed in policy. The remainder, after all allowable deductions, is the resource amount, which is at least part of the amount the client must contribute toward his cost of care.
- 2) Policy also instructs that when the institutionalized individual has a spouse living in the community, a portion of his income may be deducted for the support of the spouse at home.
- 3) Shelter costs, which include rent or mortgage payments, interest, principal, taxes, insurance and required maintenance charges for a condominium or cooperative, are an allowable deduction in calculation of the Community Spouse Maintenance Allowance, per policy.
- 4) The Respondent failed to consider the shelter costs when calculating the Community Spouse Maintenance Allowance.
- 5) The Respondent's calculation of the Appellant's contribution to his cost of care cannot be affirmed.

DECISION

It is the decision of the Hearing Officer to **REVERSE** the Respondent's determination of the Appellant's contribution to his cost of care to the nursing facility. The matter is **REMANDED** for the Respondent to issue a proper verification request allowing the Appellant an opportunity to provide information as to possible deductions he may be allowed by policy.

ENTERED this 26th day of March 2024.

Lori Woodward, Certified State Hearing Officer