



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

**Joe Manchin III**  
Governor

**Martha Yeager Walker**  
Secretary

July 8, 2005

\_\_\_\_\_  
for \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 9, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to discontinue Medicaid coverage which was provided through the MR/DD waiver services.

In arriving at a decision, the State Hearings 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.

Eligibility for the Medicaid Card is based on current policy and regulations. Some of these regulations state as follows: Individuals who otherwise meet eligibility requirements but who have income in excess of the established standard will be ineligible for medical coverage unless this excess is insufficient to meet their medical needs. These individuals are required to "spenddown" this excess amount in order to qualify for coverage. For Medicaid purposes, a 6-month period of consideration (POC) is utilized to project countable income. If medical bills sufficient to satisfy the established Spenddown are not submitted by the application processing deadline (30 days from application) the application is denied. Spenddown Assistance Groups (AG) are not redetermined and are closed at the end of the 6th month of the POC. The client must reapply for a new POC. (West Virginia Income Maintenance Manual § 16.9, 10.22 & 1.22).

The information, which was submitted at your hearing, revealed that MR/DD waiver services had ended and the Department accurately assessed Medicaid coverage using the Spenddown policies.

It is the decision of the State Hearings Officer to uphold the action of the Department to discontinue the MR/DD related Medicaid coverage.

Sincerely,

Sharon K. Yoho  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Susan Layman, DHHR

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

\_\_\_\_\_ by \_\_\_\_\_,

**Claimant,**

**v.** **Action Number:** \_\_\_\_\_

**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 concluded on May 9, 2005 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 May 9, 2005 on a timely appeal, filed March 1, 2005.

It should be noted here that the claimant's benefits have been continued pending a hearing decision.

**II. PROGRAM PURPOSE:**

The Program entitled Medicaid is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

The 1965 Amendments to the Social Security Act established, under Title XIX, a Federal-State medical assistance program commonly known as Medicaid. The Department of Health and Human Resources administers the Medicaid Program in West Virginia in accordance with Federal Regulations. The Bureau for Medical Services is responsible for development of regulations to implement Federal and State requirements for the program. The Department of Health and Human Resources processes claims for reimbursements to providers participating in the program.

### **III. PARTICIPANTS:**

\_\_\_\_\_, claimant's caregiver  
\_\_\_\_\_, claimant's Legal Committee  
Susan Layman, Income Maintenance Worker DHHR

Presiding at the Hearing was Sharon K. Yoho, State Hearing Officer and a member of the State Board of Review.

### **IV. QUESTIONS TO BE DECIDED:**

The question(s) to be decided is whether the agency was correct in their proposed discontinuance of the Medicaid benefits provided under the MR/DD waiver services and assessing coverage under the Spenddown Medicaid policies.

### **V. APPLICABLE POLICY:**

West Virginia Income Maintenance Manual § 1.22, 10.22 and 17.32.  
42 CFR § 435.831 Code of Federal Regulations

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

#### **Department's Exhibits:**

- D-1 WV Income Maintenance Manual Chapter 10.22
- D-2 WV Income Maintenance Manual Chapter 16.9
- D-3 WV Income Maintenance Manual Chapter 17.32
- D-4 Notice of discontinuance of MR/DD Waiver Services dated February 22, 2005

#### **Claimants' Exhibits:**

- C-1 Memo from MR/DD Program Director dated November 16, 2004
- C-2 Pre-Admission Screening completed October 9, 2002

### **VII. FINDINGS OF FACT:**

- 1) Mr. \_\_\_\_\_, who had been an active participant of the MR/DD Waiver program, received an annual case evaluation in 2002.
- 2) The annual evaluation included participation of personnel from \_\_\_\_\_ County \_\_\_\_\_ Care, MR/DD Waiver staff and the claimant's caregivers. It was determined that Mr. \_\_\_\_\_ might be better served if he were transferred from the MR/DD Waiver day program into the Personal Care Home program.
- 3) The process of this suggested transfer to the Personal Care Home program took many months to complete. Once the process was completed in October 2003, Mr. \_\_\_\_\_ was removed from the MR/DD program.

- 4) The MR/DD Waiver program staff did not notify the Community Services Manager of the local WV Department of Health and Human Resources of this MR/DD Waiver closure until November 16, 2004. A memo was sent in November advising that as of October 6, 2003 the claimant was no longer eligible for the Medical Assistance Program under the MR/DD program.
- 5) The Agency did not process the Medicaid closure until the month of February 2005. This delay occurred due to the wrong County office being notified of the need for closure and due to absence of staff during Vacation Leave.
- 6) Mr. \_\_\_\_\_ had been in the Personal Care Home Program for two years and four months before his Legal Committee and caregiver were made aware that the Medicaid coverage that was automatically received as an MR/DD recipient could not be received as a recipient of the Personal Care Home program.
- 7) Mr. \_\_\_\_\_' income was in excess of the Medically Needy Income Level, MNIL, and a Spenddown process had to be applied in determining eligibility for Medicaid outside of the MR/DD program. Mr. \_\_\_\_\_ was assessed to have a \$6,000. spenddown amount that must first be met before Medicaid coverage could begin.
- 8) The MR/DD waiver staffs who were involved in the recommendation to transfer Mr. \_\_\_\_\_ out of the MR/DD program failed to provide complete information to the caregiver and Legal Committee regarding how the Medicaid services would be adversely affected.
- 9) WV Income Maintenance Manual Chapter 17.32:  
SSI-Related Medicaid application is processed when the Worker receives a memorandum from the Long Term Care Unit, which gives the date that medical necessity for MR/DD Waiver services eligibility is established. Eligibility begins on the latest of these dates:
  - the physician's assessment date on the DD-2A; or
  - the date financial eligibility is determined; or
  - the date the client or his representative signs the Plan of Care
- 10) West Virginia Income Maintenance Manual § 10.22 (D):  
To receive a medical card, the monthly countable income of the need's group must not exceed the amount of the MNIL (Medically Needy Income Level). If the income of the need's group exceeds the MNIL, the client has an opportunity to "spend" his income down to the MNIL by incurring medical expenses. These expenses are subtracted from the client's income for the 6-month Period of Consideration (POC), until his income is at or below the MNIL for the needs group size, or until the POC expires.  
Once the client presents sufficient medical expenses to meet his spenddown obligation... medical expenses are entered in the data system according to the date incurred, i.e., oldest expense first.  
... eligibility begins on the date that medical bills bring the spenddown amount to \$0.

... medical expenses, which are not subject to payment by a third party and for which the client will not be reimbursed, are used to reduce or eliminate the spenddown.

- 11) West Virginia Income Maintenance Manual § 10.21 ©)(11) (a):  
If the client does not submit sufficient medical bills by the application processing deadline (30 days) (to satisfy the spenddown amount), the application is denied.
- 12) 42 §435.831 Code of Federal Regulations:  
The agency must use a prospective period not more than 6 months to compute income. If countable income exceeds the income standard, the agency must deduct from income.....incurred medical expenses that are not subject to payment by a third party.

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

- 1) Policy is clear in Chapter 17.32 that an active recipient of the MR/DD waiver program is automatically eligible for a Medicaid card. The worker begins the Medicaid eligibility after the receipt of a memorandum from the Long Term Care Unit advising that MR/DD Waiver services eligibility have been established.
- 2) A memo from the Long Term Care Unit indicating that the MR/DD waiver program eligibility has ended would and should prompt the worker to end the MR/DD waiver related Medicaid coverage and reevaluate the Medicaid eligibility.
- 3) Policy found in Chapter 10.22 provides for a spenddown process to take place in a Non-MR/DD Waiver Medicaid application.

### **IX. DECISION:**

Evidence and testimony given at this hearing clearly reveals that the Claimant's Medicaid coverage under the MR/DD program should have ended when his active MR/DD waiver status ended. It is evident that the agency was somewhat neglectful in their lack of explanation regarding Medicaid changes that would take place when recommending the transfer out of the MR/DD waiver program. The agency was also neglectful in promptly ending the Medicaid coverage. The obvious lack of communication between the agency and the claimant's caregiver and Legal Committee, does not negate the fact that policy stipulates that the MR/DD Waiver services must end when an individual is no longer active in the MR/DD program. It is the ruling of this Hearing Officer to **uphold** the agency in their proposal to discontinue Medicaid coverage and to apply Spenddown provisions in determining further eligibility.

### **X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 9th Day of July 2005.**

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**Sharon K. Yoho**  
**State Hearing Officer**