



**State of West Virginia**  
**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**  
**Office of Inspector General**  
**State Board of Review**  
**2699 Park Avenue, Suite 100**  
**Huntington, West Virginia 25704**  
**February 14, 2005**

**Joe Manchin III**  
**Governor**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Mr. \_\_\_\_\_,

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 8, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to close your SSI-related Medicaid Program case.

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.

Eligibility and benefit levels for the SSI-related Medicaid Program are determined based on current regulations. One of these regulations is if the AG previously did not have a spenddown and now has one, the case is closed after proper notice (WV Income Maintenance Manual Section 2.16 A) and the worker prepares the verification checklist or an ES-6 and attaches an ES-6A and gives them to the client during the interview and if the client does not submit sufficient medical bills by the application processing deadline, the application must be denied (WV Income Maintenance Manual Section 10.22, D, 11).

The information which was submitted at the hearing revealed that the proposal to close your SSI-Related Medicaid Program case was correct but you should have been afforded the opportunity to verify medical expenses within a 30 day processing period in consideration of a Medicaid spenddown application.

It is the decision of the State Hearing Officer to uphold the proposal of the Department to close your SSI-related Medicaid Program case. See Section VIII for further explanation.

Sincerely,

Thomas M. Smith  
State Hearing Officer  
Member, State Board of Review

cc: Board of Review  
Brenda Straight, Dept. Hearing Rep.

# **WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES**

**NAME:** \_\_\_\_

**ADDRESS:** \_\_\_\_  
\_\_\_\_\_

## **SUMMARY AND DECISION OF THE STATE HEARING OFFICER**

### **I. INTRODUCTION**

This is a report of the State Hearing Officer resulting from a fair hearing concluded on February 8, 2005 for Mr. \_\_\_\_.

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 originally convened on February 8, 2005 on a timely appeal filed December 21, 2004.

It should be noted here that any benefits under the SSI-related Medicaid Program have been continued pending the results of this hearing.

All persons giving testimony were placed under oath.

### **II. PROGRAM PURPOSE**

The program entitled SSI-related Medicaid is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and 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 Dept. of Health & Human Resources administers the Medicaid Program in WV in accordance with Federal Regulations. The office of Medical Care is responsible for development of regulations to implement Federal and State requirements for the program. The Dept. of Health & Human Resources processes claims for reimbursement to providers participating in the program.

### **III. PARTICIPANTS**

1. \_\_\_\_, Claimant.
2. \_\_\_\_, Claimant's ex-wife.
3. Brenda Straight, Dept. Hearing Rep.
4. Tracy Baldwin, Economic Service Worker.

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

### **IV. QUESTION TO BE DECIDED**

The question to be decided is whether the Department proposed the correct action to close the SSI-related Medicaid Program case.

## **V. APPLICABLE POLICY**

WV Income Maintenance Manual Section 1.22 H, 2.16, 2.4, 6.2, 10.22.

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

Exhibit #A Copy of case comments 12-10-04.

- " #B Copy of case comments 4-11-03.
- " #B1 Copy of MA eligibility determination (2 pages).
- " #C Copy of case comments 6-12-03.
- " #C1 Copy of MA eligibility determination.
- " #C2 Copy of Medicaid history printout (2 pages).
- " #IIA Copy of notification letter 12-13-04 and regulations (5 pages).
- " #IIB Copy of notification letter 12-13-04 and regulations (11 pages).
- " #IIC Copy of notification letter 12-13-04 and regulations (22 pages).

Exhibit #C1-1 Copy of bill showing \$191.75.

- " #C1-2 Copy of prescriptions (9 pages).
- " #C1-3 Copy of appointment with Dr. [REDACTED].
- " #C1-4 Copy of letter from Dr. [REDACTED].
- " #C1-5 Copy of letter from Dr. [REDACTED].
- " #C1-6 Copy of nocturnal polysomnographic study.
- " #C1-7 Copy of letter from Dr. [REDACTED].
- " #C1-8 Copy of letter from Home Health Care Services.
- " #C1-9 Copy of statement from Pain Care.
- " #C1-10 Copy of statement from Home Health Care Services.

## **VII. FINDINGS OF FACT**

1. Claimant was receiving SSI-related Medicaid based on no spenddown starting in January, 2003 when it was discovered during a review on 12-10-04 that his Social Security (SSD) income of \$593 had not been properly entered into the data system (Exhibits #A, B, B1, C, C1, C2).
2. The caseworker, Ms. Straight, used the \$593 SSD income which caused the case to be over the spenddown income limit of \$200 and action was taken to close the case (Exhibit #IIA) and the case was evaluated for Medicaid spenddown case and a spenddown of \$2238 was determined and the application for a spenddown Medicaid case was denied on 12-13-04 (Exhibit #IIB) as the claimant stated that he had no medical bills.
3. Ms. Straight testified that an ES-6 and ES-6A was not provided to the claimant allowing him 30 days to provide medical bills as the claimant was being referred to community resources which required Medicaid denial documentation.
4. The claimant testified that there was no way to meet the requirements of a spenddown and that he has to decide between food and medicine.
5. The claimant provided documentation to show his medical situation and needs.

## CONCLUSIONS OF LAW

1. WV Income Maintenance Manual Section 10.22 D, 11 states, in part:

“To receive a Medicaid card, the monthly countable income of the Needs Group must not exceed the amount of the MNIL. If the income of the Needs 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 POC, until his income is at or below the MNIL for the FDG size, or until the POC expires. The spenddown process applies only to AFDC/U-Related and SSI-Related Medicaid.

### A. Procedures

The Worker must determine the amount of the client’s spenddown at the time of application based on information provided by the client. The spenddown amount may have to be revised if the verified income amount differs from the client’s statement. He must also explain the spenddown process to the client during the intake interview. An ES-6A is attached to the ES-6 which notifies the client that an eligibility decision cannot be made until he meets the spenddown by providing proof of medical expenses. The ES-6 must also contain any other information the client must supply in order to determine eligibility.

Once the client presents sufficient medical expenses to meet his spenddown obligation and all other Medicaid eligibility requirements are met appropriate RAPIDS procedures are followed to approve the AG and enter the spenddown.....

The following procedures are required to accomplish the spenddown process.

- The Worker prepares the verification checklist or an ES-6, attaches an ES-6A and gives them to the client during the intake interview or mails them after the interview.....

- The client is requested to provide proof of his medical expenses, date incurred, type of expense and amount and to submit them to the Worker by the application processing deadline.

- When the bills or verification are received, the Worker reviews them to determine that:

- The expenses were incurred, they are not payable by a third party, and the client will not be reimbursed by a third party.....

- The individual(s) who received the medical services is one of the people described in item b below.

- The expenses are for medical services and are appropriate to use to meet a spenddown.....

- The Worker must enter the pertinent information about expenses received from the client on Screen AG TM.....

- If the client does not submit sufficient medical bills by the application processing deadline, the application is denied.

2. WV Income Maintenance Manual Section 1.22 H states, in part:

Additional information is due 30 days from the date of application".

3. WV Income Maintenance Manual Section 6.2 states, in part:

"A. ES-6, NOTICE OF INFORMATION NEEDED: ES-6A, SPENDDOWN EXPLANATION

The ES-6 may be used during any phase of the eligibility determination process. At the time of application, it is given or mailed to the applicant to notify him of information or verification he must supply to establish eligibility. The client must receive the ES-6 within five (5) working days of the date of application, when the ES-6 is mailed.

NOTE: If the client fails to adhere to the requirements detailed on the ES-6, the application is denied or the deduction disallowed, as appropriate.....

This form also notifies the client that his application will be denied or a deduction disallowed, if he fails to provide the requested information by the date specified on the form. The Worker determines the date to enter to complete the sentence, "If this information is not made available to this office by \_\_\_\_\_..." as follows:....."

3. Medicaid

The date entered here must be 30 days from the date of application.

When it is determined during the intake interview that the client will be required to meet a spenddown, the ES-6A must be attached to the ES-6. In addition, the ES-6 must indicate that medical expenses must be provided by the deadline date shown on the form, and the amount required to meet the spenddown must be specified. This is in addition to any other verification which may be required.

If the case did not appear to be a spenddown case when the ES-6 was issued, but verification of, or a change in, income results in a spenddown prior to approval, a new ES-6 is issued to obtain medical bills to establish eligibility. However, the time limit for providing medical expenses remains as 30 days from the date of application."

4. WV Income Maintenance Manual Section 2.4 D, 4 states, in part:

"When the recipient's circumstances change to the point that he becomes ineligible, the AG is closed. There are instances in which a Medicaid AG is closed by the data system. This occurs when:

- TM coverage expires
- Medically Needy non-spenddown cases that are not redetermined in the sixth month of the POC, and
- Medically Needy spenddown cases are closed at the end of the POC.

In no instance is Medicaid Coverage under one coverage group stopped without consideration of Medicaid eligibility under other coverage groups. This is done before the client is notified

that his Medicaid eligibility will end. Eligibility is determined based on case record information...."

5. WV Income Maintenance Manual Section 2.16, A states, in part:

"AFDC-RELATED AND SSI-RELATED MEDICAID

A. CHANGE IN INCOME AND DEDUCTIONS

Case maintenance action is required to update the date system when a Medicaid AG has a change in income.

Action taken by the Worker follows:

- If the AG did not previously have a spenddown and continues not to have one, no other action is necessary.
- If the AG previously did not have a spenddown and now has one, the case is closed after proper notice.

The following procedures are used in this situation.

- \* The AG is closed and reopened with a new POC. The new POC must not cover any period of time in which the case was in a POE.
- \* Advance notice must be provided for the case closure.
- \* The client must be provided with proper notice about his spenddown and the procedures which now apply."

## VIII. DECISION

Based on the evidence and testimony presented, the State Hearing Officer must uphold the proposal of the Department to close the SSI-related Medicaid Program case. The Department was correct to determine that the claimant was receiving a medical card without the correct amount of income being considered. WV Income Maintenance Manual Section 2.16 A states that when there is a change in income, "if the AG previously did not have a spenddown and now has one, the case is closed after proper notice". Proper notice was provided to the claimant on 12-13-04 that his SSI-related Medicaid case was being closed (Exhibit #II A). WV Income Maintenance Manual Section 2.16 A also states that "Advance notice must be provided for the case closure" and that "The client must be provided with proper notice about his spenddown and the procedures which now apply". Proper advance notice of the closure of the SSI-related Medicaid Program case was provided and the claimant was evaluated for a Medicaid spenddown case and was informed on 12-13-04 that he had a spenddown of \$2238 but the application was denied. According to WV Income Maintenance Section 10.22 D, 11, a verification checklist (ES-6) should have been given to the claimant and he should have been allowed 30 days to provide medical expenses. The Department did not issue form ES-6 or ES-6A to allow the claimant to present medical expenses within a 30 day period. Ms. Straight testified that she denied the application as the claimant did not have enough medical expenses to meet the spenddown. However, the State Hearing Officer finds that the Department did comply with WV Income Maintenance Manual Section 2.4 D, 4 in evaluating the claimant for other Medicaid coverage except that the application was not held pending for 30 days to allow the claimant

to provide medical expenses and he was not issued form ES-6 to verify any medical expenses. Therefore, the State Hearing Officer must uphold the proposal of the Department to close the SSI-related Medicaid Program case but the claimant's application for a Medicaid spenddown case must be processed with a 30 day application processing period and he must be issued form ES-6 (verification checklist) to provide medical expenses within 30 days prior to action being taken on the application.

## **IX. RIGHT OF APPEAL**

See Attachment.

## **X. ATTACHMENTS**

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.