



**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 15, 2005**

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

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

Dear Ms. \_\_\_\_\_,

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 10, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to close your Women With Breast Cancer or Cervical Cancer (BCC) 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 Women With Breast Cancer or Cervical Cancer (BCC) Medicaid Program are determined based on current regulations. One of these regulations is that a woman may be eligible for full-coverage Medicaid if she has no medical insurance or has only insurance that meets an exception listed in Chapter 7 under Excepted Insurance Benefits (WV Income Maintenance Manual Section 16.7 H).

The information which was submitted at the hearing revealed that you started receiving Medicare benefits in November, 2004.

It is the decision of the State Hearing Officer to uphold the proposal of the Department to close your Women With Breast or Cervical Cancer (BBC) Medicaid Program case.

Sincerely,

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

cc: Board of Review  
Mary Cavendish, 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 10, 2005 for Ms. \_\_\_\_\_.

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 10, 2005 on an appeal filed November 30, 2004.

It should be noted here that any benefits under the Women With Breast Cancer or Cervical Cancer Medicaid Program have been continued pending the results of this hearing. It should also be noted that the hearing was originally scheduled for January 21, 2005 but was rescheduled at Department's request.

All persons giving testimony were placed under oath.

### **II. PROGRAM PURPOSE**

The program entitled Women With Breast Cancer or Cervical Cancer 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 DHHR administers the Medicaid Program in West Virginia 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 DHHR processes claims for reimbursements to providers participating in the program.

### **III. PARTICIPANTS**

1. \_\_\_\_\_, Claimant.
2. Mary Cavendish, Dept. Hearing Rep.

Presiding over 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 Women With Breast and Cervical Cancer (BCC) Medicaid Program effective 11-30-04.

## **V. APPLICABLE POLICY**

WV Income Maintenance Manual Section 16.7 H, Chapter 7 Appendix A.

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

Exhibit #DHR-1 Copy of hearing summary.

- " #DHR-2 Copy of hearing request.
- " #DHR-3 Copy of form IG-BR-29.
- " #DHR-4 Copy of pre-hearing conference appointment letter.
- " #DHR-5 Copy of WV Income Maintenance Manual Sections 16.7 & Chapter &, App. A (2 pages).
- " #DHR-6 Copy of initial hearing appointment notice.
- " #DHR-7 Copy of hearing appointment reschedule notice.
- " #DHR-8 Copy of notice/letter history summary.

## **VII. FINDINGS OF FACT**

1. Claimant was receiving Medicaid under the Women with Breast or Cervical Cancer (BCC) Program when she reported on 11-16-04 that she was now receiving Medicare benefits.
2. Notification of case closure was issued on 11-17-04 effective 11-30-04 due to claimant now having medical insurance which was not listed as an Excepted Medical Insurance under Chapter 7, Appendix A (Exhibit #DHR-5).
3. Ms. Cavendish testified that the computer system was unable to produce a copy of the letter but that the letter history showed that a closure notification letter was issued on 11-17-04 (Exhibit #DHR-8).
4. The claimant testified that she did not remember receiving the closure notice but that she did receive a letter telling her that her BBC case was being closed and she did request a hearing based on closure of the BBC case.
5. Benefits were continued pending the hearing process and a pre-hearing conference was conducted on 12-7-04 (Exhibit #DHR-4).
6. The claimant testified that she is on expensive medications which cost over \$1,000 per month, that her daughter died in July of last year in [REDACTED] and they went in debt bringing her body home, that her husband is on Medicare and is disabled and they would have a spenddown of over \$2,000.
7. The claimant testified that she needs everything she is taking and has no way to pay for the medications.
8. Ms. Cavendish testified that both Mr. & Mrs. \_\_\_\_'s income would be used for a spenddown case and that Medicare is not considered a limited insurance.

## **CONCLUSIONS OF LAW**

1. WV Income Maintenance Manual Section 16.7 H states, in part:

## "H. WOMEN WITH BREAST OR CERVICAL CANCER (BCC)

Income: N/A

Assets: N/A

A woman who meets the following requirements may be eligible for full-coverage Medicaid:

- She has been diagnosed with breast or cervical cancer through the Centers for Disease Control (CDC) program administered by the Office of Maternal, Child and Family Health.
- She has no medical insurance or has only insurance that meets an exception listed in Chapter 7 under Excepted Insurance Benefits. No penalty applies for discontinuing insurance.
- She is under the age of 65.
- She is not eligible for Medicaid under any of the following Mandatory Categorically Needy coverage groups:

- \* AFDC Medicaid
- \* Deemed AFDC Medicaid
- \* Transitional Medicaid
- \* Qualified Child Medicaid
- \* Poverty-Level Pregnant Woman
- \* Poverty Level-Child
- \* SSI Medicaid
- \* Deemed SSI Medicaid".

2. WV Income Maintenance Manual Section 7, Appendix A states, in part:

### "DEFINITIONS OF INSURANCE FOR WV CHIP

Excepted Insurance Benefits: Benefits which do not affect WV CHIP eligibility, as follows:

- Coverage only for accident, or disability income insurance, or any combination of the two
- Coverage issued as a supplement to liability insurance
- Liability insurance, including general liability insurance and automobile liability insurance
- Workers' Compensation or similar insurance
- Automobile medical payment insurance
- Credit-only insurance

- Coverage for on-site medical clinics
- Limited scope dental or vision benefits when offered separately from other insurance
- Benefits for long-term care, nursing home care, home health care, community-based care, or any combination of these
- Other similar limited benefits
- Coverage only for a specified disease or illness if offered as independent, noncoordinated benefits
- Other benefits, similar to those above, under which benefits for medical care are secondary or incidental to other insurance benefits
- Tri-Care (formerly CHAMPUS)
- CHAMPVA".

## **VIII. DECISION**

Based on the evidence and testimony presented, I must uphold the Department's proposal to close the Women With Breast Cancer or Cervical Cancer (BBC) Medicaid Program case effective 11-30-04. The evidence and testimony show that the claimant began receiving Medicare benefits effective November, 2004. WV Income Maintenance Manual Section 16.7 clearly states that a person who receives other medical insurance or has insurance which is not listed as an exception listed in Chapter 7, App. A under Excepted Insurance Benefits is not eligible for the BBC Medicaid Program. Since Medicare is not listed as an exception in the Chapter 7, App. A Excepted Insurance Benefits list, the claimant is not eligible for the BBC Medicaid Program. The fact that the claimant is receiving Medicare makes her ineligible for the BBC Program. Therefore, the State Hearing Officer must uphold the proposal of the Department to close the BBC Medicaid Program case effective 11-30-04.

## **IX. RIGHT OF APPEAL**

See Attachment.

## **X. ATTACHMENTS**

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

