



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 2590
Fairmont, WV 26555-2590**

**Joe Manchin III
Governor**

**Martha Yeager Walker
Secretary**

March 29, 2007

Re: _____

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 14, 2007. Your hearing request was based on the Department of Health and Human Resources' determination of Ms. _____ Period of Consideration for Medicaid eligibility and denial of your request for out-of-pocket reimbursement through Medicaid.

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 for the SSI-Related Medicaid program is based on current regulations. One of these regulations states that individuals who otherwise meet eligibility requirements but 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. Spenddown AGs are not redetermined and are closed at the end of the 6th month of the POC. The client must reapply for a new POC. Medicaid coverage may be backdated for up to three months prior to the month of application. A client may be eligible to receive direct reimbursement for out-of-pocket medical expenses which would have otherwise been paid by Medicaid, but for the error or delay of the Department. Cases that meet spenddown must be entered into the data system within the 30 day application period. (West Virginia Income Maintenance Manual ' 1.22, 2.4, 16.3, 10.21 & 10.22)

The evidence submitted by the Department fails to verify that you requested Medicaid eligibility be backdated 3 months from the date of your June 2006 application. As a result, your POC should have been effective June 1, 2006 and the out-of-pocket expenses incurred for prescription costs in September 2006 were caused by the Department's error.

It is the decision of the State Hearing Officer to **reverse** the Department's decision to backdate Medicaid eligibility resulting from the Claimant's June 2006 application. Furthermore, the Claimant is eligible for reimbursement of out-of-pocket expenses for prescription medications purchased in September 2006.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
Sally Shreve, ESS, DHHR

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

_____,
Claimant,

v.

Action Number: 06-BOR-2223

**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 March 23, 2007 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 originally scheduled for November 1, 2006 and again for December 19, 2006 and February 13, 2007 but was convened on March 14, 2006 on a timely appeal filed June 21, 2006.

It should be noted that there were actually multiple appeals filed in this matter subsequent to the June 21, 2006 appeal.

II. PROGRAM PURPOSE:

The program entitled **Medicaid** is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and Human Resources.

SSI-Related Medicaid is a segment of the Medicaid Program available to individuals who meet the requirement of categorical relatedness by qualifying as either aged, disabled, or blind as those terms are defined by the Social Security Administration for purposes of eligibility for SSI.

III. PARTICIPANTS:

_____, Counsel for the Claimant
Sally Shreve, ESS, DHHR
Donna Ice, ESW, DHHR

Presiding at the Hearing was Thomas E. Arnett, 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 its determination of the Claimant's Medicaid Period of Consideration (POC) and if Medicaid should reimburse out-of-pocket prescription medication expenses incurred by the Claimant in September 2006.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Chapter 1.22, 2.4, 16.3 and 10.21 & 10.22 (A), (B) and (D)
42 CFR ' 435.831 Code of Federal Regulations:

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Photocopy of a note
- D-2 Correspondence from _____ to Mr. _____ dated 12/20/06 & Rite Aid Customer History Report - 9/1/06 to 9/30/06 (Customer paid \$102.48)
- D-3 Notice of Decision dated 9/25/07
- D-4 WVIMM Chapter 2.4
- D-5 WVIMM Chapter 1.24
- D-6 WVIMM Chapter 10.22

Exhibits D-1, D-2 & D-3 were received subsequent to the hearing within the agreed 10-day time period.

VII. FINDINGS OF FACT:

- 1) As a matter of record, the scope of the Claimant's appeal was narrowed to two specific issues; The Period of Consideration, hereinafter POC, resulting from the initial Medicaid application taken in June 2006 and reimbursement of out-of-pocket prescription expenses incurred by the Claimant pending a redetermination / reevaluation for eligibility in September 2006.
- 2) With regard to the Claimant's POC, the Claimant contends that the POC was shortened by the Department's decision to "backdate" coverage 3 months from the date of application. The Claimant's application was completed on June 13, 2006 and the POC was determined to be March 1, 2006 through August 31, 2006. As a result, the Claimant only received 2 ½ months of Medicaid coverage from the initial application which required the subsequent POC to begin prematurely.
- 3) The Department contends that the Claimant's representative requested Medicaid coverage be backdated 3 months from the date of application. The Department submitted a photo copy of a note (Exhibit D-1) that states – "Mr. _____ called & said that he may want this backdated to March 06." An illegible signature appears on the bottom of the note but it appears to be the name [REDACTED]

- 4) In addition to the dispute over the POC, the Claimant paid for prescription medications “out-of-pocket” during the interruption in Medicaid coverage that occurred when the Claimant was redetermined / reevaluated for a new Medicaid POC in September 2006. Exhibit D-2 was cited by Mr. _____ as evidence that his request for reimbursement of \$102.48 for out-of-pocket prescription expenses paid to Rite Aid in September 2006 was denied. The Department presented Exhibit D-3 to show that the Claimant’s application for redetermination was taken on August 29, 2006 and approved on September 25, 2006 (within the application processing regulatory timeframes of 30 days). Under these circumstances, the Department contends that the Claimant does not qualify for Medicaid reimbursement for out-of-pocket expenses.
- 5) Applicable policy addressing the spenddown provision for SSI-Related Medicaid can be found in the West Virginia Income Maintenance Manual in Chapter 10.21 & 10.22 (D). This section states, in pertinent part:

To receive a medical card, the monthly countable income of the needs group must not exceed the amount of the MNIL (Medically Needy Income Level). If the income of the needs group exceeds the MNIL, the client has an opportunity to Aspend@ 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 that 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.
- 6) West Virginia Income Maintenance Manual, Chapter 1.21 & 1.22 states that Spenddown AG’s are not redetermined and are closed at the end of the 6th month of the POC. The client must reapply for a new POC.
- 7) West Virginia Income Maintenance Manual 16.3.C states that unless specifically stated under the appropriate coverage group, Medicaid coverage may be backdated for up to three months prior to the month of application, provided all eligibility requirements were met at that time and provided the client has unpaid medical expenses.
- 8) West Virginia Income Maintenance Manual, Chapter 2.4 (Corrective Procedures) states that When determining if the client is eligible to receive direct reimbursement for out-of-pocket medical expenses which would have otherwise been paid by Medicaid, but for the error or delay of the Department, it is the responsibility of the Department to act on each application or case action correctly within a reasonable period of time, unless the delay is due to factors beyond the control of the Department. A reasonable period of time must be interpreted on a case-by-case basis.

Direct reimbursement may be made for purchases of drugs during the time before submission of the request, if the purchases were made following:

- The failure of the Department to act on the application within a reasonable period of time and the delay is not due to factors beyond the control of the Department; or
- The erroneous denial of the application for Medicaid.

- 9) West Virginia Income Maintenance Manual 1.22.I.1 (Agency Time Limits) states that for SSI Age-Related Medicaid, data system action to approve, deny or withdraw the application must be taken within 30 days of the date of application.
- 10) Policy found in Chapter 1.24.D of the West Virginia Income Maintenance Manual (Determining Reasonable Period of Time for Spenddown Entry) states – Cases that meet spenddown should be entered in the data system in the 30 day application period.

VIII. CONCLUSIONS OF LAW:

- 1) The policy that governs the SSI-Related Medicaid program states that when eligibility requirements are met, the individual's POC for Medicaid eligibility may be backdated 3 months. Because it is the Claimant's position that a request to backdate Medicaid coverage 3 months was not made, and the Department failed to produce sufficient evidence to the contrary, the Claimant's POC resulting from the June 2006 application should have been determined to be June 1, 2006 through November 30, 2006 and the subsequent 6-month POC should have started effective December 1, 2006.
- 2) Policy states that a client is eligible to receive direct reimbursement for out-of-pocket medical expenses which would have otherwise been paid by Medicaid, but for the error or delay of the Department. Based on the evidence, the \$102.48 of out-of-pocket expenses incurred by the Claimant were caused by the Department's error/delay from an unnecessary redetermination.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Department's decision to backdate Medicaid eligibility resulting from the Claimant's June 2006 application. Additionally, the Claimant is eligible for reimbursement of \$102.48 for out-of-pocket expenses incurred in September 2006 due to the Department's error.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 29th Day of March, 2007.

**Thomas E. Arnett
State Hearing Officer**