



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

February 27, 2007

Dear Mr. ____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 8, 2007. Your hearing request was based on the Department of Health and Human Resources proposal to discontinue your QI-1 Medicaid coverage which pays your Medicare premium.

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 QI-1 SSI related Medicaid is based on current policy and regulations. Some of these regulations state as follows: Countable income must be greater than 120% of the Federal Poverty Level, but less than or equal to 135% of the Federal Poverty Level. Irregular income is excluded because it cannot be anticipated.

The information, which was submitted at your hearing, revealed that your countable income after deductions does not exceed 135% of the Federal Poverty Level.

It is the decision of the State Hearings Officer to **reverse** the action of the Department to discontinue your QI-1 coverage.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Donald Tolliver, DHHR

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

____,

Claimant,

v.

Action Number: 06-BOR-3490

**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 February 8, 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 convened on February 8, 2007 on a timely appeal, filed December 13, 2006.

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 Witnesses:

____, claimant

____, claimant's wife

Department's Witnesses:

Donald Tolliver, Income Maintenance Worker

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 action to discontinue QI-1 Medicaid coverage which pays the claimant's Medicare premium.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual §1.15, 10.16, 10.22 and Chapter 10, Appendix A

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 West Virginia Income Maintenance Manual, Chapter 10 Appendix A

D-2 Computer screen of detailed earned income

D-3 Copies of CVS earnings statements for November, 2006.

D-4 Notice of termination of QI-1 Medicaid coverage dated November 30, 2006

Claimant's Exhibits:

C-1 W-2 form for year

VII. FINDINGS OF FACT:

- 1) The claimant's QI-1 Medicaid case was reviewed on November 27, 2006 to determine eligibility for the 2007 calendar year. The Department completed the review and entered the claimant's increased Social Security income and his wife's earnings from [REDACTED] for the month of November, 2006.
- 2) The weekly earned income was averaged and a monthly gross earned income of \$1807.24 was determined by multiplying by 4.3. The claimant's Social Security income was at that time \$698. After a \$65 and ½ disregard applied to the earned income and a \$20. disregard applied to the unearned income, a countable income of \$1549.12 resulted.

- 3) The countable income of \$1549.12 was applied to the 120% of the Federal Poverty Level (\$1321) and the 135% (\$1485) of the Federal Poverty Level to determine if the income fell between the two. The Department determined that it was excessive of the 135% level and they proceeded to discontinue his benefits.
- 4) The claimant's wife testified that her November earnings did not represent a consistent amount of monthly earnings. She reported that in the winter months she works more hours and that many other months her earnings are well below the amount she earned in November. Two of the November pays reflected overtime hours. She provided her W-2 form as evidence to show that an average monthly gross income is \$1608. She was employed at [REDACTED] the full year. This \$1608 is an average of all annual earnings which most likely does include some overtime income.
- 5) West Virginia Income Maintenance Manual § 1.15:
 - N. Re-determination Schedule
QI-1 re-determinations are due in December of each year, regardless of the beginning month of eligibility.
- 6) West Virginia Income Maintenance Manual § 10.16: Specific Medicaid Requirements Categorically Needy, Mandatory – For Aged, Blind or Disabled
NOTE: No Categorically Needy coverage group is subject to spenddown provision.
Qualified Individual (QI-1)
Income: Countable income is determined by subtracting any allowable disregards and deductions from the total non-excluded gross income. See Section 10.22B for SSI disregards and deductions which are used for these coverage groups. The monthly countable income is compared to guidelines on Appendix A.
 - QI-1 Income is greater than 120% to 135% Federal Poverty Level
 - C. Special Situations
 6. Irregular Income - Regardless of the source, irregular income is excluded because it cannot be anticipated.
- 7) West Virginia Income Maintenance Manual §10.22
SSI-RELATED MEDICAID (Medically Needy, Mandatory)
B. INCOME DISREGARDS AND DEDUCTIONS
The following disregards and deductions are applied, if applicable.
 1. Earned Income
 - SSI \$20 Disregard: The remainder of the \$20 income disregard not used against unearned income.
 - SSI Earned Income Disregard: \$65 and ½ of the remainder are subtracted from earned income and from gross profit from self-employment earnings.
 2. Unearned Income

-SSI \$20 Disregard: A \$20 Disregard is applied to the total gross unearned income. If the unearned income is less than \$20, the remainder is subtracted from earned income, prior to the application of any other earned income disregards and deductions.

- 8) West Virginia Income Maintenance Manual Chapter 10 Appendix A
Income Limits: QI-1 1321 - 1485

VIII. CONCLUSIONS OF LAW:

- 1) Policy 10.16 provides that when considering income for the QI-1 Medicaid program irregular income, regardless of the source is excluded because it cannot be anticipated. It is clear that anticipated income is to be used when determining eligibility for this program. The amount of earned income verified for the month of November clearly was not representative of the anticipated earned income throughout the calendar year. This was proven by the W-2 form provided for the year of 2006 which was for a full year of employment at [REDACTED]
- 2) Policy 1.15 provides that all QI-1 re-determinations are due in December of each year. If the Department routinely verified only November pays each year for the review, this claimant might never be determined to be eligible for this benefit when in fact the anticipated average monthly income would most likely fall below the November income.
- 3) The Department correctly applied the \$20. disregard to the unearned income and the \$65 ½ disregard to the earned income however; the gross monthly earned income used was excessive at \$1807. as anticipated gross income would have been \$1608 if an average monthly was used to determine anticipated income. After applying the disregards to this gross earned income and the \$698. unearned income, the countable income would be \$1449. which falls between the \$1321 and \$1485. as shown in Appendix A.

IX. DECISION:

Evidence and testimony given at this hearing clearly reveals that the Department incorrectly assessed anticipated income for the QI-1 Medicaid re-determination. It is the ruling of this Hearing Officer to **reverse** the agency in their action to discontinue this Medicaid coverage.

X. RIGHT OF APPEAL:

See Attachments

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 27th Day of February 2007.

Sharon K. Yoho
State Hearing Officer