



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

October 15, 2007

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 18, 2007. Your hearing request was based on the Department of Health and Human decision to terminate Medicaid coverage due to non-cooperation with the Bureau of Child Support.

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 program is based on current policy and regulations. Some of these regulations state as follows: All recipients of AFDC Medicaid and AFDC-Related Medicaid are required to cooperate with the Bureau of Child Support Enforcement, BCSE in establishing paternity and obtaining medical support as a condition of eligibility. Collection of support must be made through BCSE and distributed as non-public assistance (NPA) payments. (West Virginia Income Maintenance Manual § 15.3).

The information, which was submitted at your hearing, revealed that you had begun cooperating with BCSE prior to the action taken to terminate your Medicaid coverage.

It is the decision of the State Hearings Officer to **reverse** the action of the Department to terminate your Medicaid coverage.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Ann Hubbard, DHHR

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

_____,

Claimant,

v.

Action Number: 07-BOR-1863

**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 September 18, 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 October 18, 2007 on a timely appeal, filed July 30, 2007.

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

Department's Witnesses:

Megan Garland, Family Support Specialist, 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 action to terminate Medicaid benefits due to non-cooperation with Bureau of Child Support Enforcement (BCSE).

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual §15.3

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 Notice of termination dated August 7, 2007

D-2 DHS-1 office communication dated May 22, 2007, (subsequent to hearing)

D-3 WV Income Maintenance Manual policy §15.3 (subsequent to hearing)

Claimant's Exhibits:

C-1 Copy of BCSE check dated August, 22, 2007

C-2 DHS-1 office communication dated August 1, 2007 (subsequent to hearing)

Let the record show that the Department was unprepared for this hearing at the time of the hearing and the record was held open for the subsequent evidence listed above.

VII. FINDINGS OF FACT:

- 1) The claimant was an active recipient of Medicaid in May 2007 when the BCSE sent a DHS-1, inter-office communication, (Exhibit D-2) stating that the client was not cooperating with BCSE. The DHS-1 advised the caseworker that the client was not redirecting direct pays through BCSE and that she should be sanctioned off Medicaid.
- 2) The DHS-1 was sent to the DHHR Change Center and it was received by the Change Center on June 7, 2007. Notification letter (Exhibit D-1) dated August 7, 2007 advised the claimant that her AFDC Related Medicaid would stop and that she would not receive this benefit after July 2007.

- 3) The claimant submitted a check dated August 22, 2007 (Exhibit C-1) at the hearing. This check was a BCSE check made to the order of the claimant for \$132.69.
- 4) The claimant testified that she was cooperating and that the above check shows that her child support payments are coming through BCSE. She stated that she had talked on the phone with the Income Maintenance Supervisor who verified through BCSE that she was cooperating.
- 5) The claimant provided DHS-1 dated August 1, 2007 (Exhibit C-2) showing tha she was cooperating with BCSE and that the sanction should be lifted.
- 6) West Virginia Income Maintenance Manual §15.3

G. Redirection and Income withholding for AFDC Medicaid and AFDC-Related Medicaid.

Adult recipients of AFDC Medicaid and AFDC-Related Medicaid are required to cooperate with BCSE in establishing paternity and obtaining medical support as a condition of eligibility.

When an AFDC Medicaid or AFDC-Related Medicaid referral is made to BCSE, the Legal Assistant must immediately implement income withholding for child support whenever possible. The action may not be declined or terminated by the Medicaid client. Collection of support must, thereafter, be made through BCSE and distributed as non-public assistance (NPA) payments.

If the client refuses to cooperate in the establishment of paternity and in obtaining medical support, the Legal Assistant notifies the Worker.

H. When the major parent (MP), or other caretaker, receives Medicaid under any coverage group, under any case number, and is required to cooperate with BCSE for a child who also receives Medicaid, the MP or other caretaker, becomes ineligible for failure, without good cause, to cooperate. The penalty lasts until the MP, or other caretaker, cooperates with BCSE. The individual becomes eligible for Medicaid the month following the month of cooperation.

VIII. CONCLUSIONS OF LAW:

- 1) Policy stipulates in §15.3 H. that the caretaker becomes ineligible for failure to cooperate and that the individual becomes eligible for Medicaid the month following the month of cooperation. Evidence and testimony indicated that the claimant was not cooperating as of May 22, 2007 and began to cooperate as of August 1, 2007. This is supported by the DHS-1 dated August 1, 2007 as well as the BCSE check dated August 22, 2007.
- 2) The Department did not offer any testimony or evidence from the BCSE unit as to specifics regarding this alleged non-cooperation.

- 3) The Department's termination notice (Exhibit D-1) dated August 7, 2007 was not timely action on the DHS-1 dated May 22, 2007. The notice was sent after which time the BCSE notified that the claimant was cooperating.
- 3) The Department was not correct in their action of August 7, 2007 to discontinue Medicaid benefits for the claimant.

IX. DECISION:

Evidence and testimony given at this hearing did not support that the claimant was not cooperating at the time of the August 7, 2007 notice. It is the ruling of this Hearing Officer to **reverse** the agency in their action dated August 7, 2007 to discontinue Medicaid benefits to the claimant.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 15th Day of October 2007.

Sharon K. Yoho
State Hearing Officer