



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 970
Danville, WV 25053

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

July 7, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 10, 2008. Your hearing request was based on the Department of Health and Human Resources' action to terminate your Disabled Adult Child (DAC) 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 Disabled Adult Child (DAC) Medicaid Program is based on current policy and regulations. Some of these regulations state as follows: Coverage groups considered under the Disabled Adult Child (DAC) Medicaid guidelines are treated as SSI recipients for Medicaid purposes. Eligibility is determined by SSA and communicated to the Department through data exchange. The client must not be required to apply for this coverage group. (Section 16.6 of the West Virginia Income Maintenance Manual)

The information submitted at your hearing reveals that evidence was insufficient to show that the Social Security Administration communicated to the Department that you were ineligible for Disabled Adult Child (DAC) Medicaid.

It is the decision of the State Hearing Officer to **reverse** the action of the Department in terminating your eligibility for Disabled Adult Child (DAC) Medicaid.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

Pc: Erika H. Young, Chairman, Board of Review
Judy Schurdell, [REDACTED] DHHR

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

_____,
Claimant,

v.

Action Number: 08-BOR-1369

**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 June 26, 2008 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 June 10, 2008 on a timely appeal, filed May 5, 2008.

It should be noted here that the claimant's benefits have been continued pending the outcome of this hearing.

II. PROGRAM PURPOSE:

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
_____, Claimant's mother
_____, Claimant's brother
_____, Claimant's Sister-in-law

 Claimant's attorney

Judy Schurdell, DHHR Representative

Presiding at the Hearing was Cheryl Henson, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the Department is correct in the decision to terminate Disabled Adult Child (DAC) Medicaid for the Claimant.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 16.6

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Hearing Summary
- D-2 Notification letter dated May 15, 2008
- D-3 Hearing Notice IG-BR-29
- D-4 Rapids RSDI/SSI Medicare Cola Match Report dated January 26, 2008
- D-5 Notification letter dated May 2, 2008
- D-6 Notification letter dated May 1, 2008
- D-7 Social Security Laws Online Information dated May 19, 2008
- D-8 WV Income Maintenance Manual Section 16.6
- D-9 Case Comments from Rapids (six pages)
- D-10 Railroad Retirement Award Notice dated March 1, 2004

Claimant's Exhibits:

- C-1 Claimant's Summary
- C-2 Letter of Summary from Attorney
- C-3 Department of Health, Education, and Welfare Decision dated December 13, 1979
- C-4 Department of Health, Education, and Welfare Notice dated December 13, 1979
- C-5 Railroad Retirement Board Notification letters
- C-6 Railroad Retirement Award Notice dated March 1, 2004
- C-7 WVDHHR notification letter dated March 23, 2004
- C-8 Notes regarding telephone contacts
- C-9 Letter from Railroad Retirement Board dated March 27, 2004
- C-10 Letter from Railroad Retirement Board dated June 27, 2004
- C-11 Social Security Online information on Code of Federal Regulations 404.1401
- C-12 Social Security Online information on Code of Federal Regulations 404.1413
- C-13 Social Security Online information on Compilation of Social Security Laws

VII. FINDINGS OF FACT:

- 1) The Claimant has been an active recipient of SSI Medical as a deemed eligible individual since at least May 1, 1997 through the Disabled Adult Child (DAC) Medicaid program (D-1). The Claimant was receiving Social Security benefits from the Railroad Retirement Board (C-5) on her father's record. On March 24, 2004, the Claimant's brother called the Department and reported that the Claimant would begin receiving Social Security Benefits in the amount of \$926.00 from her deceased father's record. The Department stated that they contacted the Social Security Office that same day and verified this change, and that the Claimant should continue to receive the Medicaid as a Disabled Adult Child (DAC).
- 2) The Department states they received a printout from Social Security called RSDA/SSI Cola Match Report (D-4) dated January 25, 2008, and was "clearing" said form on May 1, 2008, when they noticed that it showed "No Cola Record for RSDI" in relation to the Claimant's name. The Department reports that they contacted the Social Security Office and were informed that the Claimant was not receiving Social Security benefits but was receiving her benefits from Railroad Retirement. The Department representative stated that the Social Security Office representative went on to say that the Claimant "did start out receiving Social Security from her father but then they realized it should have been paid through Railroad Retirement". The Claimant's brother stated that their father was "vested" in both Social Security and Railroad Retirement.
- 3) The Department sent the Claimant a notification letter (D-5) dated May 2, 2008 which included the following pertinent information:

ACTION: Your Medicaid for Disabled Adult Children will stop. You will not receive this benefit after May 2008.

REASON: Eligibility is based on the loss of SSI due to receipt of Disabled Adult Child Social Security Benefits.

The following individuals are ineligible.

_____ – This individual's loss of SSI is not due to Disabled Adult child Social Security Benefits.

- 4) The Department's position is that since the Claimant is no longer receiving "social security" benefits, she is not eligible for Disabled Adult Child (DAC) Medical coverage. The Claimant's position is that Railroad Retirement and Social Security benefits are "integrated" (C-11), and although the Claimant's benefits are now paid as a Disabled Child's annuity (C-6) due to the death of her father, it is still considered "social security" benefits for the purposes of Disabled Adult Child (DAC) Medical coverage. The

Claimant's attorney points to Claimant's Exhibit (C-6), which shows that the Disabled Child's annuity paid after her father's death is computed in two separate components. "Tier 1" is computed under the social security formula in the amount of \$916.00. "Tier 2" is computed under the railroad retirement formula in the amount of \$10.00, for a total of \$926.00 monthly benefits payable to the Claimant.

- 5) Other letters from the Retirement Board (C-5) show that payments made to the Claimant prior to her father's death were paid by the Railroad Retirement Board and called "social security" benefits. The letters include the following pertinent information:

SS Benefit Paid by RRB (before Medicare)	\$145.00
(less Medicare premium)	\$57.50
Benefit Amount	\$87.50

Your Benefit Amount does not include any railroad retirement benefits.

- 6) The West Virginia Income Maintenance Manual Chapter 16.6 states in pertinent part:

DEEMED SSI RECIPIENTS

Disabled Adult Children (DAC) (MP D)

Income: n/a

Assets n/a

An individual is eligible for Medicaid as a Disabled Adult Child when all of the following conditions are met:

- He is at least 18 years old.
- He became disabled or blind before reaching the age of 22.
- He was eligible for SSI based on disability or blindness.
- He lost SSI eligibility as a result of becoming entitled to or receiving an increase in child's insurance benefits on or after 7-01-87.

Eligibility is determined by SSA and communicated to the Department through data exchange. The client must not be required to apply for this coverage group.

VIII. CONCLUSIONS OF LAW:

- 1) Policy provides that eligibility for Disabled Adult Children (DAC) Medicaid is determined by the Social Security Administration and communicated to the Department through data exchange.
- 2) Information provided by the Department for this hearing does not support that the Social Security Administration clearly communicated to them that this Claimant was ineligible for Disabled Adult Child (DAC) Medicaid. Policy is clear that the Department is to rely on the Social Security Administration for the information needed to open, evaluate and close continuing eligibility for SSI Medicaid cases.
- 3) Although it is clear that the Claimant's benefit type changed after the death of her father, it is not clear that this change resulted in her ineligibility for the program.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the action of the Department in terminating the Claimant's Disabled Adult Child (DAC) Medicaid.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 7th Day of July, 2008.

**Cheryl Henson
State Hearing Officer**