



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street, West
Charleston, WV 25313

Joe Manchin III
Governor

Patsy A. Hardy, FACHE, MSN, MBA
Cabinet Secretary

November 17, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 15, 2009. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate benefits under the AFDC-Related Medicaid Program.

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 AFDC-Related Medicaid Program is based on current policy and regulations. Some of these regulations state as follows: If the net countable monthly income is equal to or less than the appropriate MNIL, the AG is eligible without a spenddown. If it exceeds the appropriate MNIL, the AG must meet a spenddown. (Section 10.21C of the West Virginia Income Maintenance Manual)

The information which was submitted at your hearing revealed your net countable monthly income is more than the appropriate MNIL, and you are required to meet a spenddown. You do not have bills to meet a spenddown for a new period of consideration (POC).

It is the decision of the State Hearing Officer to **uphold – pending proper notification** the proposal of the Department to terminate benefits under the AFDC-Related Medicaid Program.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Constance McClung, CSRC

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

-----,

Claimant,

v.

Action Number: 09-BOR-1724

**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 October 29, 2009 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 15, 2009 on a timely appeal, filed July 24, 2009. It should be noted that this hearing was originally scheduled for September 23, 2009, but was rescheduled by the State Hearing Officer and held on October 15, 2009. The record was left open until October 29, 2009 to allow both parties to submit additional income verification relevant to the case. The hearing was again left open until November 11, 2009 for the Department to submit (D-10) additional needed information.

It should also be noted that the claimant's benefits have been continued pending a hearing decision.

II. PROGRAM PURPOSE:

The Medicaid categorically related to Aid to Families with Dependent Children Program is designed to provide medical assistance to eligible families with children from the fetal stage to age 18. These dependent children must be deprived of parental support due to the death, continued absence, incapacity, or unemployment of the parents. In addition, the family must meet financial eligibility criteria.

III. PARTICIPANTS:

-----, Claimant, representing herself
Constance McClung, Customer Service Reporting Center, representing the Department

Presiding at the Hearing was Cheryl Henson, 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 is correct in its decision to terminate the Claimant's AFDC Related Medicaid due to excessive income.

V. APPLICABLE POLICY:

Sections 10.21C, 10.21D #11, 2.4D #4 and Appendix A, Chapter 10 of the West Virginia Income Maintenance Manual

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Case Comments from RAPIDS, five (5) pages
- D-2 Verification Checklist Notification letter dated July 11, 2009, three (3) pages
- D-3 Notification letter dated July 24, 2009, six (6) pages
- D-4 West Virginia Income Maintenance Manual Section 2.16, two (2) pages
- D-5 Notification letter dated August 6, 2009, three (3) pages
- D-6 Notification letter dated August 6, 2009, five (5) pages
- D-7 IG-BR-29 Hearing Record Form
- D-8 Fair Hearing Summary dated September 23, 2009, two (2) pages
- D-9 Income Verification, six (6) pages
- D-10 Additional information received November 10, 2009

Claimant's Exhibits:

- C-1 Letter from Claimant dated September 12, 2009
- C-2 Progress Notes from Physician, two (2) pages
- C-3 Letter from [REDACTED] dated August 10, 2009
- C-4 Letter from [REDACTED] dated August 24, 2009
- C-5 Various Medical Bills, twenty nine (29) pages

VII. FINDINGS OF FACT:

- 1) The Claimant was an active recipient of AFDC-Related Medicaid during the month of July 2009 when she submitted to the Department an application for School Clothing Allowance (SCA) for her children. The Department determined that not enough information was submitted and "pended" (D-1) all the benefits the Claimant was receiving, including SNAP (Supplemental Nutrition Assistance Program) and Medicaid,

along with the SCA application. By “pending” the application the Department was placing all benefits on hold until certain verifications could be obtained. The Department recorded in its Case Comments (D-1) that the Claimant reported income on the SCA application that was not reported prior to that date.

- 2) The Department sent the Claimant a Verification Checklist letter dated July 11 2009 (D-2) which included the following pertinent information:

This is to inform you that the information listed below is needed to establish your eligibility for:

AFDC Related Medicaid – SNAP - SCA

If this information is not made available to this office by 07-21-09 your eligibility for benefits and/or deductions cannot be established or continued.

INDIVIDUAL INFORMATION NEEDED:

EMPLOYMENT INCOME

Proof of gross earned income, such as paystubs/employer statement

- 3) The Department reports that it had not received the requested information by the date requested, and July 23, 2009 all benefits were terminated. The Department sent the Claimant a notification letter on July 24, 2009 which included the following pertinent information:

THIS SUMMARY IS FOR THE MONTH OF 08/2009 ONLY

Medical Assistance

ACTION: Your AFDC Related Medicaid benefits will stop. You will not receive this benefit after JULY 2009.

REASON: You did not turn in all requested information

Earned income increased.

The following information was not verified:

INDIVIDUAL INFORMATION:

EMPLOYMENT INCOME

Proof of gross earned income, such as paystubs/employer statement

The following individuals are ineligible.

- 4) The Department Representative, Constance McClung, stated that on July 31, 2009 she spoke with the Claimant about her case, and was then able to update her income using information found in the Unemployment Data Exchange System (ESABPS). She went on to say that her SNAP benefits were reopened effective September 2009 and she advised the Claimant to reapply for the SCA. She stated that when the income was updated it was excessive for the Claimant to continue receiving AFDC Related Medicaid.
- 5) The Claimant called the Customer Service Center on August 5, 2009 about her Medicaid closing. Ms. McClung stated that at that time she determined that the Claimant had not received thirteen (13) days advance notice prior to the closing of Medicaid. She reopened the Medicaid on that date effective August 2009. Ms McClung testified that the Claimant reported at that time that she did not have bills to meet any spenddown amount. The Claimant confirmed this in her testimony. In order to meet the spenddown amount and become eligible for spenddown Medicaid, the Claimant would need to have unpaid medical bills totaling the spenddown amount. She stated she had no unpaid medical bills. The spenddown amount provided by the Department during the hearing was two thousand four hundred forty one dollars (\$2441.00). Ms. McClung states that with this information available she denied the October 2009 spenddown Medicaid.
- 6) No information was provided during the hearing from either party to substantiate what the Claimant's actual countable income was for the period in question.
- 7) The Department sent the Claimant a notification letter (D-5) it says provided the Claimant with proper notice. The letter is dated August 6, 2009 and includes the following pertinent information:

THIS SUMMARY IS FOR THE MONTH OF 02/2007 ONLY.

MEDICAL ASSISTANCE

ACTION: Your application for Medicaid dated 05/08/09 has been denied.

REASON: you stated you did not have medical bills to meet your spenddown. The amount of your spenddown is \$17114.76. You stated you did not have medical bills.

- 8) The record was left open until October 29, 2009 to allow the Department time to provide evidence of the income used to determine the spenddown amount, as well as evidence of how the spenddown was calculated. Also, the Claimant was allowed this time to provide evidence of actual July 2009 income received by the household.
- 9) The Department provided evidence in the form of six (6) pages of documents. This evidence is being labeled (D-9). The first page of this evidence is a written explanation from the Department which states in pertinent part:

ON AUGUST 5TH 2009 I USED INFORMATION FOUND IN ESABPS TO CALCULATE EARNINGS AND UNEMPLOYMENT RECEIVED BY ----- . ***SEE ATTACHMENTS

USED EARNING RECEIVED FOR FIVE WEEKS. THESE EARNINGS WERE FOUND IN ESABPS. ENTERED THE EARNINGS ON AFDE.

USED LOW EARNING PAYMENTS RECEIVED IN FROM 7/11/09 TO 8/2/09 (FOUR WEEKS) AND AVERAGED THE PAYMENTS. AVERAGE PAYMENT WAS \$128 DOLLARS PER WEEK. COUNTED \$103 PER WEEK FOR MEDICAID AND ENTERED THE \$25 PER WEEK (ECONOMIC RECOVERYMONEY) AS OTFS ON AFUI AS THAT INCOME WOULD NOT COUNT FOR THE MEDICAID.

WITH THE INCOME USED THE CLIENT WOULD HAVE HAD TO MEET A SPENDDOWN. LAURA STATED SHE DID NOT HAVE BILLS TO MEET SPENDDOWN. SHE REQUESTD FAIR HEARING AND REQUESTED MEDICAID REMAIN OPEN DURING FAIR HEARING PROCESS.

In addition, the Department's evidence (D-9) provides on page two (2) a printout of what the Department claims to be earned income for the Claimant's husband. The Department has stated that they used five highlighted entries in its earned income calculations. There are three columns listed on this printout that provide dates. It is unclear which column provides the date the Claimant's household was issued the payments. Page three of this evidence (D-9) shows a RAPIDS computer screen which was last updated on August 5, 2009. It shows the Department entered the following earned income as countable for the Claimant's husband:

PAY DT	GROSS INC	INCOME COUNTD
07-04-09	304.00	Y
07-11-09	128.00	Y
07-18-09	128.00	Y
07-25-09	0	Y
08-02-09	64.00	Y

The Department's evidence (D-9) on page four (4) shows another printout labeled BENEFITS PAYMENT HISTORY and the Department has highlighted four payments and indicated it considered these four payments as unearned income in the form of Unemployment Compensation for the Claimant's husband. Again, there are four (4) columns on this document that have dates entered. It is unclear which dates provide the information as to when the checks were issued to the Claimant's household. The columns are labeled "PO DOI", "BWE", "PO DOR", and "CHK DOI". It would appear that the "CHK DOI" is the column that addresses the date the checks were

issued to the Claimant's husband. However, two of the highlighted payments used by the Department to calculate July 2009 unemployment income have August 2009 dates listed in that field. Page five (5) of the Department's evidence (D-9) shows a RAPIDS computer screen which shows it counted one hundred three dollars (\$103.00) as unemployment received weekly, for a total of four hundred forty two dollars and ninety cents (\$442.90). Page six (6) of the evidence (D-9) shows a RAPIDS computer screen which shows that the Department entered twenty five dollars (\$25.00) as "OTFS OTHER/FS ONLY, and indicated this income did not count against the Claimant's Medicaid case. The Claimant's husband stated during the hearing that he no longer is receiving Unemployment income. The Claimant provided no additional information during the timeframe allotted after the hearing and ending October 29, 2009.

- 10) In light of the information received it is impossible to determine how the Department calculated the Claimant's spenddown amount, and whether this calculation is accurate. Although income information was provided by the Department, it is unclear from the computer printouts as to when the Claimant would have been issued the checks, which is of paramount importance in anticipating projected income. Also, the Department has not provided calculations to show how they computed the spenddown amount of two thousand four hundred forty one dollars (\$2441.00).
- 11) The Hearing Officer drafted a letter to the Department on November 5, 2009 requesting that they provide within ten (10) days evidence of the meaning of the codes in the Department's evidence (D-8), verification which clearly shows the Claimant's income in July 2009, and a breakdown showing how the Department computed the Claimant's spenddown.
- 12) On November 10, 2009 the Department submitted evidence (D-10) in response to the request for information. The Department's evidence (D-10) includes a statement that the Department contacted the employer and verified his July pay as a total of eight hundred seventy six dollars (\$876.00), and low earnings from unemployment totaling two hundred eighty five dollars (\$285.00). The Department explained that this information was not available at the time of evaluation and were not used. The Department attached a copy of RAPIDS computer screen ERED which shows how the Claimant's spenddown was computed. The screen shows the spenddown was computed as follows:

Employment Earned Income	344.00
Gross Earned Income	344.00
Standard Work Deduction -	90.00
Net Earned Income	254.00
Unearned Income +	442.90
Countable Net Income total	696.90
Countable Net Income	696.90
Subtract Income Limit	290.00

Monthly Spenddown 406.90

Monthly Spenddown x 6 months 2441.40

- 13) Appendix A, Chapter 10 of the West Virginia Income Maintenance Manual reads in part:

The MNIL for a two person assistance group is \$290.00.

- 14) Section 10.21C of the West Virginia Income Maintenance Manual reads in part:

If the net countable monthly income is equal to or less than the appropriate MNIL, the AG is eligible without a spenddown. If it is in excess of the appropriate MNIL, the AG must meet a spenddown.

- 15) Section 10.21D #11 of the West Virginia Income Maintenance Manual reads in part:

To receive a Medicaid card, the Income Group's monthly countable income must not exceed the amount of the MNIL. If the income exceeds the MNIL, the AG has the opportunity to spend the 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. Once the client presents sufficient medical expenses to meet his spenddown obligation and all other Medicaid eligibility requirements are met, the spenddown is approved.....If the client does not submit sufficient medical bills by the application processing deadline, the application is denied. Certain medical expenses, which 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.

- 16) The West Virginia Income Maintenance Manual §2.16.A states in pertinent part:

CHANGE IN INCOME AND DEDUCTIONS

Case Maintenance action is required to update the data system when a Medicaid AG has a change of income.

Action taken by the Worker follows:

- If the AG did not previously have a spenddown and now has one, the case is closed after proper notice.

The following procedures are used in this situation.

- The AG is closed and reopened with a new POC. The new POC must not cover any period of time in which the case was in a POE.

- Advance notice must be provided for the case closure.
- The client must be provided with proper notice about his spenddown and the procedures which now apply.

17) The West Virginia Income Maintenance Manual §10.6 states in pertinent part:

Eligibility is determined on a monthly basis. Therefore, it is necessary to determine a monthly amount of income to count for the eligibility period. The following information applies to earned and unearned income.

For all cases, the Worker must determine the amount of income that can be reasonably anticipated for the AG. For all cases, income is projected; past income is used only when it reflects the income the client reasonably expects to receive.

VIII. CONCLUSIONS OF LAW:

- 1) Policy is clear in that when an AG receiving AFDC Related Medicaid has a change of income the case must be updated to reflect this change, and when the net monthly income exceeds the MNIL for the AG, the AG must meet a spenddown.
- 2) Policy also is clear in that the Department must provide the Claimant with proper advance notification about the spenddown and the procedures which apply.
- 3) In regard to income calculations, policy stipulates that eligibility is determined on a monthly basis; therefore it is necessary to determine a monthly amount of income to count for the eligibility period. The Department is to determine the amount of income that can be reasonably anticipated for the AG. There was no evidence to indicate the Department discussed this with the Claimant.
- 4) The Department was correct in its decision to update this case to reflect a change in income; however, they did not provide the Claimant with proper advance notice about the resulting spenddown and the procedures which apply. The notice (D-6) the Department sent to the Claimant specified the wrong application date and period of consideration, as well as the wrong spenddown amount. There was no evidence of proper notification.
- 5) Although the evidence shows the Claimant's anticipated monthly net income was in excess of the MNIL of two hundred ninety dollars (\$290.00) and would have resulted in some sort of spenddown, the Department's calculation of anticipated income does not appear to be according to policy, and additionally there was no proper notification of spenddown sent to the Claimant.
- 6) The evidence also shows the Claimant clearly had no unpaid medical bills by which to meet any spenddown amount.

IX. DECISION:

It is the finding of the State Hearing Officer that the Claimant must meet a spenddown for AFDC Medicaid eligibility. The Department is **upheld** in its decision to require the Claimant to meet a spenddown, and therefore is **upheld** in the termination of AFDC Medicaid **pending proper notification**.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 17th Day of November, 2009.

**Cheryl A. Henson
State Hearing Officer
Member, Board of Review**