



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
9083 Middletown Mall
White Hall, WV 26554

Joe Manchin III
Governor

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

March 18, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 8, 2010. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your Medicaid benefits.

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 Medicaid benefits is based on current regulations. Some of these regulations state that eligibility for the SSI Medicaid "Pass-Throughs" program requires the former SSI recipient to have been entitled to RSDI benefits in August, 1972. (West Virginia Income Maintenance Manual, Chapter 16.6)

The information submitted at your hearing reveals that you were not entitled to RSDI benefits in 1972 as you were not determined to be disabled until July 1991. As a result, you have been receiving Pass-Through Medicaid in error. The Department has evaluated you for other Medicaid programs and determined that you will be required to meet a spenddown before Medicaid coverage is effective.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department in terminating your Medicaid benefits.

Sincerely,

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

Pc: Chairman, Board of Review
Angela Barber, ESW, DHHR

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

-----,

Claimant,

v.

Action Number: 09-BOR-2325

**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 18, 2010 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 scheduled to convene on January 8, 2010 and again on February 9, 2010 but was continued on both occasions due to inclement weather. This fair hearing was subsequently convened on March 8, 2010 on a timely appeal filed October 6, 2009.

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.

The SSI Related Medicaid Program 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:

-----, Claimant (Participated telephonically)
Angela Barber, Economic Service Worker (ESW) WV Department of Health and Human Resources (WVDHHR)

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 to be decided is whether or not the Department was correct in its proposal to terminate the Claimant's Medicaid benefits.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Chapter 16.6, 10.15 and Chapter 10, Appendix A and Appendix E.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Department's Hearing Summary
- D-2 Notice of Decision dated 9/29/09
- D-3 WV Income Maintenance Manual, Chapter 16.6
- D-4 Case Comments from May 1997 through December 2009

Claimant's Exhibits:

- C-1 Claimant written statement – health related issues.
- C-2 Copy of handwritten notes documented by the Claimant
- C-3 Medicare Savings Programs (Reportedly out of the 2010 Medicare & You booklet)

VII. FINDINGS OF FACT:

- 1) On or about September 29, 2009, the Claimant was notified via a Notice of Decision (D-2) that her Pass-Through Medicaid benefits will be terminated after October 2009. This notice goes on to indicate that Pickle Amendment Medicaid Program benefits were denied due to excessive income.
- 2) Angela Barber purported that the Claimant has been receiving Medicaid benefits since 1997 when she was erroneously approved for the Pass-Through Medicaid provision as a deemed SSI recipient. The central Buy-In Unit in BMS (Bureau for Medical Services) is responsible for identifying Pass-Through cases and for taking action necessary to continue Medicaid coverage

for the recipient. Pursuant to policy found in the WV Income Maintenance Manual, an eligible recipient was required to have been entitled for RSDI benefits in 1972 and the Claimant was not determined disabled until May 1997. Exhibit D-4 indicates the Claimant met a spenddown effective May 1997, however, the first documentation of Pass-Through Medicaid benefits occurred in February 2003 when the worker noted the Claimant was "Continuously eligible. No change in benefits." It is unclear, according to Ms. Barber, how or why the Claimant was approved for the Pass-Through Medicaid provision.

- 3) Ms. Barber further testified that she evaluated the Claimant for Medicaid coverage under the Pickle Amendment Coverage but determined the household income is in excess of the maximum allowable income pursuant to the requirements found in the WV Income Maintenance Manual, Chapter 16.6,B,5. The calculations used to determine the Claimant is over the income guidelines are included in Exhibit D-1, which notes that the Claimant and her husband last received SSI and RSDI in the same month in January 1998. As a result, the multiplier for 1998, according to WV Income Maintenance Manual, Chapter 10, appendix E, is .733. The undisputed monthly household income of \$1,673.40 X .733 = \$1,226.60 per month. This amount exceeds \$1,011, which is the maximum amount for 2 people receiving SSI (the income limit). As a result, the Claimant is not eligible for Medicaid through the Pickle Amendment. Ms. Barber went on to note that because the Claimant has been determined to be disabled, she could qualify for Medicaid coverage with a spenddown.
- 4) The Claimant testified that she believed she was receiving Medicaid through the Pickle Amendment Coverage and that this benefit could never be taken from her. The Claimant submitted exhibits C-1, C-2 and C-3 to show that she continues to require medical treatment and that she has received Pickle Amendment Medicaid coverage. Page 10 of Exhibit C-2 notes – "They gave me a letter stateing [sic] I was approved starting ~~May~~ June 1st. 97. I would come up for a review in Nov. I have receive [sic] a card under the pickle amendment for 5 yrs."
- 5) WV Income Maintenance Manual, Chapter 16.6, A states that SSI is a public assistance program administered by the Social Security Administration (SSA), which provides cash benefits to eligible aged, disabled or blind individuals.

The Program began in January, 1974. As of the 1st day of that month, all individuals who were receiving state-administered Old Age Assistance (OAA), Aid to the Disabled (AD) and Aid to the Blind (AB) were converted to SSI. At the same time, SSA Offices began processing applications made directly to them.

The amendment to the Social Security Act which established SSI and subsequent rules and regulations gave the states some options regarding Medicaid coverage for SSI recipients.

West Virginia elected to cover all SSI recipients and to accept SSA's determination of eligibility for SSI as the sole eligibility determination for Medicaid. West Virginia is, then, referred to as a "1634 state" based on the section of the Social Security Act which allows this.

Consequently, there is no application or eligibility determination process for SSI Medicaid. The Department depends upon SSA for the information needed to open, evaluate and close continuing eligibility for SSI Medicaid cases.

- 6) WV Income Maintenance Manual, Chapter 16.6,B,4 indicates that when an individual is no longer eligible for SSI, eligibility for Medicaid can be established through “deemed” SSI Medicaid. Among the Medicaid programs listed as a Deemed SSI Recipient is Pass-Through Medicaid. Pass-through Medicaid policy states as follows:

Former SSI recipients who meet all of the following conditions are eligible for Medicaid:

- In August, 1972, the individual was entitled to RSDI benefits.
- The individual would currently be eligible for SSI except that the increase in RSDI benefits that occurred on July 1, 1972, under Public Law 92-336, raised his income over the limit allowed under the SSI Program.

The central Buy-In Unit in BMS is responsible for identifying Pass-Through cases and for taking action necessary to continue Medicaid coverage for them. Refer to Chapter 22 for a more complete explanation of the Buy-In Unit's responsibilities. However, there may be times when a Pass-Through case is not enrolled in Medicare. When this occurs, the Buy-In Unit notifies the Worker to refer the client to SSA for Medicare enrollment.

VIII. CONCLUSIONS OF LAW:

- 1) The evidence demonstrates that the Claimant was erroneously awarded Pass-Through Medicaid benefits. It is unclear why or how the error occurred. The Claimant was clearly not eligible for Medicaid under this provision as she was not entitled to RSDI in August 1972.
- 2) The Department has evaluated the Claimant for eligibility through other Medicaid programs but was unable to establish eligibility. While the Claimant meets some of the criteria necessary to qualify for Medicaid through the Pickle Amendment - She was eligible for and received RSDI and SSI concurrently (at the same time) for at least one month after April 1977 - Pickle Amendment Medicaid coverage also requires that you qualify financially. The evidence demonstrates that financial eligibility could not be established as the household income exceeds the maximum allowable income for an SSI assistance group of two (2).
- 3) Based on the evidence, the Department is correct in determining that the Claimant is not eligible for Pass-Through or Pickle Amendment Medicaid and that she may only be approved for Medicaid coverage once a spenddown has been met.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department in terminating your Medicaid benefits.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 18th day of March, 2010.

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