



**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

Martha Yeager Walker
Secretary

July 14, 2005

[REDACTED]

Case Name: _____.

Dear Mr. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on the hearing held May 17, 2005. Your hearing request was based on the Department of Health and Human Resources' action to deny a Shelter Cost Deduction for the household.

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 Long Term Care Medicaid Program is based on current policy and regulations. Some of these regulations state as follows: The shelter cost must be from the home the institutionalized spouse and the community spouse shared prior to institutionalization, and in which the community spouse continues to live. It must have been the client's principal place of residence. Shelter costs include rent or mortgage payments, interest, principal, taxes, insurance and required maintenance charges for a condominium or cooperative. (West Virginia Income Maintenance Manual Section 17.9 (D) (1) (b) Community Spouse Maintenance Allowance (CSMA)).

The information submitted at your hearing revealed: Your homestead property was sold in August 2004.

It is the decision of the State Hearings Officer to UPHOLD the action of the Department to deny a shelter cost deduction.

Sincerely,

Ray B. Woods, Jr., M.L.S.
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Cheryl Turnes, ESW

_____, Spouse

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

_____,

Claimant,

v.

Action Number: _____

**West Virginia Department of
Health and Human Resources,**

Respondent.

DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on July 14, 2005 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 originally scheduled on April 5, 2005 on a timely appeal filed March 15, 2005. Mr. [REDACTED] requested to reschedule due to his illness. The hearing finally convened on May 17, 2005.

It should be noted here that the claimant's benefits have been continued pending a hearing decision. A pre-hearing conference was held between the parties prior to the hearing.

II. PROGRAM PURPOSE:

The Program entitled Long Term Care Medicaid is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

The program entitled Long Term Care Medicaid (nursing facility services) is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources. It is a medical service which is covered by the State's Medicaid Program. Payment for care is made to nursing homes which meet Title XIX (Medicaid) standards for the care provided to eligible recipients. In order to qualify for Nursing Home Care, an individual must meet financial and medical eligibility criteria

III. PARTICIPANTS:

_____, Claimant

██████████ Esq. – Attorney at Law
Cheryl Turnes, Income Maintenance Worker – Nursing Home Unit

Presiding at the Hearing was, Ray B. Woods, Jr., M.L.S., State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided: Is Mr. _____ eligible for a Shelter Cost Deduction.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Section 17.9 (D) (1) (b) Community Spouse Maintenance Allowance (CSMA)

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Spousal Impoverishment Income Allocation Budget Printout (With Shelter Cost and Health Insurance Premium for 2 Included)
- D-2 Spousal Impoverishment Income Allocation Budget Printout (Without Shelter Cost and Health Insurance Premium for 2 Included)
- D-3 Spousal Impoverishment Income Allocation Budget Printout (Without Shelter Cost and Health Insurance Premium for 1 Included)
- D-4 Fax from Physicians Mutual re: Monthly Premiums
- D-5 Letter from ██████████ Esq. requesting continuance
- D-6 Scheduling Notice dated 04/15/05 (Rescheduled Notice)
- D-7 Scheduling Notice dated 03/15/05 (Initial Notice)
- D-8 West Virginia Income Maintenance Manual Section 17.9 (D) (1) (b) Community Spouse Maintenance Allowance (CSMA)
- D-9 GroupWise Message dated 05/23/05 from Mrs. Turnes re: Insurance issues resolved
- D-10 GroupWise Message dated 05/18/05 from Policy Unit to Mrs. Turnes
- D-11 Hearing Summary

Claimants' Exhibits:

- C-1 Letter dated 03/23/05 from ██████████ D.O. re: Mrs. _____'s health
- C-2 Chapter 7 Individual Debtor's Statement of Intention dated 05/07/04
- C-3 Health Benefits Payment History from ██████████ Corporation dated 12/23/04

VII. FINDINGS OF FACT:

1) The original hearing request centered on two (2) issues: (1) The correct Resource Amount due the Nursing Facility and; (2) Premium Costs related to Mr. and Mrs. _____'s Health Insurance. Mr. ██████████ requested a clarification from the Income Maintenance Policy Unit regarding the latter issue. On May 23, 2005, Mrs. Turnes advised the Hearing Officer that the issue

relating to Insurance had been resolved. The remaining issue of the the focus of this decision.

Resource Amount will be

2) Mrs. Turnes submitted the following Hearing Summary:

I received a returned letter on 2/9/05 and called _____ re: her address on 2/14/05 – she said that she had moved to _____ and that she had already reported this. She said that the homestead was sold in August, 2004, and she provided verification on 2/25/05 that the property at _____ was to be surrendered. I took the shelter cost from the case, as she no longer qualified for the shelter cost portion of the deduction in regard to the community spousal maintenance allowance. Per policy, Chapter 17.9 (D) (1) (b): The shelter cost must be from the home the institutionalized spouse and the community spouse shared prior to institutionalization and in which the community spouse continues to live.

The letter dated 2/15/05 is the first resource letter in which the shelter cost was removed.

Mrs. _____ sent in verification of the 2005 premium amounts on 2/25/05. I was able to determine from the case record that the Blue Cross policy included her on the policy - I called the insurance company, and the staff member stated that they would not verify the premium portion for Mr. _____ in writing but that the premium amount for one person was \$125.36. I was unable to premium portion for Mr. _____ in regard to the Physicians Mutual policy so divided the premium amount of \$29.75 in half = \$14.87. $\$14.87 + \$125.36 = \$140.23$ which is the insurance amount reflected on the resource letter dated 3/16/05.

Per policy, Chapter 17.9 (D) (1) (b) Community Spouse Maintenance Allowance (CSMA), refers to medical expenses which may be used as a deduction. (Refers to the expenses of the client).

3) The Claimant's Exhibit (C-2) "Chapter 7 Individual Debtor's Statement of Intention" dated 05/07/04 lists the homestead property to be surrendered.

4) West Virginia Income Maintenance Manual Section 17.9 (D) (1) (b) Community Spouse Maintenance Allowance (CSMA)

When the institutionalized individual has a spouse living in the community, a portion of his income may be deducted for the support of the spouse at home.

To determine the CSMA, the income of the community spouse is subtracted from a Spousal Maintenance Standard (SMS) which is either:

- The minimum SMS. This is 150% of the monthly FPL for 2 persons; or
- The minimum SMS, increased by excess shelter/utility expenses, but not exceeding the maximum SMS.

See Chapter 10, Appendix A for the minimum and maximum Spousal Maintenance Standard amounts.

The remainder is the amount of the institutionalized spouse's income which can be used to meet his community spouse's needs.

The determined amount must actually be paid to the community spouse for the deduction to be applied. If the client contributes less than the determined amount, only the amount actually contributed to the community spouse is deducted. If he has been ordered by a court or a Hearings Officer to contribute more to his spouse, the higher amount is deducted.

The following steps are used to determine the amount of the CSMA.

Step 1: Add together the actual shelter cost and the amount of the current Food Stamp SUA. See Chapter 10, Appendix B. The shelter cost must be from the home the institutionalized spouse and the community spouse shared prior to institutionalization, and in which the community spouse continues to live. It must have been the client's principal place of residence. Shelter costs include rent or mortgage payments, interest, principal, taxes, insurance and required maintenance charges for a condominium or cooperative.

Step 2: Compare the total of the costs in Step 1 to 30% of the minimum SMS. See Chapter 10, Appendix A. When the shelter/utility costs exceed 30% of the minimum SMS, subtract the 30% amount from the shelter/utility costs.

Step 3: Add the remainder from Step 2 to the minimum SMS. This amount, not to exceed the maximum SMS, is used in Step 5. See Chapter 10, Appendix A.

Step 4: Add together the community spouse's gross, nonexcluded earned and unearned income.

Step 5: Subtract the Step 4 amount from the amount determined in Step 3 and if there are any cents, round the resulting amount up. This is the amount subtracted from the income of the institutionalized spouse for the needs of his community spouse.

If the Step 4 amount is equal to or greater than the Step 3 amount, no deduction is allowed.

NOTE: The amount used from Step 3 cannot exceed the maximum SMS.

VIII. CONCLUSIONS OF LAW:

1) This Long Term Care Medicaid Case is not eligible for a Shelter Cost Deduction since the house was sold. The correct Resource Amount would entail Insurance Deductions for both Mr. and Mrs. _____ and no deduction for shelter costs.

IX. DECISION:

It is the decision of this State Hearing Officer to UPHOLD the action of the Department in this particular matter.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 14th day of July, 2005.

**Ray B. Woods, Jr., M.L.S.
State Hearing Officer**