April 3, 2024

[redacted]

RE: [redacted] v. DoHS/BFA
ACTION NO.: 24-BOR-1602

Dear [redacted]:

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

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 Human Services. These same laws and regulations are used in all cases to ensure that all persons are treated alike.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

Kristi Logan
Certified State Hearing Officer
Member, State Board of Review

Encl: Recourse to Hearing Decision
Form IG-BR-29

cc: Kimberly Bone, [redacted] DoHS

WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW

[redacted],

Appellant,

v. **Action Number: 24-BOR-1602**

WEST VIRGINIA DEPARTMENT OF HUMAN SERVICES
BUREAU FOR FAMILY ASSISTANCE,

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for [redacted]. This hearing was held in accordance with the provisions found in Chapter 700 of the Office of Inspector General Common Chapters Manual. This fair hearing was convened on March 26, 2024, on an appeal filed on February 29, 2024.

The matter before the Hearing Officer arises from the February 21, 2024, decision by the Respondent to increase the Appellant's Long Term Care Medicaid resource amount.

At the hearing, the Respondent appeared by Kimberly Bone, Economic Service Worker. The Appellant appeared by his son, [redacted]. The witnesses were placed under oath and the following documents were admitted into evidence.

Department's Exhibits:

D-1 Hearing Summary
D-2 Medicaid Review Form dated December 31, 2023
D-3 Notice of Decision dated February 21, 2024
D-4 Email from Kimberly Bone to [redacted] dated February 20, 2024
D-5 Hearing Request received February 29, 2024
D-6 West Virginia Income Maintenance Manual §24.19
D-7 West Virginia Income Maintenance Manual §24.7.6
D-8 West Virginia Income Maintenance Manual §24.7.3.A

Appellant's Exhibits:

A-1 Divorce Agreement dated January 29, 2007

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

1) A Medicaid redetermination form was submitted on behalf of the Appellant on December 31, 2023 (Exhibit D-2).

2) The reported monthly income for the Appellant was Social Security of $2,152.90, Black Lung of $936.60, and Long Term Disability of $1,703.33 (Exhibit D-2).

3) Effective January 1, 2024, the Appellant's Social Security income increased to $2,221.70.

4) The Appellant pays court-ordered alimony of $1,154 monthly (Exhibit A-1).

5) The Appellant pays his Medicare premium of $174.70 monthly.

6) The Respondent issued a notice on February 21, 2024, advising that the Appellant's monthly contribution to the nursing facility would increase from $2,828 to $4,641.63 effective April 1, 2024 (Exhibit D-3).

APPLICABLE POLICY

Code of Federal Regulations Title 42 §435.725 explains post-eligibility treatment of income for institutionalized individuals:

> ***Basic rules.***
> (1) The agency must reduce its payment to an institution, for services provided to an individual specified in paragraph (b) of this section, by the amount that remains after deducting the amounts specified in paragraphs (c) and (d) of this section, from the individual's total income,
> (2) The individual's income must be determined in accordance with paragraph (e) of this section.
> (3) Medical expenses must be determined in accordance with paragraph (f) of this section.
> (b) ***Applicability.*** This section applies to the following individuals in medical institutions and intermediate care facilities.
> (1) Individuals receiving cash assistance under SSI or AFDC who are eligible for Medicaid under §435.110 or §435.120.

(2) Individuals who would be eligible for AFDC, SSI, or an optional State supplement except for their institutional status and who are eligible for Medicaid under §435.211.
(3) Aged, blind, and disabled individuals who are eligible for Medicaid, under §435.231, under a higher income standard than the standard used in determining eligibility for SSI or optional State supplements.
(c) ***Required deductions.*** In reducing its payment to the institution, the agency must deduct the following amounts, in the following order, from the individual's total income, as determined under paragraph (e) of this section. Income that was disregarded in determining eligibility must be considered in this process.
(1) ***Personal needs allowance.*** A personal needs allowance that is reasonable in amount for clothing and other personal needs of the individual while in the institution. This protected personal needs allowance must be at least—
(i) $30 a month for an aged, blind, or disabled individual, including a child applying for Medicaid on the basis of blindness or disability;
(ii) $60 a month for an institutionalized couple if both spouses are aged, blind, or disabled and their income is considered available to each other in determining eligibility; and
(iii) For other individuals, a reasonable amount set by the agency, based on a reasonable difference in their personal needs from those of the aged, blind, and disabled.
(2) ***Maintenance needs of spouse.*** For an individual with only a spouse at home, an additional amount for the maintenance needs of the spouse. This amount must be based on a reasonable assessment of need but must not exceed the highest of—
(i) The amount of the income standard used to determine eligibility for SSI for an individual living in his own home, if the agency provides Medicaid only to individuals receiving SSI;
(ii) The amount of the highest income standard, in the appropriate category of age, blindness, or disability, used to determine eligibility for an optional State supplement for an individual in his own home, if the agency provides Medicaid to optional State supplement beneficiaries under §435.230; or
(iii) The amount of the medically needy income standard for one person established under §435.811, if the agency provides Medicaid under the medically needy coverage option.
(3) ***Maintenance needs of family.*** For an individual with a family at home, an additional amount for the maintenance needs of the family. This amount must—
(i) Be based on a reasonable assessment of their financial need;
(ii) Be adjusted for the number of family members living in the home; and
(iii) Not exceed the higher of the need standard for a family of the same size used to determine eligibility under the State's approved AFDC plan or the medically needy income standard established under §435.811, if the agency provides Medicaid under the medically needy coverage option for a family of the same size.
(4) ***Expenses not subject to third party payment.*** Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party, including—
(i) Medicare and other health insurance premiums, deductibles, or coinsurance charges; and
(ii) Necessary medical or remedial care recognized under State law but not covered under the State's Medicaid plan, subject to reasonable limits the agency may establish on amounts of these expenses.

(5) ***Continued SSI and SSP benefits.*** The full amount of SSI and SSP benefits that the individual continues to receive under sections 1611(e)(1) (E) and (G) of the Act.
(d) ***Optional deduction: Allowance for home maintenance.*** For single individuals and couples, an amount (in addition to the personal needs allowance) for maintenance of the individual's or couple's home if—
(1) The amount is deducted for not more than a 6-month period; and
(2) A physician has certified that either of the individuals is likely to return to the home within that period.
(3) For single individuals and couples, an amount (in addition to the personal needs allowance) for maintenance of the individual's or couple's home if—
(i) The amount is deducted for not more than a 6-month period; and
(ii) A physician has certified that either of the individuals is likely to return to the home within that period.
(e) ***Determination of income*** —
(1) ***Option.*** In determining the amount of an individual's income to be used to reduce the agency's payment to the institution, the agency may use total income received, or it may project monthly income for a prospective period not to exceed 6 months.
(2) ***Basis for projection.*** The agency must base the projection on income received in the preceding period, not to exceed 6 months, and on income expected to be received.
(3) ***Adjustments.*** At the end of the prospective period specified in paragraph (e)(1) of this section, or when any significant change occurs, the agency must reconcile estimates with income received.
(f) ***Determination of medical expenses*** —
(1) ***Option.*** In determining the amount of medical expenses to be deducted from an individual's income, the agency may deduct incurred medical expenses, or it may project medical expenses for a prospective period not to exceed 6 months.
(2) ***Basis for projection.*** The agency must base the estimate on medical expenses incurred in the preceding period, not to exceed 6 months, and on medical expenses expected to be incurred.
(3) ***Adjustments.*** At the end of the prospective period specified in paragraph (f)(1) of this section, or when any significant change occurs, the agency must reconcile estimates with incurred medical expenses.

West Virginia Income Maintenance Manual Chapter 27 explains eligibility determination for Long-Term Care Medicaid:

24.7 Income for Eligibility Determination
There is a two-step income process for providing Medicaid coverage for nursing facility services to individuals in nursing facilities. The client must be eligible for Medicaid and there must be a determination to see if the client must contribute to the cost of care. Medicaid eligibility can be established by virtue of being a Qualified Medicare Beneficiary (QMB) client, of being a member of a full Medicaid coverage group, by meeting a special income test for the nursing facility coverage group, or by meeting an SSI-Related/Monthly Spenddown. Once Medicaid eligibility is established, if applicable, the client's contribution toward his cost of care in the facility is determined in the post-eligibility process. The post-eligibility process is described in Section 24.7.3 below.

24.7.2.C Nursing Facility Coverage Group, Gross Income Test

If the client is not currently eligible by having QMB or full coverage Medicaid, Medicaid eligibility may be established as follows:

- If the client's gross countable monthly income is equal to or less than 300% of the current maximum Supplemental Security Income (SSI) payment for one person and the client is institutionalized, he may be eligible.
- SSI-Related Categorical Medicaid requirements (aged, blind or disabled) and asset guidelines must be met. These clients' contribution toward cost of care is determined in the post-eligibility process. There is no spenddown amount for these clients.

24.7.2.D SSI-Related/Monthly Spenddown

If the client is not otherwise eligible by having QMB, full coverage Medicaid, or Nursing Facility coverage group, his eligibility as an SSI-Related Medicaid client with a monthly spenddown must be explored. All policies and procedures in effect for other SSI-Related cases apply to these cases, including the determination of a spenddown amount.

24.7.2.D.1 Spenddown Calculation

When the monthly Medicaid rate for the facility in which the client resides equals or exceeds his monthly spenddown amount, the spenddown is assumed to be met and Medicaid eligibility is established. If the monthly spenddown amount exceeds the monthly Medicaid rate for the facility, the client may become eligible for Medicaid based on a six-month period of consideration (POC), but not for payment of nursing facility services. The Medicaid daily rate for the facility is multiplied by 30 to determine the average monthly rate. The daily rates are found only on the Division of Family Assistance (DFA) intranet page. The rates are updated at least semi-annually. Any requests for the rates must be made under the Freedom of Information Act (FOIA) to the Department of Health and Human Resources (DHHR) Office of the Deputy Secretary, Division of Accountability and Management Reporting.

24.7.3 Post-Eligibility Process

In determining the client's contribution toward his cost of nursing facility care, the Worker must apply only the income deductions listed below. This is the post-eligibility process. The remainder, after all allowable deductions, is the resource amount, which is at least part of the amount the client must contribute toward his cost of care. The client's spenddown amount, if any, as determined above, is added to the resource amount to determine the client's total contribution toward his nursing care, except when there is a community spouse. In cases with a community spouse, the spenddown is not added to the computed resource amount. The spenddown is used only to compare to the nursing facility's Medicaid cost of care to determine eligibility.

24.7.3.A Income Disregards and Deductions

Only the items in the following sections may be deducted from the client's gross income in the post-eligibility process.

24.7.3.A.1 Client's Personal Needs Allowance
This amount is subtracted from income to cover the cost of clothing and other personal needs of the nursing facility resident. For most residents, the monthly amount deducted is $50. However, for an individual who is receiving the reduced Veterans Affairs (VA) pension of $90, the monthly PNA is $90. Similarly, an individual receiving SSI will have his monthly allocation reduced to $30, which is his monthly PNA if he is in the facility for at least three months.

24.7.3.A.2 Community Spouse Maintenance Allowance
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.

24.7.3.A.3 Family Maintenance Allowance
When the institutionalized individual has family members who are living with the community spouse and who are financially dependent upon him, an FMA is deducted from his income.

24.7.3.A.4 Outside Living Expenses
Single individuals and couples, when both spouses are institutionalized, receive a $175 deduction from income for maintenance of a home when a physician has certified in writing that the individual, or in the case of a couple, either individual, is likely to return to the home within six months. The amount may be deducted for up to six months.

24.7.3.A.5 Non-Reimbursable Medical Expenses
Certain non-reimbursable medical expenses for the eligible client only may be deducted in the post-eligibility process. These expenses are sometimes referred to as "remedial expenses." Non-reimbursable means the expense will not be or has not been paid to the provider or reimbursed to the client by any third-party payer, such as, but not limited to, Medicare, Medicaid, private insurance or another individual.

24.7.6 Determining the Client's Total Contribution
If the individual is a full Medicaid coverage client or in the Nursing Facility Medicaid coverage group without a spenddown, the resource amount determined in the post-eligibility process from above is his total cost contribution. Because the amount of medical expenses used to meet the client's spenddown cannot be paid by Medicaid, the spenddown amount becomes part of the client's contribution toward his cost of care, unless the client has a community spouse. This amount is added to the resource amount determined above to determine the client's total monthly contribution toward the cost of his nursing care.

West Virginia Income Maintenance Manual §4.14 explains the eligibility process for SSI-Related Medicaid groups:

4.14.3 Determining Eligibility

Countable income is determined by subtracting any allowable disregards and deductions in the Budgeting Method section above from the total countable gross income. Countable income is determined as follows:

Step 1: Determine the total countable gross unearned income and subtract the $20 disregard, if applicable.

Step 2: Determine the total countable earned income. Subtract the following in order:

- Remainder of SSI $20 disregard
- SSI $65 earned income disregard
- SSI impairment-related expenses
- One-half of the remaining earned income
- SSI work-related expense deductions (blind persons only)
- Earnings diverted to a PASS
- SSI student child earned income disregard

Step 3: Add the result from Step 1 to the result from Step 2.

Step 4: Subtract unearned income diverted to a PASS account, the Death Benefits deduction and, for children, the child support disregard. The result is the total monthly countable income.

Step 5: Compare the amount in Step 4 to the SSI Maximum Payment Level, indicated in Appendix A for the appropriate number of persons. If the net countable monthly income is equal to or less than the appropriate SSI Maximum Payment Level, the assistance group (AG) is eligible and no further steps are necessary. If the net countable monthly income is above the appropriate SSI Maximum Payment Level, continue with Step 6.

Step 6: Compare the amount in Step 4 to the Medically Needy Income Level (MNIL) for the appropriate number of persons. 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.

West Virginia Income Maintenance Manual Chapter 4 Appendix A lists the following income limits:

Medically Needy Income Limit (MNIL) for one person is $200
Maximum SSI payment for one person is $943 and 300% of the SSI payment is $2,829.

DISCUSSION

Pursuant to policy, an individual must be a recipient of a full Medicaid coverage group, have a gross countable monthly income that is equal to or less than 300% of the current maximum Supplemental Security Income (SSI) payment for one person, or meet an SSI-Related spenddown to be eligible for Medicaid payment of nursing facility services.

The Appellant underwent an eligibility redetermination for Long Term Care Medicaid in

December 2023. The Appellant's income was updated to reflect 2024 cost-of-living increases for a total monthly income of $4,861.63. The Appellant's monthly contribution to the nursing facility increased from $2,828 to $4,641.63 effective April 1, 2024.

Witness for the Respondent, Kimberly Bone, testified that the Appellant's Long Term Disability benefits of $1,703.33 had previously been omitted from the case record, although the income was reported on the initial application. The addition of the disability benefit income caused the increase in the Appellant's monthly contribution.

The Appellant's representative, [redacted], testified that the Appellant is court-ordered to pay alimony of $1,154 monthly. [redacted] stated that he makes the alimony payment each month out of the Appellant's income that remains once the facility is paid for his father's care. With the increase in the amount owed to the nursing facility, the Appellant will be unable to pay the alimony.

Policy stipulates that if an individual's income exceeds 300% of the current SSI amount, eligibility may be established by meeting a spenddown. If the monthly Medicaid rate for the facility in which the client resides equals or exceeds the monthly spenddown amount, the spenddown is assumed to be met and Medicaid eligibility is established. However, because the amount of medical expenses used to meet the client's spenddown cannot be paid by Medicaid, the spenddown amount becomes part of the client's contribution toward the cost of care. This amount is added to the resource amount to determine the client's total monthly contribution toward the cost of nursing care.

Following the steps in policy, the Appellant's monthly spenddown amount is determined as follows:

$4,861.63	gross income
-$20 SSI	income disregard
$4,841.63	remainder
-$200	MNIL for one person
$4,641.63	monthly spenddown

The monthly Medicaid cost for the Appellant's care in the facility is $7,589.10. Therefore, his spenddown is met for the month and post-eligibility calculations are performed for any additional contribution he must make. Post-eligibility calculations are as follows:

$4,861.63	gross income
-$50	personal needs allowance
$4,811.63	remainder
-$174.70	Medicare premium
$4,636.93	remainder
-$4,641.63	spenddown (non-reimbursable medical expense)
$0	resource amount

The Appellant has no resource amount, so his total contribution is $4,641.63, his spenddown amount.

Policy and federal regulations list specific income deductions in the post-eligibility process to determine the monthly contribution owed to the nursing facility. Alimony is not an allowable income deduction; therefore, the Appellant's alimony payments cannot be used to reduce his monthly contribution for his care.

Whereas the Respondent applied income deductions allowed by policy and federal regulations, the Respondent's decision to increase the Appellant's monthly contribution amount is affirmed.

CONCLUSIONS OF LAW

1) Policy and federal regulations permit certain income deductions in determining the monthly contribution owed to the nursing facility.

2) Alimony payments are not a permitted income deduction.

3) The income limit for an individual for Long Term Care Medicaid services, without a spenddown, is 300% of the current SSI payment, or $2,829.

4) The Appellant's total gross income is $4,861.63.

5) The Appellant's monthly spenddown is $4,641.63, which is subtracted from his countable income of $4,861.63, after all allowable income deductions are applied.

6) The Appellant does not have a resource amount, therefore, his monthly spenddown of $4,641.63 is his total monthly contribution.

DECISION

It is the decision of the State Hearing Officer to **uphold** the action of the Respondent to increase the Appellant's monthly resource amount for Long Term Care Medicaid.

ENTERED this 3rd day of April 2024.

_____

Kristi Logan
Certified State Hearing Officer