



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
203 East Third Avenue
Williamson, WV 25661

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

November 3, 2015



RE: [REDACTED] v. WV DHHR
ACTION NO.: 15-BOR-3218

Dear Mr. [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 Health and Human Resources. These same laws and regulations are used in all cases to assure 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,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
Form IG-BR-29

cc: Jennifer Fischer, Economic Service Supervisor

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

██████████,

Appellant,

v.

ACTION NO.: 15-BOR-3218

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for ██████████. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' (WV DHHR) Common Chapters Manual. This fair hearing was convened on October 29, 2015, on an appeal filed October 5, 2015.

The matter before the Hearing Officer arises from the September 29, 2015 decision by the Respondent to deny the Appellant's application for Medicaid and Medicare Premium Assistance.

At the hearing, the Respondent appeared by Jennifer Fischer, Economic Service Supervisor at the WV DHHR, ██████████ County Office. Appearing as a witness for the Department was Cara Addair-Hunt, Economic Service Worker at the WV DHHR, ██████████ Office. The Appellant appeared *pro se*. All participants were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Letter from Department to Appellant, dated September 29, 2015 – Medicaid denial
- D-2 Letter from Department to Appellant, dated September 25, 2015 – Medicare Premium Assistance denial
- D-3 Screen Print from the WV DHHR – U.S. Social Security Administration (SSA) data exchange service, SOLQ, showing Appellant's Medicare Part A and Part B coverage
- D-4 WV DHHR Income Maintenance Manual (IMM), Chapter 5, §5.4.A
- D-5 WV DHHR IMM, Chapter 5, §5.6.A.5
- D-6 WV DHHR IMM, Chapter 5, §5.6.A.5.e
- D-7 Printout from the SSA's Medicare web site, Medicare.gov, *Should I get Part B?*
- D-8 Printout from Medicare.gov, *Part B late enrollment penalty*
- D-9 Printout from Medicare.gov, *When & how to sign up for Part B*

- D-10 Printout from Medicare.gov, *When can I sign up for Part B?*
- D-11 Printout from Medicare.gov, *When will my [Part B] coverage start?*

Appellant’s Exhibits:

None

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) The Appellant has received Social Security – Disability income since 1993. In September 2015, he applied for Medicaid and Medicare Premium Assistance.
- 2) According to a print-out from the WV DHHR – U.S. Social Security Administration data exchange service, SOLQ (Exhibit D-3), the Appellant is not a recipient of Medicare Part B.
- 3) On September 25, 2015, the Department sent to the Appellant a letter of denial for Medicare Premium Assistance (Exhibit D-2). According to the letter, his application was denied because his income was more than the income limit for the benefit, and he was “not cooperating with other potential resources.”
- 4) On September 29, 2015, the Department sent to the Appellant a letter of denial for Medicaid (Exhibit D-1). According to the letter, his application was denied because his income was more than the income limit for the benefit, and he was “not cooperating with other potential resources.”

APPLICABLE POLICY

WV Income Maintenance Manual (IMM) Chapter 5, §5.4.A (Exhibit D-4) reads as follows in part:

All applicants for and recipients of Medicaid, who qualify for Medicare Buy-In, must enroll in Medicare, Parts A and B, unless an exemption to enrollment is met. Exemptions include, but are not limited to, no established record of birth or the individual has other credible health insurance and will be disadvantaged by Medicare enrollment.

Individuals who meet all other QMB [Qualified Medicare Beneficiaries], SLIMB [Specified Low-Income Medicare Beneficiaries] and QI-1 [Qualified Individual Beneficiaries] eligibility requirements, but who are not yet enrolled in Part B, must be referred to the BMS [WV Bureau for Medical Services] Medicare Buy-In Unit by

sending an e-mail to medbuyin@wvdhhr.org. The message must contain the applicant's name, address, date of birth and Social Security number. The Buy-In Unit contacts Social Security to facilitate enrollment. This avoids any late enrollment penalty which may apply to the individual and permits enrollment outside the yearly open-enrollment period.

WV Income Maintenance Manual (IMM) Chapter 5, §5.6.A.5.e (Exhibit D-6) reads as follows in part:

All Medicaid applicants and recipients, age 65 or over, who are not enrolled, and all others who appear to meet the criteria [for Medicare Part A and Part B], must be referred for enrollment. Failure to enroll, for those eligible for Medicare Buy-In who do not meet an exception described in §5.4.A, results in denial of the Medicaid application, removal from the Medicaid AG [Assistance Group] or closure of the Medicaid AG.

DISCUSSION

The Department denied the Appellant's application for Medicaid because he did not cooperate with the U.S. Social Security Administration (SSA) by applying for Medicare Part B. Although his denial letters stated that his income was excessive for Medicaid or Medicare Premium Assistance, he was not evaluated for other programs of coverage with different income guidelines, such as spend-down Medicaid, because he was considered someone who had not cooperated with "other potential resources."

The Appellant testified that he was told by a worker at the SSA that he could not apply for Medicare Part B until the open-enrollment period of January – March of 2016. The Department's representative confirmed that the Appellant would not be considered as cooperating with the SSA until he at least could apply for Part B.

Policy is clear that as a Medicaid applicant who meets the criteria for Medicare Part A and Part B, the Applicant was required to enroll in Medicare Part B. However, neither the Department's representative nor the Appellant testified as to whether he was referred to the WV DHHR Bureau for Medical Services' Medicaid Buy-In Unit. If so, the Buy-In Unit could assist the Appellant with enrolling for Part B outside of the yearly enrollment period. In the absence of information regarding his referral to the Buy-In Unit, the Appellant's denial must be remanded to the Department to insure that this has been done.

CONCLUSION OF LAW

Pursuant to the WV Income Maintenance Manual, Chapter 5, §5.4.A, the Appellant should have been referred to the WV Bureau for Medical Services' Buy-In Unit. Because neither the Department nor the Appellant offered testimony or evidence regarding this referral during the hearing, the denial of the Appellant's application for Medicaid and Medicare Premium Assistance must be remanded to the Department.

DECISION

It is the decision of the State Hearing Officer to REMAND the Department's decision to deny the Appellant's eligibility for Medicaid and Medicare Premium Assistance to the Department so that his application may be referred to the WV Bureau for Medical Services' Buy-In Unit. Following this referral, the Department shall notify the Appellant of its decision, which shall include the right to a Fair Hearing.

ENTERED this 3rd Day of November 2015.

**Stephen M. Baisden
State Hearing Officer**