STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL

Bill J. Crouch
Cabinet Secretary

BOARD OF REVIEW
P.O. Box 1736
Romney, WV 26757
304-822-6900

Jolynn Marra
Inspector General

June 1, 2022

[redacted]

RE: [redacted] v. WVDHHR
ACTION NO.: 22-BOR-1513

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 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,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

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

cc: Erin Hammonds, WVDHHR
[redacted]

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW

[redacted],

Appellant,

v. **Action Number: 22-BOR-1513**

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 [redacted]. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on May 26, 2022, on appeal filed April 11, 2022.

The matter before the Hearing Officer arises from the November 19, 2022, decision by the Respondent to deny the Appellant's Medicare Buy-In Program application.

At the hearing, the Respondent appeared by Erin Hammonds, Economic Service Worker. The Appellant was represented by [redacted]. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

D-1 Application for Medicare Buy-In Program dated October 27, 2021
D-2 Verification Checklist dated November 1, 2021
D-3 Printout of Case Comments
D-4 Notice of Decision dated November 19, 2021

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 applied for Medicare Buy-In Program benefits on October 27, 2021. (Exhibit D-1)

2) On November 1, 2021, the Respondent issued a Verification Checklist to the Appellant requesting verification of his bank account information to determine his financial eligibility for the program. (Exhibit D-2 and Exhibit D-3)

3) At the time of application, the Appellant designated [redacted] as his authorized representative.

4) The Respondent failed to notify [redacted] of the information required to determine the Appellant's financial eligibility.

5) The Appellant failed to provide the requested bank account information.

6) On November 19, 2021, the Respondent informed the Appellant that his application for the Medicare Buy-In Program had been denied effective December 1, 2021, due to his failure to verify requested information. (Exhibit D-4).

APPLICABLE POLICY

West Virginia Income Maintenance Manual § 1.6.5 documents:

> The applicant may designate an authorized representative to act on his behalf. Such a designation must be in writing and include the applicant's signature.
>
> Authority for an individual or entity to act on behalf of an applicant or beneficiary accorded under state law, including but not limited to, a court order establishing legal guardianship or a power of attorney, must be treated as a written designation by the applicant or beneficiary of authorized representation. The power to act as an authorized representative is valid until the applicant or beneficiary modifies the authorization to the DHHR. The authorized representative is responsible to the same extent as the client being represented, including confidentially of any information regarding the client provided by the agency and agreeing to the terms of the Rights and Responsibilities.

Examples of documents the applicant may submit with the Medicaid application to verify he has designated an authorized representative include, but are not limited to:

- Single Streamlined Application (DFA-SLA-1, Appendix C)
- Application for Long Term Care Medicaid and Children with Disabilities Community Service Program (DFA-MA-1)
- Durable power of attorney (POA) and/or medical power of attorney documentation, unless limited in scope
- Court orders designating a guardian or conservator (signed by court)
- Healthcare surrogate documentation for an incapacitated applicant (signed by physician and surrogate)

West Virginia Income Maintenance Manual § 9.2.1.C documents in pertinent part:

The date entered in the DFA-6 must be at least 10 days from the date of issuance or a time agreed upon with the applicant. See Due Date of Additional Information in Section 1.6.4.

Code of Federal Regulations 42 CFR § 435.923 documents in pertinent part:

(1) The agency must permit applicants and beneficiaries to designate an individual or organization to act responsibly on their behalf in assisting with the individual's application and renewal of eligibility and other ongoing communications with the agency. Such a designation must be in accordance with paragraph (f) of this section, including the applicant's signature, and must be permitted at the time of application and at other times.

(2) Authority for an individual or entity to act on behalf of an applicant or beneficiary accorded under state law, including but not limited to, a court order establishing legal guardianship or a power of attorney, must be treated as a written designation by the applicant or beneficiary of authorized representation.

(b) Applicants and beneficiaries may authorize their representatives to -

(1) Sign an application on the applicant's behalf;

(2) Complete and submit a renewal form;

(3) Receive copies of the applicant or beneficiary's notices and other communications from the agency;

(4) Act on behalf of the applicant or beneficiary in all other matters with the agency.

(c) The power to act as an authorized representative is valid until the applicant or beneficiary modifies the authorization or notifies the agency that the representative is no longer authorized to act on his or her behalf, or the authorized representative informs the agency that he or she no longer is acting in such capacity, or there is a change in the legal authority upon which the individual or organization's authority was based. Such notice must be in accordance with paragraph (f) of this section and should include the applicant or authorized representative's signature as appropriate.

(d) The authorized representative -

(1) Is responsible for fulfilling all responsibilities encompassed within the scope of the authorized representation, as described in paragraph (b)(2) of this section, to the same extent as the individual he or she represents;

(2) Must agree to maintain, or be legally bound to maintain, the confidentiality of any information regarding the applicant or beneficiary provided by the agency.

(e) The agency must require that, as a condition of serving as an authorized representative, a provider or staff member or volunteer of an organization must affirm that he or she will adhere to the regulations in part 431, subpart F of this chapter and at 45 CFR 155.260(f) (relating to confidentiality of information), § 447.10 of this chapter (relating to the prohibition against reassignment of provider claims as appropriate for a facility or an organization acting on the facility's behalf), as well as other relevant State and Federal laws concerning conflicts of interest and confidentiality of information.

(f) For purposes of this section, the agency must accept electronic, including telephonically recorded, signatures and handwritten signatures transmitted by facsimile or other electronic transmission. Designations of authorized representatives must be accepted through all of the modalities described in § 435.907(a).

DISCUSSION

Federal Regulations require that an applicant for Medicaid services may authorize an individual or an organization to act responsibly on their behalf to assist with the application, the renewal of eligibility and any other ongoing communications with the agency. The designation of any authorized representative must be in writing and remains in effect until the applicant modifies the written authorization to the agency.

On October 27, 2021, the Appellant, through his authorized representative, applied for Medicare Buy-In Program assistance. The Respondent denied the Appellant's application when requested asset information, specifically bank account information, was not provided to determine financial eligibility. For purposes of this appeal, the Appellant contends that the Respondent failed to properly correspond with his authorized representative to identify the required information needed

to determine his eligibility. The Respondent must prove by a preponderance of the evidence that the Appellant and his authorized representative were properly notified of the requested information request to determine financial eligibility for the program.

Erin Hammonds, Economic Service Worker, testified that Appellant's application was incomplete, and the Respondent notified the Appellant by letter (Exhibit D-2) dated November 21, 2021, that additional information was required to determine his financial eligibility. Ms. Hammond acknowledged that the Respondent was aware of the Appellant's authorized representative; however, no notification was issued to the Appellant's authorized representative of record. Ms. Hammonds testified that she attempted, but was unsuccessful, in contacting the Appellant telephonically to inform him of the requested information. On November 19, 2021, the Respondent denied the Appellant's application when financial eligibility could not be established due to his failure to verify bank account information.

[redacted], the Appellant's authorized representative, contends that at the initial application, the Appellant designated, in writing, [redacted] as an authorized representative. [redacted] purported that the Appellant submitted an "Appendix C" in addition to [redacted] own authorized representation documentation. [redacted] testified that the bank account information was submitted with the April 11, 2022 appeal; however, the Respondent has not acted upon the information. Ms. Hammonds acknowledged that the Appellant had an authorized represented listed, but the Appellant failed to mark on his application that correspondence was to be issued to his authorized representative.

The evidence clearly showed that the Appellant designated an authorized representative at his initial application. The Respondent was aware of such designation and failed to properly notify the representing organization of the information required to complete the application on the Appellant's behalf. Federal Regulations require that authorized representatives are to receive ongoing communications on behalf of the applicant in order to determine program eligibility. Because the Appellant's designated authorized representative was not properly notified of the need for additional information, the Respondent's decision to deny the Appellant's application cannot be affirmed.

CONCLUSIONS OF LAW

1) Federal regulations require that an individual may designate another individual or organization to act responsibly on their behalf in assisting with applications, renewal of eligibility, or other ongoing communications with a public health agency.

2) The Appellant designated [redacted] as an authorized representative at the time of his initial application.

3) The Respondent was aware of the Appellant's designated authorized representative and failed to properly notify the authorized representative of the required information needed to determine financial eligibility for the Medicare Buy-In Program.

4) Because the Respondent failed to correspond with the authorized representative, it was incorrect in its decision to deny the Appellant's application for the Medicare Buy-In Program.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's decision to deny the Appellant's application for the Medicare Buy-In Program. The matter is **REMANDED** for a determination of eligibility for October 2021.

ENTERED this _____ day of June, 2022.

_____

Eric L. Phillips
State Hearing Officer