State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1400 Virginia Street
Oak Hill, WV 25901

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

August 12, 2008

_____
_____
_____

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 7, 2008. Your hearing request was based on the Department of Health and Human Resources' decision to terminate your Food Stamps and Specified Low Income Medicare Beneficiary (SLIMB) coverage due to excessive income.

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 Food Stamp and SLIMB programs is based on current policy and regulations. Some of these regulations state as follows: For Food Stamps spouses that are legally married and residing in the same household must be included in the same Assistance Group. For SLIMB, the ineligible spouse's income must count in determining eligibility for the eligible spouse (West Virginia Income Maintenance Manual § 9.1 A and 9.12 B).

The information which was submitted at your hearing revealed that you and your estranged wife are not residing together and her income should not have been added to your case.

It is the decision of the State Hearings Officer to **reverse** the decision of the Department to terminate your Food Stamps and SLIMB coverage due to excessive income.

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

Cc: Erika Young, Chairman, Board of Review
Susan Godby, Economic Service Supervisor

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW

_____,

Claimant,

v. **Action Number: 08-BOR-1420**
08-BOR-1421

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 August 7, 2008 for J_____. 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 convened on August 7, 2008 on a timely appeal, filed May 9, 2008.

It should be noted here that the claimant's benefits have been continued pending a hearing decision.

II. PROGRAM PURPOSE:

The Program entitled Food Stamps and Specified Low Income Medicare Beneficiary is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

The purpose of the Food Stamp Program is to provide an effective means of utilizing the nation's abundance of food "to safeguard the health and well-being of the nation's population and raise levels of nutrition among low-income households". This is accomplished through the issuance of EBT benefits to households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture.

The Qualified Medicare Beneficiaries (QMB), the Specified Low Income Medicare Beneficiaries (SLIMB), and the Qualified Individuals (QI-1 and QI-2) Programs provide limited coverage under the Medicaid Program for eligible individuals or couples who are eligible for Medicare, Part A and who meet specified income tests. The QMBV program has a

lower maximum income level and provides coverage of all Medicare co-insurance and deductibles as well as payment of the Medicare premium. SLIMB and QI-1 have higher maximum income levels and provide only for the payment of the Medicare Part B premium. The maximum income level for QI-2 is 175% of the Federal Poverty Level. This program pays for a portion of the Medicare premium.

III. PARTICIPANTS:

_____, Claimant
_____, Claimant's Estranged Wife

Susan Godby, Economic Service Supervisor

Presiding at the Hearing was Kristi Logan, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether the Department's decision to terminate your Food Stamps and Specified Low Income Medicare Beneficiary coverage is correct.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual § 9.1 and 9.12

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:
D-1 Form IG-BR-29
D-2 Notification Letter dated April 29, 2008
D-3 West Virginia Income Maintenance Manual § 10.4 and 10.4C
D-4 West Virginia Income Maintenance Manual § 10 Appendix A
D-5 Department's Summary

Claimants' Exhibits:
C-1 Medical Bills for _____
C-2 Order to Repossess a Harley-Davidson Motorcycle

VII. FINDINGS OF FACT:

1) In March 2008, _____, Claimant's wife, applied for Medicaid at the Greenbrier Valley Hospital. On her application, she indicated that Claimant was a member of her household. Claimant had been receiving Food Stamps and Specified Low Income Medicare Beneficiary (SLIMB) in a separate case as the only household member. The

Department had received previous complaints that Claimant and his wife were not separated and were living together. Mrs. _____ and her income were added to Claimant's case, which terminated his Food Stamps and SLIMB for excessive income.

2) A notification letter dated April 29, 2008 was issued and read in part (D-2):

> Your Food Stamps will stop. You will not receive this benefit after May 2008. Income is too much for you to receive benefits.
>
> Your Specified Low Income Medicare Beneficiary will stop. You will not receive this benefit after May 2008. _____ is being evaluated for another type of this assistance.

3) Ms. Godby, Economic Service Supervisor, testified that Ms. _____ listed the same mailing address as Claimant on the Medicaid application and even used that address when she had her drivers' license renewed in May 2008. She also indicated on the application that she paid the household expenses.

4) Claimant testified that he and his wife have been separated for several years. He stated that due to his depression, they can no longer get along. He lives next door to his daughter-in-law and grandchildren and Ms. _____ does come to visit several times a week but never stays the night.

Claimant said people have complained on him before to the Department and he had to turn in letters from neighbors six (6) months ago verifying that his wife does not live there. His wife does still get some mail at his address. He also shared his mailbox with his daughter-in-law next door but has since got his own mailbox (now Box 85-F-1 instead of 85-F) hoping that would solve the problem. He has tried to get his wife to stop all mail from coming there but so far she hasn't.

They haven't divorced yet because he will not agree to sell their house. She wants him to sell it but he would then have no place to go. He pays her $200-300 a month because they have started garnishing her wages for an old medical bill of his. He pays all of his household expenses.

5) Ms. _____ testified that she lives with her daughter in [redacted] She gets most of her mail at that address but some does still come to Claimant's address. She produced medical bills from [redacted] showing her address as _____, [redacted] which is her daughter's address (C-1). She does visit the grandchildren and pick up her mail several times a week.

Ms. _____ stated that she listed Claimant on her Medicaid application as her next of kin only. She didn't mean for it to be taken as they were living together. She never meant to apply for Medicaid in the first place, she knew she wasn't eligible and just did it qualify for the charity program through the hospital.

Ms. _____ stated that when she had her drivers' license renewed, she didn't give any thought to changing her address to her daughter's Virginia address because she still works in West Virginia.

6) West Virginia Income Maintenance Manual § 9.1 A(2) states:

Food Stamp Eligibility Determination Groups

The following individuals who live together must be in the same Assistance Group (AG), even if they do not purchase and prepare meals together.

- Spouses

For these purposes, spouses are individuals:

• Who are married to each other under state law

7) West Virginia Income Maintenance Manual § 9.12 B states:

The Income Group [for Specified Low Income Medicare Beneficiaries]

1. Eligible Individual With No Spouse
   Count only the individual's income.
2. Eligible Couple
   Count the couple's income.
3. Eligible Individual With Ineligible Spouse
   Consider the income of the ineligible spouse to determine if it must be deemed. See Chapter 10 for how to determine if the spouse's income is deemed.
4. Eligible Individual In A Nursing Facility Or ICF/MR With Eligible/Ineligible Spouse
   Count only the individual income. This applies when the spouse is in the community, in a nursing facility, or in an ICF/MR.

VIII. CONCLUSIONS OF LAW:

1) Policy dictates that a legally married couple residing in the same household must be included in the same Food Stamp assistance group and their income must count in determining Medicaid eligibility for each other.

2) Claimant and his wife maintain that Ms. _____ has a separate residence in Virginia and visits Claimant's residence and their grandchildren next door regularly. Ms. _____ has used Claimant's mailing address previously but gets most of her mail at her residence. Credible testimony from Claimant and Ms. _____ shows that they do have separate residences and do not live together.

3) The Department failed to produce convincing evidence that Claimant and his wife are residing together. Claimant's estranged wife was added to his case in error and his Food Stamps and SLIMB should not have been closed.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Department's decision to terminate Claimant's Food Stamps and SLIMB due to excessive income.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 12th Day of August, 2008.

_____

Kristi Logan
State Hearing Officer