



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of the Inspector General
Board of Review**

**Jeffrey H. Coben, MD
Interim Cabinet Secretary**

**Sheila Lee
Interim Inspector General**

June 8, 2023

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 23-BOR-1793

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,

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

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

cc: Kelly Davis, [REDACTED] DHHR

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

██████████,

Appellant,

v.

Action Number: 23-BOR-1793

**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' Common Chapters Manual. This fair hearing was convened on June 6, 2023, on an appeal filed on May 22, 2023.

The matter before the Hearing Officer arises from the May 24, 2023, decision by the Respondent to change Medicare Premium Assistance benefits from Qualified Medicare Beneficiary (QMB) to Specified Low Income Medicare Beneficiary (SLIMB).

At the hearing, the Respondent appeared by Kelly Davis, Economic Service Worker. The Appellant was self-represented. The witnesses were placed under oath, and the following documents were admitted into evidence.

Department's Exhibits:

None

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 was a recipient of QMB benefits.
- 2) The Appellant completed a Medicare Premium Assistance eligibility review on May 2, 2023.
- 3) The Respondent issued a notice to the Appellant on May 24, 2023, advising that his income was excessive to continue receiving QMB benefits, but was eligible to receive SLIMB benefits.
- 4) The Appellant receives Social Security Disability benefits of \$1,244 a month.

APPLICABLE POLICY

West Virginia Income Maintenance Manual §4.12 explains income eligibility for QMB, SLIMB and QI (Qualified Individual) Medicare Premium Assistance groups:

4.12.1 Determining Eligibility

Countable income is determined as follows:

Step 1: Determine the total countable gross unearned income and subtract the appropriate disregards and deductions.

Step 2: Determine the total countable gross earned income and subtract the appropriate disregards and deductions.

Step 3: Add the results from Step 1 and Step 2 to achieve the total monthly countable income.

Step 4: Compare the amount in Step 3 to the QMB, SLIMB, or QI-1 income levels for the appropriate number of persons.

If the amount is less than or equal to the QMB, SLIMB, or QI-1 income levels, the client(s) is eligible. Eligibility for these coverage groups is determined as follows:

QMB	Income is less than or equal to 100% FPL (federal poverty level).
SLIMB	Income is greater than 100% FPL, but less than or equal to 120% FPL
QI-1	Income is greater than 120% FPL, but less than or equal to 135% FPL

Chapter 4 Appendix A: Income Limits

100% FPL	\$1,133
120% FPL	\$1,359
135% FPL	\$1,507

West Virginia Income Maintenance Manual §1.2.1.E explains an applicant's rights to fair and equitable treatment:

1.2.1.E.1 Individuals with Disabilities

Federal law protects individuals with a disability and defines that as a person who:

- Has a physical or mental impairment that substantially limits one or more of the major life activities of that individual;
- Has a record of such an impairment; or
- Is being regarded as having such an impairment.

There are two key issues regarding discrimination against people with disabilities:

1. Individualized Treatment: Individualized treatment requires that individuals with disabilities be treated on a case-by-case basis, based upon facts and objectivity. Such individuals may not be treated differently on the basis of generalizations or stereotypes.

2. Effective Opportunity and Access: Effective opportunity and access means that individuals must be given the same access and opportunities to programs of assistance as individuals who do not have disabilities.

1.2.1.E.3 Worker Responsibilities

The Worker has the following responsibilities to ensure fair and equitable treatment of applicants and clients:

- Consider whether a person may have a special need, and how that may affect his ability to comply with rules, fill out forms, attend scheduled appointments, etc. If the Worker determines, or an individual informs the agency, that a person has a disability or LEP and that affects his ability to comply, the Worker has the authority to make reasonable modifications or accommodations to ensure that the person receives equal access to all programs and services. Any evidence must be documented in the case record and in case comments.
 - A reasonable accommodation can be requested for physical, mental or LEP (limited English proficiency) issues that would present a barrier to accessing programs and services. The worker must use the DFA-ADARA-1 (Family Assistance Reasonable Accommodations Report Form) to capture any information about the barrier and the disposition of the reasonable accommodation request.
 - The worker must honor the right of the client to fair hearings regarding reasonable accommodations and is responsible for sending this information to the Office of Inspector General, Board of Review.
 - If an individual requires an interpreter, the Worker must contact local resources to locate one.
- Enter an indicator in the case record to alert that an accommodation may be needed and also to track cases for Federal reporting requirements

1.2.1.E.4 Methods and Examples of Reasonable Accommodations

At this time, West Virginia offers the following methods of accommodation to all applicants and clients:

- Sign Language Interpretation
- Visual Impairment Services
- Foreign Language Interpreter Services

DISCUSSION

Policy stipulates that an individual's gross monthly income must be at or below 100% FPL for the size of the assistance group, to qualify for QMB benefits. The income limit for a one-person assistance group for QMB is \$1,133. The Respondent terminated the Appellant's QMB benefits due to excessive income and opened SLIMB benefits effective June 1, 2023.

The Appellant did not dispute that his gross monthly income is \$1,244 but contended that he is only slightly over the income limit and requested that an exception be made in his case. The Appellant also argued that as an individual with a disability, the Respondent is required to make reasonable accommodations, including waiving the income limit for QMB.

Federal law requires that disabled individuals be given the same access and opportunities to programs of assistance as individuals who do not have disabilities. A reasonable accommodation can be requested for physical, mental or limited English proficiency issues that would present a barrier to accessing programs and services. The Appellant contended that as a disabled individual, the Respondent was responsible for providing him with reasonable accommodations by waiving the income limit. There is no evidence that the Appellant had an issue that would be a barrier in accessing programs or services offered by the Respondent. All individuals are required to meet the income limits as set forth in policy and the Board of Review lacks the authority to make exceptions to policy or waive income limits.

Whereas as the Appellant's income is excessive to continue receiving QMB benefits, the Respondent's decision to approve SLIMB benefits is affirmed.

CONCLUSIONS OF LAW

- 1) The income limit for a one-person assistance group to receive QMB benefits is \$1,133.
- 2) The Appellant's gross monthly income is \$1,244.
- 3) The Appellant's income is excessive to continue receiving QMB benefits.
- 4) The income limit for SLIMB benefits is \$1,359.
- 5) The Appellant is eligible to receive SLIMB benefits.

DECISION

It is the decision of the State Hearing Officer to **uphold** the decision of the Respondent to terminate the Appellant's Qualified Medicare Beneficiary benefits and approve Specified Low Income Beneficiary benefits.

ENTERED this 8th day of June 2023.

Kristi Logan
Certified State Hearing Officer