

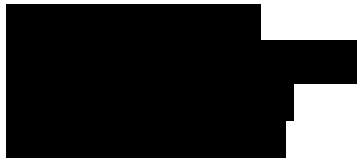


**STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of the Inspector General  
Board of Review**

**Sherri A. Young, DO, MBA, FAAFP  
Interim Cabinet Secretary**

**Christopher G. Nelson  
Interim Inspector General**

October 11, 2023



RE: [REDACTED] v. WV DHHR  
ACTION NO.: 23-BOR-2315

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: Angela Walters, Assistant Attorney General, [REDACTED] DHHR

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

[REDACTED],

**Appellant,**

**v.**

**Action Number: 23-BOR-2315**

**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 October 10, 2023, on an appeal filed on July 24, 2023.

The matter before the Hearing Officer arises from the July 17, 2023, decision by the Respondent to terminate the Appellant's Qualified Medicare Premium (QMB) benefits due to excessive income.

At the hearing, the Respondent appeared by Angela Walters, Assistant Attorney General. Appearing as a witness for the Respondent was Laurette Mincey, Economic Services Supervisor. The Appellant appeared by her attorney, [REDACTED]. The witnesses were placed under oath and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Hearing Request Notification Form and Hearing Request received July 24, 2023
- D-2 Notice of Termination dated July 17, 2023
- D-3 Notice of Approval dated July 17, 2023
- D-4 Medicaid Review Form received June 15, 2023
- D-5 Bank Statement dated June 15, 2023
- D-6 Case Comments dated July 14 – July 26, 2023
- D-7 WV State Online Query System Screen Prints – RSDI Information Response (Appellant)
- D-8 WV State Online Query System Screen Prints – RSDI Information Response (James)
- D-9 WV Income Maintenance Manual Chapter 4 Appendix A

**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 submitted an eligibility review to the Respondent on June 15, 2023 (Exhibit D-4).
- 3) The Appellant receives Social Security Disability of \$1,251 a month (Exhibits D-4 and D-7).
- 4) The Appellant's spouse, [REDACTED], has no income and does not receive Medicare (Exhibits D-4 and D-8).
- 5) The Respondent issued a notice on July 17, 2023, advising the Appellant that her income was excessive to continue receiving QMB benefits (Exhibit D-2).
- 6) The Appellant was approved for Specified Low Income Medicare Beneficiary (SLIMB) benefits effective August 1, 2023 (Exhibit D-3).

**APPLICABLE POLICY**

West Virginia Income Maintenance Manual Chapter 3 explains eligibility determination groups:

*3.15.1 The Assistance Group for QMB, SLIMB and QI-1*

When eligible spouses are both members of the assistance group (AG), they must receive the same level of coverage, QMB, SLIMB, or QI-1.

*3.15.1.A Who Must Be Included?*

Only the individual or spouses who are eligible for QMB, SLIMB, or QI-1 are included in the AG.

*3.15.2 The Income Group*

*3.15.2.A Eligible Individual with No Spouse*

Count only the individual's income.

### *3.15.2.B Eligible Spouses – No Long Term Care (LTC) Services*

Count the income of both individuals

### *3.15.2.C Eligible Individual with an Ineligible Spouse – No LTC Medicaid Services*

Consider the income of the ineligible spouse to determine if it must be deemed. See Chapter 4 for how to determine if the spouse's income is deemed.

### *3.15.3 The Needs Group*

#### *3.15.3.A Individual with No Spouse*

The income limit for a single individual is used.

#### *3.15.3.B Eligible Spouses – No LTC Medicaid Services*

The income limit for two persons is used.

#### *3.15.3.C Eligible Individual with Ineligible Spouse, No Income Deemed – No LTC Medicaid Services*

**The income limit for a single individual is used** (emphasis added).

#### *3.15.3.D Eligible Individual with Ineligible Spouse, Income is Deemed – No LTC Medicaid Services*

The income limit for two persons is used.

West Virginia Income Maintenance Manual Chapter 4 explains income eligibility for QMB, SLIMB and QI-1:

### *4.12.1 Determining Eligibility*

Countable income is determined by subtracting any allowable disregards and deductions from the total countable gross income. Deemed income is addressed in Section 4.12.2 below.

Countable income is determined as follows:

Step 1: Determine the total countable gross unearned income and subtract the appropriate disregards and deductions. See Section 4.14.2.

Step 2: Determine the total countable gross earned income and subtract the appropriate disregards and deductions. See Section 4.14.2.

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. See Section 4.14 for SSI-Related deeming procedures.

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.
- 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.

#### *4.14.2 Income Disregards*

##### *4.14.2.B Unearned Income*

##### *4.14.2.B.1 SSI \$20 Disregard*

A \$20 disregard is applied to the total gross unearned income. If unearned income is less than \$20, the remainder is subtracted from earned income, prior to the application of any other earned income disregards and deductions.

##### *4.14.2.B.2 Unearned Income Diverted to PASS*

Any unearned income diverted to a PASS account is deducted from income.

##### *4.14.2.B.3 Death Benefits*

The portion of a lump-sum payment received as a result of the death of an individual, which is used to pay the expenses of the last illness and burial of that individual, is deducted.

#### *Appendix A: Income Limits*

100% FPL for a one-person assistance group is \$1,215

100% FPL for a two-person assistance group is \$1,644

120% FPL for a one-person assistance group \$1,458

120% FPL for a two-person assistance group \$1,972

135% FPL for a one-person assistance group \$1,641

135% FPL for a two-person assistance group \$2,219

West Virginia Income Maintenance Manual Chapter 23 explains specified Medicare Premium Assistance requirements:

#### *23.12.1 Qualified Medicare Beneficiary*

Medicaid coverage is limited to payment of the Medicare, Part A and Part B premium amounts and payment of all Medicare co-insurance and deductibles, including those related to nursing facility services. An individual or couple (spouses) is eligible for this limited Medicaid coverage when all the following conditions are met:

- The individual must be enrolled in Medicare, Part A. He must be entitled in any of the following three ways:
  - By being age 64 years and 9 months old or older;
  - By having been totally and continuously disabled and receiving RSDI or Railroad Retirement benefits for 24 months or longer; or,
  - By having end-stage renal disease;
- The individual or spouses must meet the income test detailed in Chapter 4; and,
- The individual or spouses must meet the asset test detailed in Chapter 5.

#### *23.12.2 Specified Low Income Medicare Beneficiary*

Medicaid coverage is limited to payment of the Medicare Part B premium. An individual or couple (spouses) is eligible for this limited Medicaid coverage when all of the following conditions are met:

- The individual must be enrolled in Medicare, Part A. He must be entitled in any of the following three ways:
  - By being age 64 years and 9 months old or older;
  - By having been totally and continuously disabled and receiving RSDI or Railroad Retirement benefits for 24 months or longer; or,
  - By having end-stage renal disease;
- The individual or spouses must meet the income test detailed in Chapter 4; and,
- The individual or spouses must meet the asset test detailed in Chapter 5.

#### *23.12.3 Qualified Individual 1*

Medicaid coverage is limited to payment of the Medicare Part B premium. An individual or couple (spouses) is eligible for limited\* Medicaid coverage when all the following conditions are met:

- The individual must be enrolled in Medicare, Part A. He must be entitled in any of the following three ways:
  - By being age 64 years and 9 months old or older;
  - By having been totally and continuously disabled and receiving RSDI or Railroad Retirement benefits for 24 months or longer; or,
  - By having end-stage renal disease;
- The individual or spouses must meet the income test detailed in Chapter 4; and,
- The individual or spouses must meet the asset test detailed in Chapter 5.

### **DISCUSSION**

Pursuant to policy, the income limit for QMB is 100% of the FPL for the appropriate needs group size. The Respondent terminated the Appellant's QMB benefits as her income of \$1,251 exceeded the allowable income limit for a one-person needs group of \$1,215. Counsel for the Appellant argued that the Respondent should have considered the Appellant's spouse in the needs group and used the income limit for a two-person assistance group.

Policy stipulates that only the individual who is eligible for one of the Medicare Premium Assistance groups (QMB, SLIMB, QI-1) is included in the assistance group. To qualify for Medicare Premium Assistance, the individual must be enrolled in Medicare, Part A. The Appellant's spouse is not enrolled in Medicare and is therefore considered an ineligible spouse.

The income limit for a single individual is used when an eligible individual resides with an ineligible spouse and there is no deeming of income. The Appellant is a Medicare recipient and considered an eligible individual for Medicare Premium Assistance. The Appellant's spouse is an ineligible individual with no income, therefore deeming procedures do not apply.

The Appellant's income must be equal to or below 100% of the FPL, or \$1,215, for a one-person assistance group to qualify for QMB benefits. Following the steps found in policy, the Appellant's countable income is determined by subtracting any income deductions from the gross income. The

Appellant's countable income is \$1,231 (\$1,251 minus the \$20 SSI disregard) which exceeds the allowable limit to continue receiving QMB benefits. The Appellant's countable income is below the allowable limit to receive SLIMB benefits.

The Respondent acted in accordance with policy in applying the income limit for a one-person assistance group in determining eligibility for QMB benefits. The Appellant's countable income exceeds the allowable limit to continue receiving QMB benefits.

### **CONCLUSIONS OF LAW**

- 1) The income limit for a single individual is used when an eligible individual resides with an ineligible spouse and there is no deeming of income.
- 2) The Appellant is a Medicare recipient and is considered an eligible individual.
- 3) The Appellant's spouse is not a Medicare recipient and does not have income.
- 4) The Appellant's spouse is considered an ineligible individual with no income to deem.
- 5) The monthly income limit for a one-person assistance group for QMB is \$1,215.
- 6) The Appellant's countable income, after all allowable deductions are applied, is \$1,231.
- 7) The Appellant's income is excessive to receive QMB 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 due to excessive income.

**ENTERED this 11<sup>th</sup> day of October 2023.**

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**Kristi Logan**  
**Certified State Hearing Officer**