



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

**Jeffrey H. Coben, M.D.
Interim Cabinet Secretary**

**BOARD OF REVIEW
Raleigh County DHHR
407 Neville Street
Beckley, WV 25801**

**Sheila Lee
Interim Inspector General**

January 25, 2023

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 22-BOR-2634

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 Mitchem, [REDACTED] DHHR

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

██████████,

Appellant,

v.

Action Number: 22-BOR-2634

**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 January 24, 2023, on an appeal filed December 14, 2022.

The matter before the Hearing Officer arises from the March 30, 2022, decision by the Respondent to terminate the Appellant's Qualified Medicare Beneficiary (QMB) benefits.

At the hearing, the Respondent appeared by Angela Mitchem, Economic Services Supervisor. The Appellant was self-represented. The witnesses were sworn in, 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 submitted an eligibility review to the Respondent on February 18, 2022.
- 3) The Appellant received Social Security benefits of \$1,158 monthly.
- 4) On March 30, 2022, the Respondent issued a notice advising the Appellant that his QMB benefits would be terminated due to excessive income effective April 30, 2022.
- 5) Specified Low Income Medicare Beneficiary (SLIMB) benefits were approved effective May 1, 2022.

APPLICABLE POLICY

West Virginia Income Maintenance Manual §4.12.1 describes the eligibility determination process for Medicare Premium Assistance programs:

Countable income is determined by subtracting any allowable disregards and deductions from the total countable gross income. 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 (\$1,133)
- SLIMB – Income is greater than 100% FPL, but less than or equal to 120% FPL (\$1,359)
- QI-1 – Income is greater than 120% FPL, but less than or equal to 135% FPL (\$1,529)

The Families First Coronavirus Response Act (FFCRA), Public Law No. 116-127 §6008(b)(3) enacted on March 18, 2020, provides a temporary increase in states' Medicaid Federal Medical Assistance Percentage (FMAP) of 6.2 percentage points for expenditures that are ordinarily paid at the state's regular FMAP rate. This FMAP increase applies until the end of the quarter when the coronavirus public health emergency declaration ends. To be eligible for the increased FMAP states are not permitted to disenroll anyone enrolled in Medicaid as of the date of enactment, or

who enrolls during the period of the public health emergency, unless the person voluntarily requests their coverage be terminated or the person is no longer a state resident. This requirement applies regardless of any changes in circumstances that would otherwise have resulted in coverage termination. States can move an individual to an eligibility group with increased benefits during the national emergency if they experience a change in circumstances. However, the state may not decrease an individual's benefits.

This includes paying for Medicare Part A/B premiums through Medicare Savings Programs (MSPs) and other Medicaid categories. In the example of a QMB who is determined during the emergency period to no longer meet the QMB group eligibility requirements, the individual could not be shifted to the SLMB group, because the SLMB group offers a lesser amount of assistance with Medicare premiums and cost sharing than the QMB group. The state would have to maintain the individual's enrollment in the QMB group.

DISCUSSION

Pursuant to policy, the income limit for an individual to qualify for QMB benefits is \$1,133, after all allowable income deductions are applied. The Appellant's countable income, after deductions, is \$1,138.

The Respondent terminated the Appellant's QMB benefits due to excessive income and approved SLIMB benefits effective May 1, 2022. However, West Virginia accepted the increased federal Medicaid assistance funding that was enacted as part of the Families First Coronavirus Response Act. As a condition of receiving the increased federal funding, states cannot terminate Medicaid coverage or decrease Medicaid benefits for individuals who were active recipients as of the enactment of the Families First Coronavirus Response Act, until the public healthcare emergency has ended.

Whereas the Respondent cannot reduce the Appellant's Medicaid coverage to a lesser amount of assistance until the public healthcare emergency ends, the Respondent's decision to terminate the Appellant's QMB benefits cannot be affirmed.

CONCLUSIONS OF LAW

- 1) The Respondent terminated the Appellant's Qualified Medicare Beneficiary benefits due to excessive income and approved Specified Low Income Medicare Beneficiary benefits, a lesser coverage group.
- 2) The Families First Coronavirus Response Act provided increased federal Medicaid funding during the COVID-19 healthcare emergency.
- 3) As a condition of receiving the increased Medicaid funding, states cannot terminate or reduce Medicaid benefits for individuals during the public healthcare emergency.

- 4) West Virginia accepted the increased Medicaid funding and must therefore adhere to the conditions as set forth in the Families First Coronavirus Response Act.
- 5) The Appellant's Qualified Medicare Beneficiary must remain open until the public healthcare emergency has ended.

DECISION

It is the decision of the State Hearing Officer to **reverse** the Respondent's decision to terminate the Appellant's Qualified Medicare Beneficiary benefits. Retroactive benefits will be issued effective May 1, 2022, the effective date of closure.

ENTERED this 25th day of January 2023.

Kristi Logan
Certified State Hearing Officer