WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW

[redacted]

Appellant,

v. **Action Number: 26-BOR-2400**

WEST VIRGINIA DEPARTMENT OF HUMAN SERVICES
BUREAU FOR FAMILY ASSISTANCE

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 Office of Inspector General Common Chapters Manual. This fair hearing was convened on October 8, 2026.

The matter before the Hearing Officer arises from the June 18, 2026 decision by the Respondent that the Appellant was eligible for the Specified Low-Income Medicare Beneficiary program, and not eligible for other levels of Medicare Premium Assistance.

At the hearing, the Respondent appeared by Kristyne Hoskins, Economic Service Worker Senior, West Virginia Department of Human Services (DoHS). The Appellant appeared and was represented by his wife, [redacted] All witnesses were placed under oath and the following documents were admitted into evidence.

Department's Exhibits:

None

Appellant's Exhibits:

A-1 Hand-written statement received August 13, 2026
A-2 Statement of Appeal received August 18, 2026

*Judicial notice was taken of the case of Wheaton v. McCarthy, 800 F. 3d 282 (6th Cir. 2015).

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 is a recipient of Social Security Retirement, Survivors, and Disability Insurance (RSDI) benefits.

2) The Appellant lives with his wife, [redacted], and three (3) minor children. [redacted] does not receive Medicaid Long-Term Care services.

3) The Appellant's gross unearned income from RSDI is $1,505 per month. The Appellant also receives $137 for long-term disability from his previous employer.

4) The Appellant's wife receives unearned income of $157 per month of RSDI child-in-care benefits, and the Appellant's three (3) minor children receive unearned income of $157 per month of RSDI child-in-care benefits.

5) In April 2026, the Appellant applied for Medicare Premium Assistance.

6) The Respondent attributed countable income of $1,485.90 to the Appellant's household after a $20 disregard was applied to his income.

7) The Respondent determined that the Appellant's spouse's income would not be deemed to him and that his Assistance Group (AG) was one (1) person, his Income Group (IG) was one (1) person, and his Needs Group (NG) was one (1) person.

8) On June 18, 2026, the Respondent notified the Appellant that he was eligible for Specified Low-Income Medicare Beneficiaries (SLIMB) benefits beginning in July 2026.

9) The Appellant requested a fair hearing on July 7, 2026, because he contests the determination of his AG, IG, and NG size. (Fair hearing request submitted to the Board of Review and part of the Administrative record)

APPLICABLE POLICY

Title 42 of the U.S. Code, Section 1396a(a)(10)(E)(i), (iii), describes eligibility for Medical Assistance Available for Medicare Cost-Sharing, and provides, in pertinent part (emphasis added):

A State plan for medical assistance must—
(10) provide
(E)(i) for making medical assistance available for medicare cost-sharing (as defined in

section 1396d(p)(3) of this title) **for qualified medicare beneficiaries** described in section 1396d(p)(1) of this title;
(iii) for making medical assistance available for medicare cost sharing described in section 1396d(p)(3)(A)(ii) of this title subject to section 1396d(p)(4) of this title, for **individuals who would be qualified medicare beneficiaries** described in section 1396d(p)(1) of this title (including such individuals enrolled under section 1395o(b) of this title) **but for the fact that their income exceeds the income level established by the State** under section 1396d(p)(2) of this title but is less than 110 percent in 1993 and 1994, and 120 percent in 1995 and years thereafter of the official poverty line (referred to in such section) **for a family of the size involved**;

Title 42 of the U.S. Code Section 1396d(p), describes Definitions, in pertinent part (emphasis added):

(p) Qualified medicare beneficiary; medicare cost-sharing
(1) The term "qualified medicare beneficiary" means an individual—
(A) **who is entitled to hospital insurance benefits** under part A of subchapter XVIII (including an individual entitled to such benefits pursuant to an enrollment under section 1395i–2 of this title, but not including an individual entitled to such benefits only pursuant to an enrollment under section 1395i–2a of this title) or who is enrolled under part B for the purpose of coverage of immunosuppressive drugs under section 1395o(b) of this title,
(B) **whose income (as determined under section 1382a of this title for purposes of the supplemental security income program**, except as provided in paragraph (2)(D)) **does not exceed an income level established by the State consistent with paragraph (2)**, and
(C) **whose resources (as determined under section 1382b of this title for purposes of the supplemental security income program) do not exceed twice the maximum amount of resources that an individual may have and obtain benefits under that program** or, effective beginning with January 1, 2010, whose resources (as so determined) do not exceed the maximum resource level applied for the year under subparagraph (D) of section 1395w–114(a)(3) of this title (determined without regard to the life insurance policy exclusion provided under subparagraph (G) of such section) applicable to an individual or to the individual and the individual's spouse (as the case may be).

(2)(A) **The income level established under paragraph (1)(B) shall be at least the percent provided under subparagraph (B) (but not more than 100 percent) of the official poverty line** (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of this title) **applicable to a family of the size involved**.
(B) Except as provided in subparagraph (C), the percent provided under this clause, with respect to eligibility for medical assistance on or after—
(i) January 1, 1989, is 85 percent,
(ii) January 1, 1990, is 90 percent, and
(iii) January 1, 1991, is 100 percent.

(C) In the case of a State which has elected treatment under section 1396a(f) of this title and which, as of January 1, 1987, used an income standard for individuals age 65 or older which was more restrictive than the income standard established under the supplemental security income program under subchapter XVI, the percent provided under subparagraph (B), with respect to eligibility for medical assistance on or after—
(i) January 1, 1989, is 80 percent,
(ii) January 1, 1990, is 85 percent,
(iii) January 1, 1991, is 95 percent, and
(iv) January 1, 1992, is 100 percent.

Title 42 U.S.C. § 1382c(f) describes Definitions, in pertinent part (emphasis added):

(f)(1) For purposes of determining eligibility for and the amount of benefits for any individual who is married and whose spouse is living with him in the same household but is not an eligible spouse, **such individual's income and resources shall be deemed to include any income and resources of such spouse, whether or not available to such individual, except to the extent determined by the Commissioner of Social Security to be inequitable under the circumstances**.

Title 20 of the Code of Federal Regulations § 416.1163 describes How Income is Deemed to an SSI recipient from an Ineligible Spouse, in pertinent part:

§ 416.1163 How we deem income to you from your ineligible spouse.
If you have an ineligible spouse who lives in the same household, we apply the deeming rules to your ineligible spouse's income in the following order.
(a) ***Determining your ineligible spouse's income.*** We first determine how much earned and unearned income your ineligible spouse has, using the appropriate exclusions in § 416.1161(a).
(b) ***Allocations for ineligible children.*** We then deduct an allocation for ineligible children in the household to help meet their needs. *Exception:* We do not allocate for ineligible children who are receiving public income-maintenance payments (see § 416.1142(a)).
(1) The allocation for each ineligible child is the difference between the Federal benefit rate for an eligible couple and the Federal benefit rate for an eligible individual. The amount of the allocation automatically increases whenever the Federal benefit rate increases. The amount of the allocation that we use to determine the amount of a benefit for a current month is based on the Federal benefit rate that applied in the second prior month unless one of the exceptions in § 416.1160(b)(2) applies.
(2) Each ineligible child's allocation is reduced by the amount of his or her own income as described in § 416.1161(c).
(3) We first deduct the allocations from your ineligible spouse's unearned income. If your ineligible spouse does not have enough unearned income to cover the allocations we deduct the balance from your ineligible spouse's earned income.

(d) ***Determining your eligibility for SSI.***

(1) If the amount of your ineligible spouse's income that remains after appropriate allocations is not more than the difference between the Federal benefit rate for an eligible couple and the Federal benefit rate for an eligible individual, there is no income to deem to you from your spouse. In this situation, we subtract only your own countable income from the Federal benefit rate for an individual to determine whether you are eligible for SSI benefits.

(2) If the amount of your ineligible spouse's income that remains after appropriate allocations is more than the difference between the Federal benefit rate for an eligible couple and the Federal benefit rate for an eligible individual, we treat you and your ineligible spouse as an eligible couple. We do this by:

(i) Combining the remainder of your spouse's unearned income with your own unearned income and the remainder of your spouse's earned income with your earned income;

(ii) Applying all appropriate income exclusions in §§ 416.1112 and 416.1124; and

(iii) Subtracting the couple's countable income from the Federal benefit rate for an eligible couple. (See § 416.2025(b) for determination of the State supplementary payment amount.)

West Virginia Income Maintenance Manual (WVIMM), Section 3.1 describes the Eligibility Determination Groups common to all programs, in pertinent part:

3.1 Introduction

This Chapter contains the policy for Supplemental Nutrition Assistance Program (SNAP) benefits, WV WORKS, and all Medicaid coverage groups. It is used to determine:

- The Assistance Group (AG) - Who receives the benefit;
- The Income Group (IG) - Whose income and assets are counted; and
- The Needs Group (NG) - Whose needs are considered

The total income/assets of all persons in the IG is compared to the income/asset eligibility limits for the number of persons in the NG. This comparison determines if those in the AG are eligible to receive the benefit, and in some instances, the level of benefit for which they are eligible.

WVIMM, Section 3.15 describes the Eligibility Determination Groups for QMB, SLIMB, and QI-1, in pertinent part:

3.15 QMB, SLIMB, and QI-1

3.15.1 The Assistance Group (AG)

When eligible spouses are both members of the 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 (IG)

3.15.2.C Eligible Individual with Ineligible Spouse – No Medicaid LTC 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 (NG)

3.15.3.C Eligible Individual with Ineligible Spouse, No Income Deemed – No Medicaid LTC Services
The income limit for a single individual is used.

3.15.3.D Eligible Individual with Ineligible Spouse, Income Is Deemed – No Medicaid LTC Services
The income limit for two persons is used.

WVIMM, Section 4.2 describes the Definition of Allocation Standard, in pertinent part:

4.2 Definitions
Allocation Standard
The difference between the maximum Supplemental Security Income (SSI) payment for one and two persons.

WVIMM, Section 4.12 describes the Income Eligibility for QMB, SLIMB, QI-1 (Categorically Needy, Mandatory), in pertinent part:

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.

WVIMM, Section 4.12.2 describes Special Situations for QMB, SLIMB, or QI-1, in pertinent part:

4.12.2 Special Situations

4.12.2.D Deeming
See Section 4.14.4 for SSI deeming procedures.

4.12.2.J Income Received for a Non-Income Group (IG) Member
Income received by a member of the IG, which is intended and used for the care and maintenance of an individual whose income is not used in determining the eligibility of the payee's AG, is excluded as income.

WVIMM, Section 4.14.4 describes Deeming, in pertinent part:

4.14.4.D Deeming
When determining income to be deemed to an eligible individual, certain income sources are not deemed. These sources are outlined in Section 4.14.4.D.1 and Section 4.14.D.2 below.

4.14.4.D.1 Public Assistance Maintenance Income
As defined by the Social Security Administration (SSA), public assistance maintenance income of the spouse or parent from whom income is deemed is excluded from the deeming process; therefore, it is not deemed. In addition, any income, which was considered (counted or excluded) in computing the amount of such income maintenance payments, is also excluded.

These public assistance income maintenance payments are:

- Needs-based payments resulting from the Refugee Act of 1980
- Payments from the Disaster Relief and Emergency Assistance Act
- Payments from general assistance programs of the Bureau of Indian Affairs
- Payments from the VA programs when such payments are based on need. See Section 4.3.
- SSI
- State or local government assistance programs based on need. *(Earned income tax credits (EITC) payments and tax refunds are not considered to be based on need.)*
- WV WORKS

4.14.4.D.2 Other Excluded Income Sources
Other excluded sources are:

- Any portion of a grant, scholarship, fellowship, or gift used to pay tuition and fees
- Money received for providing foster care to an ineligible child
- The value of Supplemental Nutrition Assistance Program (SNAP) benefits or Department of Agriculture donated foods

• Home produce for personal consumption
• Tax refunds on income, real property, or food purchased by the family
• Income used to fulfill an approved PASS
• Income used to comply with the terms of court-ordered support or support payments enforced under Title IV-D
• Periodic payments made by a state under a program established before July 1,1973 and based solely on duration of residence and attaining age 65. Only that State of Alaska makes such payments.
• Infrequent or irregular income
• Work expenses of a blind individual
• Income of the ineligible individual or parent that is paid under a federal, state, or local program to provide chore, attendant, or homemaker services to the eligible individual
• Home energy assistance
• The earned income of a student child, up to $2,410 a month, but not more than $9,730 per year, is excluded from the income of an ineligible child for purpose of determining the ineligible child allocation

When the ineligible spouse's non-excluded income, as shown above and in Section 4.3, minus only the needs of ineligible children in the home, is greater than the Allocation Standard, the ineligible spouse's income is added to the eligible spouse's income. These are the SSI deeming provisions, which also require use of the couple income limit to determine eligibility for the individual when income is deemed. If the SSI-Related individual is a child, the income of the parent(s) is also deemed, and the above exclusions are applied to their income.

4.14.4.D.3 Deeming from Ineligible Spouse to SSI-Related Spouse

The deeming calculations are as follows:

Step 1: Determine the ineligible spouse's total countable unearned income.

Step 2: Subtract the needs of all ineligible dependent children. See Section 4.2 for the definition of ineligible child.

The need of each ineligible child is determined separately by subtracting the child's income from the Allocation Standard. The difference, if any, represents the child's needs.

Need of Each Ineligible Child Example: SSI payment level for one person is $994 and the level for two persons is $1,491.

The Allocation Standard is $499. Child #1's income is $498. Because the child's income exceeds $498, there is no deduction for Child #1's needs. Child #2's income is $140. The allocation for this child's needs is $358.

After a separate determination is made for each ineligible child, the allocations are added together and then subtracted from income.

Step 3: Determine the ineligible spouse's total gross countable earned income.

Step 4: Subtract the remainder of the needs of all ineligible children who could not be subtracted in Step 2.

Step 5: Add together the ineligible spouse's remaining earned and unearned income.

Step 6: Compare the amount from Step 5 to the Allocation Standard.

When the remaining amount is less than the Allocation Standard, no income is deemed from the ineligible spouse and the individual income limit is used.

When the remaining amount is in excess of the Allocation Standard, the ineligible spouse's remaining earned income from Step 4 is added to the SSI-Related spouse's earned income, and the ineligible spouse's remaining unearned income from Step 2 is added to the SSI-Related spouse's unearned income. The income limit for two persons is used, even though only one spouse is in the AG.

WVIMM Chapter 4 Appendix A program income limits:

100% of the Federal Poverty Level (FPL) for a one-person assistance group: $1,330
120% of the FPL for one-person assistance group: $1,596

100% of the FPL for a two-person assistance group: $1,804
120% of the FPL for a two-person assistance group: $2,164

WVIMM, Section 5.3.1.B describes the Supplemental Security Income Medicaid Groups, in pertinent part:

5.3.1.B Supplemental Security Income (SSI) Medicaid Groups
The SSI Medicaid Groups include: SSI-Related Medicaid, CDCSP, PAC, QDWI, QMB, SLIMB, and QI1.

WVIMM, Section 23.12.1 describes Medicare Premium Subsidies, in pertinent part:

23.12.1 Qualified Medicare Beneficiaries (QMB)

Income	Assets
100% FPL	$9,660 – Individual $14,470 – Couple

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. The Buy-In Unit pays the Medicare premium. Refer to Chapter 25 for details.

An individual or couple (spouses) is eligible for this limited Medicaid coverage when all the following conditions are met:

- The individual must be entitled to premium-free Medicare Part A and/or enrolled in Medicare Part B. He must be entitled to Medicare 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 Beneficiaries (SLIMB)

Income	Assets
101 – 120% FPL	$9,660 – Individual $14,470 – Couple

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 couple must meet the income test detailed in Chapter 4; and,
- The individual or couple must meet the asset test detailed in Chapter 5.

DISCUSSION

The Appellant contests the determination by the West Virginia Department of Human Services (DoHS) that he is eligible for the Specified Low-Income Medicare Beneficiary (SLIMB) level of Medicare Premium Assistance, instead of the Qualified Medicare Beneficiary (QMB) level. SLIMB is a program of assistance that pays the Medicare Part B premium. QMB pays the Medicare Part A and Part B premium amounts, and all Medicare co-insurance and deductibles, including those related to nursing facility services, and thus has a more comprehensive level of coverage. The Respondent bears the burden of proof to demonstrate by a preponderance of evidence that it correctly determined that the Appellant was not eligible for QMB.

The DoHS administers Medicaid, which provides comprehensive health insurance for eligible low-income adults and children, and the aged, blind, or disabled. Medicaid also provides assistance with Medicare cost-sharing for certain low-income individuals through Medicare Premium Subsidies. In administering Medicaid programs, the DoHS receives federal funding and must comply with federal law. The DoHS policy that describes the way the state administers Medicaid programs is the West Virginia Income Maintenance Manual (IMM). The IMM is available to the public and can be referenced at any time to learn about the eligibility requirements for all programs.

The Appellant began receiving RSDI benefits, and was eligible for Medicare in March of 2026. In April, the Appellant applied for Medicare Premium Assistance (MPA) programs. His income consists of $1,505 per month in RSDI benefits and $137 per month in long-term disability benefits from his previous employer. The Appellant is married and lives with his spouse, [redacted] Ms. [redacted] receives $157 per month in RSDI "child-in-care" benefits. Ms. [redacted] and the Appellant have three (3) minor children, each of whom receive $157 per month of RSDI "child-in-care" benefits. The Appellant's household thus receives approximately $2,270 per month in unearned income. The Respondent determined the Appellant's eligibility based on an AG of one (1) person, an IG of one (1) person, and an NG of one (1) person.

Eligibility for MPA programs is based, in part, on income relative to the Federal Poverty Level (FPL). Pursuant to the IMM, to determine eligibility, the total income/assets of all persons in the IG is compared to the income/asset eligibility limits for the number of persons in the NG. This comparison determines if those in the AG are eligible to receive the benefit, and the level of benefit for which they are eligible. To be eligible for QMB, the income counted for the IG must be less than 100% of the FPL for the NG of that size. FPL for an NG of one (1) person is $1,330. FPL for an NG of two (2) persons is $1,804. FPL for an NG of five (5) persons is $3,224.

Assistance Group (AG)
The Assistance Group (AG) is defined as "Who receives the benefit." For the MPA programs, the IMM states that the AG includes only the individual or spouses who are eligible for QMB, SLIMB, or QI-1. Only Medicare recipients are eligible for MPA programs. The Appellant's spouse and children are ineligible for QMB, SLIMB, or QI-1, because they are ineligible for Medicare. Thus, the Respondent correctly determined that the Appellant's AG includes only himself.

Income Group (IG) and Needs Group (NG)
The Income Group (IG) is defined as "Whose income and assets are counted." The Needs Group (NG) is defined as "Whose needs are considered." The Appellant argues that if the Appellant's IG included himself and his wife, it would include both of their income, which would be $1,799. If this were compared to the income eligibility limits for the number of persons in the NG, two (2), then the income would be below the limit for QMB, which is $1,804 for two (2) persons. Ms. [redacted] testified that if she, or alternatively she and her minor children, were counted as part of the Appellant's IG and NG, he would be eligible for QMB, which is a program that is more desirable to their family because of the additional coverage it provides.

Pursuant to Section 3.15 of the IMM, when determining the IG, a distinction is made between a Medicare-ineligible spouse who receives Medicaid Long-Term Care (LTC) Services and one who

does not. If the ineligible spouse does not receive Medicaid LTC Services, the IMM instructs that the Respondent must consider the income of the ineligible spouse to determine if it must be deemed. The IMM directs the reader to Chapter 4 to find out how to determine if the spouse's income is deemed. Ms. [redacted] does not receive Medicaid LTC Services.

Deeming

Section 4.12.2 of the IMM describes Special Situations for QMB, SLIMB, or QI-1. Section 4.12.2.D describes Deeming. The policy directs the reader to "See Section 4.14.4 for SSI deeming procedures." Pursuant to Section 4.14.4 of the policy, when determining who is in the NG, whether the income limit for a single individual, or for two (2) persons, is used depends on whether the income of an ineligible spouse is deemed to the eligible individual. If the eligible individual has an ineligible spouse where no income is deemed, then the income limit for a single individual is used. If the eligible individual has an ineligible spouse where income is deemed, then the income limit for two (2) persons is used. Ms. [redacted] argues that, if the Respondent determined that Ms. [redacted] income would not be deemed to the Appellant, Ms. [redacted] was excluded from the Appellant's NG, and the income limit for a single individual was used.

The Respondent determined that the Appellant's AG, IG and NG did not include his spouse. The Respondent was represented by Kristyne Hoskins, Economic Service Worker Senior. Ms. Hoskins testified that the deeming policy was not applicable to the Appellant's situation because he does not have SSI-Related Medicaid. Ms. Hoskins explained that the Respondent found that the Appellant was not eligible for the QMB program because his income from RSDI, after deducting the $20 disregard, was $1,485.90. When compared to the FPL for an NG of one (1), the Appellant's income exceeded the limit for that program for an NG of one (1), which is $1,330.

Ms. [redacted] argues that Section 4.14.4 of the IMM does apply, because Section 4.12.2.D directs the reader to that section when determining income eligibility for "Special Situations" of QMB, SLIMB, or QI-1. Ms. [redacted] testified that her income was not deemed to the Appellant because, after applying the calculations as directed by Section 4.14.4.D.3 of the policy, her income did not exceed the allocation standard. Because her spousal income did not exceed the allocation standard and was not deemed, the Appellant's IG was determined to be one (1) person and the income limit for a single individual was used. Ms. [redacted] does not contend that the policy as it is written was applied incorrectly to the Appellant's situation. It is the Appellant's argument that the policy as written and applied is contrary to federal law.

Federal Law

The Appellant argues that the Respondent's definition of the AG, IG, and NG are in conflict with federal Medicaid law. Further, the Appellant argues that, by excluding his spouse from his IG and NG, this "administratively divorces" the Appellant from his wife. It is the Appellant's contention that, taken together, 42 U.S.C. § 1396a(a)(10)(E)(i), (iii), and § 1396d(p), mean that the Appellant's and his spouse's income must be compared to the "official poverty line . . . applicable to a *family of the size involved*," which is either two (2) persons (the Appellant and his wife) or five (5) persons (the Appellant, his wife, and three (3) minor children).

However, 42 U.S.C. § 1396a(a)(10)(E)(i) also states that medical assistance must be made available for "qualified medicare beneficiaries" as described in section 1396d(p)(1). In Section

1396d(p)(1), "qualified medicare beneficiary" means an individual who is entitled to Medicare whose income does not exceed an established income level, and whose resources do not exceed twice the maximum amount of resources that an individual may have and obtain benefits under that program. Further, Sections 1396(p)(1)(B) and (C) go on to qualify that the income is "as determined under section 1382a of this title for purposes of the supplemental security income program" and resources are "as determined under section 1382b of this title for purposes of the supplemental security income program." Sections 1382a and 1382b grant authority to States to use the deeming calculation to disregard the income of the spouse, as defined further in Section 1382c(f) and in the Code of Federal Regulations.

Section 1382c(f), definitions for the Supplemental Security Income (SSI) program, allows the income of an ineligible spouse to be deemed to an SSI eligible individual under certain circumstances, which are further spelled out in the Code of Federal Regulations, 20 CFR Section 416.1163, which states, "If the amount of your ineligible spouse's income that remains after appropriate allocations is not more than the difference between the Federal benefit rate for an eligible couple and the Federal benefit rate for an eligible individual, there is no income to deem to you from your spouse." This policy is mirrored in IMM Section 4.14.4.D.3.

The Appellant argues that in the case of Wheaton v. McCarthy, 800 F. 3d 282 (6th Cir. 2015), the United States Court of Appeals for the Sixth Circuit held that federal law required the State of Ohio to compare the beneficiary's income to the federal poverty line for a "family of the size involved," and excluding the beneficiary's resident spouse from the definition of "family" was contrary to 42 U.S.C. § 1396a(a)(10)(E)(i), (iii), and § 1396d(p). The Appellant argues that a common-sense meaning of the term "family of the size involved" includes the Appellant and his spouse at minimum. Judicial notice was taken of this decision. However, as the state of West Virginia is not within the Sixth Circuit, the decision in Wheaton is not binding on the Respondent. In addition, the decision in Wheaton concerns Ohio's interpretation of the federal law in its Medicaid policy, and therefore was given no weight in the decision of the hearing officer.

The Respondent, in establishing the State Plan and IMM, has determined that an individual's income is the only income that will be considered when his spouse's income is too low to be deemed to him. The Respondent's deeming policy mirrors the federal SSI deeming rules. The Board of Review cannot pass judgment on the policy, but can only determine if the Respondent acted in accordance with the policy as it is written.

CONCLUSIONS OF LAW

1) Pursuant to the West Virginia Income Maintenance Manual, when determining eligibility for Medicare Premium Assistance (MPA) programs, if an individual is eligible for Medicare but his spouse is not, the spouse's income is deemed to him if it exceeds the federal allocation standard after deductions are applied. The Appellant's spouse's income of $157, after deductions were applied, did not exceed the allocation standard, so it was not deemed to the Appellant.

2) Federal Medicaid law allows a qualified Medicare beneficiary's income to be determined in accordance with Sections of the United States Code regarding Supplemental Security

Income (SSI), and the Respondent's policy regarding the SSI deeming rules mirrors federal regulations. The Respondent applied this policy correctly when it determined that the Appellant's spouse's income would not be deemed to him.

3) The Respondent correctly applied its policy as written when the determination was made that the Appellant was an Assistance Group of one (1), Income Group (IG) of one (1), and Needs Group (NG) of one (1).

4) Because the Appellant is an IG of one (1), and his gross unearned income of $1,485 per month, after a $20 disregard was applied, exceeded 100% of the Federal Poverty Level (FPL) for an NG of one (1) person of $1,330, the Appellant was not eligible for the Qualified Medicare Beneficiaries (QMB) level of MPA.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the action of the Respondent to deny the Qualified Medicare Beneficiary (QMB) level of Medicare Premium Assistance (MPA) to the Appellant because his income exceeded the limit for that program for an Assistance Group, Income Group, and Needs Group of one (1) person.

ENTERED this 20th day of October 2026.

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Amy Hayes
State Hearing Officer