



May 21, 2024

[REDACTED]

RE: [REDACTED] v. WV DOHS
ACTION NO.: 24-BOR-1714

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 Human Services. 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,

Lori Woodward, J.D.
Certified State Hearing Officer
Member, State Board of Review

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

cc: Amanda Simmons, WVDOHS/BFA

**WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW**

████████████████████,

Appellant,

v.

Action Number: 24-BOR-1714

**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 ██████████ ██████████. 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 May 7, 2024.

The matter before the Hearing Officer arises from the February 28, 2024 decision by the Respondent to deny the Appellant's Medicare Premium Assistance (MPA) application.

At the hearing, the Respondent appeared by Amanda Simmons, Family Support Supervisor. The Appellant was present and was represented by her daughter, ██████████. Also present, but not testifying, was the Appellant's granddaughter, ██████████. 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 applied for MPA in February 2024.
- 2) The Respondent processed the Appellant's application on February 27, 2024.
- 3) The Appellant is married and living with her spouse.
- 4) The Appellant receives Social Security benefits in the gross amount of \$806 per month.
- 5) The Appellant's spouse receives Social Security benefits in the gross amount of \$1,841 per month.
- 6) The allowable income limits at the time of the Appellant's application for an assistance group (AG) of 2 for all three categories of the MPA benefits were:
 - QMB = \$1,644
 - SLIMB = \$1,645 - \$1,972
 - QI-1 = \$1,973 - \$2,219
- 7) The Respondent used both the Appellant and her spouse's income to determine that the Appellant was over the income limit for MPA program eligibility.

APPLICABLE POLICY

Code of Federal Regulations, 42 CFR §435.125, explains individuals eligible as qualifying individuals:

(a) **Basis.** This section implements sections 1902(a)(10)(E)(iv) and 1905(p)(3)(A)(ii) of the Act.

(b) **Eligibility.** The agency must provide medical assistance to individuals who meet the eligibility requirements in [§435.123\(b\)](#), except that income is at least 120 percent, but is less than 135 percent of the Federal poverty level.

(c) **Scope.** Medical assistance included in [paragraph \(b\)](#) of this section includes the following:

(1) For individuals entitled to Medicare Part A as described in [paragraph \(b\)\(1\)](#) of this section, coverage for the Part B premium.

(2) For individuals enrolled under Medicare Part B for coverage of immunosuppressive drugs as described in [paragraph \(b\)\(1\)](#) of this section, only payment of the Part B premium related to enrollment in Medicare Part B for coverage of immunosuppressive drugs.

WV Income Maintenance Manual (WV IMM), Chapter 23, §23.12.1, QUALIFIED MEDICARE BENEFICIARIES (QMB), explains that the income limit is 100% of the Federal Poverty Level (FPL), and assets must not exceed \$9,430 and for individuals or \$14,130 for couples. 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 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.

WV IMM, Chapter 23, §23.12.2 SPECIFIED LOW-INCOME MEDICARE BENEFICIARIES (SLIMB), explains that the income limit is 101 – 120% FPL, and assets must not exceed \$9,430 for individuals and \$14,130 for couples. 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.

WV IMM, Chapter 23, §23.12.3 QUALIFIED INDIVIDUAL (QI), explains that the income limit is 121 –135% FPL, and assets must not exceed \$9,430 for individuals and \$14,130 for couples. 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 couple must meet the income test detailed in Chapter 4;
- The individual or couple must meet the asset test detailed in Chapter 5; and
- The individual or couple is not eligible for any full-coverage Medicaid group

Medicaid coverage is limited to payment of the Medicare Part B premium. The Buy-In Unit pays the Medicare premium. Refer to Chapter 25 for details.

WV IMM, Chapter 3, §3.15.1, The Assistance Group (AG), explains that when eligible spouses are both members of the assistance group (AG), they must receive the same level of coverage, QMB, SLIMB, or QI-1.

WV IMM, Chapter 3, §3.15.1.A Who Must Be Included, explains that only the individual or spouses who are eligible for QMB, SLIMB, or QI-1 are included in the AG.

WV IMM, Chapter 3, §3.15.2.B, The Income Group (IG), explains that for eligibles when there is no Medicaid Long Term Care (LTC) Services, the income of both individuals is counted.

WV IMM, Chapter 3, §3.15.2.C, The Income Group (IG), explains that for an eligible individual with an ineligible spouse when there is no Medicaid LTC Services, the income of the ineligible spouse is considered to determine if it must be deemed.

WV IMM, Chapter 4, §4.12.1, Determining Eligibility, directs that countable income be 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:

- Qualified Medicare Beneficiary (QMB) – Income is less than or equal to 100% Federal Poverty Level (FPL).
- Specified Low Income Medicare Beneficiary (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.

WV IMM, Chapter 4, §4.14.2.B.1, (Unearned) 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.

WV IMM, Chapter 4, Appendix A, lists income limits for the three categories of Medicare Premium Assistance in effect in February 2024:

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

120% FPL for a two-person assistance group: \$1,972
135% FPL for a two-person assistance group: \$2,219

WV IMM, Chapter 4, Appendix A, lists income limits for the three categories of Medicare Premium Assistance in effect March 1, 2024:

100% FPL for a two-person assistance group: \$1,704
120% FPL for a two-person assistance group: \$2,045
135% FPL for a two-person assistance group: \$2,300

DISCUSSION

Policy establishes the income limit for the Medicare Premium Assistance (MPA) categories. Qualified Medicare Benefit (QMB) as 100% of the FPL; Specified Low-Income Medicare Beneficiary (SLIMB) as up to 120% of the FPL; and Qualifying Individuals (QI-1) as up to 135% of the FPL.

The Appellant applied for MPA benefits in February 2024. The Appellant is married and lives in the same household as her husband. The Appellant receives monthly gross Social Security income of \$806 and her husband receives a monthly gross Social Security income of \$1,841, which was used by the Respondent to determine that the Appellant was over the income limit for program eligibility. On February 27, 2024, the Respondent notified the Appellant of the denial.

The Appellant's representative, [REDACTED], explained that the Appellant and her husband had not lived together for more than ten years but due to unfortunate circumstances, the Appellant had no other choice than to move in with her husband. [REDACTED] and the Appellant both stated that the Appellant and her husband do not live as husband and wife – they do not speak to one another, comingle finances, or even occupy a room at the same time.

Policy requires that for married spouses, the eligibility of the spouse needs to be determined. If a spouse is determined to be an eligible spouse, then the spouse and his or her income must be included in calculating eligibility. The income limit for a couple is used when an eligible individual resides with an eligible spouse. If the spouse is determined to be an ineligible spouse, then the ineligible spouse's income must be considered for deeming purposes. The Respondent's representative, Amanda Simmons, testified that both the Appellant and her husband's income were used in determining the Appellant's MPA eligibility. However, there was no evidence to show that the Respondent correctly determined that the Appellant's husband was indeed an eligible spouse as defined by policy. It is noted that the testimony provided by [REDACTED] indicated that the Appellant's husband receives Social Security disability benefits, however, this fact alone does not determine eligibility.

Because there was not enough evidence presented to show that the Appellant's husband was an eligible spouse as defined by policy, it cannot be determined whether the Respondent correctly used his income in denying the Appellant's application for MPA. Therefore, the Respondent's decision to deny the Appellant's MPA application cannot be affirmed.

CONCLUSIONS OF LAW

- 1) The income of an eligible spouse is used in determining MPA eligibility.
- 2) The income of an ineligible spouse is considered to determine whether it should be deemed in determining MPA eligibility.
- 3) The Respondent did not show by a preponderance of evidence that it correctly determined the Appellant's husband as an eligible spouse and correctly used his full income in determining that the Appellant was over the income limit for MPA eligibility.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's decision to deny the Appellant's application for MPA. The matter is **REMANDED** to determine the Appellant's husband's eligibility status and based upon those findings, the Respondent will redetermine the Appellant's eligibility back to the date of application.

ENTERED this 21st day of May 2024.

Lori Woodward, Certified State Hearing Officer