



July 3, 2024

[REDACTED]

RE: [REDACTED] v. WV DOHS
ACTION NO.: 24-BOR-2338

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: Barbara Bolinger, WVDOHS/BFA

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

████████████████████,

Appellant,

v.

Action Number: 24-BOR-2338

**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 July 2, 2024.

The matter before the Hearing Officer arises from the March 8, 2024 decision by the Respondent to close the Appellant's SSI Medicaid benefits and determine the Appellant was ineligible for MPA.

At the hearing, the Respondent appeared by Barbara Bolinger, Economic Services Supervisor. The Appellant appeared *pro se*. 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 receiving Supplemental Security Income (SSI) Medicaid and Medicare Premium Assistance (MPA) benefits.
- 2) The Respondent discovered that the Appellant no longer received SSI benefits as of April 2023.
- 3) On March 8, 2024, the Respondent sent notification of closure to the Appellant of his SSI Medicaid.
- 4) The Appellant receives Social Security Disability Insurance (SSDI) benefits in the gross monthly amount of \$992.
- 5) The Appellant receives Veterans Administration (VA) benefits in the gross monthly amount of \$1,663.
- 6) The allowable income limits for an assistance group (AG) of one for all three categories of Medicare Premium Assistance (MPA) benefits are:
 - Qualified Medicare Beneficiary (QMB) = \$1,255
 - Specified Low Income Medicare Beneficiary (SLIMB) = \$1,256 - \$1,506
 - Qualified Individual (QI-1) = \$1,507 - \$1,695
- 7) The Appellant's total gross monthly income is \$2,655, which is over the allowable limit for MPA eligibility for an Assistance Group (AG) of one.

APPLICABLE POLICY

Code of Federal Regulations, 42 CFR §435.123:

- (a) Basis. This section implements sections 1902(a)(10)(E)(i) and 1905(p)(1) of the Act.
- (b) Eligibility. The agency must provide medical assistance to individuals who meet all of the following:
 - (1) Are entitled to Medicare Part A based on the eligibility requirements set forth in §406.5(a) or §406.20(b) of this chapter or who are enrolled in Medicare Part B for coverage of immunosuppressive drugs based on eligibility requirements described in §407.55 of this chapter.
 - (2) Have an income, subject to paragraphs (b)(2)(i) and (ii) of this section, that does not exceed 100 percent of the Federal poverty level.
 - (i) During a transition month (as defined in paragraph (b)(2)(ii) of this section), any income attributable to a cost of living adjustment in Social Security retirement, survivors, or disability benefits does not count in determining an individual's income.
 - (ii) A transition month is any month of the year beginning when the cost of living adjustment takes effect, through the month following the month of publication of the revised official poverty level.

(3) Have resources, determined using financial methodologies no more restrictive than SSI, that do not exceed three times the maximum resource level allowed under the SSI program, annually adjusted by increases in the Consumer Price Index for inflation as defined in section 1905(p)(1)(C) of the Act.

(c) Scope. Medical assistance included in paragraph (b) of this section includes all of the following:

(1) For individuals entitled to Medicare Part A as described in paragraph (b)(1) of this section, coverage for Parts A and B premiums and cost sharing, including deductibles and coinsurance, and copays.

(2) For individuals enrolled in Medicare Part B for coverage of immunosuppressive drugs as described in paragraph (b)(1) of this section, only coverage of premiums and cost sharing related to enrollment in Medicare Part B for coverage of immunosuppressive drugs.

Code of Federal Regulations, 42 CFR §435.124, Individuals Eligible as Specified Low-Income Medicare beneficiaries:

(a) Basis. This section implements sections 1902(a)(10)(E)(iii) 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 exceeds 100 percent, but is less than 120 percent of the 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 coverage of the Part B premium related to enrollment in Medicare Part B for coverage of immunosuppressive drugs.

Code of Federal Regulations, 42 CFR, §435.125, Individuals Eligible as Qualifying Individual:

(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 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 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, §4.3.1, Chart 1, 73 & 82, Retirement, Survivors, and Disability Insurance (RSDI) and Social Security Payments, explains that RSDI income and Social Security payments are counted as unearned income to determine MPA eligibility.

WV IMM, Chapter 4, §4.3.1, Chart 1, 98(b), Veteran's Benefits, Compensation or Pension, explains that VA payments are counted as unearned income to determine MPA eligibility. However, it does note that some VA payments are based on need, and are, therefore, not subject to the SSI \$20 income disregard. They are excluded from income which is deemed. See Section 4.14.2 and Section 4.14.4. Payments based on need are:

- Pensions paid to veterans, except by an act of Congress or to a Medal of Honor recipient
- Compensation paid to a surviving parent Payments not based on need are compensation payments to a veteran, spouse, child or widow(er).

EXCEPTION: Any portion of the VA benefit which is paid as Aid and Attendance, Housebound or Unusual Medical Expense allowance is excluded.

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

100% FPL for a one-person assistance group: \$1,255

120% FPL for a one-person assistance group: \$1,506

135% FPL for a one-person assistance group: \$1,695

DISCUSSION

The Appellant had been receiving SSI (Supplemental Security Income) Medicaid benefits in addition to Medicare Premium Assistance (MPA). On March 8, 2024, the Respondent sent notification to the Appellant that his SSI Medicaid benefits would be closed after March 31, 2024 due to no longer receiving SSI. The Respondent's representative, Barbara Bolinger, testified that the Respondent had been paying the Appellant's Medicare premium because the Respondent's records showed he had been receiving SSI. Ms. Bolinger further testified that because the Appellant's SSI had stopped in April 2023, the Respondent stopped paying his Medicare premium. Ms. Bolinger also explained that because the Appellant's total gross income of \$2,655 (SSDI of \$992 + VA benefits of \$1,663), he is over the income limit for a one-person assistance group (AG) of \$1,695, for MPA eligibility.

The Appellant testified that he has never received SSI benefits. He only receives Social Security Disability Insurance (SSDI) payments. The Appellant stated that his VA benefits are compensation for "in the line of duty" injuries he sustained in service for this country, and therefore should be excluded from calculations for eligibility determination. Additionally, the Appellant averred that both his SSDI and VA benefits are considered unearned income and therefore should not be considered in the eligibility calculations.

Policy explains that SSDI and VA compensation benefits are considered unearned income and are used in calculating MPA eligibility. However, policy does allow some VA payment exclusions. VA payments which are based on need are not subject to the SSI \$20 income disregard and are also excluded from income which is deemed. Payments based on need are those pensions paid to veterans, except by an act of Congress or Medal of Honor recipient or compensation paid to a surviving parent. However, the Appellant's income is not deemed income. Therefore, that exception does not apply. Additionally, the \$20 income disregard is only a deduction made in the calculations and would not affect the Appellant's eligibility. Policy also lists the following exceptions to using VA benefits in determining income eligibility for MPA: VA educational benefits or those benefits that represent a withdrawal of a veteran's own contributions. There was no evidence to show that the Appellant's VA payments fall under these exceptions.

Policy establishes the income limits for the three categories of Medicare Premium Assistance in effect in March 2024 as: 100% FPL for a one-person assistance group: \$1,255; 120% FPL for a one-person assistance group: \$1,506; 135% FPL for a one-person assistance group: \$1,695. The Appellant's total gross monthly income of \$2,655 is over the limit for MPA eligibility.

CONCLUSIONS OF LAW

- 1) SSI Medicaid is available to those individuals receiving SSI and is determined from information received from the SSA and other policy-identified sources.
- 2) Because it was determined that the Appellant no longer received SSI, the Appellant was ineligible for continued SSI Medicaid benefits.

- 3) SSDI benefits are considered unearned income for determining MPA eligibility.
- 4) VA benefits are considered unearned income, unless it meets an exception.
- 5) The Appellant's VA benefits does not meet an exception, and therefore is considered unearned income for determining MPA eligibility.
- 6) Because the total gross monthly unearned income of the Appellant is \$2,655, he is over the income limit for MPA eligibility.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to close the Appellant's SSI Medicaid and determination of MPA ineligibility.

ENTERED this 3rd day of July 2024.

Lori Woodward, Certified State Hearing Officer