BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

[redacted],
Petitioner,

v.

DHS, FAMILY & CHILDREN SERVICES DIVISION,
Respondent.

Docket No.:
OSAH-DFCS-QMB-[redacted]-Schroer

Agency Reference No.: [redacted]

FILED
OSAH

JUN 29 2015

Victoria Hightower, Executive Assistant

INITIAL DECISION

I. Introduction

Petitioner, [redacted] appeals the decision of Respondent Georgia Department of Human Services ("DHS"), Family & Children Services Division ("DFCS"), regarding her eligibility for a Medicaid class of assistance known as the Qualified Medicare Beneficiary ("QMB") Program. An evidentiary hearing was held in the Bibb County Courthouse in Macon, Georgia on May 27, 2015 before the undersigned administrative law judge. Petitioner appeared *pro se*. Stacy Law, a Medicaid eligibility specialist with DFCS, appeared for Respondent. For the reasons stated herein, Respondent's decision is **AFFIRMED**.

II. Findings of Fact

1.

Petitioner is a Medicare recipient. Petitioner's income is such that she qualifies for a Medicare Savings Program ("MSP") through Medicaid. Petitioner has been enrolled in Medicaid since 2011 or 2012. (Testimony of [redacted] Ex. P-4.)

2.

As of January 2015, Petitioner was receiving assistance from an MSP known as the Specified Low-Income Medicare Beneficiary ("SLMB") Program. The SLMB program "pays the monthly premium for Medicare Supplemental Medical Insurance (Part B) for individuals

who meet financial criteria based on a percentage of the Federal poverty level (FPL)." See Respondent's Economic Support Services Manual, Vol. II/MA, MT 47 ("Medicaid Manual"), Section 2144. In order to be eligible for SLMB, an individual must, among other things, have gross income less than 120% of the FPL. (Testimony of Law; Exs. P-5; R-3.)

3.

QMB is a different MSP that provides an enhanced Medicare supplement for those individuals with a lower percentage of FPL than SLMB.[1] Like SLMB, QMB pays for Medicare Part B premiums, but it also pays Medicare deductibles and co-insurance payments. Medicaid Manual, Section 2143. In order to be eligible for QMB, an individual must, among other requirements, have gross income less than 100% of the FPL. (Testimony of Law; Ex. P-5.)

4.

On or about April 1, 2015, new income limits for the QMB and SLMB programs went into effect based on an update to the FPL.[2] The new limits were entered into Respondent's computer system in early March, requiring Respondent to manually "re-open" each file – including Petitioner's. The computer system considered this action to be a new application for benefits by Petitioner, and automatically generated a letter to be mailed to her regarding her "new" application. This letter, which was dated March 14, 2015, informed Petitioner that Respondent would stop paying for QMB program benefits effective March 31, 2015. According

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[1] At the hearing, Petitioner maintained that prior to April 1, 2015 she had been receiving QMB benefits, not SLMB benefits. However, the preponderance of the evidence showed that Petitioner was receiving SLMB benefits prior to April 1, 2015, as discussed *infra*.

[2] Pursuant to Section 673(2) of the Omnibus Reconciliation Act ("OBRA") of 1981, the Secretary of the Department of Health and Human Services updates the FPL at least annually. 42 U.S.C. § 9902(2). The 2015 update to the FPL was published on January 22, 2015. See 80 F.R. 3236. The Medicaid Manual provisions for both QMB and SLMB note that the FPL changes go into effect for these classes of assistance between February and April of each year. See Medicaid Manual, Sections 2143-2, 2144-1.

to the letter, Petitioner would be eligible for SLMB program benefits, effective April 1, 2015. (Testimony of Law; Ex. R-3; Ex. P-5.)

5.

The preponderance of the evidence in the record showed that the March 14, 2015 letter was inaccurate. Petitioner was not eligible for QMB benefits prior to March 14, 2015. Rather, she was eligible for and was receiving SLMB benefits prior to the change in the income limit due to the update to the FPL. (Testimony of Law; Ex. P-5.)

6.

Specifically, the evidence showed that Petitioner's gross monthly income consists of $429.00 in social security benefits and $578.00 in Department of Veteran's Affairs ("VA") benefits,[3] for a total of $1,007.00. There was no credible evidence to prove that Petitioner's gross income prior to April 1, 2015 was less than $1,007.00. (Testimony of [redacted] Law; Exs. P-1, P-5.)

7.

As a general matter, in order to determine whether an individual meets the income limits for Medicaid, Respondent calculates an applicant's monthly gross income and then subtracts $20.00, which is sometimes referred to as a "disregard" amount.[4] Petitioner's monthly income,

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[3] At the hearing, Petitioner testified that she receives $587.00 per month from the VA, but DFCS' records indicate the VA benefits were $578.00/month. (Ex. P-5.) In order to give Petitioner the benefit of the doubt, the Court has used Respondent's lower monthly VA benefit amount to determine whether Petitioner meets the limit for QMB or SLMB.

[4] The Medicaid Manual provides a list of income deductions that must be subtracted from income before determining eligibility for Medicaid. In particular, there is a $20.00 general deduction from each month of unearned income. Both VA compensation and pension benefits, as well as Social Security benefits, are considered "unearned income" under the Medicaid Manual. There is no evidence in the record that Petitioner qualifies for any other income deduction listed in the Medicaid Manual, such as an earned income deduction, a deduction of

after the $20.00 disregard is $987.00. Effective April 1, 2015, the updated monthly gross income limit for the QMB program, based on the new FPL, went from $973.00 to $981.00 for an individual. The updated monthly income limit for an individual in the SLMB program went from $1167.00 to $1177.00. Accordingly, Petitioner was over the income limit for QMB prior to the update, and remained over the limit after the update went into effect. However, she was eligible for SLMB benefits both prior to and after April 1, 2015. (Testimony of Law; Exs. R-1, R-2, R-3.)

8.

Petitioner, after receiving the letter dated March 15, 2015, believed her Medicaid benefits were being canceled altogether. She requested an appeal on March 21, 2015. In her request for an appeal, and at the hearing, Petitioner argued that Respondent should not count the Medicare Part B premium, which is deducted from her monthly Social Security benefits, when determining her gross income for purposes of determining Medicaid eligibility. However, the Medicaid Manual does not list Medicare Part B premiums as an allowable income deduction for purpose of Medicaid budgeting. See Medicaid Manual, Sections 2505, 2499. (Testimony of [redacted] Ex. P-2; Attachment to OSAH Form 1.)

III. Conclusions of Law

1.

To the extent this matter involves the reduction of a public assistance benefit, Respondent bears the burden of proof. Ga. Comp. R. & Regs. § 616-1-2-.07(d). To the extent Petitioner's appeal does not involve the reduction, suspension or termination of a benefit, Petitioner bears the

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blind work expenses, or a student child earned income deduction. See Medicaid Manual, Sections 2505, 2499.

burden of proof. Ga. Comp. R. & Regs. § 616-1-2-.07(e). The standard of proof on both sides is a preponderance of the evidence. Ga. Comp. R. & Regs. § 616-1-2-.21.

2.

Respondent produced sufficient evidence to prove by a preponderance of the evidence that Petitioner's benefits were not reduced, suspended, or terminated. Rather, Petitioner was eligible for and was receiving SLMB Medicaid, both prior to the updated gross income limits and thereafter. Petitioner bears the burden to show that she should be eligible for QMB, a higher class of medical assistance than she is currently receiving. She has failed to do so.

3.

The Medicare Act consists of two parts – "Part A," through which the federal government provides inpatient hospital insurance for people over age 65 and certain disabled individuals, and "Part B," which is supplementary voluntary insurance for other medical care, including out-patient care. See generally Rehab. Ass'n of Va., Inc. v. Kozlowski, 838 F.Supp. 243, 245 (E.D. Va. 1993), aff'd 42 F.3d 1444 (4th Cir. 1994), citing 42 U.S.C. § 426(a), 1395c. "In order to be covered by Part B, a Medicare-eligible person must pay insurance premiums." Id. For some individuals with low income, the Medicare Part B premium may be prohibitively expensive. Id. Thus, the Medicaid Act, which is a joint federal and state program that provides comprehensive medical care for the needy, contains a provision requiring states to enroll the poorest of the Medicare beneficiaries, called QMBs, in Part B and pay their premiums, deductibles and coinsurance amounts to the extent the individual cannot. Id., see also 42 U.S.C. § 1396a, 1396d; Moore v. Reese, 637 F.3d 1220, 1232 (11th Cir. 2011).

4.

To qualify as a QMB under federal law, "one must: (1) be entitled to certain Medicare benefits, (2) have income that does not exceed the federal poverty line, and (3) have resources that do not exceed a specified level." Bourgoin v. Sebelius, 296 F.R.D. 15, 18-19 (D. Maine 2013), citing 42 U.S.C. § 1396d(p). For those individuals, known as "SLMBs," whose income exceeds the federal FPL but is less than 120% of the FPL, the federal law requires states to pay certain Medicaid benefits, namely the Medicare Part B premium. Id., citing 42 U.S.C. §§ 1396a(a)(10)(E)(iii)-(iv), 1396u-3.

5.

In Georgia, the Department of Community Health ("DCH") is the state agency responsible for administration of the Medicaid state plan. DCH v. Freels, 258 Ga. App. 446 (2002); O.C.G.A. 49-4-142. Among other things, DCH "is authorized to establish the amount, duration, scope, and terms and conditions of eligibility for and receipt of ... medical assistance." O.C.G.A. § 49-4-142(a); 42 U.S.C. § 1396a(a)(17).[5] In 2009, with the reorganization of Georgia's health and human services agencies, the legislature provided that DCH would succeed to the rules and policies of DHS with respect to medical assistance. O.C.G.A. § 49-4-155. See 2009 Ga. Laws 102. In addition, DCH has contracted with DHS to handle the determination of eligibility for Medicaid through DHS's local DFCS offices. See DHS Policy 3480; O.C.G.A. § 49-4-154. Among other things, DFCS's Director is responsible for updating and maintaining the Medicaid Manual. Id.

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[5] In general, a state plan must "include reasonable standards . . . for determining eligibility for and the extent of medical assistance under the plan." Id. In determining income eligibility for QMBs and SLMBs, states may employ a "less restrictively methodology," including a "disregard" of a certain amount of income. See Bourgoin v. Sebelius, 296 F.R.D. 15, 19 (D. Maine 2013), citing 42 U.S.C. § 1396a(r)(2)(A); 42 C.F.R. 435.601(d)(iii).

6.

In DHS's Medicaid Manual, Respondent sets out a formula for determining the financial eligibility of applicants for Medicaid benefits, including QMB and SLMB. Specifically, in determining whether an individual meets the income limits for various Medicaid programs, the Medcaid Manual provides that DFCS should determine the individual's gross income then subtract a $20 "disregard." Medicaid Manual, Section 2505; Appendix A1-1.

7.

In this case, Respondent properly applied the new FPL to determine the income limits for QMB and SLMB. Respondent was authorized to disregard $20.00 of Petitioner's gross income in determining Petitioner's eligibility for QMB and SLMB. After the disregard, Petitioner's monthly income is $987.00, which is only $6.00 over the QMB income limit, but well under the $1177.00 limit for SLMB. There is no evidence that Petitioner qualifies for any other deductions from income under either federal law or the state plan. Although Petitioner is understandably frustrated at being so close to the QMB income threshold, the Undersigned does not have the authority to create a deduction or deviate from the eligibility standards set forth in federal and state law. Accordingly, the Court concludes that Petitioner is not eligible for the QMB program because she is over the limit after all allowable deductions are taken.

IV. Decision

In accordance with the foregoing Findings of Fact and Conclusions of Law, Petitioner's appeal is hereby **DENIED.** Petitioner remains eligible for the SLMB class of assistance under Medicaid, but is not eligible for the QMB program.