

## HUMAN SERVICES BOARD

# INTRODUCTION

## FINDINGS OF FACT

<sup>1</sup> Petitioner's application also reflected \$1,078 per month in Social Security Disability Insurance ("SSDI") payments. Petitioner testified she has not received SSDI payments since May of 2014, so they are not considered here.

2. By notice dated July 16, 2015, the Department informed petitioner that she was eligible to have her Medicare Part B premium paid under the Specified Low-Income Medicare Beneficiary ("SLMB") program beginning on June 1, 2015. As a result of this decision, petitioner was not required to pay her Medicare Part B premium for the remainder of 2014.

3. In October, the Department discovered that it had approved petitioner for eligibility under the SLMB program in error because her income exceeded the maximum income allowed for SLMB eligibility.

4. By notice dated October 16, 2014, the Department informed petitioner that she was no longer eligible for payment of her Medicare Part B premiums, and that she would receive a separate notice regarding closure of the premium payment benefit.

5. By notice dated November 26, 2014, the Department informed petitioner that she was no longer eligible for the SLMB program to pay her Medicare Part B premium beginning on January 1, 2015.

6. The Department's records show that the October 16, 2014 and November 26, 2014 notices were returned to the Department indicating that petitioner had a new address. The

Department promptly resent the notices to petitioner's new address.

7. Petitioner credibly testified that she did not receive either notice, and that she did not receive any notice that she was no longer eligible for the SLMB program until she received an invoice from Medicare in April of 2015 showing four months of Medicare premiums due in the amount of \$419.60.<sup>2</sup> Petitioner paid the amount due.

8. Petitioner continues to be invoiced for a monthly Medicare Part B premium, and she does not dispute that she is not eligible for payment of her Medicare premiums by Medicaid.

9. Petitioner requests a refund of the \$419.60 she paid for the first four months of 2015.

ORDER

The Department's decision is affirmed.

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<sup>2</sup> The Department moved to dismiss petitioner's appeal for lack of jurisdiction because she did not request a fair hearing within 90 days from the mailing of the closure notices. Based on petitioner's credible testimony that she did not receive the notices and that she was unaware of the closure action until April of 2015, the Department's motion is denied.

REASONS

The Board's review of Department decisions is *de novo*. As petitioner appeals the termination of her eligibility for Medicare cost-sharing programs, the Department has the burden of proving the basis for the termination by a preponderance of evidence. Fair Hearing Rule 1000.3.0(4).

The Department's regulations allow for Medicaid coverage for out-of-pocket Medicare cost sharing expenses for certain low-income households. HBEE § 8.07(b). The maximum income allowable for the SLMB program is 120 percent of the Federal Poverty Level ("FPL"), which for a household of one is currently \$1,177 per month. HBEE § 8.07(b)(2); Medicaid Procedures § P-2420B(2). While there are other Medicare Buy-In programs, all of them have financial eligibility limits that are substantially lower than petitioner's monthly income of approximately \$2,200. HBEE § 8.07(b); Medicaid Procedures § P-2420B(2).

In determining financial eligibility for any of the Medicare Buy-In programs the only allowable deduction from unearned income is a standard deduction of \$20. HBEE §§ 29.11(b)(1), 29.12(d)(1) and 29.15(b)(1). However, even with that deduction, the petitioner's countable income exceeds the highest maximum income for a Medicare Buy-In program by over

\$200. Accordingly, the Department has established that it initially approved petitioner for the SLMB program in error, and that when it discovered the error, it followed its regulations by terminating her eligibility for payment of her Medicare premiums by Medicaid effective January 1, 2015.

In addition, while the Department initially sent the closure notices to petitioner at her old address, it established that it subsequently mailed those notice to her new address after the Post Office returned them showing the correct new address. Thus, although petitioner credibly testified that she never received the notices, and it is not clear why she did not, the Department established that it took the necessary steps to send petitioner notice of the termination as required by HBEE §§ 68.01 and 68.02.

Under the circumstances of this case, nothing in the Department's rules authorizes a refund of the Medicare premiums that were otherwise owed by petitioner.<sup>3</sup> Therefore,

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<sup>3</sup> To the extent that petitioner's request is a claim for monetary damages, at least two Vermont Supreme Court rulings (one affirming a decision by the Human Services Board) have held that "an administrative agency may not adjudicate private damages claims," and the Board has therefore consistently refused to consider such claims. See, e.g., Fair Hearing No. B-03/08-104, citing *Scherer v. DSW*, Unreported, (Dkt. No. 94-206, Mar. 24, 1999) and *In re Buttolph*, 147 Vt. 641 (1987). It is noted that decisions by the Board as to its lack of jurisdiction do not decide whether petitioner may have a justiciable complaint against the Department in another forum, and she is free to seek legal advice and to take other legal action if she still feels aggrieved. See, e.g., Fair Hearing No. B-01/15-08.

it must be concluded that the Department correctly decided petitioner is not eligible for payment of her Medicare premiums under the SLMB or other Medicare Buy-In programs at this time, and its decision must be affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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