



Date: June 19, 2015

Docket # 15-457

Hearing Date: May 14, 2015



ADMINISTRATIVE HEARING DECISION

The Administrative Hearing that you requested has been decided against you. During the course of the proceeding, the following issue(s) and Agency regulation(s) were the matters before the hearing:

**EXECUTICE OFFICE OF HEALTH AND HUMAN SERVICES (EOHHS)
MEDICAID CODE OF ADMINISTRATIVE RULES (MCAR)
SECTION: 0372.05 MEDICARE PREMIUM PAYMENT PROGRAM (MPPP)
0362.05 INCOME STANDARDS - INDIVIDUAL/COUPLE
0366.10.05 INCOME DEEMING SPOUSE**

**UNITED STATES CODES
42 U.S. CODE § 1396D – SOCIAL SECURITY ACT**

**CODE OF FEDERAL REGULATIONS
20 C.F.R. § 416.1163(d)**

The facts of your case, the Agency regulation(s) and the complete administrative decision made in this matter follow. Your rights to judicial review of this decision are found on the last page of this decision.

Copies of this decision have been sent to the following: You (the Appellant), your attorney Ms. Gretchen Bath, Esq., Cheryl Tremblay, Denise Tatro and William O'Donnell on behalf of the DHS Agency.

Present at the hearing were: You (the Appellant), your attorney Gretchen Bath, Esq. and Cheryl Tremblay, Agency Supervisor.

ISSUE: Is the Appellant ineligible for the Medicare Premium Payment (MPP) Program because his monthly countable income is greater than the income standards for an individual?

EOHHS RULES AND REGULATIONS:

Please see the attached APPENDIX for pertinent excerpts from the Rhode Island Executive Office of Health and Human Services Medicaid Code of Administrative Rules (MCAR).

APPEAL RIGHTS:

Please see attached NOTICE OF APPELLATE RIGHTS at the end of this decision.

Please see the attached APPENDIX for pertinent excerpts from the Rhode Island Executive Office of Health and Human Services Medicaid Code of Administrative Rules (MCAR).

DISCUSSION OF THE EVIDENCE:**The DHS Agency Supervisor testified:**

- The agency issued a denial notice on January 26, 2015 to the Appellant with regards to his application for the Medicare Premium Payment (MPP) Program (QMB, SLMB, QI-1) since his income of \$1,695.00 exceeds the qualified standard of \$1,312.88 as of February 11, 2015, per RI DHS Manual § 0372.05. (copy of agency's January 26, 2015 notice labeled Agency II)
- The Appellant filed an Appeal of the agency's January 26, 2015 notice on February 3, 2015, claiming that he is a family of two and that the agency should include his wife in the agency's determination. The agency replied on February 9, 2015 claiming that the Appellant is ineligible for MPP, referencing RI DHS Manual §§ 0372.05 Overview of MPP, 0362.05 Income Standards – Individuals/Couples and 0366.10.05 Income Deeming Spouse. (copy of the Appellant's Request for Hearing form dated February 3, 2015 labeled Agency I)
- The Appellant was denied because his income was over the income limit for the QI-1 Medicare Premium Payment Program; he is not considered a household of two because his ineligible spouse does not have any income in accordance with § 0366.10.05.
- If the income of the ineligible spouse is equal to or less than the difference between the Federal Benefit Rate (FBR) for an eligible couple and the FBR for an eligible individual, there is no income to deem to the eligible individual. The Eligible individual's own countable income is subtracted from the MA standard for one to determine eligibility.
- The Federal Poverty Level at 135% for an individual is \$1,324.13 and the Appellant's countable income is \$1,695.00; therefore placing the Appellant's countable income over the standard allowable amount.
- The Appellant's countable income is \$1,695.00 and the Appellant's spouse has \$0.00 income.
- The agency does not count resources for MMP applicants. Resources do not have to be verified.

The Appellant's attorney cross examination of the agency supervisor:

- The agency representative confirmed that the only source of income for the household was from the Appellant's social security retirement; when the calculation was done, using the SSI and MA rules which takes twenty dollars (\$20.00) off the Appellant's income and the rest of the income is being counted.
- There was not ever any deeming in this case since the Appellant's spouse had no income to count.
- A copy of § 0362.05 – 2015 Categorically Needy Net Monthly Income Limits for Aged, Blind, or Disabled Individuals/Couples was submitted by the Appellant's attorney. (Copy of § 0362.05 labeled as Appellant's I) Regarding § 0362.05, is the section showing 135% of the Federal Poverty Level (FPL) income Guidelines for Qualified Individuals (QI-1); Individual = \$1,312.88 and Couples = \$1,769.63.
- Also submitted by the Appellant's attorney was a complete § 0372 Special Treatment Coverage Groups. (Copy of § 0372 labeled Appellant's II)
- With regards to § 0372.05.35.10, the agency was asked family size and indicated that using the deeming rules, since the spouse had no income to deem, this situation would result in a family of one. The agency knows of no definition in policy for the word "family".
- There are resource limits for MPP QI-1, \$7,280.00 for individuals and \$10,930.00 for couples, as stated in § 0372.05.35.05. Had the spouse had bank account(s), even though she is ineligible, her bank account(s) would be counted as part of a family of two as policy states but the ineligible spouse in this case has no resources to count.
- The agency does not recall what if any resources were listed on the Appellant's application.
- On behalf of the Appellant, a copy of § 0366 SSI Related Deeming of Income was presented. (Copy of § 0366 labeled as Appellant's III)

The Appellant's testimony during the examination from his attorney:

- The Appellant's only source of income is from his social security retirement and come to a little more than \$1,700.00 per month before anything is taken out.
- He has Medicare.
- In 2012 he was approved for QI-1, while he was living with his wife, who did not have any income. The ineligible spouse is not on Medicare and the household bills were paid out of the Appellant's social security.
- In 2012 the Appellant received a cut off notice from the agency because his income was too high; the agency compared the Appellant to the standard of one instead of a family of two. The Appellant filed an Appeal at that time, had a hearing and won. (Copy of the March 21, 2013 Appeals Hearing, docket # 12-2240, labeled as Appellant's IV) As a result, the 2012 notice was reversed, granting the Appellant a refund and the State paying for his Medicare Premium.
- In 2013 the State continued to pay the Appellant's MPP until the agency issued another denial notice. The Appellant filed another Appeal and at the hearing, the agency withdrew their notice and paid the Appellant's MPP, even though the Appellant was receiving social security and still living with his spouse who had no income.

- The Appellant's attorney submitted a copy of the September 30, 2014 notice from the agency that informed him that he was eligible as a QI-1 effective June 1, 2014. (copy of the September 30, 2014 notice labeled Appellant V)
- The Appellant received another notice denying him MPP in January 2015 and the Appellant appealed again, stating that he is a family of two. The Appellant and his spouse still lived together, she has no income because she takes care of the Appellant.
- The agency's notice indicates that the agency will stop paying the Appellant MPP beginning in February (2015). The Appellant has paid his March Premium out of his social security.
- Up until March 31, 2015, the Appellant lived with his wife, supported her while she stayed home to care of him, he paid all the bills out of his social security benefits.
- The Appellant's spouse has since passed away on March 31, 2015 and he understands that as of April 1, 2015 he is a family of one.
- There is no dispute that when calculating counting income, you need to use the SSI Rules to find out how much income to count.
- The Deeming Rules do not apply in this case; deeming only applies when the spouse has some income.
- Once the twenty dollar standard deduction is deducted from the Appellant's income, you are left with the Appellant's countable income; this is no dispute on what the Appellant's countable income is.
- The Appellant's attorney feels that the dispute is with the Appellant's countable income being compared to that of an individual and not as a family of two; § 0372.05.35.10 points to family size and federal law that indicates that States have to compare the countable income after it been determine by the SSI Rules; Federal statue compare the countable income to the FPL applicable to family to the size involved. Unfortunately, there is no definition of family in the federal law or the state's regulations.
- The Appellant's attorney indicated that it doesn't say in the federal statute that the countable income is compared to an MA standard of one, or a house hold of one or a household of one if the other spouse has no income; it only says family. Family is understood as two.
- For resources, they are couples.
- The Appellant's attorney stated that the plain language of the regulation, even though it hasn't been defined, says family, meaning family and not MA standard, household standard.
- The Appellant's attorney listed two state courts having defined family as two spouses living together; Martin v. North Carolina (2009 North Carolina Appeals, Lexis 6) and Winick v. Dept. of Children and Family Services (2014 Florida Appeals, Lexis 9190). Both cases saying basically you have to look at the SSI Rule to figure how much income to count but when taking that income; you need to compare it to the FPL for the size of the family size involved.
- There is a RI case where a judge ruled that the SSI methodology do apply when determining the income but the judge did not go on with determining family size. (Skaliotis v. RI Dept. of Human Services, A.2d (1996))

- Presently, the Appellant is a family of one and is over the standard but prior to March 31, 2015, the Appellant is a family of two and then would be eligible for the MPP Program.

FINDINGS OF FACT:

- On January 26, 2015 the DHS agency issued a denial notice to the Appellant with regards to his application for the Medicare Premium Payment (MPP) Program (QMB, SLMB, QI-1) because his income of \$1,695.00 exceeds the qualified standard of \$1,312.88 as of February 22, 2015 per RI DHS Manual § 0372.05 (Copy of the agency's January 26, 2015 notice entered and labeled Agency II).
- On February 3, 2015 the Appellant filed an Appeal of the agency's January 26, 2015 notice stating that he is a family of two and that the agency should be including his wife as part of the agency's determination. On February 9, 2015 the agency replied to the Appellant's Appeal being filed, citing that the Appellant is ineligible for MPP, referencing RI DHS Manual §§ 0372.05 Overview of MPP, 0362.05 Income Standards – Individuals/Couples and 0366.10.05 Income Deeming Spouse. (copy of the Appellant's Request for Hearing form dated February 3, 2015 labeled Agency I)
- The agency explained that the Appellant was denied because his countable income of \$1,695.00 per month that he receives from social security retirement is over the income limit for the QI-1 Medicare Premium Payment Program; per policy § 0366.10.05, the Appellant is not considered a family of two because his wife, the ineligible spouse, does not have any income. If the income of the ineligible spouse is equal to or less than the difference between the Federal Benefit Rate (FBR) for an eligible couple and the FBR for an eligible individual, there is no income to deem to the eligible individual. The Eligible individual's own countable income is subtracted from the MA standard for one to determine eligibility.
- After receiving all the allowable deductions, the Appellant has a countable income of \$1,695.00 that he receives each month from social security retirement and is his only income. The Appellant's wife has \$0.00 income monthly.
- The Federal Poverty Level (FPL) at 135% for an individual is \$1,324.13, which is less than the Appellant's countable income of \$1,695.00 and places the Appellant over the standard allowable amount.
- Both the agency and the Appellant, along with his attorney, agree that there is not ever any deeming in this matter since the Appellant's spouse has no income to deem to the Appellant or to count.
- The FLP of 135% Income Guidelines for Qualified Individuals QI-1 is \$1,312.88 for an individual and \$ \$1,769.63 for a couple, per policy § 0362.05.
- The agency representative is unsure if the word "family" is defined anywhere in policy.
- The agency does not count applicant's resources or verifies the answer provided on the application by an applicant.

- Policy § 0382.05.35.05 has the resource limits for MPP QI-1 at \$7,280.00 for an individual and \$10,930.00 for couples. Appellant's attorney states that if the Appellant's spouse did have any bank accounts, they would be also counted as resource and as a family of two.
- The Appellant receives Medicare.
- The Appellant had applied for QI-1 MPP in 2012 and in 2013, had been denied both years and appealed both years. In 2012, the matter went to Hearing in which a decision was issued and granted the Appellant eligibility for QI-1 MPP. In 2013 the matter went to Hearing and the agency withdrew their denial, reversing their denial decision and granting the Appellant eligibility.
- The Appellant acknowledges that as of March 31, 2015 that he is a family of one and would not be eligible for the QI-1 MPP because he would be considered of the standard for a family of one. Two state courts having defined family as two spouses living together; Martin v. North Carolina Department of Health & Human Services, 670 S.E2d 629 (N.C.Ct.APP.2009) and Winick v. Dept. of Children and Family Services, Fla. Dist. Ct. App. 2d 13-2957 (2014). Both cases saying basically you have to look at the SSI Rule to figure how much income to count but when taking that income; you need to compare it to the FPL for the size of the family size involved.
- There is a RI case where a judge ruled that the SSI methodology does apply when determining the income but the judge did not determining family size. Skaliotis v. RI Dept. of Human Services, A.2d (1996)

CONCLUSION:

The issue to be decided is whether the Appellant is ineligible for the Medicare Premium Payment (MPP) Program because his monthly countable income is greater than the income standards for an individual.

The Appellant applied for the Medical Assistance, Medicare Premium Payment (MPP) Program. The MPP Program helps elder 65 and older (and adults with disabilities) pay all or some of the costs of Medicare Part A and Part B premiums, deductibles and co-payments. (§ 0372.05 Medicare Premium Payment Program) After a review of the Appellant application, the DHS agency issued a denial notice on January 26, 2015 to the Appellant, indicating that the Appellant was not eligible for the MMP Program due to having countable income of \$1,695.00, which exceeds the qualified standard of \$1,312.88 as of February 11, 2015 and in accordance with RI DHS Manual § 0372.05.

On February 3, 2015 the Appellant filed an Appeal of the agency's action, claiming that he is not over the income limit for QI-1 MPP Program; he should be considered a household of two because his ineligible spouse does not have any income in accordance with § 0366.10.05. The agency replied on February 9, 2015 claiming that the Appellant is ineligible for MPP, referencing RI DHS Manual §§ 0372.05 Overview of

MPP, 0362.05 Income Standards – Individuals/Couples and 0366.10.05 Income Deeming Spouse.

The Appellant in this matter is married and lives with his spouse as husband and wife. The Appellant's only source of income, after proper deductions, is his monthly benefit of \$ 1,695.00, which comes from his social security retirement. The Appellant's spouse does not work so that she can provide care to the Appellant.

The Office of Health and Human Services (OHHS) governs the State's Medicaid program and the policy for the program is set in the Medicaid Code of Administrative Rules (MCAR). Under MCAR, Medicaid recipients who are elders 65 or older, blind or disabled are considered SSI-related cases. The purpose of the Medicare Premium Payment Program is to help these people who are aged, blind or disabled pay for all or some of the costs of Medicare Part A and Part B premiums, deductibles and co-payments. In accordance with the MCAR with regards to MPP, the agency is responsible for determining an applicant's countable income using the SSI methodology and then compares that income to the appropriate income limit for that particular MPP Program (QMB, SLMB, QI-1) based on the FPL Guidelines for the appropriate family size.

In this Appellant's case, the agency looked at both the Appellant and his spouse's income. The Appellant's spouse is not aged, blind or disabled and therefore referred to as an ineligible spouse since she is not eligible for Medical Assistance under an SSI related coverage group. The Appellant's spouse does not work, has no income and is supported entirely by the Appellant. Since she has no income, she has nothing to deem to the Appellant. Deem(-ing) is the process of considering another person's income to be the income of the Medical Assistance applicant/recipient. (§ 0366.05) As a result of the spouse having nothing to deem to the Appellant, the Appellant is looked at as a family of one.

Again, the Appellant receives \$1,695.00 per month from social security retirement and is seeking eligibility that would have the State pay for his share of Medicare Part B. In order to be eligible of this part of the MPP Program, QI-1, individuals have to have a countable income greater than one hundred twenty (120%) percent of the Federal Poverty Level Guidelines (\$1226.04) but less than one hundred thirty five (135%) of the Federal Poverty Level (\$1,324.13). (§ 0362.05) Due to the Appellant's income level, he is over income and found ineligible for the MPP Program by the agency.

The Appellant and his attorney both testified that this is not a deeming case since the Appellant's spouse has nothing to deem; the agency is also in agreement with this point. The Appellant's position is that this is a case that consists of two adults, who live together, are married and hold themselves out as husband and wife. The Appellant's social security retirement monthly benefit of \$1,695.00, after the proper deductions are applied, is the only source of income for the household. The Appellant has some health issues and his wife stays home to provide care to him; she does not work out of the home and has no source of income to support herself or her husband/Appellant.

As part of the MPP Program application that the Appellant submitted, there is a question that asks as to how much resources there are in the household. Furthermore, policy states that the resource limit for MPP QI-1 is \$7,280.00 for an individual and \$ 10,930.00 for a couple. (§ 0372.05.35.05) Even though in this case the spouse has zero income, the agency looks at them as a couple and not an individual; if the spouse had a bank account solely in her name, it would have been counted as part of a family of two.

The agency representative present at Hearing is in agreement with the Appellant and his attorney, that to the best of her knowledge, there is no definition of the word "family" in policy. But yet the Appellant's attorney claims that, everyone knows what "family" means, it could be any possible combination of husband, wife, son(s), daughter(s), siblings to name a few. In this case, we have a husband and wife who were living together, surviving on the only source of income from the Appellant's social security retirement benefit, since the Appellant's spouse did not work or have a source of income herself.

There is no dispute from either side that when figuring out countable income, there is a need to use the SSI Rules to figure out how much income to count; the Appellant's attorney makes this point since the spouse has no income, therefore there is no deeming. There is a \$20.00 standard deduction off the Appellant's income and what is left, \$1,695.00, is the countable income. This calculation is not in dispute either. The Appellant's attorney indicates that once the countable income is determined, it needs to be applied to the proper family size. Policy § 0372.05.35.10 – Income Limits, states that the MPP Program benefits are based on the Federal Poverty Level Guidelines for the appropriate family size. Furthermore, the Appellant's attorney states that there is a federal law that requires States to compare the countable income after it's been determined by the SSI Rules, then compare the countable income to the FPL applicable to the family size involved. There is no definition for the word "family" in federal law or the state regulations. The Appellant position is that it isn't indicated in the federal statute that the countable income is compared to an MA standard of one or household of one or a household of one if the spouse is ineligible; it only says "family". The Appellant understands that in his case, a "family" means two.

The Appellant, through his attorney, cited two out of state court decisions that state that to establish how much income to count, one would need to review the SSI Rules but then taking that income and comparing it to the FPL for the size of the family involved. Both cases, Martin v. North Carolina Department of Health & Human Services, 670 S.E2d 629 (N.C.Ct.APP.2009) and Winick v. Dept. of Children and Family Services, Fla. Dist. Ct. App. 2d 13-2957 (2014) state "family" is two people. There is also a Rhode Island case, Skaliotis v. RI Dept. of Human Services, A.2d (1996) where the judge ruled that the SSI Rules do apply when determining income but the judge did not go on to consider the federal statute about the family size.

In Martin, the Court concluded that the federal statute, 42 U.S.C. § 1396d (p),

“...that SSI methodology only determinations of income that is discussed in paragraphs (1)(B) and (1)(C). Income level, as provided for in paragraph (2)(A), is not determined by SSI methodology, but instead is to be determined in part by “the percent provided under subparagraph (B) of the official poverty line applicable to a family of the size involved. 42 U.S.C. § 1396d (p)(2)(A)”

And therefore the court relied on the ordinary meaning of the word “family”. The court found similarly in Winick.

In addition to the testimony that the Appellant provided, his attorney submitted into evidence several exhibits which support their position in this matter:

- ❖ Copy of § 0362.05, Income Standards – Individual/Couples;
- ❖ Copy of § 0372, Special Treatment Coverage Groups;
- ❖ Copy of § 0366, SSI – Related Deeming of Income;
- ❖ Copy of the Appellant’s Appeal decision, docket 12-2240, dated February 20, 2013;
- ❖ Copy of a letter dated September 30, 2014 from the Woonsocket DHS that found the Appellant eligible for the MPP Program QI-1 as of June 1, 2014

With regards to the Appellant’s Appeal decision that had issued February 20, 2013, docket 12-2240 does not set president; this matter presently on appeal involves an agency denial dated January 26, 2015. This Hearing Officer is considering this matter new (De Novo), as if it had not been heard before and as if no decision previously had been rendered.

The Appellant submitted his application for the MPP Program QI-1, seeking to have the State pay for his share his Medicare Part B. As part of the agency’s review of the Appellant’s application and calculated the Appellant’s countable income as \$1,695.00 once the proper deductions were applied. The Appellant’s only source of income is from his monthly social security retirement benefit that he uses to support himself and his wife; the Appellant lives with and supports his wife, who does not work or have any income. The Appellant’s spouse is not aged, blind or disabled and therefore termed ineligible. There is no dispute as to the amount of the countable income or when trying to determine countable income, the SSI Rules need to be used. If the amount of the 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 the applicant from the ineligible spouse. 20 C.F.R. § 416.1163(d). Again, both parties agree on this point, that since the ineligible spouse has no income, there is no deeming present.

To be qualified for QI-1, countable income has to be greater than 120% of the FPL and less than 135% of the FPL. (§ 0372.05.15) At 135% of the FLP Income Guidelines for a QI-1 is \$1,312.88 for individual and \$1,769.63 for a couple. (§ 0362.05) The agency properly determined that the Appellant is an individual and with a countable income of \$1,695.00, he was properly found over income for the MPP Program QI-1.

In summary, the Appellant applied for and was denied for the Medical Assistance, MPP Program, QI-1 due to having countable income of \$1,695.00 per month. The Appellant is contesting this denial because the agency did not consider the Appellant's spouse that he supports with his income and therefore should be calculated as a family of two and not one. The agency reviewed the Appellant's application, which indicated that the Appellant's spouse had no income of her own, is not aged, blind or disabled and concluded that the spouse has nothing to deem to the Appellant and is an ineligible spouse. Since there is no income being deemed to the Appellant, the agency is viewing him as a family of one and using the SSI methodology. Due to the Appellant having a countable income of \$1,695.00 and the maximum income for a family of one is \$1,312.88, the agency properly found the Appellant over income for the MPP Program.

After a careful review of the Agency's policies, as well as the evidence and testimony given, this Appeals Officer finds that the Appellant is ineligible for the Medicare Premium Payment (MPP) Program due to his monthly countable income is greater than the income standards for an individual. The Appellant's request for relief is therefore denied.

A handwritten signature in cursive script that reads "Thomas Breacci".

Appeals Officer

APPENDIX

**EXECUTICE OFFICE OF HEALTH AND HUMAN SERVICES (EOHHS)
MEDICAID CODE OF ADMINISTRATIVE RULES (MCAR)**

0372.05 Medicare Premium Payment Program (MPPP)

REV: 01/2014

Purpose: The Medicare Premium Payment Program helps elders 65 and older (and adults with disabilities) pay all or some of the costs of Medicare Part A and Part B premiums, deductibles and co-payments. Low income adults with disabilities, who have Medicare coverage, may be eligible for the Medicare Premium Payment Program (MPPP). Medicare Part A is hospital insurance coverage and Medicare Part B is for physician services, durable medical equipment and outpatient services. A person's income and resource determine which type of Medicare premium assistance is available.

A. Medicare is the federal health insurance to which individuals who are insured under the Social Security system are entitled once they attain 65 years of age or reach the 25th month of a permanent and total disability. Medicare is also available to individuals who have permanent kidney failure and individuals who received a kidney transplant. Medicare has two parts:

1. Part A Medicare Insurance

- a. Pays for hospital services and limited skilled nursing facility services;
- b. Is available without charge to individuals who are insured under Social Security or Railroad Retirement systems and who have attained 65 years of age or have reached the 25th month of a permanent and total disability;
- c. Is available without charge to certain individuals who receive continuing dialysis for permanent kidney failure and certain individuals who have had a kidney transplant;
- d. Is also available to aged or disabled individuals who are not insured under the Social Security System for a premium amount determined by the Social Security Administration.

2. Part B Medicare Insurance

- a. Pays for physician services, durable medical equipment and other outpatient services;

- b. Is available to both "insured" and "uninsured" individuals who have attained 65 years of age or have reached the 25th month of a permanent and total disability upon payment of a monthly premium.
- c. The Part B premium as of January 1, 2014 is \$104.90/month for timely enrollees.

B. Enrollment

1. Individuals who receive Social Security or Railroad Retirement benefit payments are automatically enrolled in Medicare when they turn 65 or reach their 25th month of disability.
 2. Individuals who need to apply for enrollment in Medicare include those who:
 - a. Have not applied for Social Security or Railroad Retirement Benefits
 - b. Were involved in certain government employment
 - c. Have kidney failure/kidney transplant.
 3. The initial enrollment period is a seven-month period that starts three (3) months before the individual first meets the requirements for Medicare. Individuals who do not enroll in the initial enrollment period may enroll in the general enrollment period, held each year from January 1 through March 31.
- C. In accordance with federal law, limited Medicaid is provided to low-income Medicare beneficiaries. This limited coverage helps eligible individuals pay for some or all of their out-of-pocket Medicare expenses. There are four (4) categories of Medicare Premium Payment Program Benefits:

1. Qualified Medicare Beneficiary (QMB)
2. Specified Low Income Medicare Beneficiary (SLMB)
3. Qualifying Individual-1 (QI-1)
4. Qualified Disabled Working Individual (QDWI)

0362.05 Income Standards - Individual/Couple

REV: January 2015

The following standards are used in the determination of an individual's or couple's income eligibility:

2. 2015 Monthly Federal Benefit Rate (FBR);
3. Categorically Needy Income Limits;
4. Medically Needy Monthly Income Limits;
5. 2015 Federal Poverty Level Income Guidelines (for Low Income Aged and Disabled Individuals, Qualified Medicare Beneficiaries, Specified Low Income Medicare Beneficiaries and Qualified Disabled and Working Individuals).

2015 Monthly Federal Benefit Rate (FBR)

Individual - Own Home	\$733.00
Couple - Own Home	\$ 1,100.00
Individual - Home of Another	\$ 488.67
Couple - Home of Another	\$ 733.34
"DIFFERENCE BETWEEN"	
Couple and Individual - Own Home	\$ 367.00
Couple and Individual - Home of Another	\$ 244.67
"DOUBLE THE FBR"	
Individual - Own Home	\$ 1,466.00
Individual - Home of Another	\$ 977.34
Couple - Own Home	\$ 2,200.00
Couple - Home of Another	\$ 1466.68

2015 Categorically Needy Net Monthly Income Limits for Aged, Blind, or Disabled Individuals/Couples

Income Limits	Individual	Couple
Living in a Nursing Facility or ICF-MR Facility	\$ 2,199.00 ¹	N/A
Living in Own Household	\$ 772.92	\$ 1,179.38
Living in Household of Another	\$ 540.59	\$ 830.64

	Individual	Couple
Living in a residential care and assisted living facility	\$ 2,199.00	** **Treat as Individual
Institutionalized individual eligible for the federal and state Supplement	\$ 50.00	\$ 100.00

This is the FEDERAL CAP which is \$ 2,199.00 effective 01/01/ 2015.

2015 TABLE OF MEDICALLY NEEDED MONTHLY INCOME LIMITS

1 Person	\$ 867.00	5 Persons	\$ 1,442.00
2 Persons	\$ 908.00	6 Persons	\$ 1,625.00
3 Persons	\$ 1,125.00	7 Persons	\$ 1,783.00
4 Persons	\$ 1,283.00	8 Persons	\$ 1,967.00

¹ By federal law, to be eligible as "Categorically Needy" while living in a nursing facility, ICF-MR facility or a licensed residential care and assisted living facility, an individual's gross income cannot exceed 300% of the federal SSI level of payment for an individual.

2014 FEDERAL POVERTY LEVEL MONTHLY INCOME GUIDELINES

100% of Federal Poverty Level Income Guidelines for Qualified Medicare Beneficiaries (QMB's) and Low-Income Aged and Disabled

Individual	\$ 972.50
Couple	\$ 1310.83

120% of Federal Poverty Level Income Guidelines for Specified Low-Income Medicare Beneficiaries (SLMB's)

Individual	\$ 1,167.00
Couple	\$ 1,573.00

135% of Federal Poverty Level Income Guidelines for Qualified Individuals (QI-1)

Individual	\$ 1,312.88
Couple	\$ 1,769.63

200% of Federal Poverty Level Income Guidelines for Qualified Disabled and Working Individuals (QDWI's)

Individual	\$ 1,945.00
Couple	\$ 2,621.67

0366.10.05 Income Deeming Spouse

REV:06/1994

When an ineligible spouse lives in the same household as the eligible individual, these deeming rules are applied in the following order:

- FIRST:** Determine the amount of the ineligible spouse's earned and unearned income, applying the appropriate income exclusions, in the computation month.
- SECOND:** Deduct an allocation for each ineligible child who lives in the household. "Ineligible child" means the ineligible individual's natural or adopted child who is under the age of 21, lives in the same household, and is not eligible for Medical Assistance. **EXCEPTION:** No allocation is given for any children who are receiving cash assistance (AFDC, SSI, GPA):

- The allocation for each ineligible child is the difference between the Federal Benefit Rate (FBR) for an eligible couple and the FBR for an eligible individual;
- Each ineligible child's allocation is reduced by the amount of his or her own income (appropriate income exclusions applied); and,
- The allocations for ineligible children are first deducted from the ineligible spouse's unearned income. If the ineligible spouse does not have enough unearned income to cover the allocations, the balance is deducted from the ineligible spouse's earned income.

THIRD: If the remaining income (both earned and unearned) of the ineligible spouse is EQUAL TO OR LESS THAN the difference between the FBR for an eligible couple and the FBR for an eligible individual, there is no income to deem to the eligible individual. IN THIS SITUATION, THE ELIGIBLE INDIVIDUAL'S OWN COUNTABLE INCOME IS SUBTRACTED FROM THE MA STANDARD FOR ONE TO DETERMINE ELIGIBILITY.

FOURTH: If the remaining income (both earned and unearned income) of the ineligible spouse is MORE THAN the difference between the FBR for an eligible couple and the FBR for an eligible individual, THE ELIGIBLE INDIVIDUAL AND THE INELIGIBLE SPOUSE ARE TREATED AS AN ELIGIBLE COUPLE:

- The eligible individual and the ineligible spouse are treated as an eligible couple by combining the remainder (after allowable allocations) of the ineligible spouse's unearned income with the eligible individual's own unearned income, and the remainder of the ineligible spouse's earned income with the individual's earned income;
- Apply all appropriate income exclusions, including the first \$20 of unearned income (if less than \$20 of unearned income in a month, any remaining portion of the \$20 exclusion is applied to any earned income in the month), \$65 of any earned income in the month, and one-half of remaining earned income in the month;
- Subtract the couple's countable income from the MA STANDARD FOR TWO.

FIFTH: If the couple's countable income is EQUAL TO OR LESS THAN the MA STANDARD FOR TWO in the computation month, the INDIVIDUAL IS ELIGIBLE FOR MA UNDER THE DEEMING RULES.

42 U.S. Code § 1396d

(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 of this chapter (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),

(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 of this chapter, 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.

(D)

(i) In determining under this subsection the income of an individual who is entitled to monthly insurance benefits under subchapter II of this chapter for a transition month (as defined in clause (ii)) in a year, such income shall not include any amounts attributable to an increase in the level of monthly insurance benefits payable under such subchapter which have occurred pursuant to section 415 (i) of this title for benefits payable for months beginning with December of the previous year.

(ii) For purposes of clause (i), the term “transition month” means each month in a year through the month following the month in which the annual revision of the official poverty line, referred to in subparagraph (A), is published.

(3) The term “medicare cost-sharing” means (subject to section 1396a (n)(2) of this title) the following costs incurred with respect to a qualified medicare beneficiary, without regard to whether the costs incurred were for items and services for which medical assistance is otherwise available under the plan:

(A)

(i) premiums under section 1395i-2 or 1395i-2a of this title, and

(ii) premiums under section 1395r of this title,^[4]

(B) Coinsurance under subchapter XVIII of this chapter (including coinsurance described in section 1395e of this title).

(C) Deductibles established under subchapter XVIII of this chapter (including those described in section 1395e of this title and section 1395l (b) of this title).

(D) The difference between the amount that is paid under section 1395l (a) of this title and the amount that would be paid under such section if any reference to “80 percent” therein were deemed a reference to “100 percent”.

Such term also may include, at the option of a State, premiums for enrollment of a qualified medicare beneficiary with an eligible organization under section 1395mm of this title.

(4) Notwithstanding any other provision of this subchapter, in the case of a State (other than the 50 States and the District of Columbia)—

(A) the requirement stated in section 1396a (a)(10)(E) of this title shall be optional, and

(B) for purposes of paragraph (2), the State may substitute for the percent provided under subparagraph (B)^[5] or ^[6] 1396a(a)(10)(E)(iii) of this title of such paragraph ^[5] any percent.

In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1315 of this title, the Secretary shall require the State to meet the requirement of section 1396a (a)(10)(E) of this title in the same manner as the State would be required to meet such requirement if the State had in effect a plan approved under this subchapter.

(5)

(A) The Secretary shall develop and distribute to States a simplified application form for use by individuals (including both qualified medicare beneficiaries and specified low-income medicare beneficiaries) in applying for medical assistance for medicare cost-sharing under this subchapter in the States which elect to use such form. Such form shall be easily readable by applicants and uniform nationally. The Secretary shall provide for the translation of such application form into at least the 10 languages (other than English) that are most often used by individuals applying for hospital insurance benefits under section 426 or 426-1 of this title and shall make the translated forms available to the States and to the Commissioner of Social Security.

(B) In developing such form, the Secretary shall consult with beneficiary groups and the States.

(6) For provisions relating to outreach efforts to increase awareness of the availability of medicare cost-sharing, see section 1320b-14 of this title.

Code of Federal Regulations

§ 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.

(c) *Allocations for aliens sponsored by your ineligible spouse.* We also deduct an allocation for eligible aliens who have been sponsored by and who have income deemed from your ineligible spouse.

(1) The allocation for each alien who is sponsored by and who has income deemed from your ineligible spouse 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 compute your benefit for a current month is based on the Federal benefit rate that applied in the second prior month (unless the current month is the first or second month of eligibility or re-eligibility as explained in § 416.420(a) and (b) (2) and (3)).

(2) Each alien's allocation is reduced by the amount of his or her own income as described in § 416.1161(d).

(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.)

(e) *Determining your SSI benefit.* (1) In determining your SSI benefit amount, we follow the procedure in paragraphs (a) through (d) of this section. However, we use your ineligible spouse's income in the second month prior to the current month. We vary this rule if any of the exceptions in § 416.1160(b)(2) applies (for example, if this is the first month you are eligible for payment of an SSI benefit or if you are again eligible after at least a month of being ineligible). In the first month of your eligibility for payment (or re-eligibility), we deem your ineligible spouse's income in the current month to determine both whether you are eligible for a benefit and the amount of your benefit. In the second month, we deem your ineligible spouse's income in that month to determine whether you are eligible for a benefit but we deem your ineligible spouse's income in the first month to determine the amount of your benefit.

(2) Your SSI benefit under the deeming rules cannot be higher than it would be if deeming did not apply. Therefore, your benefit is the lesser of the amount computed under the rules in paragraph (d)(2) of this section or the amount remaining after we subtract only your own countable income from an individual's Federal benefit rate.

(f) *Special rules for couples when a change in status occurs.* We have special rules to determine how to deem your spouse's income to you when there is a change in your situation.

(1) *Ineligible spouse becomes eligible.* If your ineligible spouse becomes eligible for SSI benefits, we treat both of you as newly eligible. Therefore, your eligibility and benefit amount for the first month you are an eligible couple will be based on your income in that month. In the second month, your benefit amount will also be based on your income in the first month.

(2) *Spouses separate or divorce.* If you separate from your ineligible spouse or your marriage to an ineligible spouse ends by divorce, we do not deem your ineligible spouse's income to you to determine your eligibility for benefits beginning with the first month following the event. If you remain eligible, we determine your benefit amount by following the rule in paragraph (e) of this section provided deeming from your spouse applied in the prior month.

(3) *Eligible individual begins living with an ineligible spouse.* If you begin to live with your ineligible spouse, we deem your ineligible spouse's income to you in the first month thereafter to determine whether you continue to be eligible for SSI benefits. If you continue to be eligible, we follow the rule in § 416.420(a) to determine your benefit amount.

(4) *Ineligible spouse dies.* If your ineligible spouse dies, we do not deem your spouse's income to you to determine your eligibility for SSI benefits beginning with the month following the month of death. In determining your benefit amount beginning with the month following the month of death, we use only your own countable income in a prior month, excluding any income deemed to you in that month from your ineligible spouse.

(5) *You become subject to the \$30 Federal benefit rate.* If you become a resident of a medical care facility and the \$30 Federal benefit rate applies, we do not deem your ineligible spouse's income to you to determine your eligibility for SSI benefits beginning with the first month for which the \$30 Federal benefit rate applies. In determining your benefit amount beginning with the first month for which the \$30 Federal benefit rate applies, we use only your own countable income in a prior month, excluding any income deemed to you in that month from your ineligible spouse.

NOTICE OF APPELLATE RIGHTS

This Final Order constitutes a final order of the Department of Human Services pursuant to RI General Laws §42-35-12. Pursuant to RI General Laws §42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.

This hearing decision constitutes a final order pursuant to RI General Laws §42-35-12. An appellant may seek judicial review to the extent it is available by law. 45 CFR 155.520 grants appellants who disagree with the decision of a State Exchange appeals entity, the ability to appeal to the U.S. Department of Health And Human Services (HHS) appeals entity within thirty (30) days of the mailing date of this decision. The act of filing an appeal with HHS does not prevent or delay the enforcement of this final order.

You can file an appeal with HHS at <https://www.healthcare.gov/downloads/marketplace-appeal-request-form-a.pdf> or by calling 1-800-318-2596.