



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
5th Floor North
4822 Madison Yards Way
Madison, WI 53705

Telephone: (608) 266-7709
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

November 14, 2023



Kristen Burstad
Barron County Department of Human Services
Courthouse Room 338
335 E Monroe Ave
Barron, WI 54812

RE:



Case No. MQB - 209768

Dear Parties:

Enclosed is a copy of the Final Decision in the above-referenced matter.

Sincerely,

Amanda Eve
Legal Associate

- c: Great Rivers Consortium - email
Division of Health Care Access and Accountability - email
Attorney Kate Schilling - email



STATE OF WISCONSIN
DEPARTMENT OF HEALTH SERVICES

In the Matter of



DECISION

Case No: MQB 209768

The attached proposed decision of the Administrative Law Judge dated September 18, 2023 is hereby adopted as the final order of the Department.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, Madison, WI 53705-9100 **and** to those identified in this decision as "PARTIES IN INTEREST". Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.


The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, WI, 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing request (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of
Madison, Wisconsin, this 14th day
of November, 2023.


Kirsten L. Johnson, Secretary
Department of Health Services



**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of



PROPOSED DECISION
Case #: MQB - 209768

PRELIMINARY RECITALS

Pursuant to a petition filed August 10, 2023, under Wis. Admin. Code, §HA 3.03(1), to review a decision by the Barron County Department of Human Services regarding the Qualified Medicare Beneficiary (QMB) program, a hearing was held on September 13, 2023, by telephone. A hearing set for August 30, 2023, was rescheduled at the petitioner's request.

The issue for determination is whether petitioner's QMB benefits can be backdated.

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:

Atty. Kate Schilling
Greater Wisconsin Agency on Aging Resources, Inc
1414 MacArthur Rd., Ste. A
Madison, WI 53714

Respondent:


Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: Kristen Burstad
Barron County Department of Human Services
335 E Monroe Ave
Barron, WI 54812

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Eau Claire County. Employees of Barron County and Polk County assist in handling Eau Claire County cases as part of the Great Rivers IM Consortium.

2. Petitioner and her husband are farmers with relatively low income. Petitioner turned age 65 on April 9, 2023. She has been eligible for Medical Assistance (MA) since 2009.
3. In late March, 2023, petitioner contacted the consortium and asked about Medicare Savings programs. She was told to call back after her Medicare started, but the worker did enter a request for the Medicare Savings program into the system. Petitioner had a number of contacts with the consortium thereafter, mostly with regard to an MA renewal but also with inquiries about QMB. She underwent ongoing verification issues while the process was ongoing.
4. Petitioner had to have an appointment with the Social Security Administration to get her Medicare started. The appointment was in June, 2023. On June 30, 2023, petitioner contacted the consortium and reported that she now is eligible for Medicare Part A and B. The agency noted that there was one asset not yet verified, and petitioner provided that verification on July 5. The consortium then confirmed QMB on July 5, making petitioner eligible effective August 1, 2023.

DISCUSSION

QMB, Special Low-Income Medicare Beneficiary (SLMB), and SLMB Plus are programs that provide assistance with Medicare Part B premiums for persons whose incomes are over the regular Medical Assistance limits. See Wis. Stat., §49.468. All three programs pay the entire Part B premium, but QMB also pays for Medicare deductibles, copayments, and coinsurance. See the MA Handbook, Appendix 32.1.1 for a full description of the programs and 32.1.3 for the benefits each pays.

Under Department policy QMB can begin on the first of the month after the month the person is determined to be eligible. Handbook, App. 32.7.1.1. Both SLMB programs can be backdated up to three months.

Petitioner argues that QMB can be backdated. She cites the SSI Program Operations Manual (POMS), §HI 00815.030. I will not include the entire quote, but the first sentence is the key: “The Social Security district/branch office should initiate the Public Welfare (PW accretion procedure) when an individual files an application for Medicare and has or will have Medicaid eligibility which will qualify them as a member of one of the State’s buy-in coverage groups.” The provision is, essentially, a direction to local SSA offices to act quickly to establish Medicare eligibility. The provision goes on to say that buy-in coverage *may* be retroactive based upon earlier entitlement to SSI or MA.

Wisconsin does not allow retroactive QMB eligibility. That is a Department policy that the Division of Hearings and Appeals cannot change. I reviewed both the Wisconsin Statutes and Administrative Code; they do not mention QMB start dates or retroactivity. It is possible that the QMB retroactivity prohibition is found within the Wisconsin state plan, but neither petitioner nor the county cited to it.

Petitioner makes much of the fact that petitioner had many contacts with the consortium in which she inquired about QMB. The problem is that the agency’s hands were tied; no decision on QMB could be made until Medicare eligibility was confirmed. Petitioner contacted the consortium on June 30 to confirm Medicare eligibility; at that point it was found that an asset was not fully verified (an asset that did not necessarily need to be verified for MA because petitioner had ongoing MA eligibility during the period April through July), and thus QMB was not confirmed until July 5. Under Department policy that the Division of Hearings and Appeals does not have authority to contradict, the agency correctly granted QMB effective the month after eligibility was confirmed.

Petitioner also points to an email from a Department buy-in analyst that suggests QMB could be backdated. However, no law is cited, and the analyst does not actually affirm that backdating could occur. The analyst mentions an erroneous request by SSA to have Wisconsin pay the premium beginning in April. Petitioner makes the leap that the analyst's meaning was that the "accretion" policy should kick in, but there simply is no evidence or citation to Wisconsin using such an accretion policy. Certainly the MA Handbook does not mention such a policy. It could be that the SSA error was asking Wisconsin to start QMB in April when Medicare eligibility had not been established that early.

I conclude that, under Wisconsin's policy, petitioner was found eligible correctly for QMB effective August 1, 2023. There simply is no Department policy, or federal law contradicting Department policy, saying that QMB can be backdated.

CONCLUSIONS OF LAW

The agency correctly started petitioner's QMB eligibility effective August 1, 2023 because eligibility was not confirmed until July 5, 2023.

THEREFORE, it is

ORDERED

That the petition for review is hereby dismissed.

NOTICE TO RECIPIENTS OF THIS DECISION:

This is a Proposed Decision of the Division of Hearings and Appeals. IT IS NOT A FINAL DECISION AND SHOULD NOT BE IMPLEMENTED AS SUCH. If you wish to comment or object to this Proposed Decision, you may do so in writing. It is requested that you briefly state the reasons and authorities for each objection together with any argument you would like to make. Send your comments and objections to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy to the other parties named in the original decision as 'PARTIES IN INTEREST.'

All comments and objections must be received no later than 15 days after the date of this decision. Following completion of the 15-day comment period, the entire hearing record together with the Proposed Decision and the parties' objections and argument will be referred to the Secretary of the for final decision-making.

The process relating to Proposed Decision is described in Wis. Stat. § 227.46(2).

Given under my hand at the City of Madison,
Wisconsin, this 18th day of September, 2023



Brian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals