



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
1400 Virginia Street  
Oak Hill, WV 25901

Earl Ray Tomblin  
Governor

Karen L. Bowling  
Cabinet Secretary

September 23, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 15-BOR-2956

Dear Ms. [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 all laws and rules and regulations applicable to the issue being adjudicated. 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,

Kristi Logan  
State Hearing Officer  
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision  
Form IG-BR-29

cc: Travis Hart, [REDACTED] DHHR

**WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
BOARD OF REVIEW**

██████████,

**Appellant,**

v.

**Action Number: 15-BOR-2956**

**WEST VIRGINIA DEPARTMENT OF  
HEALTH AND HUMAN RESOURCES,**

**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 West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on September 15, 2015, on an appeal filed September 1, 2015.

The matter before the Hearing Officer arises from the August 10, 2015, decision by the Respondent to deny the Appellant's application for Modified Adjusted Gross Income Medicaid benefits.

At the hearing, the Respondent appeared by Cassidy Hart, Economic Service Worker. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Department's Summary
- D-2 Income Summary Screen Print
- D-3 Employment Income Screen Print for Flex RN
- D-4 Employment Income Screen Print for ██████████
- D-5 Employment Income Screen Print for HMS Host
- D-6 Expenses Summary Screen Print
- D-7 MAGI Adjustments Summary Screen Print
- D-8 Medicaid/CHIP Notice of QC Error Findings
- D-9 West Virginia Income Maintenance Manual §10.3 Chart 2
- D-10 Case Summary Screen Print

**Appellant’s Exhibits:**

- A-1 Affordable Healthcare Act Title 1, H.R. 4872. Health Care and Education Reconciliation Act of 2010, Subtitle A—Coverage §1004
- A-2 Affordable Healthcare Act Title 2, Subtitle A §2002
- A-3 Screen Print from [www.healthreformbeyondthebasics.org](http://www.healthreformbeyondthebasics.org)
- A-4 Internal Revenue Service Publication 525
- A-5 Centers for Medicare and Medicaid Services Publication “Medicaid and Chip in 2014: A Seamless Path to Affordable Coverage” found at [www.medicaid.gov](http://www.medicaid.gov)
- A-6 2014 Federal Income Tax Return and 2014 West Virginia Personal Income Tax Return
- A-7 Paystubs from Flexibility and Liability, LLC dated July 2, July 17 and July 23, 2015

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 applied for Modified Adjusted Gross Income (MAGI) Medicaid and West Virginia Children’s Health Insurance Program (CHIP) benefits on August 5, 2015.
- 2) The income from the Appellant’s employment and her husband’s employment was calculated (D-2) as \$7,606 monthly. The income limit for MAGI Medicaid is \$2,227 monthly and for CHIP \$5,023 monthly.
- 3) The Appellant’s application for MAGI Medicaid and CHIP benefits was denied due to excessive income.

**APPLICABLE POLICY**

The Affordable Care Act of 2010 allowed for expanded income limits and coverage groups for Medicaid and CHIP programs through federal funding.

42 Code of Federal Regulations §435.603 states that effective January 1, 2014, MAGI-based methodologies must be used in determining financial eligibility for Medicaid and CHIP. MAGI-based income means income calculated using the same financial methodologies used to determine modified adjusted gross income as defined in The Internal Revenue Code (Title 26 Code of Federal Regulations) §36B(d)(2)(B). Non-taxable income exclusions were listed in this section.

Title 26 Code of Federal Regulations §36B(d)(2)(B) defines modified adjusted gross income as gross income increased by excluded foreign earned income, tax-exempt interest accrued by the taxpayer during the taxable year and Social Security benefits that were not included in gross income.

Title 26 Code of Federal Regulations §62(a)(2)(A) defines adjusted gross income as an individual's gross income minus reimbursed expenses of employees.

West Virginia through the State Medicaid Plan agreed to apply MAGI-based methodologies consistent with 42 Code of Federal Regulations §435.603 as a condition of expanding Medicaid and CHIP programs when an applying to the Center for Medicare and Medicaid Services for an amendment to its current state Medicaid plan.

The Center for Medicare and Medicaid Services (CMS) website ([www.cms.gov](http://www.cms.gov)) published a training workbook as part of its 2015 National Training Program, titled *Module 12 - Medicaid and the Children's Health Insurance Program*. This training module states that the MAGI-based methodology includes all taxable income. Income types that are not taxable are not counted under MAGI.

West Virginia Income Maintenance Manual §10.3, Chart 2 lists Allowances and Reimbursements as countable income for MAGI Medicaid and CHIP coverage groups.

## **DISCUSSION**

The Appellant contested the use of her reimbursement for work-related travel expenses as countable income for MAGI Medicaid and CHIP eligibility determination. The Appellant works as a Registered Nurse and travels to various job locations. She submits her travel expenses to her employer, and receives reimbursement for these expenses. The expenses include meals, lodging and mileage. This reimbursement income is not taxed and averages \$750 a week.

The Department counted the Appellant's reimbursement as income according to West Virginia Income Maintenance Manual §10.3, Chart 2, which specifies that reimbursement income is countable.

Title 42 of The Code of Federal Regulations mandates that for the expanded Medicaid coverage groups enabled by the Affordable Care Act, MAGI-based methodologies must be used. MAGI-based income means income calculated using the same financial methodologies used to determine modified adjusted gross income as defined in The Internal Revenue Code, which clearly exempts reimbursed expenses related to employment from the determination of modified adjusted gross income.

According to the information obtained from CMS, any income that is non-taxable is excluded from MAGI determination. Furthermore, since the Appellant pays for her work-related travel expenses out-of-pocket and to count the reimbursement of these expenses would be to count her income twice.

## CONCLUSIONS OF LAW

Federal policy supersedes state policy regarding the definition and application of MAGI-based methodology. Federal regulations and the Center for Medicare and Medicaid Services, the federal agency that governs state Medicaid plans, considers this non-taxable income as excluded from MAGI-based calculations. Therefore, the Department erred in counting the Appellant's reimbursement from work-related travel expenses as countable income.

## DECISION

It is the decision of the State Hearing Officer to **reverse** the Department's denial of Modified Adjusted Gross Income Medicaid or Children's Health Insurance Program benefits. This matter is hereby **remanded** to the Department for recalculation of the Appellant's eligibility for benefits without the application of the reimbursement income.

**ENTERED this 23<sup>rd</sup> day of September 2015**

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**Kristi Logan  
State Hearing Officer**