STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of the Inspector General
Board of Review

Sherri A. Young, DO, MBA, FAAFP
Interim Cabinet Secretary

Christopher G. Nelson
Interim Inspector General

October 11, 2023

[redacted]

RE: [redacted] v. WV DHHR
ACTION NOs.: 23-BOR-2923 and 23-BOR-2924

Dear [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 the Public Welfare Laws of West Virginia and the rules and regulations established by the Department of Health and Human Resources. 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
Certified State Hearing Officer
Member, State Board of Review

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

cc: Angela Mitchem, [redacted] DHHR

Raleigh County DHHR • 407 Neville Street • Beckley, West Virginia 25801
304.256.6930 • 304.256.6932 (fax) • https://www.wvdhhr.org/oig/bor.html
Kristi.D.Logan@wv.gov • DHHROIGBORE@WV.GOV

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW

[redacted],

Appellant,

v. **Action Number: 23-BOR-2923 SNAP**
23-BOR-2924 MED

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 [redacted]. 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 October 10, 2023, on an appeal filed on September 19, 2023.

The matter before the Hearing Officer arises from the August 30, 2023, decision by the Respondent to reduce the Appellant's Supplemental Nutrition Assistance Program (SNAP) benefits and terminate Adult Medicaid benefits.

At the hearing, the Respondent appeared by Angela Mitchem, Economic Services Supervisor. The Appellant was self-represented. The witnesses were placed under oath and the following documents were admitted into evidence.

Department's Exhibits:

None

Appellant's Exhibits:

None

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 was a recipient of SNAP and Adult Medicaid benefits.

2) On August 29, 2023, the Respondent's Front-End Fraud Unit determined that the Appellant's spouse, [redacted], had been employed with [redacted] since September 7, 2021.

3) The Respondent determined [redacted] monthly earned income as $2,562.80 by using the average of paystubs received August 11, 2023, of $1,264 and August 24, 2023, of $1,120.

4) The Respondent issued notices on August 30, 2023, advising the Appellant that her monthly SNAP allotment would be reduced from $363 to $23 and Adult Medicaid benefits would be terminated effective October 1, 2023.

APPLICABLE POLICY

Code of Federal Regulations – 7 CFR §273.9 provides information regarding SNAP income:

(a) ***Income eligibility standards.*** Participation in SNAP shall be limited to those households whose incomes are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet. Households which contain an elderly or disabled member shall meet the net income eligibility standards for SNAP. Households which do not contain an elderly or disabled member shall meet both the net income eligibility standards and the gross income eligibility standards for SNAP. Households which are categorically eligible do not have to meet either the gross or net income eligibility standards.

(1) The gross income eligibility standards for SNAP shall be as follows:

(i) The income eligibility standards for the 48 contiguous States and the District of Columbia, Guam and the Virgin Islands shall be 130 percent of the Federal income poverty levels for the 48 contiguous States and the District of Columbia.

2) The net income eligibility standards for SNAP shall be as follows:

(i) The income eligibility standards for the 48 contiguous States and the District of Columbia, Guam and the Virgin Islands shall be the Federal income poverty levels for the 48 contiguous States and the District of Columbia.

3) The income eligibility limits, as described in this paragraph, are revised each October 1 to reflect the annual adjustment to the Federal income poverty guidelines for the 48 States and the District of Columbia, for Alaska, and for Hawaii.

(i) 130 percent of the annual income poverty guidelines shall be divided by 12 to determine the monthly gross income standards, rounding the results upwards as necessary. For households greater than eight persons, the increment in the Federal income poverty guidelines is multiplied by 130 percent, divided by 12, and the results rounded upward if necessary.

(ii) The annual income poverty guidelines shall be divided by 12 to determine the monthly net income eligibility standards, rounding the results upward as necessary. For households greater than eight persons, the increment in the Federal income poverty guidelines is divided by 12, and the results rounded upward if necessary.

(b) ***Definition of income.*** Household income shall mean all income from whatever source excluding only items specified in paragraph (c) of this section.

(1) Earned income shall include:

(i) All wages and salaries of an employee

2) Unearned income shall include, but not be limited to:

(i) Assistance payments from Federal or federally aided public assistance programs, such as supplemental security income (SSI) or Temporary Assistance for Needy Families (TANF); general assistance (GA) programs (as defined in § 271.2); or other assistance programs based on need.

Code of Federal Regulations 7 CFR §273.10 (c) explains income determination for SNAP:

<u>(1) Anticipating Income</u>

(i)For the purpose of determining the household's eligibility and level of benefits, the State agency shall take into account the income already received by the household during the certification period and any anticipated income the household and the State agency are reasonably certain will be received during the remainder of the certification period. If the amount of income that will be received, or when it will be received, is uncertain, that portion of the household's income that is uncertain shall not be counted by the State agency. For example, a household anticipating income from a new source, such as a new job or recently applied for public assistance benefits, may be uncertain as to the timing and amount of the initial payment. These moneys shall not be anticipated by the State agency unless there is reasonable certainty concerning the month in which the payment will be received and in what amount. If the exact amount of the income is not known, that portion of it which can be anticipated with reasonable certainty shall be considered as income. In cases where the receipt of income is reasonably certain but the monthly amount may fluctuate, the household may elect to income average. Households shall be advised to report all changes in gross monthly income as required by § 273.12.

(ii) Income received during the past 30 days shall be used as an indicator of the income that is and will be available to the household during the certification period. However, the State agency shall not use past income as an indicator of income anticipated for the certification period if changes in income have occurred or can be anticipated. If income fluctuates to the extent that a 30-day period alone cannot provide an accurate indication of anticipated income, the State agency and the household may use a longer period of past time if it will provide a more accurate indication of anticipated fluctuations in future income. Similarly, if the household's income fluctuates seasonally, it may be appropriate to use the most recent season comparable to the certification period, rather than the last 30 days, as one indicator of anticipated income. The State agency shall exercise particular caution in using income from a past season as an indicator of income for the certification period. In many cases of seasonally fluctuating income, the income also fluctuates from one season in one year to the same season in the next year. However, in no event shall the State agency automatically attribute to the household the amounts of any past income. The State agency shall not use past income as an indicator of anticipated income when changes in income have occurred or can be anticipated during the certification period.

(2) Income only in month received

(i) Income anticipated during the certification period shall be counted as income only in the month it is expected to be received, unless the income is averaged. Whenever a full month's income is anticipated but is received on a weekly or biweekly basis, the State agency shall convert the income to a monthly amount by multiplying weekly amounts by 4.3 and biweekly amounts by 2.15, use the State Agency's PA conversion standard, or use the exact monthly figure if it can be anticipated for each month of the certification period. Nonrecurring lump-sum payments shall be counted as a resource starting in the month received and shall not be counted as income.

(ii) Wages held at the request of the employee shall be considered income to the household in the month the wages would otherwise have been paid by the employer. However, wages held by the employer as a general practice, even if in violation of law, shall not be counted as income to the household, unless the household anticipates that it will ask for and receive an advance, or that it will receive income from wages that were previously held by the employer as a general practice and that were, therefore, not previously counted as income by the State agency. Advances on wages shall count as income in the month received only if reasonably anticipated as defined in paragraph (c)(1) of this section.

(iii) Households receiving income on a recurring monthly or semimonthly basis shall not have their monthly income varied merely because of changes in mailing cycles or pay dates or because weekends or holidays cause additional payments to be received in a month.

(3) Income averaging

(i) Income may be averaged in accordance with methods established by the State agency to be applied Statewide for categories of households. When averaging income, the State agency shall use the household's anticipation of monthly income fluctuations over the certification period. An average must be recalculated at recertification and in response to changes in income, in accordance with § 273.12(c), and the State agency shall inform the household of the amount of income used to calculate the allotment. Conversion of income received weekly or biweekly in accordance with paragraph (c)(2) of this section does not constitute averaging.

(ii) Households which, by contract or self-employment, derive their annual income in a period of time shorter than 1 year shall have that income averaged over a 12-month period, provided the income from the contract is not received on an hourly or piecework basis. These households may include school employees, sharecroppers, farmers, and other self-employed households. However, these provisions do not apply to migrant or seasonal farmworkers. The procedures for averaging self-employed income are described in § 273.11. Contract income which is not the household's annual income and is not paid on an hourly or piecework basis shall be prorated over the period the income is intended to cover.

(iii) Earned and unearned educational income, after allowable exclusions, shall be averaged over the period which it is intended to cover. Income shall be counted either in the month it is received, or in the month the household anticipates receiving it or receiving the first installment payment, although it is still prorated over the period it is intended to cover.

West Virginia Income Maintenance Manual §4.4 explains the budgeting method for determining SNAP eligibility and §4.6 for determining Medicaid eligibility.

4.4.1 (SNAP) and 4.6.1 (Medicaid) Budgeting Method

The following method is used to determine income for the certification period or period of consideration (POC), unless information to the contrary is shown in the remaining sections of this chapter. Eligibility is determined on a monthly basis. Therefore, it is necessary to determine a monthly amount of income to count for the eligibility period. The following information applies to earned and unearned income. For all cases, the Worker must determine the amount of income that can be reasonably anticipated for the assistance group (AG). For all cases, income is projected; past income is used only when it reflects the income the client reasonably expects to receive during the certification period.

4.4.1.A and 4.6.1.A Methods for Reasonably Anticipating Income

There are two methods for reasonably anticipating the income the client expects to receive. One method uses past income, and the other method uses future income. Both methods may be used for the same AG for the same certification period. The method used depends on the circumstances of each source of income. Use past income only when both of the following conditions exist for a source of income:

- Income from the source is expected to continue into the certification period or POC.
- The amount of income from the same source is expected to be more or less the same. For these purposes, the same source of earned income means income from the same employer, not just the continued receipt of earned income. Use future income when either of the following conditions exist for a source of income:
- Income from a new source is expected to be received in the certification period or POC. For these purposes, a new source of earned income means income from a different employer.
- The rate of pay or the number of hours worked for an old source is expected to change during the certification period or POC. Income that normally fluctuates does not require use of future income.

4.4.1.B and 4.6.1.B Consideration of Past Income

The Worker must consider information about the client's income sources before deciding which income to use. The Worker must follow the steps below for each old income source.

Step 1: Determine the amount of income received by all persons in the Income Group (IG) in the 30 calendar days prior to the application/redetermination date. The appropriate time period is determined by counting back 30 days beginning with the calendar day prior to the date of application/redetermination. The income from this 30-day period is the minimum amount of income that must be considered. When, in the Worker's judgment, future income may be more reasonably anticipated by considering the income from a longer period of time, the Worker considers income for the time period he determines to be reasonable. Whether the Worker considers income from the prior 30 days, or from a longer period of time, all of the income received from that source during that time period must be considered. All pay periods during the appropriate time period must be considered and must be consecutive.

Step 2: Determine if the income from the previous 30 days is reasonably expected to continue into the new certification period or POC. If it is not expected to continue, the income from this source is no longer considered for use in the new certification period or POC. If it is expected to continue, determine if the amount is reasonably expected to be more or less the same. If the income is expected to continue, the income source is used for the new certification period or POC and treated according to How to Use Past and Future Income below. If it is not expected to continue at more or less the same amount, the income source is used for the new certification period or POC and treated according to Consideration of Future Income below.

Step 3: Record the results of Step 2, including the amount of income, why the source is or is not being considered for the new certification period or POC, the client's statement about continuation of the income from this source, the time period used, and, if more than the previous 30 days, the reason additional income was considered.

Once the Worker has determined all the old sources of income to consider and the time period for which they are considered, he must then determine if any source should be considered for future income.

<u>4.4.1.D and 4.6.1.D How to Use Past and Future Income</u>

After the Worker determines all of the income sources that are to be considered for use, the Worker determines the amount of monthly income, based on the frequency of receipt and whether the amount is stable or fluctuates. This is described below.

When the Frequency of Receipt is:	When the Amount is Stable:	When the Amount Fluctuates:
Monthly	Use actual monthly amount	Use average monthly amount
More often than monthly	Convert amount per period to monthly amount	Find average amount per period and convert to monthly amount
Less often than monthly	Prorate to find amount for intended period. If not monthly, convert or prorate amount	Prorate to find amount for intended period. If monthly, convert or prorate amount

The purpose of finding an average amount of fluctuating income is to even out the highs and lows in the amount of income. The client is not, then, required to report fluctuating income each pay period and the Worker is not required to change income monthly. Should the client report fluctuations in the amount of income, the Worker is only required to recalculate the countable income when, in his judgment, the fluctuation will affect eligibility. All changes reported by the client must be considered, but not necessarily used. Reported changes must be recorded and the Worker must record why the reported income was or was not used.

Conversion of income to a monthly amount is accomplished by multiplying an actual or average amount as follows:

- Weekly amount x 4.3
- Biweekly amount (every two weeks) x 2.15
- Semimonthly (twice/month) x 2

West Virginia Income Maintenance Manual §4.7 explains the Modified Adjusted Gross Income (MAGI) methodology for the Adult Medicaid group:

4.7.1 Determining Income Counted for the MAGI Household
Income of each member of the individual's MAGI household is counted. The MAGI household is determined using the MAGI methodology established in Chapter 3.

4.7.4 Determining Eligibility
The applicant's household income must be at or below the applicable MAGI standard for the MAGI coverage groups.

Step 1: Determine the MAGI-based gross monthly income for each MAGI household income group (IG).

Step 2: Convert the MAGI household's gross monthly income to a percentage of the FPL by dividing the current monthly income by 100% of the FPL for the household size. Convert the result to a percentage. If the result from Step 2 is equal to or less than the appropriate income limit (133% FPL), no disregard is necessary, and no further steps are required.

Step 3: If the result from Step 2 is greater than the appropriate limit (133% FPL), apply the 5% FPL disregard by subtracting five percentage points from the converted monthly gross income to determine the household income. Step 4: After the 5% FPL income disregard has been applied, the remaining percent of FPL is the final figure that will be compared against the applicable modified adjusted gross income standard for the MAGI coverage groups.

Chapter 4 Appendix A: Income Limits
133% of the FPL for a two-person AG: $2,186
100% of the FPL for a two-person AG: $1,644

DISCUSSION

Pursuant to policy and federal regulations, monthly SNAP allotments are determined by an assistance group's countable income, after all allowable deductions have been applied. The Respondent reduced the Appellant's monthly SNAP allotment when unreported earned income for [redacted] was added to the Appellant's case.

The Appellant did not dispute that her husband was employed but contended that his work is dependent on the weather. The Appellant testified that her husband missed over two weeks of work in September due to illness and did not receive one full paycheck. The Appellant anticipated that he would receive a paycheck on Friday and stated he works 30-40 hours a week at $16 an hour. The Appellant stated she was not concerned with the SNAP reduction, but testified that due to multiple medical problems, she needs Medicaid benefits to continue.

Policy stipulates that eligibility is determined on a monthly basis therefore it is necessary to determine a monthly amount of income to count for the eligibility period. For all cases, the Worker must determine the amount of income that can be reasonably anticipated for the assistance group. Income received during the past thirty (30) days shall be used as an indicator of the income that is and will be available to the household during the certification period.

The Respondent calculated [redacted] monthly earned income as $2,562.80 using an average of the paychecks received within the previous 30 days of the discovery of the employment income. Although the Appellant stated her husband did not receive a paycheck in September due to illness, his source of income has not been terminated and must be considered when determining eligibility for SNAP and Medicaid benefits. The Appellant did not provide evidence to support her claim that [redacted] income is less than what was verified by the Respondent.

Pursuant to policy, the income limit for a two-person assistance group for Adult (MAGI) Medicaid benefits is $2,186, or 133% of the federal poverty level. A 5% disregard is applied if the deduction would bring the assistance group's income below the 133% federal poverty level income limit.

The gross monthly income for the Appellant's household is $2,562.80. To determine if the Appellant is eligible for the 5% disregard, her monthly income is divided by 100% of the federal poverty level: $2,562.80/1,644 = 1.55 which is then converted to a percentage, 155%. Since the application of the 5% disregard would not bring the Appellant's income that is 155% of the federal poverty level below the allowable income limit of 133% of the federal poverty level, the disregard is not applied. The household income is excessive to continue receiving Adult Medicaid benefits.

Whereas the Respondent acted in accordance with policy by using [redacted] earned income in determining eligibility for SNAP and Adult Medicaid benefits, the Respondent's decision to reduce the Appellant's monthly SNAP allotment and to terminate Adult Medicaid benefits is affirmed.

CONCLUSIONS OF LAW

1) The income limit for a two-person assistance group for Adult Medicaid benefits is $2,186.

2) The gross monthly income for the Appellant's household is $2,562.80

3) The Appellant's income is excessive to continue receiving Adult Medicaid benefits.

4) SNAP benefits are determined by an assistance group's countable income, after all allowable deductions have been applied.

5) The Respondent reduced the Appellant's monthly SNAP allotment when unreported earned income for [redacted] was added to the case.

6) The Respondent correctly used [redacted] employment income in determining SNAP eligibility, thereby reducing the Appellant's monthly SNAP allotment.

DECISION

It is the decision of the State Hearing Officer to **uphold** the decision of the Respondent to terminate the Appellant's Adult Medicaid benefits and reduce her monthly Supplemental Nutrition Assistance Program benefits.

ENTERED this 11th day of October 2023.

____

Kristi Logan
Certified State Hearing Officer