STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
P.O. Box 1247
Martinsburg, WV 25402

Jim Justice
Governor

Bill J. Crouch
Cabinet Secretary

February 16, 2017

[redacted]

RE: [redacted] v. WV DHHR
ACTION NO.: 16-BOR-3216

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,

Lori Woodward
State Hearing Officer
Member, State Board of Review

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

cc: Peggy Gillespie, WV DHHR

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW

[redacted],

Appellants,

v. **Action Number: 16-BOR-3216**

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 convened on February 9, 2017, on appeal filed December 22, 2016.

The matter before the Hearing Officer arises from the December 5, 2016, decision by the Respondent to deny the Appellants' application for renewal of Modified Adjusted Gross Income (MAGI) Medicaid benefits.

At the hearing, the Respondent appeared by Peggy Gillespie, Economic Services Supervisor. The Appellants appeared *pro se,* testifying on their own behalf. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

D-1 Notice of denial dated December 5, 2016
D-2 Screen print of the Appellant's MAGI Medicaid Income Budget
D-3 Copy of Unemployment Compensation Income received by [redacted], dated December 14, 2016
D-4 Screen print of Employee Wage Data for [redacted]

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 Appellants submitted an application for renewal of MAGI Medicaid benefits in December 2016.

2) The Appellant [redacted] had reported unemployment compensation income of $173 per week, beginning December 14, 2016. (Exhibit D-3)

3) The Respondent received an Employee Wage Data match showing Mr. [redacted] quarterly wages from [redacted] from the first quarter of 2015 to the third quarter of 2016. (Exhibit D-4).

4) Due to the type of employment Mr. [redacted] engages in at [redacted] he gets laid off seasonally and receives unemployment compensation for the months he is laid off.

5) The Respondent calculated Mr. [redacted] income by using an average of his quarterly wages from the fourth quarter of 2015 to the third quarter of 2016 which equaled $25,126.94, and divided that amount by 12 months, equaling a monthly average of $2,093.91. The Respondent then calculated an average monthly amount of his current unemployment income of $173 per week multiplied by 4.3, equaling a monthly average of $743.90. The Respondent added that amount to the averaged wages for use in calculating Mr. [redacted] anticipated gross income to be $2,837.81. (Exhibits D-3 and D-4)

6) The Respondent denied MAGI Medicaid benefits based on the calculation of Mr. [redacted] gross income at $2,837.81 as it is over 133% FPL for an Assistance Group of 4, and sent notice on December 5, 2014 to the Appellants. (Exhibits D-1 and D-2)

APPLICABLE POLICY

The Affordable Care Act required a new methodology for determining how income is counted and how household composition and size are determined when establishing financial eligibility for all three Insurance Affordability Programs (IAP) - Medicaid, CHIP and Advance Premium Tax Credits (APTC) through the Exchange. Modified Adjusted Gross Income (MAGI) methodologies apply to individuals whose eligibility for Medicaid is determined for coverage effective on or after January 1, 2014.

WV IMM §10.8.F, explains how to determine MAGI eligibility:

The applicant's household income must be at or below the applicable modified adjusted gross income standard for the MAGI coverage groups.

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

Step 2: Convert the MAGI household's gross monthly income to a percentage of the Federal Poverty Level (FPL) by dividing current monthly income by 100% FPL for the household size. Convert the result to a percentage.

Step 3: Apply the 5% FPL disregard by subtracting five (5) percentage points from the converted monthly gross income to determine the household income if it affects the applicant's eligibility for MAGI Medicaid.

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.

MAGI household income is the sum of the MAGI-based income of every individual included in the individual's MAGI household. The MAGI household is determined using the MAGI methodology established above. The income of each member of the individual's MAGI household is counted. The adjusted gross income is then compared to 133% of the Federal Poverty Level (FPL) for the appropriate AG size to determine eligibility for MAGI Medicaid.

West Virginia Income Maintenance Manual (IMM), Chapter 10, §10.6.B states 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. The following information applies to earned and unearned income. For all cases, the worker must determine the amount of <u>income that can be reasonably anticipated</u> 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. [Emphasis added]

Methods for Reasonably Anticipating Income: There are 2 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 because the method used varies with the circumstances of each source of income. The situations which prompt usage of one or the other method are listed below. More details are contained in the following items. 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; and,
- The amount of income from the same source is expected to be more or less the same.

NOTE: 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; or
- The rate of pay or the number of hours worked for an old source is expected to change during the certification period or POC.

Consideration of Future Income: When the client reasonably expects to receive income from a new source during the new certification period or POC, or when the amount of income from an old source is expected to change, the Worker must consider the income which can be reasonably expected to be received. When it is possible to reasonably anticipate a range of income, the minimum amount that can be anticipated is used.

Conversion of income to a monthly amount is accomplished by multiplying an actual or average amount as follows: Weekly amount x 4.3.

The adjusted gross income is then compared to 133% of the Federal Poverty Level for the appropriate AG size to determine eligibility for MAGI Medicaid.

IMM, Chapter 10, Appendix A lists 133% FPL for an AG of four (4) is $2,694.

DISCUSSION

The Appellant [redacted] has worked at [redacted], a lawn maintenance company, since the first quarter of 2015. During the winter months, Mr. [redacted] gets laid off, at which time he begins receiving Unemployment Compensation Income (UCI). The Appellants submitted an application for MAGI Medicaid renewal in December 2016. When processing the Appellants' application, the Respondent found through the Employee Wage Data exchange information that Mr. [redacted] had quarterly earnings from [redacted] from the first quarter 2015 through the third quarter 2016. The Respondent used Mr. [redacted] quarterly wages from the fourth quarter 2015 through the third quarter 2016 to determine an anticipated monthly amount from his earned income. These quarters were added together, totaling $25,126.94, and then divided by twelve months to get a monthly average of $2,093.91. As Mr. [redacted] also receives UCI for the months he is laid off from [redacted], the Respondent calculated Mr. [redacted] current weekly UCI income of $173 per week, multiplied by 4.3, for a monthly average of UCI of $743.90. The Respondent added both averaged amounts and determined his monthly gross monthly income to be $2,837.81, which is over 133% FPL of $2,064 for an AG of 4.

The Appellants testified that they were unclear about how the Respondent calculated such a large amount of monthly earnings. Mr. [redacted] testified that he was laid off from [redacted] on December 9, 2016, and he began receiving UCI the following week. The last paystub from [redacted] issued on December 16, 2016, which he submitted to the Respondent, showed his year-end total wages to be $27,417.99. It is noted that this amount is higher than the average the Respondent used in calculating Mr. [redacted] earned income.

The Respondent's representative testified that because the Employer Wage Data information showed a pattern of work history for Mr. [redacted] type of employment, the worker used an average of past income. Because he also received UCI during the year, the Respondent added this income source to determine his gross income to determine MAGI eligibility.

However, the method that the Respondent used in these calculations is flawed as the Respondent attributes UCI for the whole year as anticipated future income of the Appellants. The UCI amount that the Respondent used cannot be reasonably anticipated by Mr. [redacted] for the full year. The evidence showed that he receives UCI in those months wherein he is laid off from [redacted]. Thus, when Mr. [redacted] is working full-time, he would not be receiving UCI in those months. To attribute UCI in those months is incorrect.

CONCLUSIONS OF LAW

1. The Appellant [redacted] works in a seasonal industry wherein he anticipates getting laid off for several months of the year and receiving UCI for those months he is laid off.
2. An average of the Appellants' yearly gross income should be calculated to reflect earned and unearned income that can be reasonably anticipated.

3. UCI is not received by Appellant [redacted] during those months he is fully employed.
4. The Respondent erred in counting the Appellant [redacted] UCI for the full year.

DECISION

It is the decision of the State Hearing Officer to **reverse** the Respondent's denial of Modified Adjusted Gross Income Medicaid benefits. This matter is hereby **remanded** to the Respondent for recalculation of the Appellants' eligibility for MAGI Medicaid benefits counting UCI only in those months the Appellant can reasonably anticipate receiving it.

ENTERED this 16th day of February 2017.

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Lori Woodward, State Hearing Officer