



**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 14, 2017

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 16-BOR-3264

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: Rachel Hartman, WV DHHR

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

██████████,

**Appellant,**

v.

**Action Number: 16-BOR-3264**

**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 convened on January 31, 2017, on appeal filed December 30, 2016.

The matter before the Hearing Officer arises from the December 29, 2016, decision by the Respondent to deny the Appellant's application for Modified Adjusted Gross Income Medicaid benefits.

At the hearing, the Respondent appeared by Janel Johnson, Family Support Services Supervisor. The Appellant appeared *pro se*. Appearing on behalf of the Appellant was ██████████, Accountant for ██████████, Appellant's employer. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Hearing Summary
- D-2 Screen print of West Virginia's Data Exchange - State Wage Details, Quarterly Wage History from January 2015 to September 2016
- D-3 Notice letter dated December 29, 2016

**Appellant's Exhibits:**

- A-1 Federal Internal Revenue Service (IRS) Publication 525
- A-2 Appellant's 2016 Form W-2 Wages and Tax Statement
- A-3 Blank copy of West Virginia IRS Schedule M
- A-4 WorkForce West Virginia Employer Handbook March 2016 excerpt, page 11
- A-5 Hearing Summary

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 submitted his application form for renewal of his Modified Adjusted Gross Income (MAGI) Medicaid benefits in November 2016.
- 2) The Appellant reported on his Medicaid review form that his monthly income was \$1200 per month.
- 3) The Respondent received a Data Exchange - State Wage match showing the Appellant had quarterly earnings of \$5100, which equals \$1700 per month. (Exhibit D-2).
- 4) The Respondent determined that the \$1700 per month was the Appellant's actual income and denied the Appellant's renewal of his MAGI Medicaid benefits.
- 5) On December 29, 2016, notice of denial was sent to the Appellant due to being over income for the Medicaid and/or WV CHIP program benefit. (Exhibit D-3)
- 6) The Appellant's reported income on his Form W-2 Wages and Tax Statement (W-2), shows his 2016 wages, tips, and other compensation to be \$14,400 for federal, social security, Medicare, and state income tax purposes. (Exhibit A-2).

### **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. 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—(i) any amount excluded from gross income under section 911, (ii) any amount of interest received or accrued during the taxable year which is exempt from tax, and (iii) an amount equal to the portion of the taxpayer's social security benefits (as defined in section 86(d)) which is not included in gross income under section 86 for the taxable year.

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.

IRS Publication 525 (2016), Taxable and Nontaxable Income, instructs that a taxpayer does not include in income the value of meals and lodging provided by the employer at no charge if the following conditions are met:

1. The meals are:
  - a. Furnished on the business premises of your employer, and
  - b. Furnished for the convenience of your employer.
2. The lodging is:
  - a. Furnished on the business premises of your employer,
  - b. Furnished for the convenience of your employer, and
  - c. A condition of your employment. (You must accept it in order to be able to properly perform your duties.)

WV Income Maintenance Manual (IMM), Chapter 10, §10.8, PARENTS/CARETAKER RELATIVES; PREGNANT WOMEN; CHILDREN UNDER AGE 19; and ADULT GROUP (Categorically Needy, Mandatory) MODIFIED ADJUSTED GROSS INCOME (MAGI) METHODOLOGY, establishes that MAGI methodologies apply to individuals whose eligibility for Medicaid is determined for coverage effective on or after January 1, 2014. 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. MAGI methodology is used to determine financial eligibility for the following Medicaid eligibility groups:

- Parents and Other Caretaker Relatives;
- Pregnant Women;
- Children Under 19;
- Adult Group

West Virginia through the State Medicaid Plan, S10, agreed to apply MAGI-based methodologies consistent with 42 Code of Federal Regulations §435.603 as a condition of expanding the Medicaid program.

IMM, Chapter 10, §10.3, CHART OF INCOME SOURCES, lists sources of income. The list is not all inclusive, so all other payments from any source must be evaluated. Chart 2 shows income sources used in the calculation of MAGI. These income sources are unique to the specific Medicaid coverage groups that utilize MAGI methodology to make eligibility determinations. Because the calculation of MAGI relies on a base AGI figure, it is necessary to list the income sources used by the IRS to calculate AGI. These income sources are the basis of the calculation of the household's MAGI, and therefore apply to the following coverage groups: Adult Group, Parents/Caretaker Relatives, Children Under 19, Pregnant Women, and WV CHIP. Chart 2 should not be considered an exhaustive list of income sources that count towards AGI.

## **DISCUSSION**

The Appellant submitted his adult Medicaid review paperwork in November 2016, reporting his income as \$1200 per month. When processing the Appellant's review, the Respondent found through the Data Exchange - State Wage Data match that the Appellant's employer reported quarterly wages of \$5100 since October 2015, averaging \$1700 per month. Upon inquiry to the Appellant regarding this discrepancy, the Appellant informed the Respondent that his employer was required to report the value of his meals and lodging provided to him. The Respondent considered this additional \$500 per month as withheld income by his employer and added that amount to determine the Appellant's Medicaid eligibility. With the inclusion of the additional \$500 per month, the total of \$1700 per month was over the allowable MAGI income limit of 133% of the FPL for the Appellant's Assistance Group of one (1). On December 29, 2016, the Respondent issued a denial of the Appellant's MAGI Medicaid benefits.

The Appellant explained that due to the WorkForce West Virginia (WorkForce WV) regulations, his employer is required to report his meals and lodging as wages. Therefore, in compliance with WorkForce WV requirements, his employer has determined the value of his meals and lodgings is \$500 per month. The Appellant proffers that the Federal IRS specifically provides guidelines (see, IRS Publication 525) which allows him to exclude the meals and lodging as income. He and his witness testified that the meals and lodging provided by the Appellant's employer do meet the conditions stated in IRS Publication 525. Additionally, he asserts that West Virginia does not require him to add in this room and board as an adjustment to his Federal Adjusted Gross Income on his state income tax calculations. (See Exhibit A-3) The Appellant produced his 2016 W-2 showing reported wages, tips and other compensation to be \$14,400 for federal, social security, Medicare, and state income tax purposes.

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 specifically exempts meals and lodging as long as it meets certain criteria from the determination of modified adjusted gross income. The evidence and testimony showed that the meals and lodging provided by the Appellant's employer is federally excluded from calculation of AGI.

West Virginia had agreed to apply Federal guidelines when calculating AGI for MAGI benefit group eligibility. The Appellant's meals and lodging are not withheld income by his employer and is considered as an exemption by the federal IRS in calculating AGI. The Respondent should not have included the value of the Appellant's meals and lodging in determining his AGI for MAGI benefit eligibility calculations.

## **CONCLUSION OF LAW**

1. Federal regulations consider the meals and lodging as non-taxable income and, therefore, are to be excluded from MAGI-based calculations.

2. The Respondent erred in counting the value of the Appellant's meals and lodging provided by his employer as countable income in MAGI eligibility determination.

### **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 Appellant's eligibility for benefits without the inclusion of the meals and lodging valuation to his income.

**ENTERED this 14<sup>th</sup> day of February 2017.**

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**Lori Woodward, State Hearing Officer**