



**STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL**

**Bill J. Crouch**  
Cabinet Secretary

**Board of Review  
416 Adams Street Suite 307  
Fairmont, WV 26554  
304-368-4420 ext. 79326**

**Jolynn Marra**  
Interim Inspector  
General

September 4, 2019



RE: [REDACTED] v. WVDHHR  
ACTION NO.: 19-BOR-1942

Dear Mr. [REDACTED]

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

In arriving at a decision, the Board of Review 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 that may be taken if you disagree with the decision reached in this matter.

Sincerely,

Tara B. Thompson  
State Hearing Officer  
State Board of Review

Enclosure: Appellant's Recourse  
Form IG-BR-29

cc: David Griffin, [REDACTED] County DHHR

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

██████████,

**Appellant,**

v.

**ACTION NO.: 19-BOR-1942**

**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' (DHHR) Common Chapters Manual. This fair hearing was convened on July 31, 2019, on an appeal filed June 24, 2019.

The matter before the Hearing Officer arises from the June 17, 2019 determination by the Respondent to terminate the Appellant's SSI Related Medicaid benefits.

At the hearing, the Respondent appeared by David Griffin, ██████████ County DHHR. The Appellant was represented by his parents, ██████████ and ██████████. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Notice, dated June 17, 2019
- D-2 eRAPIDS Employment Income printout, dated June 28, 2019
- D-3 West Virginia Income Maintenance Manual (WVIMM) §§ 4.15 and Chapter 4, Appendix A

**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 following Findings of Fact are set forth.

## **FINDINGS OF FACT**

- 1) The Appellant is a recipient of SSI Related Medicaid who completed his annual review and submitted updated verification of income during his review.
- 2) The Appellant is a recipient of Medicare.
- 3) The Appellant has been employed by the same employer for approximately three and a half years.
- 4) The Appellant's hours and income fluctuate seasonally.
- 5) The Appellant had reported his employment and seasonally fluctuating income to the Respondent during previous reviews.
- 6) The Respondent had previously considered the Appellant's seasonally fluctuating income when completing the Appellant's SSI Related Medicaid reviews.
- 7) On June 17, 2019, the Respondent issued a notice advising the Appellant that his SSI Related Medicaid benefits would be terminated effective July 1, 2019 due to his income exceeding SSI Related Medicaid income eligibility guidelines (Exhibit D-1).
- 8) The June 17, 2019 notice reflected an incorrect Medical Needy Income Limit of \$1,041 (Exhibit D-1).
- 9) On June 28, 2019, a corrected notice reflecting a Medical Needy Income Limit of \$771 was issued to the Appellant.
- 10) The Respondent used a gross monthly income amount of \$1,895.41 when determining the Appellant's SSI Related Medicaid eligibility (Exhibit D-2).
- 11) The Respondent determined the Appellant's gross monthly income amount based on an average of paystubs dated May 31 and June 14, 2019 in the amounts of \$895.27 and \$867.90 (Exhibit D-2).
- 12) After applying deductions, the Respondent determined that the Appellant's countable income was \$905.20 (Exhibit D-3).
- 13) When making the June 17, 2019 eligibility determination, the Respondent only considered the Appellant's income for the previous 30 days.
- 14) November 21, 2018 was the last date in the Respondent's record which noted that the Appellant's work was seasonal.
- 15) The Respondent evaluated the Appellant for other types of Medicaid coverage and determined the Appellant's income exceeded eligibility for MAGI Medicaid.

## **APPLICABLE POLICY**

### **West Virginia Income Maintenance Manual (WVIMM) § 1.2.2.B provides in part:**

Periodic reviews of total eligibility for recipients are mandated by federal law .... The redetermination process involves basically the same activities described in the Application Process.

### **WVIMM § 1.2.3.A provides in part:**

During the Application Process, the worker is required to:

- Adhere to the Department's policies and procedures to establish eligibility
- Obtain all pertinent, necessary information through verification, when appropriate

### **WVIMM § 4.15.1 provides in part:**

The budgeting method in Section 4.6.1 is used for the SSI-Related Non-Cash Assistance Medicaid group.

### **WVIMM § 4.6.1 provides in part:**

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 [emphasis added] 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 [emphasis added].

### **WVIMM § 4.6.1. A provides in part:**

Methods for reasonably anticipating the income a client expects to receive 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 [emphasis added] 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 [emphasis added] 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 [emphasis added] is expected to change during the certification period or POC. Income that normally fluctuates does not require use of future income [emphasis added].

**Fluctuating Work Hours Example:** Mr. Thorn has earnings that fluctuate greatly from week to week. He expects no change in his earnings. Mr. Thorn's income is anticipated by using his past income as an indication of what he can expect to receive in the certification period. Mr. Thorn's source of income meets the requirements for using past income to anticipate the future income.

**WVIMM §4.6.1.F provides in part:**

The following are examples of methods to anticipate income. The Worker must always base anticipated income on the individual situation, not solely on the information contained in the example below.

**Example 6:** A self-employed applicant has seasonal income from growing and selling Christmas trees. Most of his income for the year is earned during the months of November and December. In addition, he sells the leftover trees and the amount fluctuates during the year .... The Worker requests that the client provide income received in the previous year from his sales from the previous season.

Anticipated income is based on an average of monthly sales from the previous season. The Worker records the client's situation in detail, how past income was verified, and the method used to anticipate income for the new certification period.

**WVIMM § 4.15.3 provides in part:**

Countable income is determined by subtracting any allowable disregards and deductions in the Budgeting Method in Section 4.6.1 from the total countable gross income.

## **DISCUSSION**

The Appellant's representatives did not contest the Respondent's determination that the Appellant was ineligible for other types of Medicaid. The Appellant's representatives did not contest the deductions applied and only contested the amount of income used by the Respondent to determine the Appellant's countable income. The Appellant's representatives contended that the income for the time period used is not reflective of the amount of earned income that the Appellant typically receives.

The Respondent testified that the initial notice mailed to the Appellant on June 17, 2019 reflected an incorrect Medical Needy Income Limit and therefore, a corrected copy was issued in June 28, 2019. Although a copy of the corrected notice was not provided, the Appellant did not contest that the Respondent had issued a corrected notice. As the amount of Medical Needy Income Limit was not contested by the Appellant, the Respondent's notice error was given little weight in the decision of this Hearing Officer.

The Respondent had to prove by a preponderance of evidence that the amount of the Appellant's gross monthly income was correctly determined when establishing the Appellant's SSI Related Medicaid eligibility.

The Appellant's father testified that the Appellant's income fluctuates \$500 to over \$800 and that the Appellant makes approximately \$15,000 per year. The Appellant's father testified that the pay considered by the Respondent reflected a \$867 gross pay for the Appellant but that the Appellant's most recent paycheck was \$576. The Appellant's mother testified that the Appellant had always advised the Respondent that his work was seasonal. The Respondent testified that the worker had averaged the gross income reflected on the Appellant's two paystubs. The Respondent was provided with an opportunity during the hearing to review the Appellant's record. The Respondent did not contest that the Appellant had previously advised the Respondent that his work was seasonal. The Respondent testified that the case record last reflected the Appellant's seasonal work on November 21, 2018. The Respondent testified that the proper method of client's eligibility review would have included the Respondent worker reviewing the Appellant's record to determine if the Appellant's income might be seasonal. No evidence was entered to confirm that the Respondent worker correctly assessed the Appellant's case record prior to making calculation determinations regarding the Appellant's SSI Related Medicaid eligibility.

The Respondent had a responsibility to review the Appellant's income record when making a determination about the Appellant's SSI Related Medicaid eligibility. The evidence established that the Appellant has previously reported seasonal employment, that there had been no change in the Appellant's employer since the previous review, and the Respondent had previously considered the Appellant's seasonal employment when determining the Appellant's SSI Related Medicaid eligibility. During the hearing, the Appellant's representative offered to provide the Appellant's tax records to the Respondent. The Respondent agreed to reconsider the Appellant's eligibility subsequent to receiving additional income verification.

### **CONCLUSIONS OF LAW**

1. The Appellant was required to provide the Respondent with complete and accurate information about his circumstances so that the Worker could make a correct determination about his eligibility.
2. The Appellant maintained the same employer for a three and a half years and had previously advised the Respondent that his employment was seasonal.

3. During the Appellant's annual eligibility review, the Respondent worker was required to review the Appellant's case record and obtain pertinent income information through verification.
4. The Respondent worker was required to determine the amount of monthly income the Appellant could reasonably expect to receive during the certification period.
5. The evidence established that the Respondent worker failed to consider the seasonal nature of the Appellant's income when calculating the Appellant's monthly gross income.
6. The Respondent failed to demonstrate by a preponderance of evidence that the amount of the Appellant's gross monthly income was correctly determined.
7. The Respondent made an incorrect determination to terminate the Appellant's SSI Related Medicaid benefits due to his income exceeding Medicaid eligibility guidelines.

### **DECISION**

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's decision to terminate the Appellant's SSI Related Medicaid benefits. It is hereby **REMANDED** for recalculation of the Appellant's gross monthly income and reconsideration of the Appellant's SSI Related Medicaid eligibility.

ENTERED this 4<sup>th</sup> day of September 2019.

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**Tara B. Thompson**  
State Hearing Officer