



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

Bill J. Crouch
Cabinet Secretary

BOARD OF REVIEW
State Capitol Complex Building 6, Room 817-B
Charleston, WV 25305
Phone 304-558-0955

Jolynn Marra
Interim Inspector General

August 24, 2020

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 20-BOR-1918

Dear [REDACTED]:

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

In arriving at this decision, the State Hearing Officer was governed by the Public Welfare Laws of West Virginia and the rules and regulations established by the Department of Health and Human Resources and by Federal Regulations at 45 CFR Part 155, Subpart F. 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, J.D.
Certified State Hearing Officer
Member, State Board of Review

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

cc: BORC

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

In Re: [REDACTED], Appellant

Action # 20-BOR-1918

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing held on August 13, 2020, for [REDACTED]. This hearing was held in accordance with the provisions found in 45 CFR Part 155, Subpart F as a result of the Federally Facilitated Marketplace (FFM) having denied Medicaid coverage to the Appellant and the Appellant's having chosen to appeal that denial and have the appeal heard by the appeals entity for the State of West Virginia. That entity is the Board of Review within the West Virginia Department of Health and Human Resources (DHHR). The Appellant submitted her Appeal request to the FFM on or about July 23, 2020. On July 27, 2020, the federal appeals entity electronically transmitted to the Board of Review the Appellant's appeal file. The hearing was held by telephone.

The Appellant, who was present, was represented by her son, [REDACTED]. The FFM was not represented. The participants were sworn. The Appellant did not submit any documents as evidence in the hearing.

The question of whether the FFM was correct in determining that the Appellant was not eligible for Medicaid at the time of the application is determined *de novo* in this proceeding.

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) West Virginia entered into an agreement with the FFM to accept as final the Medicaid and WV CHIP eligibility determinations made by FFM. The FFM determines eligibility for Modified Adjusted Gross Income (MAGI) Medicaid groups and WV CHIP only.
- 2) The Appellant is a 69 year-old single female who receives Medicare Part A benefits.
- 3) The Appellant completed an application for assistance with healthcare through the FFM on July 21, 2020.

- 4) On July 21, 2020, the Appellant was notified by letter she was not eligible for Medicaid or WV CHIP because she did not meet the current criteria.
- 5) The MAGI Medicaid groups are: Parents and other Caretaker Relatives; Pregnant Women; Children Under 19; and Adult Group (19 years or older and under age 65 years).
- 6) Policy denies eligibility under MAGI Medicaid if an individual does not meet the established criteria under any of these coverage groups.
- 7) The Appellant does not meet the criteria for eligibility under any of the MAGI Medicaid groups.

APPLICABLE POLICY

WV IMM, Chapter 1, §1.2.6, limits FFM's responsibility of determining eligibility for Medicaid to Medicaid coverage implemented through the Affordable Care Act (ACA) in West Virginia effective October 1, 2013 and includes Modified Adjusted Gross Income (MAGI) coverage groups only. FFM is not responsible to assess or determine eligibility for other Medicaid or other Department programs, benefits, or services. When the worker identifies the individual's potential eligibility, the worker notifies the individual of the application process for any other programs or services.

West Virginia agreed to accept as final the Medicaid and WVCHIP eligibility determinations made by FFM based on MAGI. The FFM determines eligibility for MAGI Medicaid groups and WV CHIP only, in real time without delay when possible. Non-financial and financial information about the applicant is matched with the Federal Data Hub. (**WV IMM §1.6.11.A.1**)

The MAGI methodology is used to determine the financial eligibility for the following Medicaid eligibility groups:

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

(**WV IMM, Chapter 4, §4.7**)

WV IMM §23.10.4, in part, states that to be eligible for Medicaid Adult Group coverage, the individual must:

- Be age 19 or older and under age 65
- Not be eligible for another categorically mandatory Medicaid coverage group such as SSI, Deemed SSI, Parent/Caretaker Relatives, Pregnant Women, Children Under Age 19, and Former Foster Children.
- Not be enrolled in Medicare Part A or B; and
- Be income eligible pursuant to Chapter 4
- Be income must be at or below 133% of the Federal Poverty Level (FPL)

45 CFR §155.510(3)(i) establishes that the Exchange appeals entity will conduct the appeal in accordance with—(A) Medicaid and CHIP MAGI-based income standards and standards for citizenship and immigration status, in accordance with the eligibility and verification rules and procedures.

45 CFR §155.535(e), *Information and evidence to be considered*, mandates that the appeals entity must consider the information used to determine the appellant’s eligibility as well as any additional relevant evidence presented during the course of the appeals process, including at the hearing.

45 CFR §155.535(f), *Standard of review*, states that the appeals entity will review the appeal *de novo* and will consider all relevant facts and evidence adduced during the appeals process.

De novo review means a review of an appeal without deference to prior decisions in the case. (**45 CFR §155.500**)

WV IMM, Chapter 4, §4.12.1, Determining Eligibility, in part states that countable income for MPA groups is determined by subtracting any allowable disregards and deductions from the total countable gross income. If the amount is less than or equal to the QMB, SLIMB, or QI-1 income levels, the client is eligible. Eligibility for these coverage groups is determined as follows:

- QMB –Income is less than or equal to 100% FPL
- SLIMB –Income is greater than 100% FPL, but less than or equal to 120% FPL
- QI-1 –Income is greater than 120% FPL, but less than or equal to 135% FPL

WV IMM, Chapter 4, Appendix A, in part, lists the monthly income limits for MPA Programs for a one-person Assistance Group as follows: QMB = \$1,064 (100% FPL); SLIMB = \$1,277 (120% FPL); and QI = \$1,437 (135% FPL).

DISCUSSION

The state of West Virginia agreed to allow the Federally Facilitated Marketplace (FFM) to make Modified Adjusted Gross Income (MAGI) Medicaid groups and WV CHIP eligibility determinations for those who apply for healthcare assistance through the FFM.

On July 21, 2020, the Appellant applied for healthcare assistance through the FFM. The Appellant is a 69 year-old single female receiving Medicare Part A. On her application, she reported receiving pension income of \$1,000 per month in addition to earned income of \$310.51 bi-weekly. Her annual income was self-attested as \$20,067.05, which is over 160% Federal Poverty Level (FPL). Based upon the information she provided on her application, the FFM determined she was ineligible to receive Medicaid or WV CHIP program benefits because she did not meet the current criteria. The FFM sent notification of this to the Appellant on July 21, 2020. The Appellant elected to appeal the decision of the FFM to the Board of Review. The question of the Appellant’s West Virginia Medicaid eligibility was heard *de novo*.

The MAGI Medicaid groups are: Parents and other Caretaker Relatives; Pregnant Women; Children Under 19; and Adult Group (age 19 years or older and under age 65 years). The evidence and testimony did not show that the Appellant met the criteria for any of MAGI Medicaid groups.

Although beyond the scope of the hearing, the possibility for Medicare Premium Assistance (MPA), non-MAGI Medicaid, was considered. The income information as presented showed that the Appellant was over the allowable income limit for MPA eligibility.

The Appellant testified that she currently works for [REDACTED] of [REDACTED] County with reduced work hours due to COVID-19 restrictions since March 2019. She testified that she works 10 hours per week, earning \$150 bi-weekly. However, the testimony was unclear as to whether this amount was gross income or net income. No evidence was submitted to corroborate her testimony.

The Appellant also stated she receives unearned income from the Social Security Administration (SSA) of \$135 per month, but that her Medicare premiums were deducted. There was no information presented to corroborate the gross amount she receives from the SSA.

The Appellant also testified she receives \$450 per month in pension income. However, in reviewing the FFM application, the stated pension income was \$1,000 per month. There was no information presented to corroborate the amount she receives in monthly pension income.

Upon further examination, the Appellant revealed she has been receiving partial state unemployment income of \$200 per week due to her involuntarily reduced work hours, and that she also received Coronavirus Aid, Relief, and Economic Security (CARES) Act weekly \$600 Federal Pandemic Unemployment Compensation payments. (It is noted, however, that the CARES Act income does not count as income for Medicare Premium Assistance programs.) Mr. [REDACTED] testified that the Appellant remains eligible for state unemployment income.

The Appellant's income as claimed was converted to a monthly amount and calculated as follows: Earned income \$322.50 (\$150 bi-weekly x 2.15) + Pension income of \$450 + SSA income of \$135 + UCI of \$860 (\$200 weekly x 4.3) = \$1,767.50. Although gross income amounts are required to be used for MPA calculations, in reviewing the Appellant's income as stated at the hearing, the Appellant is over the income limit for MPA eligibility.

CONCLUSION OF LAW

1. The Appellant is over the age of 65 years.
2. The Appellant receives Medicare part A.
3. The Appellant does not meet the criteria for any of the MAGI Medicaid coverage groups.

DECISION

It is the determination of the State Hearing Officer that the Appellant is ineligible for MAGI Medicaid as she does not meet the criteria for eligibility.

ENTERED this 24th day of August 2020.

Lori Woodward, Certified State Hearing Officer