STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
Raleigh County DHHR
407 Neville Street
Beckley, WV 25801

Jeffrey H. Coben, M.D.
Interim Cabinet Secretary

Sheila Lee
Interim Inspector General

January 24, 2023

[redacted]

RE: [redacted] v. WV DHHR
ACTION NO.: 22-BOR-2599

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: Recourse to Hearing Decision
Form IG-BR-29

cc: Margaret Fain, [redacted] DHHR

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW

[redacted],

Appellant,

v. **Action Number: 22-BOR-2599**

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 January 20, 2023, on an appeal filed December 9, 2022.

The matter before the Hearing Officer arises from the November 28, 2022, decision by the Respondent to deny the Appellant's application for Adult Medicaid benefits.

At the hearing, the Respondent appeared by Margaret Fain, Economic Services Supervisor. The Appellant was self-represented. The witnesses were sworn, 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 submitted an application for Adult Medicaid benefits on October 20, 2022.

2) The Appellant last worked for [redacted] on September 9, 2022 and submitted her last two (2) paystubs from [redacted], received on September 29 and October 13, 2022 with the application.

3) The Appellant started new employment with [redacted] Family Medicine on September 26, 2022, and provided her first paystub with the application.

4) The Appellant's first pay with [redacted] Family Medicine received on October 7, 2022 was for 38.75 hours.

5) The Respondent used the Appellant's self-attestation from the application that she would be paid $25 an hour, working 38.5 hours per week, paid bi-weekly at [redacted] Family Medicine.

6) The Respondent determined the Appellant's anticipated monthly income from [redacted] Family Medicine to be $4,138.75.

7) The Respondent issued a notice of denial on November 28, 2022, advising the Appellant that her application for Adult Medicaid benefits had been denied due to excessive income.

8) The Appellant files a federal tax return, claiming herself and her minor daughter as dependents.

APPLICABLE POLICY

West Virginia Income Maintenance Manual §3.7 explains the eligibility determination groups for Adult Medicaid:

3.7 Adult Medicaid Group
The Patient Protection and Affordable Care Act, amended by the Health Care and Education Reconciliation Act of 2010, enacted March 30, 2010, are together referred to as the Affordable Care Act (ACA). The ACA established the categorically mandatory coverage group known as the Adult Group. Effective January 1, 2014, Medicaid coverage is provided to individuals age 19 or older and under age 65 who are not otherwise eligible for and enrolled in another categorically mandatory Medicaid coverage group, and are not entitled to or enrolled in Medicare Part A or B. Eligibility for this group is determined using Modified Adjusted Gross Income (MAGI) methodologies.

3.7.2 MAGI Household Income Group (IG)
Income of each member of the individual's MAGI household is counted. The income group is determined using the MAGI methodology established in Section 3.7.3.

EXCEPTION: Income of children, or other tax dependents, who are not expected to be required to file an income tax return is not counted, whether or not the individual actually files a tax return.

3.7.3 MAGI Household Needs Group (NG)

The needs group is the number of individuals included in the MAGI household size based upon the MAGI rules for counting household members. To determine the MAGI household size, the following step-by-step methodology is used for each applicant**.** In the case of married couples who reside together, each spouse must be included in the MAGI household of the other spouse, regardless of whether they expect to file a joint tax return or whether one spouse expects to be claimed as a tax dependent by the other spouse. The MAGI household of the pregnant woman also includes her unborn child(ren).

This methodology must be applied to each applicant in the MAGI household separately:

STEP 1: IS THE APPLICANT A TAX FILER (and will NOT be claimed as a tax dependent)?

IF NO: Move to **STEP 2**.

IF YES: The applicant's MAGI household includes themselves, each individual he expects to claim as a tax dependent, and his spouse if residing with the tax filer. This is known as the tax filer rule.

STEP 2: IS THE APPLICANT CLAIMED AS A TAX DEPENDENT ON SOMEONE ELSE'S TAXES?

IF NO: Move to **STEP 3.**

IF YES: Test against the three exceptions below. If the answer to any of these exceptions is 'yes', then the applicant's MAGI household size must be calculated using STEP 3.

- The applicant is claimed as a dependent by someone other than a spouse or parent.
- The applicant is a child under 19 who lives with both parents, but both parents do not expect to file taxes jointly.
- The applicant is a child under 19 who is claimed as a tax dependent to a non-custodial parent(s).

If none of these exceptions are true, then the applicant's Medicaid household consists of the applicant, the tax filer claiming him as a dependent, this could be two people filing jointly, any other dependents in the tax filer's household, and the applicant's spouse if they reside together. This is known as the tax dependent rule.

STEP 3: IF THE APPLICANT IS NOT A TAX FILER, IS NOT CLAIMED AS A TAX DEPENDENT OR MEETS ONE OF THE EXCEPTIONS IN STEP 2:

- The Medicaid household consists of the applicant and the following individuals as long as they reside with the applicant:
- The applicant's spouse;
- The applicant's child(ren) under age 19;
- For applicants under 19, their parents, and their siblings who are also under 19.

This is known as the non-filer rule.

STEP 4: CASES WHERE APPLICANT CANNOT REASONABLY ESTABLISH TAX DEPENDENT STATUS If an applicant/tax filer cannot reasonably establish that reported household members will be tax dependents of the applicant for the tax year in which Medicaid is sought, the inclusion of such individual in the MAGI household of the tax filer is determined using rules in STEP 3.

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.

West Virginia Income Maintenance Manual §4.6 explains income information for Medicaid:

4.6.1 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. <u>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.</u> When the amount of an anticipated income source is determined by use of an income tax return, it is not necessary to change the method by which that income source is anticipated at each redetermination prior to the next tax return, unless the anticipated income from that source for the upcoming certification period or POC is expected to change.

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.

4.6.1.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.

4.6.1.C Consideration of Future Income

This section applies only 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. In that case, the Worker must consider the income that can be reasonably expected to be received.

Step 1: Determine if the IG expects to receive income from a new source, or expects a different amount from an old source, in the new certification period or POC. If not, none of the following steps are necessary. However, the Worker must record the client's statement that he does not expect income from a new source.

Step 2: Determine the amount of income the client reasonably expects to receive from the new source, or the new amount from the old source. If the amount of income is not reasonably anticipated, the income from that source is not counted. If it is possible to reasonably anticipate a range of income, the minimum amount that is anticipated is used. The Worker will record case comments for the client's statement concerning this income and will also record why it cannot be reasonably anticipated.

Step 3: Determine when the client can be reasonably expected to receive income from the new source or the changed amount from the old source. If the date of receipt cannot be reasonably anticipated, income from this source is not considered. The Worker must record the client's statement that he expects income from a new source or a change in the amount from an old source. In addition, the Worker must record why the date of receipt cannot be anticipated and information about attempts made to determine the date of receipt.

Step 4: When the amount and date of receipt can be anticipated, the Worker treats the income according to How to Use Past and Future Income below.

The Worker must record how the amount and date of receipt were projected.

4.6.1.D How to Use Past and Future Income

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

Proration of income to determine a monthly amount is accomplished by dividing the amount received by the number of time periods it is intended to cover as follows:

- Bimonthly amount (two months) ÷ 2
- Quarterly amount (three months) ÷ 3
- Semi-annual amount (twice/year) ÷ 6
- Annual amount ÷ 12
- Six-week amount ÷ 6 and converted to monthly amount by using x 4.3
- Eight-week amount ÷ 8 and converted to monthly amount by using x 4.3

Chapter 4 Appendix A: Income Limits
100% of the FPL for two-persons: $1,526
133% of the FPL for two-persons: $2,030

DISCUSSION

Pursuant to policy, eligibility for Medicaid 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 Medicaid groups, the amount of income that can be reasonably anticipated for the assistance group must be determined. Income is projected, and past income is used only when it reflects the income the client reasonably expects to receive during the certification period.

The Appellant applied for Adult Medicaid benefits on October 20, 2022. The Appellant started new employment on September 26, 2022, and provided her first paystub from the new employment with her applications. The Respondent determined that the Appellant's first paycheck from the new employment was for a partial pay period and used the Appellant's statement of what she anticipated to earn to determine Medicaid eligibility. Based upon the Appellant's statement of earning $25 an hour and working 38.5 hours per week, the Respondent estimated the Appellant's anticipated earnings from [redacted] Family Health as $4,138.75 monthly. The Respondent denied the Appellant's application due to excessive income.

The Appellant testified that she provided the Respondent with paystubs she received within thirty (30) days prior to the date of application and contended that Medicaid eligibility should have been determined using that income. The Appellant argued that she cannot guarantee that she will work 38 hours each week as she has no accumulated paid leave with [redacted] Family Health.

Policy stipulates that income from a past source is only used when it can be reasonably anticipated to be received throughout the certification period. If a source of income is not expected to continue, the income from this source is not considered for use in the certification period. The Appellant's income from [redacted] Dermatology was not expected to continue, therefore this income cannot be used in determining eligibility.

When the client reasonably expects to receive income from a new source during the certification period, or when the amount of income from an old source is expected to change, the Respondent must consider the income that can be reasonably expected to be received. The Appellant's first paystub from [redacted] Family Health that was provided with the application was for 38.75 hours. The Respondent used the Appellant's statement that she would be working 38.5 each week, at $25 an hour, to anticipate her income for the certification period (38.5 x $25 = $962.50 weekly). Using the budgeting method found in policy, the Appellant's anticipated gross bi-weekly income is $1,925 ($962.50 x 2) converted to a monthly income is $4,138.75 ($1,925 x 4.3).

The gross income limit for a two-person assistance group for the Adult Medicaid group is $2,030. The Appellant's anticipated earnings from [redacted] Family Medicine exceed the allowable limit to receive Adult Medicaid benefits.

CONCLUSIONS OF LAW

1) Pursuant to policy, in determining eligibility for Medicaid, income is projected, and past income is used only when it reflects the income the client reasonably expects to receive during the certification period

2) The Appellant started new employment in the month she applied for Medicaid.

3) The income from the Appellant's previous employment would not continue during the certification period, and therefore could not be used in determining eligibility.

4) The Respondent anticipated the Appellant's monthly earned income from new employment based upon her statement of 38.5 hours per week at $25 an hour.

5) The Respondent correctly anticipated the Appellant's gross monthly earned income based upon her statement at application as $4,138.75.

6) The income limit for a two-person assistance group for Adult Medicaid is $2,030.

7) The Appellant’s income exceeds the allowable limit to receive Adult Medicaid benefits.

DECISION

It is the decision of the State Hearing Officer to **uphold** the decision of the Respondent to deny the Appellant’s application for Adult Medicaid benefits.

ENTERED this 24th day of January 2023.

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Kristi Logan
Certified State Hearing Officer