



**STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of the Inspector General  
Board of Review**

**Jeffery H. Coben, MD  
Interim Cabinet Secretary**

**Sheila Lee  
Interim Inspector General**

June 13, 2023

[REDACTED]

RE: [REDACTED] v. WV DHHR  
Action No.: 23-BOR-1816

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,

Eric L. Phillips  
State Hearing Officer  
Member, State Board of Review

Encl: Recourse to Hearing Decision  
Form IG-BR-29

cc: Sarah Kennedy, WVDHHR

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

[REDACTED],

**Appellant,**

**v.**

**Action Number: 23-BOR-1816**

**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 June 8, 2023, on an appeal filed May 24, 2023.

The matter before the Hearing Officer arises from the May 9, 2023 decision by the Respondent to terminate the Appellant's Medicaid assistance.

At the hearing, the Respondent appeared by Sarah Kennedy, Economic Service Worker. Appearing as a witness for the Respondent was Jeffery Adkins, Economic Service Supervisor. The Appellant appeared pro se. Appearing as a representative and witness was [REDACTED] Appellant's spouse.

All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Hearing Summary
- D-2 Notice of Decision
- D-3 Case Comments dated April 27, 2023 through May 24, 2023
- D-4 Employment Income Screen
- D-5 Medicaid Budget Screen
- D-6 WorkForce WV Income Screen
- D-7 West Virginia Income Maintenance Manual Income Chart
- D-8 West Virginia Income Maintenance Manual Chapter 4.7

**Appellant's Exhibits:**

- A-1 Appellant's Prescription List

## A-2 Employment Income

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 was a recipient of MAGI Medicaid assistance.
- 2) On April 27, 2023, the Appellant completed a redetermination for continued eligibility for Medicaid assistance.
- 3) The Appellant is currently seeking a disability determination from the Social Security Administration.
- 4) The Appellant's spouse is employed with [REDACTED].
- 5) The Respondent utilized self-attested employment income from the Appellant's spouse in the determination of the Appellant's Medicaid eligibility.
- 6) The Respondent determined the Appellant's monthly countable household income amount to be \$2477.48 (\$1152.32 biweekly income multiplied by 2.15 equals \$2477.48).
- 7) The monthly income limit for Adult Medicaid assistance is \$2186.00 or 133% of the Federal Poverty Level.
- 8) On May 9, 2023, the Respondent issued a Notice of Decision (Exhibit D-2) to the Appellant which documents that his Medicaid assistance would terminate effective May 31, 2023 because "income is above the income limit for this type of assistance."

### **APPLICABLE POLICY**

West Virginia Income Maintenance Manual Chapter 3.7.3 states, in pertinent part:

The needs group is the number of individuals included in the Modified Adjusted Gross Income (MAGI) household size based upon the MAGI rules for counting household members.

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.

## West Virginia Income Maintenance Manual 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. NOTE: The year-to-date amounts on check stubs may only be used when the client has verification of all payment amounts whether used or not but is missing one. 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.

## West Virginia Income Maintenance Manual Chapter 4.7.1

Income of each member of the individual's MAGI household is counted.

West Virginia Income Maintenance Manual Chapter 4, Appendix A, states, in pertinent part:

For a two-person Assistance Group, 133% of the FPL is \$2,186.

## **DISCUSSION**

Eligibility for MAGI Medicaid assistance is established, when a household's countable income is equal to or below 133% of the Federal Poverty Level for the appropriate needs group size.

On April 27, 2023, the Appellant, who resides with his spouse, completed a redetermination for Medicaid assistance. The Respondent determined that the household's countable income for a needs group size of two exceeded the limits set forth by policy and terminated the Appellant's eligibility for MAGI Medicaid effective May 31, 2023. The Respondent must prove by a preponderance of the evidence that the household's countable income exceeded 133% of the Federal Poverty Level.

Sarah Kennedy, Economic Service Worker testified that the Respondent utilized the Appellant's self-attested bi-weekly income of \$1152.32 (Exhibit D-4) to determine the Appellant's Medicaid eligibility. This income was converted to a monthly amount of \$2477.49 (\$1152.32 multiplied by 2.15) and exceeded the income limit of \$2186.00 (133% of the Federal Poverty Level).

██████████, the Appellant's spouse, indicated that the Appellant is currently unable to work and seeking a disability determination with the Social Security Administration. ██████████ indicated that her husband needs Medicaid assistance because he requires doctor's visits and certain diabetic prescriptions. ██████████ purported that she is unable to enroll her husband in her employer sponsored health care coverage due to the cost. ██████████ disputed the income which was utilized in determining her husband's Medicaid eligibility, citing that certain commission incentives from her employer are not received on a regular basis. ██████████ provided seven pay verifications from her employer from the time period of March 3, 2023 through May 26, 2023. Each pay verification documents overtime pay; therefore, it is reasonable to assume this income can be anticipated on a regular basis. While the pay verifications for the months of March, April, and May document the commission pay in each of those months, it was not utilized in the State Hearing Officer's determination of monthly income. A thirty-day period of considered income for eligibility is March 29, 2023 through April 27, 2023, the household income from March 31, 2023-\$1119.66 and April 14, 2023 \$1144.68 (the commission incentives for this pay were not considered in the calculation). The income average for this period is \$1132.17 ( $\$1119.66 + \$1144.68 = \$2264.34 / 2 = \$1132.17$ ). The monthly amount of considered income is \$2434.16 (\$1132.17 multiplied by 2.15) and exceeds that income limit of \$2186.00 established by policy.

Because the Appellant's household income exceeds the 133% Federal Poverty Level amount for a two-person household of \$2186.00, the decision of the Respondent to terminate the Appellant's Medicaid assistance is affirmed.

## **CONCLUSIONS OF LAW**

- 1) The Appellant's MAGI Medicaid is based on a two-person needs group.
- 2) The income limit for MAGI Medicaid for a two-person needs group is \$2186.00.
- 3) The household's earned income is determined to be \$2434.16 per month.

- 4) The Appellant's household income exceeds 133% of the Federal Poverty Level for a two-person household.

**DECISION**

It is the decision of the State Hearing Officer to UPHOLD the Respondent's action to deny MAGI Medicaid benefits based on excessive income.

**ENTERED this \_\_\_\_\_ day of June 2023.**

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Eric L. Phillips  
**State Hearing Officer**