



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

**Sherri A. Young, DO, MBA, FAAFP  
Interim Cabinet Secretary**

**Christopher G. Nelson  
Interim Inspector General**

August 8, 2023

[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.: 23-BOR-1869

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,

**Tara B. Thompson, MLS**  
State Hearing Officer  
Member, State Board of Review

Encl: Decision Recourse  
Form IG-BR-29

CC: Elizabeth Malesick, [REDACTED] DHHR

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

██████████,

**Appellant,**

**v.**

**Action Number: 23-BOR-1869**

**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 was convened on June 21, 2023.

The matter before the Hearing Officer arises from the Respondent's May 22, 2023 decision to terminate the Appellant's Adult Medicaid benefits.

At the hearing, the Respondent was represented by Elizabeth Malesick, ██████████ DHHR. The Appellant appeared and represented herself. All those present were sworn in 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 following Findings of Fact are set forth.

## **FINDINGS OF FACT**

- 1) The Appellant was a recipient of Adult Medicaid benefits for a two-person Assistance Group (AG).
- 2) During the coronavirus disease 2019 (COVID-19) public health emergency (PHE), the Appellant remained eligible for Medicaid benefits — without consideration of her income — pursuant to the Families First Coronavirus Response Act (FFCRA) continuous coverage provisions.
- 3) On May 22, 2023, the Respondent issued a notice advising the Appellant her Adult Medicaid benefits would end after May 31, 2023, because her income exceeded Medicaid income eligibility guidelines.
- 4) The Appellant's Adult Medicaid benefits ended after May 31, 2023.
- 5) The Respondent considered the Appellant's gross weekly income — including \$625.22 on April 21, 2023, \$651.90 on April 28, 2023, \$779.82 on May 5, 2023, \$525.45 on May 12, 2023, and \$641.54 on May 19, 2023 — when determining the Appellant's Adult Medicaid eligibility.
- 6) The Respondent did not apply any income deductions when determining the Appellant's Adult Medicaid eligibility.
- 7) The Appellant's average gross weekly earned income was \$649.67.
- 8) The Appellant's gross monthly earned income was \$2,793.58.

## **APPLICABLE POLICY**

**Families First Coronavirus Response Act and Fiscal Year (FY) 2023 Omnibus Appropriations Bill provide in relevant sections:**

During the COVID-19 PHE, provisions were stipulated permitting the Respondent to provide continuous coverage to Medicaid recipients, regardless of income, during the PHE. On December 23, 2022, the end of Medicaid continuous enrollment was set as April 1, 2023.

**West Virginia Income Maintenance Manual (WVIMM) § 1.2.2.B Redetermination Process provides in relevant sections:**

Periodic reviews of total eligibility for recipients are mandated by federal law.

**West Virginia Income Maintenance Manual (WVIMM) § 4.3.2 *Countable Sources of Income* provides in relevant sections:**

For determining Modified Adjusted Gross Income (MAGI) Medicaid Adult Group eligibility, wages and salaries are countable sources of income.

**WVIMM § 4.6.1 *Budgeting Method* provides in relevant sections:**

Eligibility is determined monthly. Therefore, it is necessary to determine a monthly amount of income to count for the eligibility period. For all cases, the Worker must determine the amount of income that can be reasonably anticipated for the 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.

**WVIMM § 4.6.1.A *Methods for Reasonably Anticipating Income* provides in relevant sections:**

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.
- 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 exists for a source of income:

- Income from a new source is expected to be received in the certification period. 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. Income that normally fluctuates does not require the use of future income.

**WVIMM § 4.6.1. *Consideration of Past Income* provides in relevant sections:**

Step 1: Determine the amount of income received by all persons in the Income Group (IG) in the 30 calendar days before the redetermination date ...When, in the Worker's judgment, future income may be more reasonably anticipated by considering the income from a longer period, the Worker considers income for the time period he determines to be reasonable ...

Step 2: Determine if the income from the previous 30 days is reasonably expected to continue into the new certification period ...If the income is expected to continue, determine if the amount is reasonably expected to be more or less the same ...

**WVIMM § 4.6.1.D *How to Use Past and Future Income* provides in relevant sections:**

The Worker determines the amount of monthly income based on the frequency of receipt and whether the amount is stable or fluctuates.

When the frequency receipt is less often than monthly and the amount fluctuates, prorate to find the amount for the intended period. If monthly, convert or prorate the amount. 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 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 the monthly amount by using x 4.3
- Eight-week amount ÷ 8 and converted to the monthly amount by using x 4.3

**WVIMM §§ 4.7 and 4.7.2 *MAGI Methodology* provides in relevant sections:**

The MAGI methodology is used to determine financial eligibility for the Medicaid Adult Group.

**WVIMM § 4.7.2 *Calculating MAGI* provides in relevant sections:**

MAGI based income includes adjusted gross income (taxable income less deductions/adjustments) ...

To calculate the MAGI, determine the adjusted gross income amount for the current month .... The Worker uses the budgeting method established in Section 4.6.1 to anticipate future income amounts, consider past income sources, and build monthly income amounts based on the applicant's reported income.

**WVIMM §§ 4.7.3 *MAGI-Based Income Disregard* and 4.7.3.A *MAGI-Based Income Disregards Examples* provides in relevant sections:**

The only allowable income disregard is an amount equivalent to five percentage points of 100% of the Federal Poverty Level (FPL) for the applicable MAGI household size. The 5% FPL disregard is not applied to every MAGI eligibility determination and should not be used to determine the MAGI coverage group for which an individual may be eligible. The 5% FPL disregard will be applied to the highest MAGI income limit for which an individual may be determined eligible.

**Adult Group Example 1:** A client has MAGI household income at 137% of the FPL. The 5% FPL disregard would be applied to bring his income below 133% of the FPL for the Adult Group.

**WVIMM § 4.7.4 *Determining Eligibility* provides in relevant sections:**

The AG's income must be at or below the applicable MAGI standard for the MAGI coverage groups.

Step 1: Determine the MAGI-based gross monthly income ...

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, no disregard is necessary, and no further steps are required.

Step 3: If the result from Step 2 is greater than the appropriate limit, 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.

**WVIMM § 23.10.4 *Adult Group* and Chapter 4, Appendix A *Income Limits* provide in relevant sections:**

To be eligible for Adult Group Medicaid benefits, the income must be equal to or below 133% FPL. For a two-person AG, 133% of the FPL is \$2,186. For a two-person AG, 100% of the FPL is \$1,644.

**WVIMM §§ 10.6.5.A-B *Assistance Group (AG) Closures* and § 10.8.1 *Change in Income* provides in part:**

When the client's income changes to the point that he becomes ineligible, the AG is closed. The Department is required to consider the individual's Medicaid eligibility under other coverage groups prior to notifying the individual that Medicaid eligibility will end. Advanced notice is required for any adverse action.

**DISCUSSION**

The Respondent terminated the Appellant's Medicaid benefits because the amount of the Appellant's gross monthly income exceeded the Adult Medicaid eligibility guidelines for a two-

person AG. The Appellant disagreed with the decision and argued her income was within the Medicaid income eligibility guidelines.

Pursuant to the COVID-19 PHE-related procedures, the Respondent did not consider the Appellant's income when determining her Medicaid eligibility during the COVID-19 PHE. After April 1, 2023, the Respondent was permitted to resume considering income when determining Medicaid eligibility.

The Board of Review is required to follow the policy and cannot change the policy or award eligibility beyond the circumstances provided in the policy. This Hearing Officer is unable to grant the Appellant relief by awarding income exclusions or Adult Medicaid eligibility exceptions beyond the policy provisions.

To be eligible for Adult Medicaid, the Appellant's gross monthly income could not exceed \$2,186. The Respondent had to prove by a preponderance of the evidence that the Appellant's gross monthly income exceeded \$2,186 at the time of the Respondent's decision.

The policy requires the Respondent to consider the amount of the Appellant's income received in the previous thirty (30) days. Pursuant to the policy, the Respondent must convert the Appellant's gross weekly earned income amount into a monthly amount to determine Medicaid eligibility. During the hearing, the Respondent's representative testified the amount of income reflected on the Appellant's paystubs was considered when determining the Appellant's Adult Medicaid eligibility and provided the amounts for each pay period considered. The Appellant did not refute the weekly income amounts considered. Pursuant to the Respondent's representative's testimony, no income deductions were applied. No evidence was submitted to indicate that the Appellant should have received any income deductions.

**Pursuant to the weekly paystubs:**

\$ 651.90  
779.82  
525.45  
+ 641.54  
2,598.71

The policy instructs that the Appellant's income from the previous 30 days may be converted into an average by dividing the total amount by the number of periods it is intended to cover.

$\$2,598.71 \div 4 \text{ weeks} = \$649.67 \text{ average weekly income}$

The policy instructs the weekly income amount be converted to a gross monthly income amount:

\$649.67 gross weekly income  
X 4.3  
**\$2,793.58 gross monthly income**

Pursuant to the policy, to be eligible for Adult Medicaid, the Appellant's income had to be at or below the 133% FPL MAGI standard. To determine whether the income is below the MAGI standard, the policy instructs the monthly gross income be converted to a percentage of the FPL:

$$\begin{array}{l} \$2,793.58 \text{ gross monthly income} \div \$1,644 \text{ (100\% of the FPL for a two-person AG)} = \\ 170\% \end{array}$$

Even after the application of a 5% FPL income disregard, the Appellant's income would exceed 133% of the FPL. The preponderance of evidence revealed that the Appellant's income exceeded 133% of the FPL for a two-person AG.

### **CONCLUSIONS OF LAW**

- 1) To be eligible for Adult Medicaid benefits, the Appellant's gross monthly income must be equal to or below 133% of the Federal Poverty Level (FPL).
- 2) The preponderance of the evidence demonstrated the Appellant's gross monthly income exceeded 133% of the FPL.
- 3) The Respondent correctly terminated the Appellant's Adult Medicaid benefits because her gross monthly income exceeded the Medicaid income eligibility limit for a two-person AG.

### **DECISION**

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to terminate the Appellant's Adult Medicaid benefits.

Entered this 8<sup>th</sup> day of August 2023.

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**Tara B. Thompson, MLS**  
State Hearing Officer