



**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**

**Sheila Lee
Interim Inspector General**

July 26, 2023

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 23-BOR-2092

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: Rena Lawless, [REDACTED] DHHR

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

████████████████████,

Appellant,

v.

Action Number: 23-BOR-2092

**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 July 25, 2023, on an appeal filed June 27, 2023.

The matter before the Hearing Officer arises from the June 16, 2023, decision by the Respondent to terminate Medicaid benefits for the Appellant's grandson.

At the hearing, the Respondent appeared by Rena Lawless, Economic Services Supervisor. The Appellant was self-represented. The witnesses were placed under oath 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 was a recipient of Medicaid benefits for his grandson, [REDACTED].
- 2) The Appellant became [REDACTED] legal guardian in 2020, when he was still a minor.
- 3) The Appellant completed an eligibility review in June 2023 for [REDACTED] Medicaid benefits.
- 4) [REDACTED] is 19 years old, is claimed as a tax dependent by the Appellant, and is employed.
- 5) The reported gross monthly earned income for [REDACTED] was \$2,069.38.
- 6) The Respondent issued a notice on June 16, 2023, advising that the income was excessive for [REDACTED] to continue receiving Medicaid benefits.

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.

Chapter 4 Appendix A: Income Limits

133% of the FPL for a one-person AG: \$1,507

23.10.5 Former Foster Children

The Affordable Care Act (ACA) established a new coverage group called the Former Foster Children group effective January 1, 2014. In accordance with Section 1002 of the SUPPORT Act West Virginia must cover Former Foster Children who received Medicaid at the time they aged out of foster care, regardless of the state the individual lived in at the time of age-out effective for youth who turn 18 on or after January 1, 2023.

Applicants must meet the following requirements:

- They are under 18 years of age;
- **They have been in foster care under the responsibility of a state;** and,
- They were receiving Medicaid on their 18th birthday, or the date they aged out of foster care, up to age 21.

Individuals eligible for both the Former Foster Children group and the Adult Group must be enrolled in the Former Foster Children group.

DISCUSSION

Pursuant to policy, the income limit for a one-person assistance group for Adult (MAGI) Medicaid benefits is \$1,507, or 133% of the federal poverty level. The Respondent terminated [REDACTED] Medicaid coverage as his monthly earned income of \$2,069.38 exceeded the allowable

income limit.

The Appellant did not dispute the income used by the Respondent to determine eligibility for [REDACTED] Medicaid. However, the Appellant argued that [REDACTED] should have been classified as a foster child and should be eligible for the Former Foster Children Medicaid coverage. The Appellant testified that he voluntarily accepted guardianship of [REDACTED] prior to his mother's death in November 2020, which was reported to the Respondent. Because of his guardianship of [REDACTED], the Appellant contended that he should have been considered as being in foster care and therefore eligible for Medicaid.

A requirement to receive Former Foster Children Medicaid is that the applicant must have been in foster care under the responsibility of a state. [REDACTED] had never been in legal custody of the state; therefore, he cannot be considered as residing in foster care. Although the Appellant's voluntary acceptance of the care of [REDACTED] is certainly commendable, [REDACTED] was not in the foster care system and does not qualify for the Former Foster Children Medicaid group.

Whereas [REDACTED] income is excessive to receive Adult MAGI Medicaid benefits and he was not in the foster care system prior to turning age 18, the Respondent's decision to terminate Medicaid is affirmed.

CONCLUSIONS OF LAW

- 1) The income limit for a one-person assistance group for Adult Medicaid benefits is \$1,507.
- 2) [REDACTED] gross monthly earned income of \$2,069.38 exceeds the allowable limit to receive Medicaid.
- 3) Guardianship of [REDACTED] was awarded to the Appellant prior to him attaining age 18.
- 4) [REDACTED] was never in custody of the state.
- 5) [REDACTED] is not a former foster child and does not qualify for the Former Foster Children Medicaid group.

DECISION

It is the decision of the State Hearing Officer to **uphold** the decision of the Respondent to terminate Medicaid benefits for [REDACTED].

ENTERED this 26th day of July 2023.

Kristi Logan
Certified State Hearing Officer