



**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**

October 6, 2023



RE: [REDACTED] v. WVDHHR
ACTION NO.: 23-BOR-2212

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 ensure 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: Leslie Riddle, [REDACTED] DHHR

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

██████████,

Appellant,

v.

Action Number: 23-BOR-2212

**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 August 22, 2023.

The matter before the Hearing Officer arises from the Respondent's May 8, 2023 denial of the Appellant's eligibility for Medicaid benefits.

At the hearing, the Respondent was represented by Leslie Riddle, ██████████ DHHR. The Appellant appeared and represented himself. All those present were sworn in and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 West Virginia Income Maintenance Manual (WVIMM) Income Chart
- D-2 Notice, dated June 8, 2023
- D-3 Notice, dated June 8, 2023

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) In May 2023, the Appellant applied for Medicaid benefits for himself and his two children.
- 2) The Appellant's reported gross monthly earned income was \$4,300.
- 3) The Appellant's spouse's gross monthly earned income was \$2,795.
- 4) On June 8, 2023, the Respondent issued a notice advising the Appellant his eligibility for Adult Medicaid and WV CHIP benefits was denied because the household income exceeded the Medicaid income eligibility limit (Exhibits D-2 and D-3).
- 5) The notice reflected an incorrect gross earned income of \$12,896.86 listed for each of the household members (Exhibit D-2 and D-3).
- 6) The Respondent's denials were based on a three-person AG that included the Appellant and his two children.
- 7) The Appellant resides with his spouse and their two children.
- 8) The Appellant's spouse files taxes separately.
- 9) The Appellant is a tax filer and claims his two children as dependents.
- 10) The Appellant reapplied and the children in the Appellant's AG were determined eligible for WV CHIP, effective July 1, 2023.

APPLICABLE POLICY

MAGI HOUSEHOLD

WVIMM § 3.7.2 *The MAGI Household Income Group (IG)* provides in relevant sections:

The 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.

WVIMM 3.7.3 *The MAGI Household Needs Group (NG)* provides in relevant sections:

The needs group is the number of individuals included in the MAGI household size based on 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 [emphasis added]

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

2. The applicant is a child under 19 who lives with both parents, but both parents do not expect to file taxes jointly.

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

INCOME

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, bonuses and awards, wages, salaries, and tip income are countable sources of income.

WVIMM § 3.6 through 3.6.2 *Children Under Age 19 Medicaid* provides in relevant sections:

The methodology for determining the MAGI household's IG and NG is the same as found in Section 3.7.

Note: If the child is ineligible for this coverage group, he should be evaluated for West Virginia Children's Health Insurance Program (WVCHIP) eligibility. WVCHIP uses the same eligibility group as those used...

WVIMM § 23.10.4 *Adult Group* provides in relevant sections:

To be eligible, income must be equal to or below 133% FPL.

WVIMM Chapter 4, Appendix A, *Income Limits*, provides in relevant sections:

For a four-person Assistance Group (AG):

100% FPL is \$2,500

133% FPL is \$3,325

300% FPL is \$7,500.

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.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 more often than monthly and the amount is stable, convert the amount per period to a monthly amount. The conversion of income to a monthly amount is accomplished by multiplying an actual or average amount as follows:

- Weekly amount x 4.3

WVIMM §§ 4.7, 4.7.1, 4.7.2, and 22.5.1 *MAGI Methodology* provides in relevant sections:

The Modified Adjusted Gross Income (MAGI) methodology is used to determine financial eligibility for WVCHIP and the following Medicaid eligibility groups:

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

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.

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

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 §§ 22.4 through 22.4.3 *WVCHIP Eligibility Determination Groups* provides in relevant sections:

See Section 4.7 for the MAGI methodology used for determining the MAGI household income group and needs group.

WVIMM § 22.16.1.3 *Requirements for WVCHIP* provides in relevant sections:

Individuals are eligible for WVCHIP when the household income is less than or equal to 300% FPL. See Chapter 4, Appendix A.

WVIMM § 22.2.4.A *Beginning Date of Eligibility* is provided in the relevant sections:

The beginning date of eligibility is the first day of the month of application. When the case is pending termination of other health insurance coverage, the earliest date of eligibility is the first day of the month when the other health insurance is not in effect.

DISCUSSION

The Respondent bears the burden of proof and had to demonstrate by a preponderance of evidence that the Appellant's income exceeded the Medicaid eligibility limit for the Adult Medicaid and WVCHIP Medicaid coverage groups. The Appellant contested the Respondent's eligibility denials. The Respondent's representative testified that the Appellant reapplied and the children in the AG were eligible for WV CHIP, beginning in July 2023. The notice revealed that the Appellant's AG was ineligible for WV CHIP, beginning May 1, 2023, due to the AG's

income exceeding Medicaid eligibility guidelines. The Appellant requested a decision be made regarding the children's eligibility, effective May 1, 2023.

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 Medicaid eligibility exceptions beyond the policy provisions. The only documents submitted for evidential review were the adverse action notices and the relevant WVIMM income chart.

Notice

After a review of the parties' testimony, the Hearing Officer found that the \$12,896.86 amount of gross monthly income reflected in the notices was a typographical error. While the income amount reflected on the notices was incorrect, the Appellant was not prejudiced by this error as he was granted a hearing to dispute the Respondent's calculations. As the amount of income reflected on the notices was unreliable, it was given no weight in this decision.

Income Group

To prove that the Appellant's income exceeded the Medicaid eligibility limit, the evidence had to establish that the amount of income considered was correct. During the hearing, the Respondent's representative testified that eligibility was based on who the Appellant claimed as a dependent on his taxes. The Appellant testified that his wife files separately and that he files together with the children only. The Respondent argued that the Appellant's wife was still required to be in the household income group.

Income Eligibility

During the hearing, the Respondent's representative was asked to provide an explanation of the calculation used to determine the amount of the AG's income. The Respondent's representative testified that at the application, the Appellant's wife's gross monthly income of \$2,795 was calculated based on the application's reported earned income, every two weeks. The Respondent's representative testified that at the application, the Appellant's gross monthly income of \$4,300 was calculated based on the application's reported earned income of \$1,000, weekly. While the application was not provided as evidence, the Appellant testified that the Respondent's witness's testimony regarding the household's reported income was correct.

During the hearing, the Respondent's representative testified the Respondent's denials were based on the Medicaid income eligibility limits for a three-person household that included the Appellant and his two children. Pursuant to the policy, the Appellant's MAGI Household Needs Group included his spouse and two children; therefore, eligibility should have been determined on a four-person household.

To be eligible for Adult Group Medicaid, the AG's gross monthly income could not exceed 133% of the FPL for a four-person AG. Pursuant to the policy, 133% of the FPL for a four-person AG is \$3,325.

To be eligible for WVCHIP, the household income had to be equal to or below 300% of the FPL. Pursuant to the policy, 300% of the FPL for a four-person household is \$7,500.

The evidence revealed that the AG's monthly gross income was \$7,095. No evidence was submitted to indicate that future income should have been used or to contest the Respondent's use of past income to determine the AG's Medicaid eligibility. During the hearing, the Appellant indicated that he did not have any self-employment or other eligible income deductions.

To convert the MAGI household's gross monthly income to a percentage of the FPL, the amount is divided by 100% of the FPL for the household size and converted to a percentage. The policy provides that 100% of the FPL for a four-person AG is \$2,500.

$$7,095 \div 2,500 = 283.8 \text{ or } 284\% \text{ FPL}$$

The preponderance of the evidence revealed that the AG's income exceeded the income eligibility limit for Adult Medicaid. Further, the evidence demonstrated that the AG's income was below the 300% FPL eligibility limit for WVCHIP.

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 revealed that the Appellant's MAGI Household Needs Group (NG) included himself, his spouse, and their two children.
- 3) The preponderance of the evidence demonstrated the Appellant's gross monthly income exceeded 133% of the FPL for a four-person AG.
- 4) To be eligible for WVCHIP, the household income had to be equal to or below \$7,500 — 300% of the FPL.
- 5) The preponderance of the evidence demonstrated that the household's \$7,095 gross monthly income was 284% FPL — below the WVCHIP income eligibility limit.
- 6) The Respondent incorrectly denied the Appellant eligibility for WVCHIP based on the household's income exceeding the 300% FPL eligibility limit.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to deny the Appellant's Adult Medicaid eligibility. It is the decision of the State Hearing Officer to **REVERSE** the Respondent's decision to deny the Appellant WVCHIP eligibility. It is hereby **ORDERED** the Appellant's WVCHIP eligibility be retroactive to his date of application.

Entered this 6th day of October 2023.

Tara B. Thompson, MLS
State Hearing Officer