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

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

**Christopher G. Nelson**
**Interim Inspector General**

September 26, 2023

[redacted]

RE: [redacted] v. WV DHHR
ACTION NO.: 23-BOR-2375

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,

Lori Woodward, J.D.
Certified State Hearing Officer
Member, State Board of Review

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

cc: Ann Hubbard, BFA, WV DHHR

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

[redacted],

**Appellant,**

**v.** **ACTION NO.: 23-BOR-2375**

**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 September 21, 2023, on an appeal filed July 28, 2023.

The matter before the Hearing Officer arises from the Respondent's July 26, 2023 decision to deny Adult Medicaid (MAGI) benefits.

At the hearing, the Respondent appeared by Ann Hubbard, Economic Services Supervisor. The Appellant appeared *pro-se*. The witnesses were placed under oath and the following documents were admitted into evidence:

**Department's Exhibits**:

- D-1 Hearing Summary
- D-2 Completed Medicaid/WV CHIP Coverage review (MREV) received by the local office on June 28, 2023
- D-3 Notice of denial dated July 26, 2023
- D-4 Copy of the Appellant's eRAPIDS MAGI Medicaid Income Budget screen
- D-5 West Virginia Income Maintenance Manual, Chapter 4, §4.7.4

**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 Adult Medicaid benefits in an assistance group (AG) of one.

2) On June 12, 2023, the Respondent issued a Medicaid/WV CHIP (MREV) review form for the Appellant to complete and return by July 1, 2023. (Exhibit D-2)

3) The Appellant returned the form on June 28, 2023, prior to the deadline. (Exhibit D-2)

4) The Appellant's submitted MREV showed he has weekly earned income of $600. (Exhibit D-2)

5) The Appellant's submitted MREV incorrectly showed he has a monthly spousal support obligation of $500. (Exhibit D-2)

6) The Appellant has a monthly child support obligation of $500.

7) The Appellant's total monthly gross earned income was calculated as $2,580. (Exhibit D-4)

8) The maximum monthly gross income limit for Adult Medicaid is $1,616, or 133% Federal Poverty Level (FPL).

9) On July 26, 2023, the Respondent sent notification to the Appellant that his application for Medicaid and/or CHIP had been denied as of August 1, 2023, because he is over the income limit. (Exhibit D-3)

## APPLICABLE POLICY

Families First Coronavirus Response Act (FFCRA) and Fiscal Year (FY) 2023 Omnibus Appropriations Bill permitted the Respondent to provide continuous coverage to Medicaid recipients during the declared public health emergency (PHE). The Medicaid continuous enrollment ended on April 1, 2023.

**WV IMM, Chapter 23, §23.10.4, *ADULT GROUP***, explains in part:
The income limit is 133% FPL (Federal Poverty Level). As a result of the ACA (Affordable Care Act), the Adult Group was created effective January 1, 2014. Eligibility for this group is determined using Modified Adjusted Gross Income (MAGI) methodologies established in Section

4.7. Medicaid coverage in the Adult Group is provided to individuals who meet the following requirements:

- They are age 19 or older and under age 65;
- They are not eligible for another categorically mandatory Medicaid coverage group:
  - o SSI
  - o Deemed SSI
  - o Parents/Caretaker Relatives
  - o Pregnant Women
  - o Children Under Age 19
  - o Former Foster Children
- They are not entitled to or enrolled in Medicare Part A or B; and
- The income eligibility requirements described in Chapter 4 are met.

**WV IMM, Chapter 4, §4.6.1, *BUDGETING METHOD,*** explains in part:
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.

**WV IMM, Chapter 4, §4.6.1.D, *How to Use Past and Future Income***, in relevant part:
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. … 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

Alimony paid ONLY if court ordered prior to January 2019. Any pre-existing agreements modified after December 31, 2018 are not deductible. From countable income. (**WV IMM, Chapter 4, §4.7.2.B**).

**WV IMM, Chapter 4, §4.7.3, *MAGI-BASED INCOME DISREGARD,*** states:
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.

**WV IMM, Chapter 4, §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.

**WV IMM, Chapter 4, Appendix A, Income Limits**
133% of the FPL for a one-person AG: $1,616

**WV IMM, Chapter 9, §9.3.1,** ***ADVANCE NOTICE REQUIREMENTS***, requires that a client receive advance notice in all situations involving adverse actions except those described in the Adverse Actions Not Requiring Advance Notice section below. The advance notice requirement is that notification be mailed to the client at least 13 days prior to the first day of the month in which the benefits are affected.

**WV IMM, Chapter 9, §9.3.1.A,** ***Adverse Actions Requiring Advance Notice***, explains:
Adverse actions are defined by program as follows. Use the DFA-NL-C in these situations…
Medicaid and/or WVCHIP:

- AG closure
- Removal of a client from the AG

**WV IMM, Chapter 9, §9.3.2.C.3,** ***Medicaid and WVCHIP***, in pertinent part:
The notice must include:

- The specific action being taken;
- The date that the action is effective;
- The reason for the action;
- The IMM section on which the decision is based; and
- Any other action taken.

The following must be included as appropriate:

- For Closures: The fact that the Medicaid AG is being closed.

**WV IMM, Chapter 9, §9.3.1.B,** ***Adverse Actions Not Requiring Advance Notice***
The following adverse actions do not require advance notice; use the DFA-NL-B in these situations.

- When adverse action occurs as a result of a mass change initiated, such as:
  o The annual updates of SNAP allotments or deductions;
  o The annual Retirement, Survivors, and Disability Insurance (RSDI)/SSI updates;
  o A change in the WV WORKS benefit levels; or
  o A change in the Medically Needy Income Levels (MNIL).
- When the client has signed a DFA-NL-5, Waiver of 13-Day Advance Notice, to waive his right to a 13-day advance notice. See Section 9.3

- For SNAP only: when the benefit is terminated or reduced as a result of a redetermination.

**WV IMM, Chapter 9, §9.3.1.C, *Beginning and Ending of the Advance Notice Period*:**
The 13-day advance notice period begins with the date shown on the notification letter. It ends after the 13th calendar day has elapsed. If the 13-day notice period ends on a weekend or holiday, the action is taken on the first subsequent workday.

**WV IMM, Chapter 9, §9.3.1.D.2, *Advance Notice Period Expires the First of the Following Month or Later*:**
If the 13-day advance notice period does not expire until the first day of the following month or later, the change is not effective until the month following the end of the 13-day advance notice period.

## DISCUSSION

The Appellant had been receiving Adult Medicaid coverage in a one-person AG. On June 12, 2023, the Respondent issued a Medicaid/WV CHIP (MREV) review form for the Appellant to complete and return by July 1, 2023. The Appellant returned the form indicating that he received earned income in the amount of $600 per week. The Appellant also noted that he paid alimony of $500 per month. The Respondent's worker converted the Appellant's weekly earned income to a monthly amount for a total of $2,580 ($600 x 4.3). No alimony deduction was made in calculating the Appellant's income. The Appellant's calculated monthly income exceeded the income limit for Adult Medicaid for an AG of 1 set forth by policy to be 133% of the FPL, or $1,616. On July 26, 2023, the Respondent sent notification to the Appellant that his Adult Medicaid application was denied as of August 1, 2023, because he is over the income limit.

The Appellant did not contest the amount of his stated weekly income of $600. The Appellant did contest the fact that his monthly child support payments of $500 were not deducted from the income calculation. The Appellant stated that he did not see a space to include the child support payment on the review form but reported it at the local office to a worker prior to submitting the completed form. At the hearing, the Appellant indicated that he included his $500 monthly child support payments on the review form under the alimony obligation section on the review form. Child support obligations are not an allowable deduction in calculating income for Adult Medicaid eligibility.

Although the Respondent correctly calculated and determined the Appellant was over the allowable income limit for Adult Medicaid eligibility, the issued notice was incorrect. The Respondent failed to process the Appellant's review in a timely manner, triggering the computer system to incorrectly issue a notice of an application denial on July 26, 2023 with the begin date of August 1, 2023. A notice of benefit closure should have been issued 13 days prior to the adverse action. It is noted that the Appellant's Medicaid benefits were held open pending the hearing decision.

## CONCLUSIONS OF LAW

1) The income limit for a one-person AG for Adult Medicaid benefits is $1,616.

2) Child support obligations are not considered a deduction from income for Adult Medicaid eligibility calculations.

3) The Appellant's gross monthly income is $2,580.

4) The Appellant's income is excessive to continue receiving Adult Medicaid benefits.

5) Policy requires that notification be mailed to the client at least 13 days prior to the first day of the month in which the benefits are affected and should include, but not limited to, the reason for the action.

6) The Respondent incorrectly issued notification of an application denial and did not allow the policy-mandated 13-day notice of adverse action of the Appellant's Adult Medicaid benefit closure and the correct reason for the action.

## DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to close the Appellant's Adult Medicaid benefits but is **REMANDED** for issuance of a 13-day adverse action notification of benefit closure indicating the correct reason for the action.

**ENTERED this 26th day of September 2023.**

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Lori Woodward, Certified State Hearing Officer