



**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**

October 18, 2023

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 23-BOR-2468

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: Meghan Delaney/Peter VanKleeck, BFA, WV DHHR

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

██████████,

Appellant,

v.

ACTION NO.: 23-BOR-2468

**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 October 17, 2023, on an appeal filed August 8, 2023.

The matter before the Hearing Officer arises from the Respondent's May 17, 2023 decision to close Adult Medicaid benefits.

At the hearing, the Respondent appeared by Peter VanKleeck, Family Support 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 May 1, 2023
- D-3 West Virginia Income Maintenance Manual (WV IMM), Chapter 4, §4.7.4
- D-4 WV IMM, Chapter 4, Appendix A
- D-5 WV IMM, Chapter 23, §23.10.5

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 is a 31 year-old who was receiving Adult Medicaid (MAGI) benefits in an assistance group (AG) of one.
- 2) Beginning April 1, 2023, the Respondent began completing eligibility reviews for Medicaid which had been suspended during the COVID-19 Public Health Emergency (PHE).
- 3) On April 17, 2023, the Respondent issued a Medicaid/WV CHIP (MREV) review form for the Appellant to complete and return by May 1, 2023. (Exhibit D-2)
- 4) The Appellant returned the completed MREV on May 1, 2023, attesting to a bi-weekly income of \$1,223.86. (Exhibit D-2)
- 5) The Appellant's bi-weekly income when converted to a monthly amount, is \$2,631.30 (\$1,223.86 x 2.15), or 216.5% of the Federal Poverty Level (FPL). (Exhibit D-1)
- 6) Policy sets the income limit for a one-person AG at \$1,616, or 133% FPL. (Exhibit D-4)
- 7) The Respondent issued a closure of Adult Medicaid benefits on May 17, 2023, due to her being over the income limit for this type of assistance.

APPLICABLE POLICY

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, §4.7.3, *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 4, §23.10.5, *FORMER FOSTER CHILDREN*:

The 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.

Example 1: Gardenia was in foster care in Kentucky. She turns age 18 on April 19, 2023, and ages out. On August 6, 2023, she moves to West Virginia and applies for Former Foster Care. Because she aged-out after January 1, 2023, she is eligible for the benefit in West Virginia.

Example 2: Daisy was in foster care in Kentucky. She turns 18 on November 21, 2022, and ages out. On February 12, 2023 she moves to West Virginia and applies for Former Foster Care. Because she aged-out prior to January 1, 2023, she is ineligible for Former Foster Care in West Virginia but evaluated for another Medicaid category.

Applicants must meet the following requirements:

- They are under 26 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 the COVID-19 PHE-related procedures, Medicaid recipients received continuous coverage without consideration of all routine eligibility criteria. After April 1, 2023, the Respondent was permitted to resume considering all eligibility criteria when determining Medicaid eligibility.

The Appellant is a 31-year-old who had been receiving Adult Medicaid coverage in a one-person AG. On April 17, 2023, the Respondent issued a Medicaid/WV CHIP (MREV) review form for the Appellant to complete and return by May 1, 2023. The Appellant returned the form on May 1, 2023, attesting to a bi-weekly income of \$1,223.86. When the Respondent converted the Appellant's stated income to a monthly amount, as required by policy, it was determined that the Appellant was over the allowable income limit for Adult Medicaid ($\$1,223.86 \times 2.15 = \$2,631.30$, or 216.5% of the FPL. The Respondent sent notification of the closure to the Appellant on May 17, 2023. The Appellant appeals the Respondent's decision.

The Appellant did not contest the amount of the monthly income used to calculate her eligibility. Instead, the Appellant averred that because an [REDACTED] ordered that Medicaid coverage be granted to the Appellant as long as she continued to be treated for the conditions existing prior to her adoption, the state of West Virginia must follow the [REDACTED] Order. Medicaid programs are administered by each state separately. An Order from the [REDACTED] Court mandating that Medicaid coverage be provided to the Appellant in the state of [REDACTED] is not binding upon the State of West Virginia, absent an agreement between the states. There was no evidence submitted to show that the [REDACTED] Court has jurisdiction over West Virginia Medicaid decisions.

Additionally, the Appellant contends that she should qualify for Medicaid under the Former Foster Children (FFC) category. Although the FFC Medicaid coverage group does allow former foster care children in any state to be eligible, it also requires that the applicant for this program be under the age of 26. The Appellant is 31 years old, she does not meet the eligibility requirement for the FFC Medicaid coverage group.

Because the Respondent correctly calculated the Appellant's income to be over the allowable limit for Adult Medicaid eligibility, the Respondent's decision to close the Appellant's Adult Medicaid benefits is affirmed.

CONCLUSIONS OF LAW

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

- 2) The Appellant's gross monthly income is \$2,631.30.
- 3) The Appellant's income is excessive to continue receiving Adult Medicaid benefits.
- 4) An [REDACTED] Court Order regarding the state's Medicaid coverage of the Appellant is not binding in the state of West Virginia, absent a consent decree between the states.
- 5) There was no evidence presented to show that the State of [REDACTED] has jurisdiction in West Virginia Medicaid issues.
- 6) To be eligible under the Former Foster Children Medicaid group, an applicant must be under the age of 26.
- 7) Because the Appellant is 31 years-old, she does not qualify under the Former Foster Children Medicaid group.
- 8) The Respondent correctly determined that the Appellant was over the income limit for Adult Medicaid coverage.

DECISION

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

ENTERED this 18th day of October 2023.

Lori Woodward, Certified State Hearing Officer