



**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 3, 2023

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 23BOR-2762

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: Nathan Wilcox, [REDACTED] DHHR

Raleigh County DHHR • 407 Neville Street • Beckley, West Virginia 25801
304.256.6930 ext. 10643 • 304.256.6932 (fax) • Kristi.D.Logan@wv.gov
<https://www.wvdhhr.org/oig/bor.html> • DHHROIGBORE@WV.GOV

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

██████████,

Appellant,

v.

Action Number: 23-BOR-2762

**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 September 26, 2023, on an appeal filed on September 5, 2023.

The matter before the Hearing Officer arises from the September 5, 2023, decision by the Respondent to terminate the Appellant's Adult Medicaid benefits due to excessive income.

At the hearing, the Respondent appeared by Nathan Wilcox, Economic Service Worker. The Appellant was self-represented. The witnesses were placed under oath and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Hearing Summary
- D-2 Correspondence from the Acting Director of AmeriCorps VISTA dated September 1, 2023
- D-3 West Virginia Income Maintenance Manual §4.3.2 Chart 2

Appellant's Exhibits:

- A-1 West Virginia Income Maintenance Manual §10.3. (effective October 2013)
- A-2 West Virginia Income Maintenance Manual §4.17.a
- A-3 Excerpt from VISTA Member Handbook, Chapter 15, Page 30
- A-4 42 US Code §5044
- A-5 Correspondence Acting Director of AmeriCorps VISTA dated September 1, 2023

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 Modified Adjusted Gross Income (MAGI) Adult Medicaid benefits.
- 2) The Appellant submitted a Supplemental Nutrition Assistance Program (SNAP) and Medicaid review form on September 1, 2023.
- 3) The Appellant receives an AmeriCorps VISTA living allowance of \$877.66 bi-weekly, or \$1,886.96 monthly.
- 4) The gross income limit for a one-person assistance group for Adult Medicaid is \$1,616.
- 5) The Respondent issued a notice of termination advising the Appellant that he would no longer receive Adult Medicaid benefits after September 30, 2023, due to excessive income.

APPLICABLE POLICY

West Virginia Income Maintenance Manual Chapter 4 explains income eligibility for Medicaid.

4.2 Definitions

AmeriCorps - A national service program administered by the Corporation for National and Community Service (CNCS). Included in the AmeriCorps Network of programs are AmeriCorps USA, AmeriCorps Volunteers in Service to America (VISTA), and AmeriCorps National Civilian Community Corps (NCCC). Closely associated with the AmeriCorps Programs are the Senior Corps, the Youth Corps, and Learn and Serve, which are also administered by CNCS.

Corporation for National and Community Service - The federal government administers a number of national and community service programs such as, but not limited to, AmeriCorps and the NCCC. In addition, it administers the former ACTION Agency programs created by the Domestic Volunteer Act of 1973. Former ACTION programs include, but are not limited to, AmeriCorps VISTA, University Year of Action, Urban Crime Prevention Program, Retired Senior Volunteer Program (RSVP) and Foster Grandparents.

4.3.1 Chart 1 Countable Sources of Income

17.d AmeriCorps and Related Programs Living Allowance is exempt income for SNAP, AFDC-Related Medicaid, SSI-Related Medicaid, Medicare Premium Assistance and WV WORKS.

4.3.2 Chart 2 Countable Sources of Income for Modified Adjusted Gross Income (MAGI) Coverage Groups

- AmeriCorps Living Expenses

Appendix A: Income Limits

133% of the Federal Poverty Level for one-person \$1,616

100% of the Federal Poverty Level for one-person \$1,215

United States Code Title 42 §5044 states:

(f) Government Assistance; Eligibility; Special Limitations

(1) Notwithstanding any other provision of law except as may be provided expressly in limitation of this subsection, payments to volunteers under this chapter shall not in any way reduce or eliminate the level of or eligibility for assistance or services any such volunteers may be receiving under any governmental program, except that this paragraph shall not apply in the case of such payments when the Director determines that the value of all such payments, adjusted to reflect the number of hours such volunteers are serving, is equivalent to or greater than the minimum wage then in effect under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) or the minimum wage, under the laws of the State where such volunteers are serving, whichever is the greater.

DISCUSSION

Pursuant to policy, a living expense paid under the AmeriCorps VISTA program is countable income for MAGI Medicaid groups. The Appellant receives a living expense of \$1,886.96 monthly from the AmeriCorps VISTA program. The Respondent terminated the Appellant's Adult Medicaid benefits as his income exceeded the allowable limit of \$1,616.

The Appellant contended that under United States Code, his AmeriCorps VISTA living expense income is excluded from determining eligibility for government assistance (Exhibit A-5). The Appellant's living expense income was considered exempt from SNAP eligibility.

The AmeriCorps VISTA program is a national volunteer service program administered by the Corporation for National and Community Service (CNCS). Per 42 United States Code §5044, notwithstanding any other provision of law, payments to volunteers shall not reduce or eliminate the level of eligibility for assistance under any governmental program. Agency policy does not address this exemption as provided by U.S. Code and does not address the exclusion of the AmeriCorps VISTA living allowance for all other programs, except MAGI Medicaid groups.

Whereas the Respondent failed to cite a provision of law that specifically states that payments made through a national volunteer service program is countable income for MAGI Adult Medicaid, the inclusion of the Appellant's AmeriCorps VISTA living expense in determining eligibility for his Medicaid benefits cannot be affirmed.

CONCLUSIONS OF LAW

- 1) Pursuant to United States Code, notwithstanding any other provision of law, payments to volunteers shall not reduce or eliminate the level of eligibility for assistance under any governmental program.
- 2) The Appellant's AmeriCorps VISTA living expense is paid through a national volunteer service program.
- 3) Payments made to the Appellant under the AmeriCorps VISTA program cannot reduce or eliminate his eligibility for government assistance.
- 4) The Respondent incorrectly used the Appellant's living expense income in determining eligibility for Adult Medicaid benefits.

DECISION

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

ENTERED this 3rd day of October 2023.

Kristi Logan
Certified State Hearing Officer