



**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 17, 2023

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 23-BOR-2831

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: Trevor Wayne, [REDACTED] DHHR

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

[REDACTED]

**Appellant,**

**v.**

**Action Number: 23-BOR-2831**

**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 October 3, 2023, on an appeal filed September 11, 2023.

The matter before the Hearing Officer arises from the August 29, 2023, decision by the Respondent to deny the Appellant's application for Adult Medicaid benefits due to excessive income.

At the hearing, the Respondent appeared by Trevor Wayne, Economic Service Worker. The Appellant was self-represented. Appearing as a witness for the Appellant was [REDACTED], his wife. The witnesses were placed under oath and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 2022 Wage and Tax Statement (Form W-2), page 1
- D-2 IRS Publication 525 (excerpt)
- D-3 Approval Letter from Aetna October 2, 2014
- D-4 IRS Publication 525 (excerpt)
- D-5 2022 Wage and Tax Statement (Form W-2), page 2
- D-6 Medicaid Budget Income Screen
- D-7 Income Summary Screen

### **Appellant's Exhibits:**

- A-1 Bureau for Medical Services Provider Manual §400.7
- A-2 Approval Letter from Aetna October 2, 2014
- A-3 IRS Publication 525
- A-4 2022 Wage and Tax Statement (Form W-2)
- A-5 2022 Federal Income Tax Return
- A-6 Modified Adjusted Gross Income definition retrieved from [www.healthcare.gov](http://www.healthcare.gov)

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 applied for Modified Adjusted Gross Income (MAGI) Adult Medicaid benefits on August 20, 2023.
- 2) The Appellant receives a Long Term Disability benefit of \$58,996.68 yearly (Exhibits D-3 and A-2).
- 3) The Appellant's wife receives \$1,126.90 monthly in Social Security benefits.
- 4) The total combined monthly income was determined to be \$6,043.29.
- 5) The income limit for a two-person assistance group for Adult Medicaid is \$2,186.
- 6) The Respondent issued a notice of denial advising the Appellant that his application had been denied due to excessive income.

### **APPLICABLE POLICY**

West Virginia Income Maintenance Manual Chapter 4 explains income guidelines for Medicaid:

#### **4.3 Chart of Income Sources**

Chart 2 shows income sources used for calculating the Modified Adjusted Gross Income (MAGI). These income sources are unique to the specific Medicaid coverage groups that utilize MAGI methodology to make eligibility determinations. **Because the calculation of MAGI relies on a base adjusted gross income figure, it is necessary to list the income sources used by the Internal Revenue Service (IRS) to calculate the adjusted gross income** (emphasis added). These income sources are the basis of the calculation of the household's MAGI, and therefore apply to the following Medicaid coverage groups: Adult Group, Parents/Caretaker Relatives, Children Under 19, Pregnant Women; and to the West Virginia Children's Health Insurance

Program (WVCHIP). Chart 2 should not be considered an exhaustive list of income sources that count towards adjusted gross income.

#### **4.3.2 Chart 2 Countable Sources of Income for MAGI Medicaid Groups**

- Alimony ONLY if court ordered prior to January 2019
- Census Bureau Income
- Net Farming/Fishing
- Net Rental Income
- Pensions and Annuities
- Retirement Accounts and Profit-Sharing Plans
- Self-Employment and Business Income
- Social Security Benefits
- Unemployment Benefits
- Wages, Salaries, and Tip Income
- Other:
  - Accrued Leave Payment
  - Advance Commission
  - Allowances and Reimbursements
  - AmeriCorps Living Expenses
  - Back Pay Awards
  - Bartering Income
  - Bonuses and Awards
  - Child Care Provider Income
  - College Work Study Program (this is considered taxable income under IRS rules and therefore cannot be excluded from the MAGI calculation.)
  - Court Awards and Damages
  - Disability Pension Plans Paid by Employer
  - Discharged Student Loan Debt, unless the student is deceased or determined as permanently and totally disabled.
  - Dividends and Other Stock Gains
  - Earnings for Clergy
  - Employee Achievement Awards
  - Fringe Benefits
  - Gambling Income and Losses
  - Government Cost-of-Living Allowances (COLA)
  - Interest Income Reported on a 1099
  - Most Cancelled Debts
  - National Guard Differential Wage Payments
  - Non-Qualified Deferred Compensation Plans
  - Prize Payments
  - Qualified Lottery and Gambling Winnings.
  - Railroad Retirement Benefits
  - Railroad Sick Pay
  - Royalties
  - Severance Pay
  - Sick Pay
  - Stock Appreciation Rights

## Excluded Income Sources

- ABLE Account distributions that are used for qualified disability expenses
- Adoption Assistance
- American Indian/Alaska Native Specific Income Sources
- Rights of ownership or possession in any lands described in paragraph (3)(b) of this section; or
- Federally protected rights regarding off-reservation hunting, fishing, gathering, or usage of natural resources.
- Black Lung Benefits
- Cash Support
- Child Support
- Educational Scholarships and Fellowship Grants including AmeriCorps Education Expenses
- Federal Tax Credits
- Foster Care Payments
- Gifts and Loans
- Parent Mentor Compensation
- Supplemental Security Income (SSI)
- TANF Assistance
- Title XIX Medicaid Waiver Payments
- Veteran Benefits (Disability, Pension, other)
- Worker's Compensation

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

### 4.7.2 Calculating MAGI (What Income is Used)

MAGI-based income includes:

- Adjusted gross income (**taxable income less deductions/adjustments**), excluding:
  - Certain taxable American Indian/Alaska Native income
  - Taxable scholarships/awards used for educational purposes
- Non-taxable Social Security benefits
- Tax-exempt interest
- Foreign earned income

To calculate the MAGI, determine the adjusted gross income amount for each member of the MAGI household whose income will count, for the current month. The MAGI differs from the adjusted gross income, because MAGI accounts for additions and adjustments.

#### 4.7.2.A Step 1 – Determine the Income

The Worker must first add all of the individual's income from any of the income sources listed in "Countable Sources of Income" of Section 4.3, Chart 2 and exclude income listed in "Excluded Sources of Income" of Section 4.3, Chart 2.

#### **4.7.2.B Step 2 – Make the Adjustments/Deductions**

After the income has been determined in Step 1, determine if any adjustments/deductions are applicable and subtract them from the income determined in Step 1. The Worker must incorporate allowable deductions (also known as adjustments) in the calculation of MAGI-based income. These adjustments/deductions can be found on page one of IRS form 1040.

The following items are subtracted from the individual's income:

- Educator expenses
- Certain business expenses of reservists, performing artists, and fee-basis government officials
- Health savings account deductions
- Moving expenses (Only for active duty members of the military who are ordered to move or change duty station).
- Deductible part of self-employment tax
- Self-employed Simplified Employee Pension (SEP), Savings Incentive Match Plan for Employees (SIMPLE), and qualified plans
- Self-employed health insurance deductions
- Penalty on early withdrawal of savings
- Alimony paid ONLY if court ordered prior to January 2019. Any pre-existing agreements modified after December 31, 2018 are not deductible.
- IRA deductions
- Student loan interest deductions

#### **4.7.2.C Step 3 – Required Additions**

Add the following income sources to the income determined in Step 2:

- Foreign earned income and housing costs as defined in 26 USC §911.
- Any interest received that would normally be excluded from taxes.
- The portion of the individual's Title II Social Security benefits typically excluded from taxation, as described in 26 USC §86(d).
- Self-employment/farming income, after accounting for depreciation and operating losses. In cases where the business or farm operated at a loss, the Worker must subtract the amount of the loss from the income calculation. See the methodology established in Section 4.7 for calculating self-employment income.
- For individuals who expect to be claimed as a tax dependent by a grandparent, another relative, or another individual who is not a parent or stepparent, their household income includes cash support provided by the person claiming them as a tax dependent, if over \$50 per month.
- Lump-sum income must be included, but it must only be counted in the month that it is received.

#### **4.7.3 MAGI-Based Income Disregard**

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.

#### **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, 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.

#### **Chapter 4 Appendix A: Income Limits**

133% FPL for a 2-person assistance group is \$2,186

100% FPL for a 2-person assistance group is \$1,644

Code of Federal Regulations Title 42 §435.603 explains the application of Modified Adjusted Gross Income:

#### **(a) *Basis, scope, and implementation.***

(1) This section implements section 1902(e)(14) of the [Act](#).

(2) Effective January 1, 2014, the agency must apply the financial methodologies set forth in this section in determining the financial eligibility of all individuals for Medicaid, except for individuals identified in paragraph (j) of this section and as provided in paragraph (a)(3) of this section.

#### **(b) *Definitions.*** For purposes of this section—

*Code* means the Internal Revenue Code.

**(d) *Household income*** - (1) *General rule.* Except as provided in paragraphs (d)(2) through (d)(4) of this section, household income is the sum of the MAGI-based income, as defined in paragraph (e) of this section, of every individual included in the individual's household.

**(e) *MAGI-based income.*** For the purposes of this section, MAGI-based income means income calculated using the same financial methodologies used to determine modified adjusted gross income as defined in section 36B(d)(2)(B) of the Code, with the following exceptions—

- (1) An amount received as a lump sum is counted as income only in the month received.
- (2) Scholarships, awards, or fellowship grants used for education purposes and not for living expenses are excluded from income.
- (3) *American Indian/Alaska Native exceptions.* The following are excluded from income:
  - (i) Distributions from Alaska Native Corporations and Settlement Trusts;
  - (ii) Distributions from any property held in trust, subject to Federal restrictions, located within the most recent boundaries of a prior Federal reservation, or otherwise under the supervision of the Secretary of the Interior;
  - (iii) Distributions and payments from rents, leases, rights of way, royalties, usage rights, or natural resource extraction and harvest from—
    - (A) Rights of ownership or possession in any lands described in paragraph (e)(3)(ii) of this section; or
    - (B) Federally protected rights regarding off-reservation hunting, fishing, gathering, or usage of natural resources;
  - (iv) Distributions resulting from real property ownership interests related to natural resources and improvements—
  - (v) Payments resulting from ownership interests in or usage rights to items that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional lifestyle according to applicable Tribal Law or custom;
  - (vi) Student financial assistance provided under the Bureau of Indian Affairs education programs.

Internal Revenue Service Publication 525 explains certain taxable income:

### **Sickness and Injury Benefits**

In most cases, you must report as income any amount you receive for personal injury or sickness through an accident or health plan that is paid for by your employer. If both you and your employer pay for the plan, only the amount you receive that is due to your employer's payments is reported as income. However, certain payments may not be taxable to you.

*Cost paid by you.* If you pay the entire cost of an accident or health plan, don't include any amounts you receive from the plan for personal injury or sickness as income on your tax return. If your plan reimbursed you for medical expenses you deducted in an earlier year, you may have to include some, or all, of the reimbursement in your income.



## **DISCUSSION**

Pursuant to policy, the monthly income limit for a two-person assistance group for MAGI Adult Medicaid benefits is \$2,186. The Respondent determined the Appellant's countable monthly income as \$6,043.29 and denied the application due to excessive income.

The Respondent counted the Appellant's Long Term Disability payments as income in determining eligibility for MAGI Adult Medicaid benefits. The Respondent's witness testified that the Appellant's disability payments were coded as dividends, claiming there was no coding in its computer system for Long Term Disability benefits.

The Appellant contended that the payments he receives from his Long Term Disability insurance policy should be excluded as income. The Appellant testified that he does not pay federal income taxes on this income because he paid the insurance premiums while still employed. The Appellant provided a copy of his 2022 Federal Income Tax Return and the Wage and Tax Statement (Form W-2) provided by his insurance company showing that this income is not taxable.

Policy defines adjusted gross income as taxable income less deductions and adjustments. To calculate MAGI, a determination of the adjusted gross income amount must be made for each member of the MAGI household whose income will count, for the current month. The modified adjusted gross income differs from the adjusted gross income, because MAGI accounts for additions and adjustments. The Appellant's adjusted gross income, according to the Internal Revenue Service, is \$0. The Social Security income of \$1,126.90 received by the Appellant's wife is a taxable source of income and is counted towards eligibility determination for MAGI Adult Medicaid. The Appellant has no adjustments/deductions listed in policy, therefore the Appellant's countable modified adjusted gross income is \$1,126.90.

Whereas the Appellant's Long Term Disability payments should not have been considered in determining his modified adjusted gross income, the countable income of \$1,126.90 is below the allowable limit of \$2,186 for a 2-person household to receive MAGI Adult Medicaid benefits.

## **CONCLUSIONS OF LAW**

- 1) Pursuant to policy, adjusted gross income is taxable income less deductions and adjustments.
- 2) The Appellant's Long Term Disability benefit is not taxable income and should not have been considered as his adjusted gross income.
- 3) The countable income for the Appellant's household is his wife's Social Security benefits of \$1,126.90, which is below the allowable limit to receive MAGI Adult Medicaid benefits.

## **DECISION**

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

**ENTERED this 17<sup>th</sup> day of October 2023.**

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**Kristi Logan**  
**Certified State Hearing Officer**