



**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 25, 2023

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 23-BOR-2953

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,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

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

cc: Teresa Losh, WVDHHR

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

██████████,

Appellant,

v.

Action Number: 23-BOR-2953

**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 24, 2023.

The matter before the Hearing Officer arises from the September 18, 2023, decision by the Respondent to terminate Medicaid benefits effective October 2023. The secondary matter, addressed by the Appellant during the hearing, concerns whether Medicaid benefits were properly continued pending a hearing decision.

At the hearing, the Respondent appeared by Teresa Losh, Economic Service Worker Trainee, WVDHHR. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was ██████████, the Appellant's daughter. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Social Security income verification
- D-2 West Virginia Income Maintenance Manual Chapter 4, Appendix A
- D-3 Notice of Decision dated September 18, 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 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 Respondent reviewed the Appellant's case in September 2023 and determined that the Appellant's income was excessive for MAGI Adult Medicaid benefits.
- 3) The Appellant's gross Social Security income is \$1,954 per month (Exhibit D-1).
- 4) The income limit for a one-person MAGI Adult Medicaid Assistance Group is \$1,616 per month (133% of the Federal Poverty Level) (Exhibit D-2).
- 5) Shelter and utility expenses are not allowable deductions for the MAGI Medicaid Program.
- 6) The Respondent sent the Appellant a Notice of Decision on September 18, 2023, indicating that Medicaid benefits would be terminated effective October 2023 based on excessive income (Exhibit D-3).
- 7) The Appellant filed a Fair Hearing Request Form with the Respondent on September 22, 2023.

APPLICABLE POLICY

West Virginia Income Maintenance Manual Chapter 23.10.4 states, in pertinent part:

As a result of the Affordable Care Act (ACA), the Adult Group was created, effective January 1, 2014. Eligibility for this group is determined using MAGI methodologies established in Section 4.7. Medicaid coverage in the Adult Group is provided to individuals who are aged 19 or older and under age 65.

To be eligible for the Adult Group, income must be equal to or below 133% of the Federal Poverty Level (FPL).

West Virginia Income Maintenance Manual Chapter 3.7.3 states, in pertinent part:

The needs group is the number of individuals included in the Modified Adjusted Gross Income (MAGI) household size based upon the MAGI rules for counting household members.

West Virginia Income Maintenance Manual Chapter 4.7.3 states that 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.

West Virginia Income Maintenance Manual Chapter 4.7.2 states that eligibility for the MAGI coverage group is determined by using the adjusted gross income (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. The worker uses the budgeting method established in Section 4.6.1, Budgeting Method, to anticipate future income amounts, consider past income sources, and build monthly income amounts based upon the applicant's reported income.

West Virginia Income Maintenance Manual Chapter 4, Appendix A (Exhibit D-2) states that the income limit for a one-person MAGI Medicaid Assistance Group is \$1,616 per month (133% of the Federal Poverty Level).

Code of Federal Regulations § 431.230 states:

Maintaining services.

(a) If the agency sends the 10-day or 5-day notice as required under [§ 431.211](#) or [§ 431.214 of this subpart](#), and the beneficiary requests a hearing before the date of action, the agency may not terminate or reduce services until a decision is rendered after the hearing unless—

(1) It is determined at the hearing that the sole issue is one of Federal or State law or policy; and

(2) The agency promptly informs the beneficiary in writing that services are to be terminated or reduced pending the hearing decision.

DISCUSSION

Policy states that to be eligible for the MAGI Adult Medicaid Group, income must be equal to or below 133% of the Federal Poverty Level for the Needs Group size.

The Appellant did not dispute the amount of his Social Security income, but questioned whether the Respondent considers shelter and utility costs when calculating countable income for Medicaid purposes. The Respondent's witness testified that shelter and utility costs cannot be considered when determining Medicaid eligibility.

The Respondent also testified that he has an upcoming physician's appointment in October 2023 and questioned whether his Medicaid benefits had been continued pending a hearing decision. The Respondent's witness did not indicate that Medicaid benefits were continued. Federal regulations

state that if a beneficiary requests a hearing before the date of action, the agency may not terminate or reduce services until a decision is rendered after the hearing unless specific circumstances exist. The Respondent's Fair Hearing Request Form was submitted on September 22, 2023, prior to the effective date of the adverse action. The Fair Hearing Request Form states that if an Appellant requests a hearing prior to the effective date of a closure or reduction, benefits will not be stopped or reduced pending a final hearing decision. The form includes a statement allowing Appellants to waive their right to continued benefits, and the Appellant did not agree to a waiver. Therefore, the Respondent must reinstate Medicaid benefits pending the hearing decision.

As the Appellant's household income exceeds the income limit for a one-person MAGI Adult Medicaid Assistance Group, the Respondent's decision to terminate Medicaid benefits is affirmed. The Respondent is required to continue Medicaid benefits pending the hearing decision.

CONCLUSIONS OF LAW

- 1) The Appellant's MAGI Adult Medicaid benefits were terminated effective October 2023 based on excessive income.
- 2) The Appellant's gross monthly household income is \$1,954 per month.
- 3) The income limit for a one-person Assistance Group for MAGI Adult Medicaid is \$1,616 per month.
- 4) The Appellant's monthly household income exceeds the income limit for the MAGI Adult Medicaid Program. Therefore, the Respondent's decision to terminate Medicaid benefits based on excessive income is affirmed.
- 5) As the Appellant requested a hearing prior to the effective date of Medicaid termination and did not waive his right to continued benefits, the Respondent must reinstate his Medicaid benefits for the month of October 2023.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's action to terminate MAGI Adult Medicaid benefits. The Respondent's Medicaid benefits must be reinstated for the month of October 2023 as he was entitled to receive continued benefits pending the hearing decision.

ENTERED this 25th day of October 2023.

**Pamela L. Hinzman
State Hearing Officer**