



**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**

November 2, 2023



RE: [REDACTED] v. WVDHHR  
ACTION NO.: 23-BOR-2903

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: Leslie Riddle, WVDHHR

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

██████████,

**Appellant,**

v.

**Action Number: 23-BOR-2903**

**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 25, 2023.

The matter before the Hearing Officer arises from the August 21, 2023, decision by the Respondent to terminate Medicaid benefits effective September 2023.

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

**Department's Exhibits:**

- D-1 West Virginia Income Maintenance Manual Chapter 4, Appendix A
- D-2 Notice of Decision dated August 21, 2023
- D-3 Notice of Decision dated August 21, 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 August 2023 and determined that household income was excessive for MAGI Adult Medicaid benefits.
- 3) The Appellant's husband, [REDACTED] receives gross Social Security income of \$2,953.90 per month.
- 4) The Appellant's adopted daughter receives gross Social Security income of \$1,477 per month.
- 5) Total household income was calculated as \$4,430.90 (Exhibits D-2 and D-3).
- 6) The income limit for a three-person MAGI Adult Medicaid household is \$2,756 per month (133% of the Federal Poverty Level) (Exhibit D-1).
- 7) Shelter/utility and household living expenses are not allowable deductions for the MAGI Medicaid Program.
- 8) The Respondent sent the Appellant Notices of Decision on August 21, 2023, indicating that Medicaid benefits were denied effective September 2023 based on excessive income (Exhibits D-2 and D-3).

### **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.

To determine the MAGI household size, the following step-by-step methodology is used for each applicant. For purposes of applying the MAGI methodology:

- Child means natural, adopted, or stepchild;
- Parent means natural, adopted, or stepparent;
- Sibling means natural, adopted, half, or stepsibling.

In the case of married couples who reside together, each spouse must be included in the MAGI household of the other spouse, regardless of whether they expect to file a joint tax return or whether one spouse expects to be claimed as a tax dependent by the other spouse. The MAGI household of the pregnant woman also includes her unborn child(ren).

This methodology must be applied to each applicant in the MAGI household separately:

**STEP 1: IS THE APPLICANT A TAX FILER (and will NOT be claimed as a tax dependent)?**

**IF NO:** Move to STEP 2.

**IF YES:** The applicant's MAGI household includes themselves, each individual he expects to claim as a tax dependent, and his spouse if residing with the tax filer.

This is known as the tax filer rule.

**STEP 2: IS THE APPLICANT CLAIMED AS A TAX DEPENDENT ON SOMEONE ELSE'S TAXES?**

**IF NO:** Move to STEP 3.

**IF YES:** Test against the three exceptions below. If the answer to any of these exceptions is 'yes', then the applicant's MAGI household size must be calculated using STEP 3.

1. The applicant is claimed as a dependent by someone other than a spouse or parent.
2. The applicant is a child under 19 who lives with both parents, but both parents do not expect to file taxes jointly.
3. The applicant is a child under 19 who is claimed as a tax dependent to a non-custodial parent(s).

If none of these exceptions are true, then the applicant's Medicaid household consists of the applicant, the tax filer claiming him as a dependent, this could be two people filing jointly, any other dependents in the tax filer's household, and the applicant's spouse if they reside together. This is known as the tax dependent rule.

**STEP 3: IF THE APPLICANT IS NOT A TAX FILER, IS NOT CLAIMED AS A TAX DEPENDENT OR MEETS ONE OF THE EXCEPTIONS IN STEP 2:**

The Medicaid household consists of the applicant and the following individuals as long as they reside with the applicant:

- The applicant's spouse;

- The applicant's child(ren) under age 19;
- For applicants under 19, their parents, and their siblings who are also under 19.

This is known as the non-filer rule.

West Virginia Income Maintenance Manual Chapter 4.7.1 states that the income of each member of the individual's MAGI household is counted. The MAGI household is determined using the MAGI methodology established in Chapter 3.

EXCEPTION: Income of children, or other tax dependents, who are not expected to be required to file an income tax return is excluded from the MAGI household income. NOTE: A reasonable determination as to whether an individual will be required to file a tax return can be made based on the individual's current income for the applicable budget period. Such a determination would be based on information available at the time of application or renewal. Information regarding "Who Must File" a tax return can be found in Appendix F.

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 4.7.4 states that 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.

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.

West Virginia Income Maintenance Manual Chapter 4, Appendix A (Exhibit D-1) states that the income limit for a three-person MAGI Medicaid household is \$2,756 per month (133% of the Federal Poverty Level).

Code of Federal Regulations Title 42 Section 435.603(d), ***Household Income***, states:

(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.

(2) ***Income of children and tax dependents.***

(i) The MAGI-based income of an individual who is included in the household of his or her natural, adopted or step parent and is not expected to be required to file a tax return under section 6012(a)(1) of the Code for the taxable year in which eligibility for Medicaid is being determined, is not included in household income whether or not the individual files a tax return.

(ii) The MAGI-based income of a tax dependent described in [paragraph \(f\)\(2\)\(i\)](#) of this section who is not expected to be required to file a tax return under section 6012(a)(1) of the Code for the taxable year in which eligibility for Medicaid is being determined is not included in the household income of the taxpayer whether or not such tax dependent files a tax return.

According to 2022 Tax Tips listed at [www.irs.gov](http://www.irs.gov), individuals can determine if their Social Security benefits are taxable by taking half of their Social Security income and adding it to their other income (including pensions, wages, interest, dividends, and capital gains). If individuals are single and that total comes to more than \$25,000, then part of their Social Security benefits may be taxable.

## **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 household size.

The Appellant did not dispute the amount of gross household income, but the Appellant's husband questioned whether the Respondent considers shelter and utility costs when calculating countable income for Medicaid purposes. The Respondent's witness testified that household expenses cannot be considered when determining Medicaid eligibility. The Appellant's husband testified that he is disabled, and his adopted daughter is a minor who has experienced trauma. He stated that the Appellant needs health care services because she serves as their caretaker, and that the cost of health insurance is outside of the family's financial means.

The Respondent's witness testified that the Respondent counted Social Security benefits for both the Appellant and his adopted minor daughter in determining eligibility for MAGI Adult Medicaid. However, federal regulations reveal that the MAGI-based income of a tax dependent, who is not expected to be required to file a tax return under section 6012(a)(1) of the Code for the taxable year in which eligibility for Medicaid is being determined, is not included in the household income of the taxpayer whether or not such tax dependent files a tax return. IRS documentation indicates that only when a single individual's Social Security benefits, plus any additional income, exceeds \$25,000, then a portion of Social Security benefits may be taxable. The minor child's Social Security income totals \$17,724 per year and no additional income was reported for the child. As the Respondent's daughter is a tax dependent who is not required to file a tax return, her income is not included in the MAGI household income calculation. Therefore, the Respondent erred in considering the child's Social Security income as countable income for MAGI Medicaid.

The Appellant's countable income for MAGI Medicaid purposes is \$2,953.90 (his Social Security income) and the income limit for a three-person MAGI household (the Appellant, his spouse and his adopted daughter) is \$2,756. To determine if the Appellant is eligible for a 5% income disregard:

- The Appellant's countable income of \$2,953.90 is divided by \$2,072 (100% of the Federal Poverty Level for a three-person household). This equals 1.425.
- The total of 1.425 is then converted to a percentage: 142.5%.
- If the result from Step 2 is greater than the appropriate limit (133%), apply the 5% FPL disregard by subtracting five percentage points from the converted monthly gross income to determine the household income ( $142.5\% - 5\% = 137.5\%$ ).
- After the 5% FPL income disregard has been applied, the remaining percent of FPL (137.5%) is the final figure that will be compared against the applicable modified adjusted gross income standard (133%) for the MAGI coverage groups.

As the Appellant's income, after application of the 5% disregard, exceeds 133% of the Federal Poverty Level for a three-person household, the Respondent correctly terminated Medicaid benefits.

### **CONCLUSIONS OF LAW**

- 1) The Appellant's MAGI Adult Medicaid benefits were terminated effective September 2023 based on excessive income.
- 2) The Appellant's countable household income is \$2,953.90 per month.
- 3) The income limit for a three-person household for MAGI Adult Medicaid is \$2,756 per month.
- 4) Shelter and utility expenses are not allowable deductions for MAGI Adult Medicaid under applicable policy.

- 5) The Appellant's monthly household income exceeds the income limit for the MAGI Adult Medicaid Program.
- 6) The Respondent's decision to terminate Medicaid benefits based on excessive income is affirmed.

### **DECISION**

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

**ENTERED this 2nd day of November 2023.**

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**Pamela L. Hinzman  
State Hearing Officer**