



October 10, 2024

[REDACTED]

RE: [REDACTED] v. DoHS/BFA
ACTION NO.: 24-BOR-3239

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 Human Services. 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: Kristen Moore, [REDACTED] DoHS

**WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW**

██████████,

Appellant,

v.

Action Number: 24-BOR-3239

**WEST VIRGINIA DEPARTMENT OF HUMAN SERVICES
BUREAU FOR FAMILY ASSISTANCE,**

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 Office of Inspector General Common Chapters Manual. This fair hearing was convened on October 8, 2024, on an appeal filed on September 18, 2024.

The matter before the Hearing Officer arises from the August 27, 2024, decision by the Respondent to terminate Adult Medicaid benefits.

At the hearing, the Respondent appeared by Kristen Moore, ██████████ DoHS. The Appellant represented himself. The witnesses were placed under oath and the following documents were admitted into evidence.

Department's Exhibits:

None

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 received Modified Adjusted Gross Income (MAGI) Adult Medicaid benefits for himself and his daughter, [REDACTED]
- 2) The Appellant submitted an eligibility review to the Respondent on August 15, 2024.
- 3) The Respondent requested verification of the Appellant's earned income to determine continued eligibility.
- 4) The Appellant provided paystubs to the Respondent on August 23, 2024, for July 26, \$1,968.48; August 9, \$1,968.49; and August 17, \$1,968.49.
- 5) The Respondent calculated the Appellant's gross monthly earned income as \$4,232.25.
- 6) The Respondent sent a notice of termination to the Appellant on August 27, 2024, advising him that MAGI Adult Medicaid benefits would be terminated September 30, 2024, as the income exceeded the allowable limit.
- 7) The Appellant requested a hearing on September 18, 2024.
- 8) MAGI Adult Medicaid benefits for the Appellant and [REDACTED] were terminated September 30, 2024.

APPLICABLE POLICY

Code of Federal Regulations, 42 CFR §435.119 provides the following information concerning Adult Medicaid coverage:

Coverage for individuals age 19 or older and under age 65 at or below 133 percent Federal Poverty Level

(a) ***Basis.*** This section implements section 1902(a)(10)(A)(i)(VIII) of the Act.

(b) ***Eligibility.*** Effective January 1, 2014, the agency must provide Medicaid to individuals who:

- (1) Are age 19 or older and under age 65;
- (2) Are not pregnant;
- (3) Are not entitled to or enrolled for Medicare benefits under part A or B of title XVIII of the Act;
- (4) Are not otherwise eligible for and enrolled for mandatory coverage under a State's Medicaid State plan in accordance with [subpart B of this part](#); and
- (5) Have household income that is at or below 133 percent FPL for the applicable family size.

West Virginia Income Maintenance Manual Chapter 9 explains client notification requirements:

9.3.1.D.2 Advance Notice Period Expires the First of the Following Month or Later

If the 13-day advance notice period does not expire until the first day of the following month or later, the change is not effective until the month following the end of the 13-day advance notice period.

9.3.1.D.3 Fair Hearing Requested After Receipt of DFA-NL-C

Requesting within Advance Notice Period - **When the client requests a Pre-Hearing Conference or a Fair Hearing before the date of proposed closure or reduction, benefits are restored or reinstated immediately, whether or not the client requests reinstatement** (emphasis added). If the client specifically requests benefits not be reinstated—verbally, by checking the appropriate section of the DFA-FH-1, or in some other written manner—no reinstatement action will be taken. No change is made in AG status or benefit levels related to the current issue until a final decision is made as a result of a Pre-Hearing Conference or Fair Hearing. Other changes may occur during the Hearing process. If this happens, the client must receive proper notification of these other changes. If the client does not request a Pre-Hearing Conference or a Fair Hearing on these subsequent changes, the changes are made, even though the first change is in Pre-Hearing Conference or Hearing status. If the client requests a Pre-Hearing Conference or a Fair Hearing on the subsequent changes, the Worker must take action depending on whether the client requests a Pre-Hearing Conference or a Fair Hearing only.

West Virginia Income Maintenance Manual Chapter 3 explains eligibility determination groups for MAGI Adult Medicaid:

3.7 Adult Medicaid Group

The Patient Protection and Affordable Care Act, amended by the Health Care and Education Reconciliation Act of 2010, enacted March 30, 2010, are together referred to as the Affordable Care Act (ACA). The ACA established the categorically mandatory coverage group known as the Adult Group. Effective January 1, 2014, Medicaid coverage is provided to individuals age 19 or older and under age 65 who are not otherwise eligible for and enrolled in another categorically mandatory Medicaid coverage group, and are not entitled to or enrolled in Medicare Part A or B. Eligibility for this group is determined using Modified Adjusted Gross Income (MAGI) methodologies.

3.7.2 MAGI Household Income Group (IG)

Income of each member of the individual's MAGI household is counted. The income group is determined using the MAGI methodology established in Section 3.7.3.

EXCEPTION: Income of children, or other tax dependents, who are not expected to be required to file an income tax return is not counted, whether or not the individual actually files a tax return.

3.7.3 MAGI Household Needs Group (NG)

The needs group is the number of individuals included in the 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. 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.

West Virginia Income Maintenance Manual Chapter 4 explains income eligibility:

4.7.1 Determining Income Counted for the MAGI Household

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.

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.

4.6.1 Budgeting Method

The following method is used to determine income for the certification period or period of consideration (POC), unless information to the contrary is shown in the remaining sections of this chapter. Eligibility is determined on a monthly basis. Therefore, it is necessary to determine a monthly amount of income to count for the eligibility period. The following information applies to earned and unearned income. For all cases, the Worker must determine the amount of income that can be reasonably anticipated for the assistance group (AG). For all cases, income is projected; past income is used only when

it reflects the income the client reasonably expects to receive during the certification period. When the amount of an anticipated income source is determined by use of an income tax return, it is not necessary to change the method by which that income source is anticipated at each redetermination prior to the next tax return, unless the anticipated income from that source for the upcoming certification period or POC is expected to change.

4.6.1.A Methods for Reasonably Anticipating Income

There are two methods for reasonably anticipating the income the client expects to receive. One method uses past income, and the other method uses future income. Both methods may be used for the same AG for the same certification period. The method used depends on the circumstances of each source of income. Use past income only when both of the following conditions exist for a source of income:

- Income from the source is expected to continue into the certification period or POC.
- The amount of income from the same source is expected to be more or less the same. For these purposes, the same source of earned income means income from the same employer, not just the continued receipt of earned income.

4.6.1.B Consideration of Past Income

The Worker must consider information about the client's income sources before deciding which income to use. The Worker must follow the steps below for each old income source.

Step 1: Determine the amount of income received by all persons in the Income Group (IG) in the 30 calendar days prior to the application/redetermination date. The appropriate time period is determined by counting back 30 days beginning with the calendar day prior to the date of application/redetermination. The income from this 30-day period is the minimum amount of income that must be considered. When, in the Worker's judgment, future income may be more reasonably anticipated by considering the income from a longer period of time, the Worker considers income for the time period he determines to be reasonable. Whether the Worker considers income from the prior 30 days, or from a longer period of time, all of the income received from that source during that time period must be considered. All pay periods during the appropriate time period must be considered and must be consecutive.

Step 2: Determine if the income from the previous 30 days is reasonably expected to continue into the new certification period or POC. If it is not expected to continue, the income from this source is no longer considered for use in the new certification period or POC. If it is expected to continue, determine if the amount is reasonably expected to be more or less the same. If the income is expected to continue, the income source is used for the new certification period or POC and treated according to How to Use Past and Future Income below. If it is not expected to continue at more or less the same amount, the income source is used for the new certification period or POC and treated according to Consideration of Future Income below.

Step 3: Record the results of Step 2, including the amount of income, why the source is or is not being considered for the new certification period or POC, the client's statement about continuation of the income from this source, the time period used, and, if more than the previous 30 days, the reason additional income was considered.

Once the Worker has determined all the old sources of income to consider and the time period for which they are considered, he must then determine if any source should be considered for future income.

4.6.1.D How to Use Past and Future Income

After the Worker determines all of the income sources that are to be considered for use, the Worker determines the amount of monthly income based on the frequency of receipt and whether the amount is stable or fluctuates. This is described below.

When the Frequency of Receipt is:	When the Amount is Stable:	When the Amount Fluctuates:
Monthly	Use actual monthly amount	Use average monthly amount
More often than monthly	Convert amount per period to monthly amount	Find an average amount per period and convert to monthly amount
Less often than monthly	Prorate to find amount for the intended period. If not monthly, convert or prorate amount	Prorate to find amount for the intended period. If monthly, convert or prorate amount

The purpose of finding an average amount of fluctuating income is to even out the highs and lows in the amount of income. The client is not, then, required to report fluctuating income each pay period and the Worker is not required to change income monthly. Should the client report fluctuations in the amount of income, the Worker is only required to recalculate the countable income when, in his judgment, the fluctuation will affect eligibility. All changes reported by the client must be considered, but not necessarily used. Reported changes must be recorded and the Worker must record why the reported income was or was not used.

Conversion of income to a monthly amount is accomplished by multiplying an actual or average amount as follows:

- Weekly amount x 4.3
- Biweekly amount (every two weeks) x 2.15
- Semimonthly (twice/month) x 2

Chapter 4 Appendix A: Income Limits

133% of the FPL for a two-person AG: \$2,266

100% of the FPL for a two-person AG: \$1,704

Families First Coronavirus Response Act and Fiscal Year (FY) 2023 Omnibus Appropriations Bill provide in relevant sections:

During the COVID-19 Public Health Emergency (PHE), provisions were stipulated permitting the Respondent to provide continuous coverage to Medicaid recipients, regardless of income, during the PHE. On December 23, 2022, the end of Medicaid continuous enrollment was set as April 1, 2023.

DISCUSSION

Pursuant to policy, the income limit for a two-person assistance group for MAGI Adult Medicaid benefits is \$2,266, or 133% of the federal poverty level. A 5% disregard is applied if the deduction would bring the assistance group's income below the 133% federal poverty level income limit.

The Respondent verified the Appellant's earnings of \$1,968.49 biweekly with paystubs submitted for the Medicaid eligibility review. The Respondent determined the Appellant's monthly income as \$4,232.25. The Appellant did not dispute the amount of his paystubs that were used in determining eligibility for Medicaid and confirmed that he is a salaried employee, and his earnings do not fluctuate.

The Appellant questioned the Respondent's conversion of his income to a monthly amount, arguing that his paystubs added together were less than \$4,000 a month. The Appellant stated that Medicaid benefits were not continued for October, and it was his understanding that benefits would continue pending the outcome of the hearing.

Policy stipulates that the amount of income that can be reasonably anticipated for the assistance group is used in determining eligibility. The amount of income received by everyone in the Income Group (IG) in the 30 calendar days prior to the application or redetermination date is considered. If the income can be reasonably expected to continue through the certification, an average of the income received in the previous 30 days is converted to a monthly amount using the multiplier according to the frequency the income is received.

The Appellant is paid a salary of \$1,968.49 every two weeks. This amount is converted to a monthly amount by applying the multiplier found in policy for income received biweekly: $\$1,968.49 \times 2.15 = \$4,232.25$. The Respondent acted in accordance with policy in calculating the Appellant's monthly earned income.

To determine if the Appellant is eligible for the 5% disregard, the monthly income is divided by 100% of the federal poverty level for the size of the assistance group: $\$4,232.25$ divided by $\$1,704 = 2.48$ which is then converted to a percentage, 248%. Since the application of the 5% disregard would not bring the Appellant's income that is 248% of the federal poverty level below the allowable income limit of 133% of the federal poverty level, the disregard is not applied. The Appellant's income is excessive to continue receiving MAGI Adult Medicaid benefits.

Pursuant to policy, when a recipient requests a Pre-Hearing Conference or a Fair Hearing before the date of proposed closure or reduction, benefits are restored or reinstated immediately, whether or not the recipient requests reinstatement. If the client specifically requests benefits not be reinstated, either verbally or by checking the appropriate section of the fair hearing request form

(DFA-FH-1), no reinstatement action will be taken. The proposed date of MAGI Adult Medicaid closure for the Appellant and [REDACTED] was September 30, 2024. The Appellant requested a hearing on September 18, 2024; therefore, MAGI Adult Medicaid benefits were required to be reinstated pending a hearing decision.

Whereas the Appellant's income is excessive to continue receiving MAGI Adult Medicaid benefits, the Respondent's decision to terminate benefits is affirmed. MAGI Adult Medicaid benefits will be issued for October 2024.

CONCLUSIONS OF LAW

- 1) The income limit for a two-person assistance group for MAGI Adult Medicaid benefits is \$2,266.
- 2) The Appellant's gross monthly earned income is \$4,232.25.
- 3) The Appellant's income is excessive to continue receiving MAGI Adult Medicaid benefits.
- 4) The Appellant requested a fair hearing prior to the effective date of MAGI Adult Medicaid closure.
- 5) Policy requires that benefits must be reinstated, unless specifically declined by the recipient, upon receipt of the fair hearing request if the request is made prior to the effective date of benefit closure.
- 6) The Respondent failed to follow policy in the reinstatement of MAGI Adult Medicaid benefits pending the outcome of the fair hearing.

DECISION

It is the decision of the State Hearing Office to **uphold** the decision of the Respondent to terminate the Appellant's and [REDACTED] MAGI Adult Medicaid benefits. The matter is **remanded** to the Respondent for issuance of MAGI Adult Medicaid benefits for October 2024.

ENTERED this 10th day of October 2024.

Kristi Logan
Certified State Hearing Officer