



April 3, 2024



RE: [REDACTED] v. DoHS/ BFA
ACTION NO.: 24-BOR-1266

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 ensure 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,

Tara B. Thompson, MLS
State Hearing Officer
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
Form IG-BR-29

cc: Carrie Casto, [REDACTED] DoHS

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

██████████,

Appellant,

v.

Action Number: 24-BOR-1266

**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 March 13, 2024.

The matter before the Hearing Officer arises from the Respondent's December 7, 2023, decision to terminate the Appellant's Adult Group Medicaid benefits.

At the hearing, the Respondent was represented by Carrie Casto, Economic Services Supervisor, ██████████ Department of Human Services (DoHS). The Appellant appeared and was represented by her attorney, ██████████ Legal Aid of West Virginia. Appearing as a witness on behalf of the Appellant was ██████████ Associate General Counsel, AmeriCorps. All witnesses were placed under oath and the following exhibits were submitted to the record:

Department's Exhibits:

- D-1 Corporation for National & Community Services Allowance Statement
- D-2 West Virginia Income Maintenance Manual (WVIMM) Excerpts
- D-3 Medicaid Review Form, submitted November 21, 2023

Appellant's Exhibits:

- A-1 Notices, dated February 1, 2024
- A-2 Notices, dated December 7, 2023

- A-3 Legal Aid Letter and Authorization
- A-4 WVIMM Policy Excerpts
- A-5 United States Code 42 USC § 5044(a)
- A-6 Letter, AmeriCorps Acting Director
- A-7 AmeriCorps Memorandum, [REDACTED], General Counsel
- A-8 Email Correspondence, [REDACTED], AmeriCorps Associate General Counsel
- A-9 United States District Court for the Southern District of West Virginia Order
- A-10 West Virginia Common Chapters Excerpt
- A-11 Email Correspondence, [REDACTED], DoHS
- A-12 AmeriCorps VISTA Member Handbook
- A-13 Case Comments
- A-14 Corporation for National and Community Service Allowance Statement
- A-15 Earnings Statement, pay dates November 10 and December 10, 2021
- A-16 Public Assistance Verification Form
- A-17 Authorization for Release of Information
- A-18 Notice, dated February 2024
- A-19 Department of the Treasury Internal Revenue Service Form 1095-B

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) On December 7, 2023, the Respondent issued a notice advising the Appellant her Adult Medicaid benefits would stop after December 31, 2023, because she failed to submit requested information.
- 2) The basis of the December 7, 2023 notice for the Appellant's Adult Medicaid termination was incorrect.
- 3) The Respondent based the December 7, 2023 decision to terminate the Appellant's Adult Medicaid benefits on \$1,888.97 in monthly earned income.
- 4) On November 29, 2023, the Appellant submitted a Corporation for National & Community Service, AmeriCorps Vista Allowance Statement as verification of \$877.66 gross bi-weekly living allowance, for fourteen service days, through November 18, 2023 (Exhibit D-1).
- 5) AmeriCorps is a Corporation for National and Community Service (CNCS).
- 6) The Appellant is a resident of West Virginia (Exhibits D-1, D-3, and A-6).
- 7) The Appellant has been a member of AmeriCorps Volunteers in Service to America (VISTA) since 2021 (Exhibits D-1 and A-6).

8) In 2023, the Federal minimum wage was \$7.25 per hour.

9) In 2023, the West Virginia state minimum wage was \$8.75 per hour.

APPLICABLE POLICY

West Virginia Income Maintenance Manual (WVIMM) § 4.2 *Definitions* provides in relevant sections:

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).

WVIMM § 4.3.2 Chart 2 provides in relevant sections: For MAGI coverage groups, including Adult Group Medicaid, AmeriCorps Living Expenses [emphasis added] are a countable source of income.

WVIMM § 4.3.1(17)(d) *AmeriCorps and Related Programs Living Allowance* provides in relevant sections: For Aid to Families with Dependent Children (AFDC)-Related Medicaid, SSI-Related Medicaid, and Medicare Premium Assistance coverage groups, AmeriCorps living allowance is not considered when determining eligibility.

WVIMM Chapter 4, 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

WVIMM § 23.10.4 *Adult Group* provides in relevant sections: To be eligible for the Adult Group Medicaid coverage, the household's income cannot exceed 133% of the Federal Poverty Level (FPL). Eligibility for this group is determined using Modified Adjusted Gross Income (MAGI) methodologies established in section 4.7.

United States Code 42 U.S.C. § 4955(b) *Description of allowances and support services; determination of allowances; adjustments; methodology* provides in relevant section:

- (1) The Director shall provide volunteers such living, travel ..., and leave allowances And shall ensure that each volunteer has available such allowances and support as will enable the volunteer to carry out the purpose and provisions of this part and to effectively perform the work to which such volunteer is assigned.

United States Code 42 U.S.C. § 5044(f) *Government assistance; eligibility; special limitations* provides in relevant sections:

- (1) Notwithstanding any other provisions of law except as may be provided expressly in limitation of this subsection, payments to volunteers 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 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.

Code of Federal Regulations 45 CFR § 2556.5 *Volunteers in Service to America — What definitions apply in this part?* provides in relevant sections:

AmeriCorps means the corporation for National and Community Services, established pursuant to section 191 of the National and Community Services Act of 1990, as amended 42 U.S.C. 12651, which operates as AmeriCorps.

Living Allowance or living allowance payment means a monetary benefit paid for subsistence purposes to a VISTA member during VISTA service.

Code of Federal Regulations 45 CFR § 2556.300 *Is a VISTA considered a Federal employee and is a VISTA considered an employee of the sponsor?* Provides in relevant sections:

...

- (d) Monetary allowances, such as living allowances that VISTAs receive during VISTA service, are not considered wages. Monetary allowances, such as living allowances, that VISTAs receive during VISTA service are considered income for such purposes as Federal income tax and Social Security.

West Virginia Code § 21-5C-2 *Minimum wages* provides in relevant sections:

- (a) Minimum wage: ...

After December 31, 2015, every employer shall pay to each of his or her employees' wages at a rate not less than \$8.75 per hour.

When the federal minimum hourly wage as prescribed by 29 U.S.C. § 206(a)(1) is equal to or greater than the wage rate prescribed in the applicable provision of this subsection, every employer shall pay to each of his or her employee wages at a rate of not less than the federal minimum hourly wage as prescribed by 29 U.S.C. § 206(a)(1)

United States Code 29 U.S.C. § 206 *Minimum Wage* (January 2023) provides in relevant sections:

... Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or the production of goods for commerce, wages at the following rates:

Except as otherwise provided in this section, not less than —
\$5.85 an hour, beginning on the 60th day after May 25, 2007; ...
(C) \$7.25 an hour, beginning 24 months after that 60th day.

DISCUSSION

The Appellant was a recipient of Adult Group Medicaid. The Respondent determined her income exceeded the income eligibility limit and terminated the Appellant's Adult Group Medicaid benefits. The Appellant contested the amount of income used to determine her Adult Group Medicaid eligibility and argued that her AmeriCorps living allowance should not have been considered as income.

The Respondent bears the burden of proof and had to demonstrate by a preponderance of evidence that the Appellant's AmeriCorps living allowance was correctly included when determining her Adult Group Medicaid eligibility.

The Respondent's representative testified that the Appellant's determination was based on the November 29, 2023 submitted AmeriCorps Vista Allowance Statement. The statement reflected a gross bi-weekly living allowance for one fourteen-day period. The submitted information did not reveal the number of volunteer hours the fourteen-day living allowance covered.

The Respondent's representative testified that the Respondent's policy required the Appellant's VISTA living allowance to be included when determining her Adult Group Medicaid eligibility. The Respondent submitted a policy excerpt that stipulated AmeriCorps living expenses are counted as income for determining Adult Group Medicaid eligibility. The policy does not address the use of AmeriCorps living allowance for determining Adult Group Medicaid eligibility. The policy does not provide definitions for *allowance* or *expense*. These terms are not commonly interchangeable. The Respondent's policy provides that AmeriCorps living allowance is not considered for eligibility determinations in other Medicaid coverage groups. Where the agency policy is unclear or silent, the Board of Review must look to federal regulations for guidance regarding the use of a client's AmeriCorps living allowance for determining Adult Group Medicaid eligibility.

The regulations provide that the Appellant is entitled to receive a living allowance as a VISTA member. The language provided by 42 U.S.C. § 5044(f) instructs that the regulation supersedes any other law that might contradict or conflict with the conditions set forth within the section. According to the regulation, payments to volunteers may not disqualify the volunteer from assistance or services being received from any governmental program unless "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.”

To prove that the Respondent correctly included the Appellant’s AmeriCorps living allowance when determining her Adult Group Medicaid eligibility, the Respondent had to demonstrate by a preponderance of the evidence that the Appellant’s AmeriCorps living allowance was equivalent to or greater than the minimum wage then in effect.

The submitted records from AmeriCorps counsel indicated that only AmeriCorps may determine if volunteers are paid for services equivalent to or greater than the applicable minimum wage. The reliable information submitted by the Appellant stipulated that payments to VISTA members have not equaled or exceeded the Federal or state minimum wage. During the hearing, the Appellant’s witness affirmed the validity of the submitted AmeriCorps records. Testimony from the Appellant’s witness affirmed that the AmeriCorps director has not approved payments to VISTA participants that equal or exceed Federal or state minimum wage. The Respondent did not refute the reliability of the information provided by the Appellant or the Appellant’s witness. The preponderance of evidence failed to verify that the Appellant’s VISTA living allowance payment equaled or exceeded the minimum wage then in effect.

CONCLUSIONS OF LAW

- 1) The Adult Group Medicaid income eligibility limit for a one-person Assistance Group is \$1,616.
- 2) Monetary allowances, such as living allowances that VISTAs receive during VISTA service, are not considered wages.
- 3) Payments to VISTA volunteers may not disqualify the volunteer from assistance or services being received from any governmental program unless 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.
- 4) The preponderance of evidence failed to verify that the value of the Appellant’s VISTA volunteer payments, adjusted to reflect the number of hours of volunteer service, was equivalent to or greater than the minimum wage in effect.
- 5) The Respondent incorrectly included the Appellant’s AmeriCorps VISTA living allowance when determining her December 7, 2023 Adult Group Medicaid eligibility.
- 6) The preponderance of evidence failed to demonstrate that the Appellant’s income exceeded the Adult Group Medicaid income eligibility limit.
- 7) The Respondent’s December 7, 2023 decision to terminate the Appellant’s Adult Group Medicaid benefits, due to income exceeding the Medicaid eligibility limit for a one-person household , was incorrect.

- 8) Because the Respondent incorrectly terminated the Appellant's Adult Group Medicaid benefits, the Appellant's Adult Group Medicaid benefits must be retroactively reinstated.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's decision to terminate the Appellant's Adult Group Medicaid benefits, effective after December 31, 2023. The matter is **REMANDED** for retroactive reinstatement of the Appellant's Adult Group Medicaid benefits.

ENTERED this 3rd day of April 2024.

Tara B. Thompson, MLS
State Hearing Officer