



August 8, 2024

[REDACTED]

RE: [REDACTED] v. WVDoHS  
ACTION NO.: 24-BOR-2401

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 people 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: Jennifer Barker, WVDoHS

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

████████████████████

**Appellant,**

v.

**Action Number: 24-BOR-2401**

**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 West Virginia Office of Inspector General Common Chapters Manual. This fair hearing was convened on July 31, 2024.

The matter before the Hearing Officer arises from the May 29, 2024, decision by the Respondent to terminate West Virginia Children’s Health Insurance Program (WVCHIP) benefits.

At the hearing, the Respondent appeared by Jennifer Barker, Economics Services Supervisor, WVDoHS. The Appellant appeared *pro se*. All witnesses were sworn, and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Notice of Decision dated May 29, 2024
- D-2 WVCHIP renewal form submitted on April 20, 2024
- D-3 Appellant’s 2023 income tax information
- D-4 Information from Internal Revenue Service website concerning income tax deductions
- D-5 West Virginia Income Maintenance Manual Chapters 4.2, 4.4.4.D.2, 4.7.5.A, 4.7.5.A.1, and 4.7.5.A.2
- D-6 Information from the Centers for Medicare & Medicaid Services regarding income consideration

**Appellant's Exhibits:**

- A-1 Pay information from [REDACTED] for period of June 1, 2024, through June 15, 2024, and 2023 bonus information

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 West Virginia Children's Health Insurance Program (WVCHIP) benefits for her two children.
- 2) The Appellant's WVCHIP case was due for redetermination in May 2024.
- 3) The Appellant submitted a WVCHIP renewal form to the Respondent on April 20, 2024 (Exhibit D-2).
- 4) The Appellant is a self-employed, contracted accounting service provider for [REDACTED] and reported self-employment income of \$6,000 per month and business expenses of \$100 per month on her WVCHIP renewal form (Exhibit D-2).
- 5) The Appellant provided her 2023 income tax return to the Respondent to verify income (Exhibit D-3).
- 6) In addition to self-employment income, the Appellant received an Individual Retirement Account distribution of \$24,067 in 2023, had taxable interest income of \$248, and ordinary dividends of \$230 (Exhibit D-3).
- 7) The Appellant's adjusted gross income was \$114,964 for 2023 (Exhibit D-3).
- 8) Based on a yearly adjusted gross income of \$114,964, the Appellant's average monthly income was \$9,580.33 in 2023.
- 9) The WVCHIP income limit is \$6,455 per month, 300% of the Federal Poverty Level (FPL), for a three-person household.
- 10) The Respondent sent the Appellant a Notice of Decision on May 29, 2024, informing her that WVCHIP benefits would stop effective July 2024 based on excessive income (Exhibit D-1).

## APPLICABLE POLICY

West Virginia Income Maintenance Manual Chapter 22.1 states that to qualify for WVCHIP benefits, household income must not exceed 300% of the FPL.

West Virginia Income Maintenance Manual Chapter 4, Appendix A, states that the income limit for a three-person CHIP household is \$6,455 per month (300% of the FPL).

West Virginia Income Maintenance Manual Chapter 22.5.1 states:

The Patient Protection and Affordable Care Act, enacted March 23, 2010, 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 required a new methodology for determining how income is counted and how household composition and size are determined when establishing financial eligibility for all three Insurance Affordability Programs (IAP)— Medicaid, Children’s Health Insurance Program (CHIP) and Advance Premium Tax Credits (APTC) through the Marketplace. MAGI Methodology is used to determine financial eligibility for the West Virginia Children’s Health Insurance Program (WVCHIP) and the following Medicaid eligibility groups:

- Adults
- Parents and Other Caretaker Relatives
- Pregnant Women
- Children Under Age 19

The same methodology is used to determine WVCHIP eligibility as is used for MAGI Medicaid groups. See Section 4.7.

26 Code of Federal Regulations Section 1.36.B.1 defines Modified Adjusted Gross Income as follows:

The term “modified adjusted gross income” means adjusted gross income increased by—

- (i) any amount excluded from gross income under section 911,
- (ii) any amount of interest received or accrued by the taxpayer during the taxable year which is exempt from tax, and
- (iii) an amount equal to the portion of the taxpayer’s social security benefits (as defined in section 86(d)) which is not included in gross income under section 86 for the taxable year.

West Virginia Income Maintenance Manual Chapter 4.2 defines self-employment as a situation in which an individual has an investment in a business, has costs involved in producing income from this business, and could suffer a loss. He is usually responsible for his own income taxes and Federal Insurance Contribution Act (FICA) taxes. A self-employed individual usually has to provide his

own equipment, supplies and materials needed to do a job or produce the income. He controls to some extent his hours or work and where the work is done.

West Virginia Income Maintenance Manual Chapter 4.7.5.A states:

When a member of the MAGI household Income Group receives self-employment income, the instructions below must be used to arrive at the gross profit, which is used to calculate countable income. Countable income is determined by subtracting allowable business expenses from the gross income

West Virginia Income Maintenance Manual Chapter 4.7.5.A.2 states:

Gross profit from self-employment is the income remaining after deducting any identifiable costs of doing business from the gross income. The instructions below must be used to arrive at the gross profit, which is used to calculate countable income. These instructions are based upon the IRS Forms used by self-employed individuals to file federal taxes on their self-employment income. Income from self-employment is calculated by totaling the following items, as described on the IRS Forms:

- Add payment cards and third-party network transactions.
- Add gross receipts or sales (separate from items reported above).
- Add income that results from “Statutory Employee” status. If an individual’s income results from such a status, they would receive a W-2 for the year that has the “Statutory Employee” box checked.
- Add any other form of income received by the business.
- Subtract returns, allowances, and other adjustments.
- Subtract the cost of goods sold, calculated using the following methodology:
  - o Add value of inventory at the beginning of the period under consideration.
  - o Add purchases (disregarding cost of items withdrawn for personal use).
  - o Add labor costs (disregarding amounts paid to oneself).
  - o Add materials and supplies.
  - o Add other costs.
  - o Subtract value of inventory at the end of the period under consideration.
- Subtract the expenses related to the business’ operations. The following expenses can be deducted:
  - o Advertising
  - o Car and truck expenses
  - o Commissions and fees
  - o Contract labor
  - o Depletion
  - o Depreciation and section 179 expense deduction

- o Employee benefit programs
- o Insurance (not including health insurance)
- o Interest (mortgage and from other loans)
- o Legal and professional services
- o Office expenses
- o Pension and profit-sharing plans
- o Rent or lease (includes vehicles, machinery, equipment, and other business property)
- o Repairs and maintenance
- o Supplies
- o Taxes and licenses
- o Travel, meals, and entertainment
- o Utilities
- o Wages
- o Any other business-related expenses

- Subtract the business' expenses from its income to arrive at the self-employment income profit or loss for the individual.

West Virginia Income Maintenance Manual Chapter 4.3 states that gross retirement benefits, interest income, and dividends are counted as unearned income for Medicaid purposes.

West Virginia Income Maintenance Manual Chapter 4.7.2 states:

MAGI-based income includes:

- Adjusted gross income (taxable income less deductions/adjustments), excluding:
  - o Certain taxable American Indian/Alaska Native income
  - o 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. 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 4.7.2.A, Determine the Income, states:

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.

West Virginia Income Maintenance Manual Chapter 4.7.2.B, Step 2, Make the Adjustments/Deductions, states:

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. Different methodologies, as shown in the table below, may be used to incorporate different types of adjustments/deductions into the income determined in Step 1.

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 the alimony agreements are finalized prior to January 2019. Any pre-existing agreements modified after December 31, 2018 are not deductible.
- IRA deductions
- Student loan interest deduction

According to <https://www.irs.gov/businesses/small-businesses-self-employed/self-employment-tax-social-security-and-medicare-taxes>:

The self-employment tax is a tax consisting of Social Security and Medicare taxes primarily for individuals who work for themselves. It is similar to the Social Security and Medicare taxes withheld from the pay of most wage earners.

Employers calculate Social Security and Medicare taxes of most wage earners. However, you figure self-employment tax (SE tax) yourself using Schedule SE (Form 1040 or 1040-SR). Also, you can deduct the employer-equivalent portion of your SE tax in figuring your adjusted gross income. Wage earners cannot deduct Social Security and Medicare taxes.

The employer-equivalent portion of the self-employment tax is deducted in figuring adjusted gross income.

West Virginia Income Maintenance Manual Chapter 4.7.2.C, Step 3, Required Additions, states:

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.

West Virginia Income Maintenance Manual Chapter 4.7.3, MAGI-Based Income Disregard, states:

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, Determining Eligibility, states:

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.

### **DISCUSSION**

Policy states that to be eligible for WV CHIP benefits, countable household income must not exceed 300% of the FPL.

The Respondent's representative, Jennifer Barker, contended that the Appellant's monthly average adjusted gross income is excessive for WV CHIP after considering all allowable income deductions.

The Appellant questioned whether she is allowed income deductions for Qualified Business Income (QBI) and self-employment tax. The Appellant asked whether the Respondent could consider her projected income for 2024, as she stated that she will not receive as much money from IRA distributions (possibly \$5,000 to \$7,000 in 2024) since she is draining her accounts to pay expenses. The Appellant stated that she receives annual bonuses from [REDACTED] although the bonuses are not guaranteed. Ms. Barker stated that the Respondent could possibly consider the Appellant's anticipated income for 2024, but would require additional documentation to make a projection.

The QBI deduction is not mentioned in policy as a potential tax deduction from adjusted gross income and IRS information indicates that the self-employment tax deduction is given when adjusted gross income is computed. Therefore, no further deductions can be subtracted from the Appellant's adjusted gross income.

Based on information provided during the hearing, the Respondent's decision to terminate WVCHIP benefits based on excessive income is correct.

### **CONCLUSIONS OF LAW**

- 1) To qualify for WV CHIP benefits, countable household income cannot exceed 300% of the Federal Poverty Level for the household size.
- 2) The income limit for a WVCHIP household of three is \$6,455 per month (300% of the FPL).
- 3) The Appellant's adjusted gross income of \$114,964 per year equates to \$9,580.33 per month.
- 4) The Appellant's countable household income is excessive for WVCHIP benefits.

**DECISION**

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's action to terminate WV CHIP benefits effective July 2024.

**ENTERED this 8th day of August 2024**

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**Pamela L. Hinzman  
State Hearing Officer**