



September 18, 2024

[REDACTED]

RE: [REDACTED] v. WV DoHS/BFA
ACTION NOS.: 24-BOR-2894, 24-BOR-2895, 24-BOR-2896

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 (DoHS). 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: Recourse to Hearing Decision
Form IG-BR-29

cc: Leslie Riddle, [REDACTED] DoHS

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

████████████████████,

Appellant,

v.

**Action Number: 24-BOR-2894
24-BOR-2895 and
24-BOR-2896**

**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 August 27, 2024.

The matter before the Hearing Officer arises from the Respondent's July 31, 2024 denials of the Appellant's Supplemental Nutrition Assistance Program (SNAP), Medicaid, and West Virginia School Clothing Allowance (SCA) eligibility.

At the hearing, the Respondent appeared by Leslie Riddle, ██████████ DoHS. The Appellant appeared and represented himself. Both representatives were placed under oath and the following exhibits were submitted as evidence.

Department's Exhibits:

- D-1 DoHS Notices, each dated July 31, 2024
- D-2 DoHS Income Chart, dated March 2024
- D-3 West Virginia Income Maintenance Manual (WVIMM) Policy Excerpts: Chapter 4
- D-4 WVIMM § 1.3.4
- D-5 WVIMM § 3.10
- D-6 WVIMM § 3.7
- D-7 WVIMM § 4.12.1
- D-8 WVIMM Change Reporting Form
- D-9 WVIMM § 20.2.2.F and § 20.2.2.F.1

- D-10 WVIMM § 20.5.6.A
- D-11 WVIMM § 22.16
- D-12 WVIMM § 4.4.D.1
- D-13 WVIMM § 22.2
- D-14 WVIMM § 4.14.3
- D-15 Case Comments, dated March 18 through August 27, 2024

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) On July 10, 2024, the Appellant applied for SCA benefits for [REDACTED] (Exhibit D-15).
- 2) At the time of application, [REDACTED] had just completed the first grade (Exhibit D-15).
- 3) On July 16, 2024, the Appellant applied for Medicaid and SNAP benefits for [REDACTED] (Exhibit D-15).
- 4) On July 18, 2024, DoHS Worker EW54BT scheduled the Appellant for an eligibility interview on July 26, 2024 (Exhibit D-15).
- 5) On July 26, 2024, DoHS Worker EW54AM recorded, "Sent email to social services to verify custody of his daughter before continuing" (Exhibit D-15).
- 6) On July 26, 2024, the Appellant completed his eligibility interview by telephone (Exhibit D-15).
- 7) On July 27, 2024, DoHS Worker EW54BW recorded "Checking to see if his SNAP appt was done and if soc serv responded about custody. Not doing anything with his daughter in this case yet. Checked on his med app in OB 7/16, it only has child listed as requesting med. So will wait until more info to do any of his case" (Exhibit D-15).
- 8) On July 30, 2024, DoHS Worker EW45AM's July 26, 2024 interview notes reflected the Appellant included [REDACTED] in the Assistance Group (AG) (Exhibit D-15).
- 9) The July 30, 2024 interview notes reflected *Earned Income* – "received paystubs 06/16/2024-07/15/2024" (Exhibit D-12).
- 10) The July 30, 2024 interview notes reflected *Shelter Costs* – "received land contract and rental statement (Exhibit D-12).

- 11) On July 31, 2024, the Respondent issued a notice to the Appellant advising he was ineligible for SNAP and Medicaid benefits because his income exceeded the eligibility limit (Exhibit D-1). [REDACTED] was denied eligibility for Medicaid and/or WV CHIP because she was already receiving the benefit in another assistance group (Exhibit D-1).
- 12) On July 31, 2024, the Respondent issued a notice to the Appellant advising he was ineligible for WV SCA because his income exceeded the eligibility limit (Exhibit D-1).
- 13) The notices reflected \$3,634.07 gross earned income compared to a \$2,137 gross income limit for a two-person household (Exhibit D-1).
- 14) In March 2024, 130% of the Federal Poverty Level (FPL) for a two-person AG was \$2,137 (Exhibit D-2).
- 15) In March 2024, 141% FPL for a two-person AG was \$2,402 (Exhibit D-2).
- 16) In March 2024, 158% FPL for a two-person AG was \$2,692 (Exhibit D-2).
- 17) In March 2024, 211% FPL for a two-person AG was \$3,595 (Exhibit D-2).
- 18) In March 2024, 300% FPL for a two-person AG was \$5,110 (Exhibit D-2).

APPLICABLE POLICY

SNAP

Code of Federal Regulations 7 CFR § 273.9(a)(1)(i) *Income and deductions – Income eligibility standards* provides that participation in SNAP shall be limited to those households whose gross incomes are determined to be 130% of the Federal income poverty levels.

Code of Federal Regulations 7 CFR § 273.9(b)(1)(i) *Definition of income* provides that household earned income includes all wages and salaries of an employee.

Code of Federal Regulations 7 CFR 273.10(c)(1) *Determining Income – Anticipating income* provides in the relevant sections:

- i. The State agency shall take into account the income already received by the household during the certification period and any anticipated income the household and the State agency are reasonably certain will be received during the remainder of the certification period. If the amount of income that will be received, or when it will be received, is uncertain, that portion of the household's income that is uncertain shall not be counted by the State agency. In cases where the receipt of income is reasonably certain but the monthly amount may fluctuate, the household may elect to income average. Households shall be advised to report all changes in gross monthly income as required by § 273.12.

- ii. Income received during the past 30 days shall be used as an indicator of the income that is and will be available to the household during the certification period. However, the State agency shall not use past income as an indicator of income anticipated for the recertification period if changes in income have occurred or can be anticipated. If income fluctuates to the extent that a 30-day period alone cannot provide an accurate indication of anticipated income, the State agency and the household may use a longer period of past time if it will provide a more accurate indication of anticipated fluctuations in future income

WVIMM § 4.3.30 *Employment* provides that salaries and wages are counted as earned for SNAP and WV WORKS.

MEDICAID

West Virginia Income Maintenance Manual (WVIMM) § 1.7.1 *Who Can Be Included on the Same Application?* provides that individuals who have a familial relationship with the applicant (child-biological; parent-biological, etc.) may be included on the same application. A non-custodial parent cannot apply for Medicaid or WVCHIP for their child even when claiming their child as a tax dependent. In this situation, based on MAGI rules, the child's MAGI household includes himself and his parents. Information necessary to determine the child's eligibility cannot be determined based on the non-custodial parent's application; therefore, the case should fail for the child with the reason because the non-custodial parent cannot apply for the child.

WVIMM § 3.6.1 *Children Under Age 19 Medicaid – Assistance Group* provides that only the child under age 19 is included in the Assistance Group (AG).

WVIMM § 3.6.2 *The Modified Adjusted Gross Income (MAGI) Household Income Group (IG) and Needs Group (NG)* provides that the methodology for determining the MAGI household's IG and NG is the same as found in section 3.7. This section of the policy notes that if the child is ineligible for this coverage group, they should be evaluated for West Virginia Children's Health Insurance Program (WVCHIP) eligibility. WVCHIP uses the same eligibility groups as those used for Children Under Age 19.

WVIMM § 3.7.1.A *Adult Group – Who Must Be Included?* and § 3.731.B *Who Cannot Be Included?* provides that only adults age 19 or older and under age 65 are included in the AG. Individuals eligible for categorically mandatory coverage groups such as Children Under Age 19 Medicaid cannot be included in the AG.

WVIMM § 3.7.2 *The MAGI Household Income Group (IG)* provides that the 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.

WVIMM § 3.7.3 *The MAGI Household Needs Group (NG)* provides that to determine the MAGI household size, the following step-by-step methodology is used for each applicant:

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 the applicant, the tax filer claiming them as and dependent ... 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 long as they reside with the applicant: ... the applicant's child under age 19; for applicants under 19, their parents ... This is known as the non-filer rule.

Step 4: CASES WHERE APPLICANT CANNOT REASONABLY ESTABLISH TAX DEPENDENT STATUS

If an applicant/tax filer cannot reasonably establish that reported household members will be tax dependents of the applicant for the tax year in which Medicaid is sought, the inclusion of such individual in the MAGI household of the tax filer is determined using rules in STEP 3.

WVIMM § 23.10.2 Children Under Age 19 provides that the income eligibility limit for this coverage group is contingent upon the age of the child:

To be eligible for Children Under Age 19 Medicaid: for children under age one, the AG's income could not exceed 158% FPL; for children between ages 1 and 5, the AG's income could not exceed 141% FPL; for children between ages 6 and 19, the AG's income could not exceed 133% FPL.

A child is eligible for Medicaid coverage in this group when all of the following conditions are met:

- The child is not eligible for Supplemental Security Income (SSI) Medicaid;
- The child is under age 19, regardless of school attendance or course completion date; and,
- The income eligibility requirements described in Chapter 4 are met.

WVIMM § 22.16.1 *Specific West Virginia Children’s Health Insurance Program (WVCHIP) Requirements* provides:

Income: 211% of FPL
300% of the FPL WVCHIP Premium
No Spenddown Provision

Assets: N/A

Individuals are eligible for WVCHIP when all the following conditions are met:

- 1) At the time of application or redetermination, the child must not be financially eligible for a MAGI Medicaid coverage group.
- 2) The child is not yet age 19...
- 3) Household income is less than or equal to 300% FPL. See Chapter 4, Appendix A.
- 4) The child is not an inmate of a public institution.
- 5) The child is not a patient in an institution for mental diseases.
- 6) The child meets the Medicaid citizenship and related requirements found in Chapter 7.

Verification

WVIMM § 7.2.1 *When Verification is Required* provides that verification of a client’s statement is required when the information provided is questionable. To be questionable, it must be inconsistent with other information provided; inconsistent with information in the case file; inconsistent information received by DoHS from other sources; incomplete; obviously inaccurate; or outdated.

WVIMM § 7.2.2 *When Verification is not Required* provides that verification is not required from the individual when the information is known or available to DoHS.

WVIMM 7.2.3 *Client Responsibilities* provides that the primary responsibility for providing verification rests with the client. It is an eligibility requirement that the client cooperate in obtaining necessary verifications. The client is expected to provide information to which he has access to and sign authorizations needed to obtain other information. Failure of the client to provide necessary information or to sign authorizations for the release of information results in denial of the application, provided that the client has access to such information and is physically and mentally able to provide it.

For Medicaid coverage groups and WVCHIP only: Client self-attestation is verified by electronic data sources. The client must not be required to provide verification unless information cannot be obtained electronically or through self-attestation, and electronic data sources are not reasonably compatible. See Section 7.2.5 below. Refusal to cooperate, failure to provide necessary information, or failure to sign authorizations for the release of information, provided the client has access to such information and is physically and mentally able to provide it, may result in denial of the application.

No case may be determined ineligible when a person outside the AG or income group (IG) fails to cooperate with verification.

WVIMM § 7.2.4 Worker Responsibilities provides that in the verification process, the worker must: At application and anytime a DFA-6 is used, the Worker must list all of the required verification known at the time ... If the client is unsuccessful in obtaining information, or if physical or mental limitations prevent his compliance, and there is no one to assist him, the Worker must document attempts to obtain the verification. The Worker must accept any reasonable documentary evidence as verification and must not require a specific kind or source of verification. Verification may be submitted in person, by mail, by fax, or electronically.

WV SCA

WVIMM § 19.4.5 Income provides that the Chapter 4 WV WORKS income requirements apply when considering eligibility for School Clothing Allowance (SCA) benefits. No deductions or disregards are applied. For SCA, income eligibility is based on July, the program month If the gross non-excluded income is equal to or greater than 130% of the federal poverty level (FPL), the family is ineligible for WVSCA.

DISCUSSION

The Respondent determined the Appellant was ineligible for SNAP, Medicaid, and SCA benefits. The Appellant did not dispute his benefit denials but protested the denials of eligibility for [REDACTED] and requested that eligibility be established for his daughter.

The submitted evidence did not clarify how some exhibits were relevant to the programs in contention and were therefore given no weight. Exhibit D-7 referenced WVIMM § 4.12, related to Medicare Premium Assistance; Exhibit D-9 referenced WVIMM § 20.2.2.F, related to Emergency Assistance eligibility; and Exhibit D-10 reflected WVIMM § 20.5.6.A, related to Summer EBT eligibility, which were not programs related to the Appellant's contested matters.

The Board of Review is required to follow the policy and federal regulations and cannot change the policy or award eligibility beyond the circumstances provided in the policy. The Respondent bears the burden of proof and had to demonstrate by a preponderance of evidence that the Appellant's gross monthly income exceeded the SNAP and SCA eligibility guidelines. The Respondent had to further prove that [REDACTED] should be denied Medicaid and/or WVCHIP eligibility because she correctly received benefits in another AG.

SNAP and WV SCA

The policy requires that children and parents be included in the same AG; therefore, the Appellant was required to be included in [REDACTED] SNAP AG and his income was required to be considered when determining SNAP eligibility for [REDACTED]

The Respondent determined that the Appellant was ineligible for SNAP and SCA because his income exceeded the eligibility limit for each program. During the hearing, the Appellant did not dispute the \$3,634.07 gross income considered by the Respondent and testified that he knows his

gross income amount is high. The Appellant argued that he does not bring home gross income and that he only brings home a net amount of income after deductions.

The regulations and policy require that a gross amount of the AG's income be considered. The Respondent's representative explained that the AG's gross income must be at or below the income eligibility limit before shelter and other income deductions may be applied to determine an amount of SNAP allotment. To determine SNAP eligibility, the Respondent had to consider the amount of the AG's gross income thirty days before the date of application. However, the regulations and policy stipulate that if the thirty-day preceding period is insufficient for determining the amount of the AG's anticipated income, the Respondent may consider the AG's income over additional periods. The Respondent's representative testified that the Respondent considered 6 submitted weekly paystubs to get a more accurate average of the Appellant's income.

The Appellant did not dispute the amount of income considered by the Respondent when determining his SNAP and SCA eligibility, only that a gross amount should not be considered. As the Appellant's \$3,634.07 gross monthly income exceeded the \$2,137 SNAP and SCA eligibility limit for a two-person AG, the Respondent correctly denied the Appellant's SNAP and SCA eligibility.

Medicaid

The Appellant did not contest the Adult Medicaid eligibility denial and only contested the denial of [REDACTED] Medicaid eligibility. The notice advised that [REDACTED] was denied Medicaid because she was already receiving benefits in another AG. The Respondent bears the burden of proof and had to demonstrate by a preponderance of the evidence that the Appellant was ineligible to receive Medicaid benefits for [REDACTED] because she was correctly receiving benefits in another AG.

The Respondent argued that the Appellant had the responsibility to verify [REDACTED] custody status but no verification was submitted. The policy provides that a non-custodial parent cannot apply for Medicaid or WVCHIP for their child, even when claiming the child as a tax dependent, and that the application must fail for the child with the reason being the non-custodial parent cannot apply for the child. The notice issued to the Appellant did not indicate that the reason was his non-custodial status but indicated that the reason for the denial was because [REDACTED] was already receiving the benefit in another AG.

The policy instructs that for Medicaid coverage groups and WVCHIP, client self-attestation is verified by electronic data sources. The client must not be required to verify unless the information cannot be obtained electronically. The policy instructs that the Appellant's refusal to cooperate, provide necessary information, or sign authorizations for the release of information may result in denial of the application. The preponderance of evidence did not indicate that the Respondent issued a verification checklist to request custody verification from the Appellant.

The Appellant argued that he submitted all custody and income verifications in person at the local DoHS office and spoke to a worker at the same time. During the hearing, the Respondent's representative was permitted an opportunity to review the DoHS record and provide testimony

regarding whether the record contained custody verification. Because the submitted evidence was insufficient to rule out the Appellant's claim that he submitted custody verification in person, the Respondent was requested to produce case comments for the applicable period. The case comments revealed that June 16 through July 15, 2024 paystubs, land contract, and rental statements were submitted by the Appellant and considered by the Respondent during the July 31, 2024 eligibility decision.

The case comments do not reveal any record of the Appellant visiting the local office to submit verification forms. The case comments also do not verify when or how the Respondent received the Appellant's submitted verification as reflected in the June and July case comments. During the hearing, the Respondent's representative testified that she assumed the Appellant submitted the referenced verifications at application because she did not see any indication that the Respondent requested them.

As no request for custody verification was made by the Respondent, the evidence failed to establish that the Appellant refused to cooperate with submitting requested custody verifications. Further, as the case comments do not indicate how other noted verifications were received, the Appellant's argument that he submitted custody verification to the Respondent cannot be ruled out. The submitted case comments indicated that the Respondent was aware of the Appellant's questionable custody status before the July 31, 2024 decision was made. The submitted evidence does not reveal how the Respondent became aware of [REDACTED] custody change. During the hearing, the Respondent's representative testified that she did not personally take adverse action in the case and was unable to clearly state how the DoHS worker was prompted to reach out to CPS for custody verification.

The case comments indicate that the Respondent sought to verify [REDACTED] custody status by reaching out to CPS by email, on the same day of his eligibility interview. The following day, DoHS Worker EW54BW checked the case to see if social services had responded about [REDACTED] custody. No other case comments were reflected to indicate further follow-up with CPS or that the Respondent requested verification from the Appellant before the Respondent's July 31, 2024 Medicaid eligibility decision.

The policy stipulates that no case may be determined ineligible when a person outside the AG or IG fails to cooperate with verification. The evidence revealed the Respondent failed to follow the policy process for requesting custody verification from the Appellant and denied [REDACTED] Medicaid eligibility after CPS failed to respond to the Respondent's request for custody verification. Based on the submitted evidence, the Respondent's decision to deny the Appellant Medicaid eligibility for [REDACTED] because she was receiving Medicaid benefits in another AG was incorrect.

The policy stipulates that for Children Under Age 19, the income eligibility limit is based on the age of the child. While the evidence did not specifically state the age of [REDACTED] the case comments indicated that she had completed first grade, which would reasonably imply she was above age five and would have been subject to the 141% FPL income limit. To be eligible for Medicaid for Children Under Age 19, the AG's income could not exceed \$2,402.

To determine the Medicaid household size, the Medicaid policy instructs that the tax filer status of the applicant must be established. The submitted evidence did not indicate whether [REDACTED] would be claimed as a dependent on the Appellant's taxes. However, the policy provides that in cases where applicants cannot reasonably establish tax-dependent status, households containing children under age 19 and their parent(s) are included together in the Medicaid household. The policy requires that the Appellant's income be considered when determining [REDACTED] eligibility for Medicaid benefits for children under age 19.

During the hearing, the Respondent's representative testified that it appeared [REDACTED] would be income-eligible for WVCHIP benefits. To be eligible for WV CHIP, the AG's income could not exceed \$3,595, or \$5,110 for WVCHIP Premium.

As the evidence failed to prove that [REDACTED] should be denied Medicaid or WV CHIP because she was correctly receiving the benefit in another AG, the matter must be remanded for issuance of a proper request of custody verification and a new review of [REDACTED] Medicaid and/or WVCHIP eligibility once the verification process is complete.

CONCLUSIONS OF LAW

SNAP

- 1) To be eligible for SNAP benefits, the AG's gross monthly income could not exceed the \$2,137 SNAP eligibility limit for a two-person AG.
- 2) The Respondent proved by a preponderance of evidence that the Appellant's \$3,634.07 gross monthly income exceeded the SNAP eligibility limit for a two-person AG.
- 3) The Respondent proved by a preponderance of the evidence that the Appellant was correctly denied SNAP benefit eligibility.

Medicaid

- 4) No Medicaid or WVCHIP case may be determined ineligible when a person outside the AG or IG fails to cooperate with verification.
- 5) Verification of a client's statement is required when the information provided is questionable.
- 6) The preponderance of evidence failed to prove that the Respondent requested that the Appellant submit custody verification.
- 7) The preponderance of evidence revealed that CPS failed to cooperate with the Respondent's verification request.
- 8) The preponderance of evidence failed to prove that the Respondent properly denied the Appellant Medicaid and/or WVCHIP eligibility for [REDACTED] because she was correctly receiving Medicaid benefits in another AG.

- 9) The matter must be remanded for completion of the verification process to determine [REDACTED] custody status.

WV SCA

- 10) To be eligible for SCA benefits, the AG's income could not exceed the \$2,137 SNAP eligibility limit for a two-person AG.
- 11) The Respondent proved by a preponderance of evidence that the Appellant's \$3,634.07 gross monthly income exceeded the SCA eligibility limit for a two-person AG.
- 12) The Respondent proved by a preponderance of the evidence that the Appellant was correctly denied WV SCA benefit eligibility.

DECISION

SNAP

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to deny the Appellant eligibility for SNAP benefits.

Medicaid

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's decision to deny [REDACTED] Medicaid and/or WVCHIP eligibility. The matter is **REMANDED** for issuance of a verification request and a new review of [REDACTED] Medicaid and/or WVCHIP eligibility once the verification process is complete.

WV SCA

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to deny the Appellant eligibility for WV SCA benefits.

ENTERED this 18th day of September 2024.

Tara B. Thompson, MLS
State Hearing Officer