



September 11, 2024



RE: v. WVDoHS
BOR Action No.: 24-BOR-2979

Dear

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,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

Encl: Recourse to Hearing Decision
Form IG-BR-29

cc: Kristyne Hoskins, BFA

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

[REDACTED]

Appellant,

v.

Action Number: 24-BOR-2979

**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 [REDACTED]. 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 September 4, 2024, on appeal filed August 19, 2024.

The matter before the Hearing Officer arises from the July 19, 2024 decision by the Respondent to terminate the Appellant's eligibility for Medicaid assistance.

At the hearing, the Respondent appeared by Kristyne Hoskins, Economic Services Worker-Senior. The Appellant appeared pro se. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Computer printout of case comments of June 7, 2024
- D-2 CSLR Redetermination dated July 8, 2024
- D-3 Computer printout of case comments of July 12, 2024
- D-4 Verification Checklist dated July 12, 2024
- D-5 Income Information
- D-6 Computer printout of case comments of July 18, 2024
- D-7 Case Income Summary
- D-8 Case Earned Income Summary
- D-9 Notice of Decision dated July 19, 2024

- D-10 Chapter 4 Appendix A
- D-11 West Virginia Income Maintenance Manual § 4.4.1.F
- D-12 West Virginia Income Maintenance Manual § 4.7

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) Medicaid.
- 2) On July 8, 2024, the Appellant submitted a CSLR redetermination to determine her continued eligibility for Supplemental Nutrition Assistance Program (SNAP) and Medicaid benefits.
- 3) The Appellant reported earned income from her employment at [REDACTED]
- 4) The Appellant reported unearned income from the Social Security Administration in the monthly amount of \$1067.00.
- 5) The Appellant reported a Housing and Urban Development (HUD) utility supplement in the amount of \$27.00.
- 6) On July 12, 2024, the Respondent issued a Verification Checklist (Exhibit D-4) for the Appellant to provide employment income verification from the dates of June 8, 2024 through July 7, 2024.
- 7) The Appellant provided gross employment income verification in the amounts of June 11, 2024-\$88.53, June 18, 2024-\$170.69, June 25, 2024-\$204.23 and July 2, 2024-\$156.44. (Exhibit D-5 and Exhibit D-8)
- 8) The Respondent utilized an average of earned income in the amount of \$666.38 (total of submitted pays $\$619.89/4=\154.97 . $\$154.97*4.3=\666.38). (Exhibit D-8)
- 9) The Respondent utilized a total monthly income for the Appellant in the amount of \$1760.38. ($\1067.00 Social Security benefits+ $\$666.38$ earned income+ $\$27.00$ HUD utility supplement) (Exhibit D-9)

- 10) On July 19, 2024, the Respondent issued a Notice of Decision (Exhibit D-9) informing the Appellant that her Adult Medicaid benefits would terminate effective July 31, 2024 because of excessive income.

APPLICABLE POLICY

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.

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.

West Virginia Income Maintenance Manual Chapter 4.7.1 documents in part:

Income of each member of the individual's MAGI household is counted.

West Virginia Income Maintenance Manual Chapter 4.7.4 documents in pertinent part:

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.

West Virginia Income Maintenance Manual Chapter 4, Appendix A, documents in part:

For a one-person Assistance Group, 133% of the FPL is \$1670

For a one-person Assistance Group, 100% of the FPL is \$1255

West Virginia Income Maintenance Manual Chapter 4.6.1.B documents in part:

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. NOTE: The year-to-date amounts on check stubs may only be used when the client has verification of all payment amounts whether used or not, but is missing one. 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.

West Virginia Income Maintenance Manual Chapter 4.3.2 documents:

Applicable MAGI Coverage Groups:

- Adult Group
- Children Under Age 19
- Parents/Caretaker Relatives
- Pregnant Women
- WVCHIP

Countable Sources of Income:

- Alimony ONLY if the alimony agreements are finalized prior to January 2019
- Census Bureau Income
- Net Farming/Fishing
- Net Rental Income
- Pensions and Annuities
- Retirement Accounts and Profit-Sharing Plans
- Self-Employment and Business Income
- Social Security Benefits • Unemployment Benefits
- Wages, Salaries, and Tip Income
- Other:
 - o Accrued Leave Payment
 - o Advance Commission
 - o Allowances and Reimbursements
 - o Back Pay Awards
 - o Bartering Income
 - o Bonuses and Awards
 - o Child Care Provider Income
 - o College Work Study Program (this is considered taxable income under IRS rules and therefore cannot be excluded from the MAGI calculation.)
 - o Court Awards and Damages
 - o Disability Pension Plans Paid by Employer
 - o Discharged Student Loan Debt, unless the student is deceased or determined as permanently and totally disabled.
 - o Dividends and Other Stock Gains
 - o Earnings for Clergy
 - o Employee Achievement Awards
 - o Fringe Benefits
 - o Gambling Income and Losses
 - o Government Cost-of-Living Allowances (COLA)
 - o Interest Income Reported on a 1099
 - o Most Cancelled Debts
 - o National Guard Differential Wage Payments
 - o Non-Qualified Deferred Compensation Plans
 - o Prize Payments
 - o Qualified Lottery and Gambling Winnings. See Section 4.7.5.F Exception.
 - o Railroad Retirement Benefits
 - o Railroad Sick Pay
 - o Royalties
 - o Severance Pay
 - o Sick Pay
 - o Stock Appreciation Rights

Excluded Income Sources This list is not all inclusive, payments from any source must be evaluated. Please contact the BMS Policy Unit.

- ABLE Account distributions that are used for qualified disability expenses
- Adoption Assistance
- American Indian/Alaska Native Specific Income Sources:
 - o Distributions from Alaska Native Corporations and Settlement Trusts
 - o Distributions from any property held in trust, subject to Federal restrictions, located within the most recent boundaries of a prior Federal reservation, or otherwise under the supervision of the Secretary of the Interior
 - o Distributions and payments from rents, leases, rights of way, royalties, usage rights, or natural resource extraction and harvest from:
 - Rights of ownership or possession in any lands described in paragraph (3)(b) of this section; or
 - Federally protected rights regarding off-reservation hunting, fishing, gathering, or usage of natural resources.
- AmeriCorps Living Expenses
- Black Lung Benefits
- Cash Support
- Child Support
- Educational Scholarships and Fellowship Grants including AmeriCorps Education Expenses (See Section 4.7.5.C)
- Federal Tax Credits
- Foster Care Payments
- Gifts and Loans
- Parent Mentor Compensation
- Supplemental Security Income (SSI)
- TANF Assistance
- Title XIX Medicaid Waiver Payments:
 - o Medicaid Waiver Payments made to an applicant if they live in the home full-time with the waiver client.
- Veteran Benefits (Disability, Pension, other):
 - o Disability compensation and pensions payments for disabilities paid either to veterans or their families.
 - o Grants for homes designed for wheelchair living.
 - o Grants for motor vehicles for veterans who lost their sight or the use of their limbs.
 - o Veterans' insurance proceeds and dividend paid either to veterans or their beneficiaries, including the proceeds of a veteran's endowment policy paid before death.
 - o Interest on insurance dividends left on deposit with the VA.
 - o Benefits under a dependent care assistance program.

- o The death gratuity paid to a survivor of a member of the Armed Forces who died after September 10, 2001.
- o Any bonus payment by a state or political subdivision because of service in a combat zone.
- Worker's Compensation

DISCUSSION

Eligibility for Adult Medicaid assistance is established when a household's countable income is equal to or below 133% of the Federal Poverty Level for the appropriate needs group size.

The Respondent determined that the Appellant's countable income exceeded the income limits set forth by policy and denied that Appellant's application for Adult Medicaid effective July 19, 2024. The Respondent must prove by a preponderance of the evidence that the household's countable income exceeded 133% of the Federal Poverty Level or \$1670 per month.

On July 8, 2024, the Appellant completed a redetermination of her Supplemental Nutrition Assistance Program benefits. During the redetermination, the Appellant reported her earned income from [REDACTED] a \$27.00 monthly HUD utility supplement, and the onset of income from the Social Security Administration in the amount of \$1,067.00. The Period of Consideration for employment income was June 8, 2024 through July 7, 2024, which the Appellant provided the following income information; June 11, 2024-\$88.53, June 18, 2024-\$170.69, June 25, 2024-\$204.23 and July 2, 2024-\$156.44. The Respondent determined the Appellant's monthly gross income to be \$666.38 (total of submitted pays \$619.89 /4=\$154.97. $\$154.97 * 4.3 = \666.38) The Respondent utilized a total monthly income for the Appellant in the amount of \$1760.38 (\$1067.00 Social Security benefits+\$666.38 earned income+\$27.00 HUD supplement). The Respondent determined that the Appellant's gross monthly income is 140% of the Federal Poverty Level. ($\$1760.38 / 1255$ 100% Federal Poverty Level=1.40 or 140% of the Federal Poverty Level) Because the Appellant's income exceeded 133% of the Federal Poverty Level, the Respondent terminated the Appellant's eligibility for Adult Medicaid benefits. (Exhibit D-9)

The Appellant testified that her employment hours from [REDACTED] fluctuate and cannot be anticipated. The Appellant purported that the recent reduction in her SNAP benefits and termination of Medicaid assistance create a financial strain on her living situation.

Based on the presented evidence, it is clear that the Respondent attributed the monthly \$27.00 HUD utility supplement paid to the Appellant as unearned income toward financial determination of her eligibility for Adult Medicaid assistance. HUD utility supplements are non-taxable and governing policy lists countable and excluded sources of income applicable to the MAGI Medicaid coverage groups. Policy also denotes a disclaimer which documents "List is not all inclusive, payments from any source must be evaluated. Please contact the BMS Policy Unit." While Allowances and Reimbursements are listed in policy as countable sources of income, there is no specific inclusion to outline HUD utility supplements as countable or excluded source of income. This income carries great weight in the total calculation of the Appellant's monthly income and its

comparison to the Federal Poverty Level and applicable income disregards. The Respondent provided no testimony regarding consultation with the Policy Unit concerning the inclusion of the utility supplement income. Because policy is silent concerning whether such HUD supplemental income is to be included for Medicaid determination purposes, the worker was obligated to consult the Policy Unit prior to its determination of including such income in the Appellant's total monthly income. Thus, because HUD supplemental income is not included in the governing policy as countable income and because the worker did not follow policy by consulting the Policy Unit prior to utilizing the income, the use of the HUD supplemental income cannot be affirmed.

CONCLUSIONS OF LAW

- 1) Eligibility for Adult Medicaid services is determined when a household's countable income is equal to or less than 133% of the appropriate needs group.
- 2) The Appellant's total household income was \$1760.38, 140% of the Federal Poverty Level.
- 3) The Respondent included a HUD utility supplement in the total monthly financial income determination.
- 4) Policy does not denote HUD utility supplements as a countable source of income toward a financial determination for MAGI Medicaid.
- 5) Because HUD utility supplement income is not included in the policy as countable income, and the Respondent did not consult the Policy Unit prior to utilization of such income, the use of HUD supplement income cannot be affirmed.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's decision to terminate Adult Medicaid assistance. This matter is **REMANDED** to the Respondent to recalculate the Appellant's countable income consistent with this decision.

ENTERED this _____ day of September 2024.

Eric L. Phillips
State Hearing Officer