



October 29, 2024

[REDACTED]

RE: [REDACTED] v. WV DoHS/BFA  
ACTION NO.: 24-BOR-3251

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,

Lori Woodward, J.D.  
Certified State Hearing Officer  
Member, State Board of Review

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

cc: Katrina Mercer, WV DoHS/BFA

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

██████████,

**Appellant,**

v.

**Action Number: 24-BOR-3251**

**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 23, 2024.

The matter before the Hearing Officer arises from the July 22, 2024 decision by the Respondent to deny the Appellant's Adult Medicaid application.

At the hearing, the Respondent appeared by Katrina Mercer, Economic Service Worker Senior. The Appellant and the Appellant's wife, ██████████ were present but chose to be represented by ██████████ a family friend and employer. Everyone was placed under oath and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Hearing Summary
- D-2 West Virginia Department of Health and Human Resources Application for Benefits (DFA-20, signed and dated March 8, 2024)
- D-3 Denial notice dated September 25, 2024
- D-4 Worker desk copy of WV Income Maintenance Manual (WV IMM), Chapter 4, Appendix A (effective July 1, 2024)
- D-5 West Virginia Income Maintenance Manual (WV IMM), Chapter 4, §4.7, *et seq.*

**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 applied for Medicaid benefits for himself and his wife, [REDACTED] on March 8, 2024. (Exhibit D-2)
- 2) On the March 2024 Medicaid application, the Appellant reported monthly earned income of \$1,000. (Exhibit D-2)
- 3) On the March 2024 Medicaid application, the Appellant reported self-employment income of \$800 per month with \$80 in monthly business expenses. (Exhibit D-2)
- 4) The Appellant submitted an IRS Form 1099 showing self-employment income of \$1,597.50 per month.
- 5) On July 22, 2024, the Respondent denied the Appellant's Medicaid and/or WVCHIP application for being over the income limit for eligibility for an assistance group (AG) of two.
- 6) On September 23, 2024, the Appellant requested a fair hearing regarding the July 22, 2024 denial.
- 7) A pre-hearing conference was held between the Respondent's representative, Katrina Mercer, and the Appellant on or about September 24, 2024.
- 8) Prior to the commencement of the pre-hearing conference, the Respondent's representative offered interpreter services, which the Appellant declined.
- 9) Ms. Mercer had no difficulty in performing the pre-hearing conference with the Appellant and verified the following income from the Appellant:
  - Monthly employment income from [REDACTED] of \$2,500 for the Appellant
  - Monthly self-employment income of \$800 less \$600 expenses for a total of \$200 per month
- 10) On September 25, 2024, the Respondent denied the Appellant's Medicaid and/or WVCHIP application for being over the income limit for eligibility. (Exhibit D-3)
- 11) The Appellant's gross income of \$2,700 (\$2,500 + \$200) divided by 100% of the Federal Poverty Level (FPL) \$1,255 equals 2.1514, or 215.14% FPL when converted to a percentage. (Exhibit D-5)

- 12) The income limit for Adult Medicaid eligibility is 133% of the Federal Poverty Level (FPL), or \$2,266 for an AG of 2. (Exhibit D-4)
- 13) The Appellant is over the income limit for a two-person AG for Adult Medicaid eligibility.
- 14) At no time did the Appellant request a language interpreter prior to or during the hearing.
- 15) The Appellant's representative did not act as a translator during the hearing.

### **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 FPL.**

(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.

### **WV IMM, Chapter 1, §1.3.4, Medicaid Application Forms**

#### **§1.3.4.A, Single Streamlined Application (SLA), DFA-SLA-1, DFA-SLA-2**

##### **§1.3.4.A.1, Purpose:**

The SLA, also known as the Application for Health Coverage and Help Paying Cost, allows individuals to apply with the Department for all health coverage programs including WVCHIP. The DFA-SLA-1 and DFA-SLA-2 (short form) are the shelf document (paper) versions of the single-streamlined application used to apply for health coverage only. These applications collect information needed to determine eligibility for health care coverage groups on the basis of Modified Adjusted Gross Income (MAGI).

- The DFA-SLA-1 is used for a family, or when there is more than one individual in the household.
- The DFA-SLA-2 is used by a single individual.

The SLA is available at community and business sites throughout the State. The form is given to anyone who requests it, regardless of the county in which he resides, if different from the county of the special outreach site. The SLA must be available for distribution in all county DOHS offices and provided to anyone who makes the request. When the client requests the SLA mailed to him, this must occur the same day as his request. **When received, the client has the option of completing the SLA the day he receives the form**

**and leaving it at the DOHS office for processing, taking it with him for completion and returning it to the local office at a later date, or returning with the form for completion in the office. [Emphasis added]**

**WV IMM, Chapter 1, §1.6.2, *No Interview Required*:** There is no interview required for any Medicaid coverage group. The Worker may contact an applicant for additional information if needed. Although no interview is required, when an interview is conducted, the interview requirements found in Section 1.2 are applicable.

**WV IMM, Chapter 1, §1.2.1.E.1, *Individuals with Disabilities, in part*:**

Federal law protects individuals with a disability and defines that as a person who:

- Has a physical or mental impairment that substantially limits one or more of the major life activities of that individual;
- Has a record of such an impairment; or
- Is being regarded as having such an impairment

**WV IMM, Chapter 1, §1.2.1.E.2, *Individuals with Limited English Proficiency (LEP)*:**

Federal law also protects individuals with Limited English Proficiency (LEP) and defines that as individuals who:

- Do not speak English as their primary language; and
- Have a limited ability to read, speak, write, or understand English

**WV IMM, Chapter 1, §1.2.1.E.3, *Worker Responsibilities*:** The Worker has the following responsibilities to ensure fair and equitable treatment of applicants and clients:

- Consider whether a person may have a special need, and how that may affect his ability to comply with rules, fill out forms, attend scheduled appointments, etc. **If the Worker determines, or if an individual informs the agency, that a person has a disability or LEP and that affects his ability to comply, the Worker has the authority to make reasonable modifications or accommodations to ensure that the person receives equal access to all programs and services.** Any evidence must be documented in the case record and in case comments. Some examples of reasonable modifications or accommodations can be found below in 1.2.1.E.4. [Emphasis added]
- A reasonable accommodation can be requested for physical, mental or LEP (limited English proficiency) issues that would present a barrier to accessing programs and services. The worker must use the DFA-ADARA-1 (Family Assistance Reasonable Accommodations Report Form) to capture any information about the barrier and the disposition of the reasonable accommodation request. A copy of the DFA-ADARA-1 should be placed into the case record and a copy made available to the BFA ADA Coordinator. A copy of the DFA-ADARA-1 must also be made available to the client upon request.
- The worker must honor the right of the client to fair hearings regarding reasonable accommodations and is responsible for sending this information to the Office of Inspector General, Board of Review.
  - If an individual requires an interpreter, the Worker must contact local resources to locate one.

- Enter an indicator in the case record to alert that an accommodation may be needed and also to track cases for Federal reporting requirements.

**WV IMM, Chapter 1, §1.2.1.E.4, *Methods and Examples of Accommodations*, in part:**

Foreign Language Interpreter Services: If an individual requires an interpreter, the Worker must contact local resources to locate one. If a local community resource cannot be located, the Supervisor of the Worker must contact the DFA Policy Unit for assistance

**WV IMM, Chapter 23, §23.10.4, *Adult Group*, in part:** As a result of the Affordable Care Act (ACA), the Adult Group was created, effective January 1, 2014. Eligibility for this group is determined using MAGI methodologies established in Section 4.7. Medicaid coverage in the Adult Group is provided to individuals who are aged 19 or older and under age 65. ... To be eligible for the Adult Group, income must be equal to or below 133% of the Federal Poverty Level (FPL).

**WV IMM, Chapter 3, §3.7.3, *The MAGI Household Needs Group (NG)*, in 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.

**WV IMM, Chapter 4, §4.7.2, *Calculating MAGI (What Income is Counted)*, in part:**

Eligibility for the MAGI coverage group is determined by using the adjusted gross income (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.

**WV IMM, Chapter 4, §4.16.4.A, *Income from Self-Employment*:**

When the AG member receives self-employment income, the instructions below must be used to arrive at the gross profit, which is used to calculate countable income. This is determined by subtracting allowable business expenses from the gross income.

**WV IMM, Chapter 4, §4.16.4.A.1, *Determining Gross Income*, in part:**

The method used to determine monthly gross income from self-employment varies with the nature of the enterprise. It is necessary to determine which of the following types of self-employment applies to the client's situation. Once the pattern of self-employment is determined, the instructions below are used to determine how the income is counted.

➤ **Persons Receiving Regular Income**

For persons who receive income on a more or less regular schedule (weekly, monthly, etc.) — or who receive a specific amount from the business each week or month and/or receive the balance of profit from the enterprise at the end of the business year—the income is converted to a monthly amount according to item A above.

Business expenses may be computed on a monthly basis or prorated over a 12-month period, at the client's option.

**WV IMM, Chapter 4, §4.16.4.A.2, *Determining Gross Profit, in part:***

Gross profit from self-employment is the income remaining after deducting any identifiable costs of doing business from the gross income.

➤ Deductions

Examples of allowable deductions include, but are not limited to:

- Advertising costs.
- Cost of rental space used for conducting the business.
- Employee labor costs
- Fertilizers
- Insurance premiums and taxes paid on the business and business property
- Interest and taxes, but not the principal, paid on installment payments to purchase capital assets, such as real estate, machinery, equipment, etc.
- Interest and taxes on the client's residence that is used in part to produce income. This is applicable only if the costs on the portion of the home used in the self-employment enterprise can be identified separately
- Legal costs
- Office expenses (stamps, stationery, etc.)
- Raw material
- Repair and maintenance of machinery and/or property
- Seed
- Stock and supplies
- Utilities

Do not deduct the following:

- Amounts claimed as a net loss
- Depreciation
- Federal, state, or local income taxes
- Money paid to purchase capital assets, such as real estate, machinery, equipment, etc. Interest is deducted, if paid in installments. Example: The cost of purchasing a new furnace is a capital expenditure and only the interest on installment payments is deducted. A repair of a furnace is a routine repair and is deducted in its entirety
- Money set aside for retirement
- Principal of real estate mortgages on income-producing property
- Travel from home to a fixed place of business and return

**WV IMM, Chapter 4, §4.7.3, *MAGI-Based Income Disregard, in part:***

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.

**WV IMM, Chapter 4, §4.7.4, *Determining Eligibility, in 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, 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.

**WV IMM, Chapter 4, Appendix A**, sets the income limit for a two-person Adult Medicaid Assistance Group as \$2,266 (133% of the Federal Poverty Level)

### **DISCUSSION**

Policy allows applications for Medicaid to be completed without a face-to-face interview. An individual may apply on-line, in-person, or by paper application. When an individual receives an application, the applicant has the option of completing it the day it is received and leaving it at the local office for processing, taking it with him/her for completion and returning it to the local office at a later date, or returning with the form for completion in the office.

#### **Limited English Proficiency (LEP)**

State and federal regulations protect individuals with Limited English Proficiency (LEP). LEP is defined as individuals who do not speak English as their primary language and have a limited ability to read, speak, write, or understand English. If a worker determines, or if an individual informs the agency, that he/she has a LEP and it affects his/her ability to comply, the worker should obtain foreign language interpreter services.

The Appellant applied for Medicaid benefits on March 8, 2024 for himself and his wife, [REDACTED]. On the March 2024 application form, he indicated his preferred spoken or written language is "Spanish." The Appellant's representative, [REDACTED], questioned whether any assistance was offered to the Appellant in completing the Medicaid application as the Appellant had marked that his preferred language was Spanish. There was no evidence to indicate that the Appellant was contacted by a worker to determine whether the Appellant needed foreign language interpreter services or whether the Appellant actually received any assistance in completing the application. The Appellant offered no testimony regarding this issue. It is noted that the March 2024 application form appeared complete.

The uncontested testimony provided by the Respondent's representative, Katrina Mercer, showed that prior to conducting a pre-hearing conference in September 2024, the Appellant was given an opportunity to have interpreter services, which he declined. Moreover, Ms. Mercer testified that



she had no difficulty conducting the pre-hearing conference and obtaining information from the Appellant regarding his income. Additionally, it is noted that [REDACTED] did not provide any interpretation to the Appellant during the hearing nor request that an interpreter be provided.

### **Medicaid Determinations**

On the March 2024 application, the Appellant self-attested earned income of \$1,000 per month and self-employment income from housecleaning of \$800 per month with \$80 monthly expenses. However, the Appellant provided an IRS Form 1099 showing self-employment income of \$1,597.50, which was used in the July 2024 determination that the Appellant and his wife were over the income limit for Medicaid eligibility. The Respondent sent the Appellant notification of the denial of his Medicaid application on July 22, 2024.

On September 25, 2024, another determination of the Appellant's Medicaid application was made after conducting a pre-hearing conference with the Appellant using the information provided by the Appellant at that time – self-employment income of \$200 per month (\$800 monthly gross income - \$600 in monthly self-employment expenses) and earned income verification from [REDACTED] of \$2,500 per month. (It does not go without notice that the self-employment expenses increased substantially as a result of the pre-hearing conference.) The total income used for Medicaid eligibility determination was \$2,700. When the Appellant's total gross income is divided by 100% of the FPL (\$1,255) it equals 2.1514, or when expressed as a percentage of the FPL, is 215.14%, which is over the policy limit of 133% of FPL, or \$2,266 for an AG of 2. On September 25, 2024, another Medicaid notice was issued to the Appellant, citing ineligibility for Medicaid due to being over the income limit.

[REDACTED] averred that the Appellant and his wife have over \$8,000 in medical bills that they are unable to pay and require Medicaid assistance for these medical bills. Additionally, [REDACTED] proffered that the Appellant declined interpreter services due to pride. Although the Appellant and his wife were given an opportunity to respond, they both declined to do so.

The Board of Review is without authority to change policy or award eligibility beyond policy and can only determine if the Respondent correctly applied the policy when determining the Appellant's Medicaid eligibility. Although there was no evidence to support that the Respondent offered foreign language interpreter services initially, the Appellant declined those services when offered prior to the pre-hearing conference wherein a redetermination was made regarding his March 2024 application using the information he provided at the pre-hearing conference. Whereas the Appellant is over the allowable income limit for Adult Medicaid eligibility, the Respondent's decision to deny the Appellant's Adult Medicaid is application affirmed.

### **CONCLUSIONS OF LAW**

- 1) Policy mandates the opportunity for interpreter services for those with LEP.
- 2) The Appellant did indicate that Spanish was his preferred language on his March 2024 Medicaid Application.

- 3) There was no evidence to show that the Appellant was offered foreign language interpreter services in assisting with his March 2024 Medicaid application.
- 4) The evidence did show that foreign language interpreter services were offered to the Appellant prior to the commencement of a pre-hearing conference in September 2024 which resulted in redetermination of his March 2024 Medicaid application.
- 5) The Appellant was found to be over the income limit for Medicaid eligibility during the July 22, 2024 determination and September 25, 2024 redetermination.
- 6) Policy sets the income limit for Adult Medicaid eligibility for an AG of 2 as \$2,266.
- 7) The Appellant's total gross income of \$2,700 is over the allowable income limit for Adult Medicaid eligibility for an AG of 2.
- 8) The Respondent correctly denied the Appellant's Medicaid application.

### **DECISION**

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's July 22, 2024 and September 25, 2024 decisions to deny the Appellant's March 2024 Medicaid benefit application.

**ENTERED this 29<sup>th</sup> day of October 2024.**

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Lori Woodward, Certified State Hearing Officer