



December 3, 2024

[REDACTED]

RE: [REDACTED] v. WV DoHS
ACTION NO.: 24-BOR-3509

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 assure 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: Amanda Simmons, WV DoHS/BFA

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

██████████

Appellant,

v.

ACTION NO.: 24-BOR-3509

**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 November 20, 2024.

The matter before the Hearing Officer arises from the August 20, 2024, determination by the Respondent of the Appellant's monthly Supplemental Nutrition Assistance Program (SNAP) benefits and Medicaid approval.

At the hearing, the Respondent appeared by Amanda Simmons, Economic Service Supervisor. The Appellant appeared *pro se*. Interpretation services were provided by ██████████. Appearing as a witness for the Appellant was Abraham Asbu. The witnesses and interpreter were placed under oath and the following documents were admitted into evidence:

Department's Exhibits:

- D-1 Notice of July SNAP Medicaid and/or WVCHIP approval for the Appellant and her daughter, and denial for ██████████ and denial of WVWORKS, dated August 20, 2024; Notice of August SNAP and Medicaid and/or WVCHIP approval for the Appellant and her daughter, and denial for SNAP benefits for ██████████ dated August 20, 2024; Notice of September SNAP and Medicaid and/or WVCHIP approval for the Appellant and her daughter, and denial for SNAP benefits for ██████████ dated August 20, 2024; Notice of ongoing SNAP benefits for October for the Appellant and her daughter, and denial for SNAP benefits for ██████████ dated September 10, 2024; Notice of ongoing SNAP benefits for November for the Appellant and her daughter, and denial for SNAP benefits for ██████████ dated September 10, 2024; Notice of ongoing SNAP benefits for December for the Appellant and her daughter, and WVCHIP approval for the

Appellant, and denial for SNAP benefits for [REDACTED] dated October 31, 2024; copies of pay statements for [REDACTED] for October 4, 11, 18, 25, 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) The Appellant applied for SNAP and Medicaid and/or WVCHIP benefits on July 19, 2024.

The Systematic Alien Verification for Entitlements (SAVE) Coordinator notified the Respondent that the Appellant has been given refugee status and is, therefore, eligible for benefits.

- 2) The Appellant's household includes herself, [REDACTED], the father of [REDACTED]
- 3) [REDACTED] did not qualify for SNAP or Medicaid benefits due to failing to provide requested information/not meeting the alien eligibility requirements. (Exhibit D-1)
- 4) Per policy, a pro-rated portion of [REDACTED] income was deemed to the Appellant's AG in calculating her monthly SNAP allotment.
- 5) [REDACTED] has shelter/utility expenses which were not included in the calculation of the Appellant's monthly SNAP allotment.
- 6) Although the Appellant began her SNAP eligibility in July 2024 of \$23, her prorated amount for the month of application was \$0. (Exhibit D-1)
- 7) Per policy, [REDACTED] income must be used in determining [REDACTED] Medicaid and/or WVCHIP eligibility.
- 8) The Appellant was approved for Medicaid benefits. (Exhibit D-1)
- 9) [REDACTED] was approved for WVCHIP benefits. (Exhibit D-1)

APPLICABLE POLICY

Code of Federal Regulations, §273.4, Citizenship and alien status, in part:

(a) Household members meeting citizenship or alien status requirements. No person is eligible to participate in the Program unless that person is:

- (1) A U.S. citizen[1] ;
- (2) A U.S. non-citizen national
- (3) An individual who is:
 - (i) An American Indian born in Canada who possesses at least 50 per centum of blood of the American Indian race to whom the provisions of section 289 of the Immigration and Nationality Act (INA) (8 U.S.C. 1359) apply; or
 - (ii) A member of an Indian tribe as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)) which is recognized as eligible for the special programs and services provided by the U.S. to Indians because of their status as Indians;
- 4) An individual who is:
 - (i) Lawfully residing in the U.S. and was a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to U.S. personnel by taking part in a military or rescue operation during the Vietnam era beginning August 5, 1964, and ending May 7, 1975;
 - (ii) The spouse, or surviving spouse of such Hmong or Highland Laotian who is deceased, or
 - (iii) An unmarried dependent child of such Hmong or Highland Laotian who is under the age of 18 or if a full-time student under the age of 22; an unmarried child under the age of 18 or if a full time student under the age of 22 of such a deceased Hmong or Highland Laotian provided the child was dependent upon him or her at the time of his or her death; or an unmarried disabled child age 18 or older if the child was disabled and dependent on the person prior to the child's 18th birthday. For purposes of this paragraph (a)(4)(iii), child means the legally adopted or biological child of the person described in paragraph (a)(4)(i) of this section, or
- (5) An individual who is:
 - (i) An alien who has been subjected to a severe form of trafficking in persons and who is certified by the Department of Health and Human Services, to the same extent as an alien who is admitted to the United States as a refugee under Section 207 of the INA; or
 - (ii) An alien who has been subjected to a severe form of trafficking in persons and who is under the age of 18, to the same extent as an alien who is admitted to the United States as a refugee under Section 207 of the INA;
 - (iii) The spouse, child, parent or unmarried minor sibling of a victim of a severe form of trafficking in persons under 21 years of age, and who has received a derivative T visa, to the same extent as an alien who is admitted to the United States as a refugee under Section 207 of the INA; or
 - (iv) The spouse or child of a victim of a severe form of trafficking in persons 21 years of age or older, and who has received a derivative T visa, to the same extent as an alien who is admitted to the United States as a refugee under Section 207 of the INA; or
- (6) An individual who is both a qualified alien as defined in paragraph (a)(6)(i) of this section and an eligible alien as defined in paragraph (a)(6)(ii) or (a)(6)(iii) of this section.
 - (i) A qualified alien is:
 - (A) An alien who is lawfully admitted for permanent residence under the INA;
 - (B) An alien who is granted asylum under section 208 of the INA;
 - (C) A refugee who is admitted to the United States under section 207 of the INA;
 - (D) An alien who is paroled into the U.S. under section 212(d)(5) of the INA for a period of at least 1 year;
 - (E) An alien whose deportation is being withheld under section 243(h) of the INA as in effect prior to April 1, 1997, or whose removal is withheld under section 241(b)(3) of the INA;
 - (F) An alien who is granted conditional entry pursuant to section 203(a)(7) of the INA as in effect prior to April 1, 1980;
 - (G) An alien who has been battered or subjected to extreme cruelty in the U.S. by a spouse or a parent or by a member of the spouse or parent's family residing in the same household as the alien

at the time of the abuse, an alien whose child has been battered or subjected to battery or cruelty, or an alien child whose parent has been battered;[2] or

(H) An alien who is a Cuban or Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980.

(ii) A qualified alien, as defined in paragraph (a)(6)(i) of this section, is eligible to receive SNAP benefits and is not subject to the requirement to be in qualified status for 5 years as set forth in paragraph (a)(6)(iii) of this section, if such individual meets at least one of the criteria of this paragraph (a)(6)(ii):

(A) An alien age 18 or older lawfully admitted for permanent residence under the INA who has 40 qualifying quarters as determined under Title II of the SSA, including qualifying quarters of work not covered by Title II of the SSA, based on the sum of: quarters the alien worked; quarters credited from the work of a parent of the alien before the alien became 18 (including quarters worked before the alien was born or adopted); and quarters credited from the work of a spouse of the alien during their marriage if they are still married or the spouse is deceased.

(1) A spouse may not get credit for quarters of a spouse when the couple divorces prior to a determination of SNAP eligibility. However, if the State agency determines eligibility of an alien based on the quarters of coverage of the spouse, and then the couple divorces, the alien's eligibility continues until the next recertification. At that time, the State agency must determine the alien's eligibility without crediting the alien with the former spouse's quarters of coverage.

(2) After December 31, 1996, a quarter in which the alien actually received any Federal means-tested public benefit, as defined by the agency providing the benefit, or actually received SNAP benefits is not creditable toward the 40-quarter total. Likewise, a parent's or spouse's quarter is not creditable if the parent or spouse actually received any Federal means-tested public benefit or actually received SNAP benefits in that quarter. The State agency must evaluate quarters of coverage and receipt of Federal means-tested public benefits on a calendar year basis. The State agency must first determine the number of quarters creditable in a calendar year, then identify those quarters in which the alien (or the parent(s) or spouse of the alien) received Federal means-tested public benefits and then remove those quarters from the number of quarters of coverage earned or credited to the alien in that calendar year. However, if the alien earns the 40th quarter of coverage prior to applying for SNAP benefits or any other Federal means-tested public benefit in that same quarter, the State agency must allow that quarter toward the 40 qualifying quarters total;

(B) An alien admitted as a refugee under section 207 of the INA;

(C) An alien granted asylum under section 208 of the INA;

(D) An alien whose deportation is withheld under section 243(h) of the INA as in effect prior to April 1, 1997, or whose removal is withheld under section 241(b)(3) or the INA;

(E) An alien granted status as a Cuban or Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980);

(F) An Amerasian admitted pursuant to section 584 of Public Law 100-202, as amended by Public Law 100-461;

(G) An alien with one of the following military connections:

(1) A veteran who was honorably discharged for reasons other than alien status, who fulfills the minimum active-duty service requirements of 38 U.S.C. 5303A(d), including an individual who died in active military, naval or air service. The definition of veteran includes an individual who served before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines while such forces were in the service of the Armed Forces of the U.S. or in the Philippine Scouts, as described in 38 U.S.C. 107;

(2) An individual on active duty in the Armed Forces of the U.S. (other than for training); or

(3) The spouse and unmarried dependent children of a person described in paragraphs (a)(6)(ii)(G)(1) or (a)(6)(ii)(G)(2) of this section, including the spouse of a deceased veteran, provided the marriage fulfilled the requirements of 38 U.S.C. 1304, and the spouse has not remarried. An unmarried dependent child for purposes of this paragraph (a)(6)(ii)(G)(3) is: a child who is under the age of 18 or, if a full-time student, under the age of 22; such unmarried dependent child of a deceased veteran provided such child was dependent upon the veteran at the time of the veteran's death; or an unmarried disabled child age 18 or older if the child was disabled and dependent on the veteran prior to the child's 18th birthday. For purposes of this paragraph (a)(6)(ii)(G)(3), child means the legally adopted or biological child of the person described in paragraph (a)(6)(ii)(G)(1) or (a)(6)(ii)(G)(2) of this section.

(H) An individual who is receiving benefits or assistance for blindness or disability (as specified in § 271.2 of this chapter).

(I) An individual who on August 22, 1996, was lawfully residing in the U.S., and was born on or before August 22, 1931; or

(J) An individual who is under 18 years of age.

(iii) The following qualified aliens, as defined in paragraph (a)(6)(i) of this section, must be in a qualified status for 5 years before being eligible to receive SNAP benefits. The 5 years in qualified status may be either consecutive or nonconsecutive. Temporary absences of less than 6 months from the United States with no intention of abandoning U.S. residency do not terminate or interrupt the individual's period of U.S. residency. If the resident is absent for more than 6 months, the agency shall presume that U.S. residency was interrupted unless the alien presents evidence of his or her intent to resume U.S. residency. In determining whether an alien with an interrupted period of U.S. residency has resided in the United States for 5 years, the agency shall consider all months of residency in the United States, including any months of residency before the interruption:

(A) An alien age 18 or older lawfully admitted for permanent residence under the INA.

(B) An alien who is paroled into the U.S. under section 212(d)(5) of the INA for a period of at least 1 year;

(C) An alien who has been battered or subjected to extreme cruelty in the U.S. by a spouse or a parent or by a member of the spouse or parent's family residing in the same household as the alien at the time of the abuse, an alien whose child has been battered or subjected to battery or cruelty, or an alien child whose parent has been battered;

(D) An alien who is granted conditional entry pursuant to section 203(a)(7) of the INA as in effect prior to April 1, 1980.

(iv) Each category of eligible alien status stands alone for purposes of determining eligibility. Subsequent adjustment to a more limited status does not override eligibility based on an earlier less rigorous status. Likewise, if eligibility expires under one eligible status, the State agency must determine if eligibility exists under another status.

(7) For purposes of determining eligible alien status in accordance with paragraphs (a)(4) and (a)(6)(ii)(I) of this section "lawfully residing in the U.S." means that the alien is lawfully present as defined at 8 CFR 103.12(a).

Code of Federal Regulations, CFR 273.11(c)(3):

(i) The State agency must count all or, at the discretion of the State agency, all but a pro rata share, of the ineligible alien's income and deductible expenses and all of the ineligible alien's resources in accordance with paragraphs (c)(1) or (c)(2) of this section. In exercising its discretion under this paragraph (c)(3)(i), the State agency may count all of the alien's income for purposes of applying the gross income test for eligibility purposes while only counting all but a pro rata share to apply the net income test and determine level of benefits. This paragraph (c)(3)(i) does not apply to an alien:

(A) Who is lawfully admitted for permanent residence under the INA;

(B) Who is granted asylum under section 208 of the INA;

(C) Who is admitted as a refugee under section 207 of the INA;

(D) Who is paroled in accordance with section 212(d)(5) of the INA;

(E) Whose deportation or removal has been withheld in accordance with section 243 of the INA;

(F) Who is aged, blind, or disabled in accordance with section 1614(a)(1) of the Social Security Act and is admitted for temporary or permanent residence under section 245A(b)(1) of the INA;

or

(G) Who is a special agricultural worker admitted for temporary residence under section 210(a) of the INA.

(ii) For an ineligible alien within a category described in paragraphs (c)(3)(i)(A) through (c)(3)(i)(G) of this section, State agencies may either:

(A) Count all of the ineligible alien's resources and all but a pro rata share of the ineligible alien's income and deductible expenses; or

(B) Count all of the ineligible alien's resources, count none of the ineligible alien's income and deductible expenses, count any money payment (including payments in currency, by check, or electronic transfer) made by the ineligible alien to at least one eligible household member, not deduct as a household expense any otherwise deductible expenses paid by the ineligible alien, but cap the resulting benefit amount for the eligible members at the allotment amount the household would receive if the household member within the one of the categories described in paragraphs (c)(3)(i)(A) through (c)(3)(i)(G) of this section were still an eligible alien. The State agency must elect one State-wide option for determining the eligibility and benefit level of households with members who are aliens within the categories described paragraphs (c)(3)(i)(A) through (c)(3)(i)(G) of this section.

(iii) For an alien who is ineligible under § 273.4(a) because the alien's household indicates inability or unwillingness to provide documentation of the alien's immigration status, the State agency must count all or, at the discretion of the State agency, all but a pro rata share of the ineligible alien's income and deductible expenses and all of the ineligible alien's resources in accordance with paragraphs (c)(1) or (c)(2) of this section. In exercising its discretion under this paragraph (c)(3)(iii), the State agency may count all of the alien's income for purposes of applying the gross income test for eligibility purposes while only counting all but a pro rata to apply the net income test and determine level of benefits.

(iv) The State agency must compute the income of the ineligible aliens using the income definition in § 273.9(b) and the income exclusions in § 273.9(c).

(v) For purposes of this paragraph (c)(3), the State agency must not include the resources and income of the sponsor and the sponsor's spouse in determining the resources and income of an ineligible sponsored alien.

Code of Federal Regulations, 7 CFR §273.9, in part:

- (a) **Income eligibility standards.** Participation in SNAP shall be limited to those households whose incomes are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet. Households which contain an elderly or disabled member shall meet the net income eligibility standards for SNAP. Households which do not contain an elderly or disabled member shall meet both the net income eligibility standards and the gross income eligibility standards for SNAP. Households which are categorically eligible do not have to meet either the gross or net income eligibility standards.
- (1) The gross income eligibility standards for SNAP shall be as follows:
 - (i) The income eligibility standards for the 48 contiguous States and the District of Columbia, Guam and the Virgin Islands shall be 130 percent of the Federal income poverty levels for the 48 contiguous States and the District of Columbia.
 - ...
 - (2) The net income eligibility standards for SNAP shall be as follows:
 - (i) The income eligibility standards for the 48 contiguous States and the District of Columbia, Guam and the Virgin Islands shall be the Federal income poverty levels for the 48 contiguous States and the District of Columbia.
 - ...
 - (3) The income eligibility limits, as described in this paragraph, are revised each October 1 to reflect the annual adjustment to the Federal income poverty guidelines for the 48 States and the District of Columbia, for Alaska, and for Hawaii.
 - (i) 130 percent of the annual income poverty guidelines shall be divided by 12 to determine the monthly gross income standards, rounding the results upwards as necessary. For households greater than eight persons, the increment in the Federal income poverty guidelines is multiplied by 130 percent, divided by 12, and the results rounded upward if necessary.
 - (ii) The annual income poverty guidelines shall be divided by 12 to determine the monthly net income eligibility standards, rounding the results upward as necessary. For households greater than eight persons, the increment in the Federal income poverty guidelines is divided by 12, and the results rounded upward if necessary.
 - (4) The monthly gross and net income eligibility standards for all areas will be prescribed in tables posted on the FNS web site, at www.fns.usda.gov/snap

7 CFR §273.10, in part:

- (d) **Determining deductions.** Deductible expenses include only certain dependent care, shelter, medical and, at State agency option, child support costs as described in § 273.9.
- ...
- (e) **Calculating net income and benefit levels —**
- (1) **Net monthly income.**
 - (i) To determine a household's net monthly income, the State agency shall:
 - (A) Add the gross monthly income earned by all household members and the total monthly unearned income of all household members, minus income exclusions, to determine the household's total gross income.
 - (B) Multiply the total gross monthly earned income by 20 percent and subtract that amount from the total gross income; or multiply the total gross monthly earned income by 80 percent and add that to the total monthly unearned income, minus income exclusions.

- (C) Subtract the standard deduction.
 - (D) If the household is entitled to an excess medical deduction as provided in §273.9(d)(3), determine if total medical expenses exceed \$35. If so, subtract that portion which exceeds \$35.
 - (E) Subtract allowable monthly dependent care expenses, if any, as specified under §273.9(d)(4) for each dependent.
 - (F) If the State agency has chosen to treat legally obligated child support payments as a deduction rather than an exclusion in accordance with §273.9(d)(5), subtract allowable monthly child support payments in accordance with §273.9(d)(5).
 - (G) Subtract the homeless shelter deduction, if any, up to the maximum of \$143.
 - (H) Total the allowable shelter expenses to determine shelter costs. Subtract from total shelter costs 50 percent of the household's monthly income after all the above deductions have been subtracted. The remaining amount, if any, is the excess shelter cost. If there is no excess shelter cost, the net monthly income has been determined. If there is excess shelter cost, compute the shelter deduction according to paragraph (e)(1)(i)(I) of this section.
 - (I) Subtract the excess shelter cost up to the maximum amount allowed for the area (unless the household is entitled to the full amount of its excess shelter expenses) from the household's monthly income after all other applicable deductions. Households not subject to a capped shelter expense shall have the full amount exceeding 50 percent of their net income subtracted. The household's net monthly income has been determined.
- (ii) In calculating net monthly income, the State agency shall use one of the following two procedures:
- (A) Round down each income and allotment calculation that ends in 1 through 49 cents and round up each calculation that ends in 50 through 99 cents; or
 - (B) Apply the rounding procedure that is currently in effect for the State's Temporary Assistance for Needy Families (TANF) program. If the State TANF program includes the cents in income calculations, the State agency may use the same procedures for SNAP income calculations. Whichever procedure is used, the State agency may elect to include the cents associated with each individual shelter cost in the computation of the shelter deduction and round the final shelter deduction amount. Likewise, the State agency may elect to include the cents associated with each individual medical cost in the computation of the medical deduction and round the final medical deduction amount.
- ...
- (ii)
- (A) Except as provided in paragraphs (a)(1), (e)(2)(iii) and (e)(2)(vi) of this section, the household's monthly allotment shall be equal to the maximum SNAP allotment for the household's size reduced by 30 percent of the household's net monthly income as calculated in paragraph (e)(1) of this section. If 30 percent of the household's net

income ends in cents, the State agency shall round in one of the following ways:

- (1) The State agency shall round the 30 percent of net income up to the nearest higher dollar; or
 - (2) The State agency shall not round the 30 percent of net income at all. Instead, after subtracting the 30 percent of net income from the appropriate Thrifty Food Plan, the State agency shall round the allotment down to the nearest lower dollar.
- (B) If the calculation of benefits in accordance with paragraph (e)(2)(ii)(A) of this section for an initial month would yield an allotment of less than \$10 for the household, no benefits shall be issued to the household for the initial month.
- (C) Except during an initial month, all eligible one-person and two-person households shall receive minimum monthly allotments equal to the minimum benefit. The minimum benefit is 8 percent of the maximum allotment for a household of one, rounded to the nearest whole dollar.

...

(4) Thrifty Food Plan (TFP) and Maximum SNAP Allotments.

- (i) Maximum SNAP allotment level. Maximum SNAP allotments shall be based on the TFP as defined in §271.2, and they shall be uniform by household size throughout the 48 contiguous States and the District of Columbia. ... The TFP amounts and maximum allotments in each area are adjusted annually and will be prescribed in a table posted on the FNS web site, at www.fns.usda.gov/fsp.

WV IMM, Chapter 3, §3.2.1.A.4, *Children under Age 22, Living with a Parent, in part:*

Natural or adopted children and stepchildren who are under 22 years of age and who live with a parent must be in the same AG as that parent.

WV IMM, Chapter 3, §3.2.1.B.4, *Ineligible Noncitizen, in part:*

Individuals who do not meet the citizenship or eligible noncitizen status are ineligible to participate in SNAP and may not be a separate AG. When an individual indicates inability or unwillingness to provide documentation of noncitizen status, that client is classified as an ineligible noncitizen. **The income of the ineligible noncitizen is deemed and expenses are prorated according to Section 4.4. Eligibility is determined for the remaining eligible AG members.** See Chapter 15. Once the Worker determines the individual is an ineligible noncitizen and would normally be included in the AG, no additional status, such as student, is determined. [Emphasis added]

WV IMM, Chapter 4, §4.4.4.H, *Deeming, in part:*

Income is deemed from individuals who are ineligible, disqualified, and excluded by law and from certain income sources as found below.

WV IMM, Chapter 4, §4.4.4.H.1, *Deeming from Disqualified and Ineligible Individuals, in part:*

➤ **Ineligible AG Members** The following individuals are ineligible to be included in the AG and are not counted as AG or Needs Group members when determining eligibility and the benefit level. See Section 3.2.

- Individuals subject to an enumeration penalty

- Ineligible noncitizens
- Individuals who are found to be ineligible Able-Bodied Adults Without Dependents (ABAWD)

The income is deemed as follows:

Step 1: The total countable income of the ineligible individual is divided by the number of persons in the AG, plus the ineligible individual(s). This is each individual's pro rata share.

Step 2: Subtract the disqualified individual(s)' share from his total countable income. The remaining amount is counted as income to the AG.

The Earned Income Disregard is applied only to the portion deemed to the AG. The portion of the AG's allowable child support payments, shelter, and dependent care expenses, which is billed to and/or paid by the ineligible individual is prorated as described above.

NOTE: No portion of an AG's SUA is prorated due to the ineligibility of an AG member.

Ineligible Individual Example: The household consists of father, mother, and three children. The father has earnings of \$500 per month and is an ineligible individual. There is no other income in the home and the father pays the \$250 rent.

Income for the AG is calculated as follows:

Step 1: $\$500 \div 5 = \100 Pro rata income share for each person

Step 2: $\$500$ Father's income
 $-\$100$ Father's pro rata share
 $\$400$ Deemed to AG as earned income

The shelter expense is calculated as follows:

Step 1: $\$250 \div 5 = \50 Pro rata rent share for each person

Step 2: $\$250$ Rent paid by father
 $-\$50$ Father's pro rata share
 $\$200$ Used as shelter expense for AG

WV IMM, Chapter 15, §15.6.1, Method Used in Deeming:

The income and assets of non-qualified noncitizens are considered when determining eligibility for those individuals for whom the noncitizens are financially responsible (spouses and children). The method to be used in deeming is based on the particular category of assistance being evaluated.

WV IMM, Chapter 15, §15.6.1.A, SNAP:

The ineligible noncitizen is not included in the assistance group (AG). The income of all ineligible noncitizens and/or illegal noncitizens is prorated to the Supplemental Nutrition Assistance Program (SNAP) AG using the method described in Section 4.4.4. Assets of ineligible noncitizens and illegal noncitizens are counted in their entirety. Ineligible noncitizens include:

- Noncitizens who were ineligible prior to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) due to noncitizen status; or
- Noncitizens made ineligible due to PRWORA; and
- Noncitizens made ineligible because the household was unable or unwilling to provide documentation of noncitizen status.

WV IMM, Chapter 15, §15.6.1.B, WV WORKS, in part:

Ineligible/illegal noncitizens are excluded from the AG and the needs group (NG). They are included in the income group (IG).

WV IMM, Chapter 15, §15.6.1.D, AFDC-Related Medicaid and Other Medicaid Coverage Groups for Families and/or Children:

See Chapter 23 for the specific coverage groups. Non-qualified noncitizens are excluded from the AG. They are included in the NG and IG

WV IMM, Chapter 4, §4.4.3.B, Determining Countable Income, in pertinent part:

The following steps are used to determine countable income for cases meeting the eligibility tests above.

- Step 1: Combine monthly gross countable earnings and monthly gross profit from self-employment.
- Step 2: Deduct 20% of Step 1.
- Step 3: Add the gross countable unearned income
- Step 4: Subtract the Standard Deduction
- Step 5: Subtract allowable Dependent Care Expenses
- Step 6: Subtract the amount of legally obligated child support actually paid.
- Step 7: Subtract the Homeless Shelter Standard Deduction found in Appendix B.
- Step 8: Subtract allowable medical expenses in excess of \$35
- Step 9: Calculate 50% of the remaining income and compare it to the actual monthly shelter/SUA amount.
- Step 10: If the shelter/SUA costs are equal to or less than the amount found in step 9, no further computation is needed, the amount from step 8 is the countable income. If the shelter/SUA costs are greater than step 9, the amount in excess of 50% is deducted to arrive at the countable income. Elderly/disabled households are not subject to the shelter/utility cap.
- Step 11: Compare the countable income to the maximum net income in Appendix A for the AG size.

WV IMM, Chapter 4, §4.4.3.C, Determining the Amount of the Benefit:

To determine the SNAP allotment, find the countable income and the maximum benefit allotment for the AG in Appendix A. One- and two-person AGs who meet the gross and net income test or who are categorically eligible, as defined in Section 1.4.17.C automatically receive the minimum SNAP benefit, unless it is a prorated benefit. See Appendix D, SNAP and WV WORKS Proration Table. No benefits are issued to any AG eligible for an initial, prorated amount less than \$10. See Chapter 1 for proration requirements. To determine the SNAP allotment, find the countable income and the maximum benefit allotment for the AG in Appendix A. The Worker will determine the benefit amount by using the following method. The eligibility system also uses this method.

- Multiply net income by 30% (Round up)
- Subtract 30% of net income as calculated above from the maximum monthly benefit for the AG size

WV IMM, Chapter 4, §4.4.2.B.2, Standard Deduction:

A Standard Deduction is applied to the total non-excluded income counted for the AG, after application of the Earned Income Disregard. The amount of the Standard Deduction is found in Appendix B.

DISCUSSION

The Appellant, an eligible noncitizen, was approved for SNAP and Medicaid benefits for herself and her [REDACTED]. The Appellant resides with the father of [REDACTED]. It was determined that [REDACTED] was an ineligible noncitizen at the time of application. Although [REDACTED] was ineligible to receive SNAP or Medicaid benefits, a pro-rata amount of his income must be included in calculating the Appellant's monthly SNAP allotment. [REDACTED] income must be used in determining Medicaid and/or WVCHIP eligibility for [REDACTED] has earned income.

On August 20, 2024, it was determined that the Appellant and [REDACTED] were eligible for SNAP benefits in the amount of \$23 a month, along with Adult Medicaid benefits for the Appellant and WVCHIP benefits for [REDACTED]. The Appellant requested this hearing as she believed that she did not have Medicaid or SNAP benefits.

The Respondent's representative, Amanda Simmons, explained to the Appellant that she has ongoing Medicaid benefits, including WVCHIP coverage for [REDACTED]. The Appellant was concerned because she has dental and medical issues and was unaware that she needed to find a provider who accepted West Virginia Medicaid. Additionally, Ms. Simmons explained that the Appellant does receive SNAP benefits in an AG of two in the amount of \$23 per month.

Per policy, a pro-rated amount of [REDACTED] income must be deemed to the Appellant and c [REDACTED]. In reviewing the approval notices in evidence, it does appear that [REDACTED] gross income amount of \$6,073.79 was deemed to the Appellant's AG which included a 20% earned income disregard and a standard deduction of \$198. No shelter/utility expenses were included in the calculations. Ms. Simmons testified that the Appellant's shelter/utilities expenses were paid by [REDACTED]. Policy allows shelter/utility expenses of an ineligible non-citizen living in the household to be pro-rated and deemed, if verification is provided. However, it is unclear whether the necessary verifications were requested and/or provided to allow consideration for a pro-rated shelter/utility expense in the Appellant's SNAP calculation.

Because the preponderance of evidence did not show that the Respondent correctly excluded any shelter/utility deduction in its determination of the Appellant's monthly SNAP allotment, the Respondent's decision cannot be affirmed.

CONCLUSIONS OF LAW

- 1) Policy requires that a pro-rata portion of an ineligible non-citizen's income must be deemed to the SNAP AG if the ineligible non-citizen would otherwise be included in the SNAP AG.
- 2) The father of Appellant's daughter, [REDACTED], who lives in the same household would otherwise be required by policy to be included in the Appellant's AG but for his status as an ineligible non-citizen.
- 3) The Respondent correctly deemed [REDACTED] income to the Appellant's SNAP AG.
- 4) Policy requires that the shelter/utility expenses of a SNAP AG must be pro-rated and deemed in calculating the monthly SNAP allotment.
- 5) The evidence failed to show whether the Respondent correctly excluded the shelter/utility expenses of [REDACTED]

DECISION

It is the decision of the State Hearing Officer to **REVERSE** and **REMAND** the case to determine whether verification of the shelter/utility expenses were submitted for consideration in the calculation of the Appellant's SNAP benefits. If the shelter/utility expense verifications were provided, then a redetermination should reflect a pro-rata amount deemed to the Appellant's AG from the date upon which the verifications were received.

ENTERED this 3rd day of December 2024.

Lori Woodward, Certified State Hearing Officer