February 4, 2025

[redacted]

RE: [redacted] v. DoHS/BFA
ACTION NO.: 25-BOR-1003

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,

Kristi Logan
Certified State Hearing Officer
Member, State Board of Review

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

cc: Karry Evans, [redacted] DoHS

WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW

[redacted],

Appellant,

v. **Action Number: 25-BOR-1003**

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 January 21, 2025.

The matter before the Hearing Officer arises from the December 12, 2024, decision by the Respondent to terminate the Appellant's Adult Medicaid benefits.

At the hearing, the Respondent appeared by Karry Evans, [redacted] DoHS. The Appellant appeared *pro se*. The witnesses were placed under oath and the following documents were admitted into evidence.

Department's Exhibits:

D-1 Hearing Request Notification Form
D-2 Hearing Request received December 27, 2024
D-3 Board of Review Scheduling Order dated January 8, 2025
D-4 Board of Review Hearing Decision, Action Number 24-BOR-3578
D-5 Notice of Termination dated November 25, 2024
D-6 Office Interview Appointment Letter dated January 2, 2025
D-7 Paystubs dated November 1 and November 29, 2024
D-8 Employer Statement received December 2, 2024
D-9 Notice of Termination dated December 12, 2024
D-10 Case Comments from November 22, 2024, through January 8, 2025
D-11 West Virginia Income Maintenance Manual §4.3.2 Chart 2

D-12 West Virginia Income Maintenance Manual Chapter 4 Appendix A

Appellant's Exhibits:

A-1 Employer Statement
A-2 Paystubs dated December 13 and December 27, 2024

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 Adult Medicaid benefits.

2) The Appellant's earned income was updated in connection with a Supplemental Nutrition Assistance Program (SNAP) application in October 2024.

3) The Respondent issued a notice of termination to the Appellant in October 2024 advising that her income was excessive to continue receiving Adult Medicaid benefits.

4) The Appellant requested a fair hearing over the termination of Adult Medicaid benefits on October 31, 2024, and the hearing was convened on November 20, 2024.

5) In a decision issued by the Board of Review on November 22, 2024, Action Number 24-BOR-3578, the Respondent's decision to terminate the Appellant's Adult Medicaid benefits was upheld (Exhibit D-4).

6) The Respondent issued a notice to the Appellant on November 25, 2024, advising that Adult Medicaid benefits would be terminated effective December 31, 2024 (Exhibit D-5).

7) On December 2, 2024, the Appellant submitted additional paystubs and an employer statement to the Respondent for reconsideration of the Adult Medicaid termination (Exhibits D-7 and D-8).

8) The Respondent calculated the Appellant's monthly income, excluding overtime and holiday pay, as $3,027.80 (November 1, $1,446.28 plus November 29, $1,370.28 equals $2,816.56 divided by two equals $1,408.28 multiplied by 2.15). (Exhibits D-7 and D-8).

9) The employer statement submitted on December 2, 2024, indicated that the Appellant worked Monday through Thursday, 7:30 to 5:00, working on Fridays only in the case of emergencies (Exhibit D-8).

10) The Respondent issued a notice to the Appellant on December 12, 2024, advising that Adult Medicaid benefits would be terminated effective December 31, 2024, due to excessive income (Exhibit D-9).

11) The Appellant requested a hearing on December 27, 2024 (Exhibit D-2).

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 Federal Poverty Level**
> (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.

West Virginia Income Maintenance Manual Chapter 3 explains eligibility determination groups for MAGI Adult Medicaid:

> **3.7 Adult Medicaid Group**
> The Patient Protection and Affordable Care Act, amended by the Health Care and Education Reconciliation Act of 2010, enacted March 30, 2010, are together referred to as the Affordable Care Act (ACA). The ACA established the categorically mandatory coverage group known as the Adult Group. Effective January 1, 2014, Medicaid coverage is provided to individuals age 19 or older and under age 65 who are not otherwise eligible for and enrolled in another categorically mandatory Medicaid coverage group, and are not entitled to or enrolled in Medicare Part A or B. Eligibility for this group is determined using Modified Adjusted Gross Income (MAGI) methodologies.
>
> **3.7.2 MAGI Household Income Group (IG)**
> 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.
>
> EXCEPTION: Income of children, or other tax dependents, who are not expected to be required to file an income tax return is not counted, whether or not the individual actually files a tax return.

3.7.3 MAGI Household Needs Group (NG)
The needs group is the number of individuals included in the MAGI household size based upon the MAGI rules for counting household members. To determine the MAGI household size, the following step-by-step methodology is used for each applicant**.** In the case of married couples who reside together, each spouse must be included in the MAGI household of the other spouse, regardless of whether they expect to file a joint tax return or whether one spouse expects to be claimed as a tax dependent by the other spouse. The MAGI household of the pregnant woman also includes her unborn child(ren).

This methodology must be applied to each applicant in the MAGI household separately:
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.

West Virginia Income Maintenance Manual Chapter 4 explains income eligibility for MAGI Medicaid coverage groups:

4.2 Definitions
Earned income is the income of an individual which is derived, at least in part, from compensation for physical or mental activity as part of a trade or business. ***Earnings include gross income from employment and gross profit from self-employment.***

4.7.1 Determining Income Counted for the MAGI Household
Income of each member of the individual's MAGI household is counted. The MAGI household is determined using the MAGI methodology established in Chapter 3.

4.7.4 Determining Eligibility
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.

4.6.1 Budgeting Method

The following method is used to determine income for the certification period or period of consideration (POC), unless information to the contrary is shown in the remaining sections of this chapter. Eligibility is determined on a monthly basis. Therefore, it is necessary to determine a monthly amount of income to count for the eligibility period. The following information applies to earned and unearned income. For all cases, the Worker must determine the amount of income that can be reasonably anticipated for the assistance group (AG). For all cases, income is projected; past income is used only when it reflects the income the client reasonably expects to receive during the certification period. When the amount of an anticipated income source is determined by use of an income tax return, it is not necessary to change the method by which that income source is anticipated at each redetermination prior to the next tax return, unless the anticipated income from that source for the upcoming certification period or POC is expected to change.

4.6.1.A Methods for Reasonably Anticipating Income

There are two methods for reasonably anticipating the income the client expects to receive. One method uses past income, and the other method uses future income. Both methods may be used for the same AG for the same certification period. The method used depends on the circumstances of each source of income. Use past income only when both of the following conditions exist for a source of income:

- Income from the source is expected to continue into the certification period or POC.
- The amount of income from the same source is expected to be more or less the same. For these purposes, the same source of earned income means income from the same employer, not just the continued receipt of earned income.

4.6.1.B Consideration of Past Income

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.

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.

4.6.1.C Consideration of Future Income

This section applies only when the client reasonably expects to receive income from a new source during the new certification period, or when the amount of income from an old source is expected to change. In that case, the Worker must consider the income that can be reasonably expected to be received.

Step 1: Determine if the IG expects to receive income from a new source, or expects a different amount from an old source, in the new certification period. If not, none of the following steps are necessary. However, the Worker must record the client's statement that he does not expect income from a new source.

Step 2: Determine the amount of income the client reasonably expects to receive from the new source, or the new amount from the old source. If the amount of income is not reasonably anticipated, the income from that source is not counted. If it is possible to reasonably anticipate a range of income, the minimum amount that is anticipated is used. The Worker will record case comments for the client's statement concerning this income and will also record why it cannot be reasonably anticipated.

Step 3: Determine the date the client reasonably expects to receive the income from the new source, or the new amount from the old source. If the date the income will be received is not reasonably anticipated, the income from that source is not counted. The Worker will record case comments for the client's statement concerning the date and will also record why it cannot be reasonably anticipated.

Step 4: When the amount and date of receipt can be anticipated, the Worker treats the income according to Section 4.4.1.D below. The Worker must record how the amount and date of receipt were projected.

4.6.1.D How to Use Past and Future Income
After the Worker determines all of the income sources that are to be considered for use, the Worker determines the amount of monthly income based on the frequency of receipt and whether the amount is stable or fluctuates. This is described below.

When the Frequency of Receipt is:	When the Amount is Stable:	When the Amount Fluctuates:
Monthly	Use actual monthly amount	Use average monthly amount
More often than monthly	Convert amount per period to monthly amount	Find an average amount per period and convert to monthly amount
Less often than monthly	Prorate to find amount for the intended period. If not monthly, convert or prorate amount	Prorate to find amount for the intended period. If monthly, convert or prorate amount

The purpose of finding an average amount of fluctuating income is to even out the highs and lows in the amount of income. The client is not, then, required to report fluctuating income each pay period and the Worker is not required to change income monthly**.** Should the client report fluctuations in the amount of income, the Worker is only required to recalculate the countable income when, in his judgment, the fluctuation will affect eligibility. All changes reported by the client must be considered, but not necessarily used. Reported changes must be recorded and the Worker must record why the reported income was or was not used.

Conversion of income to a monthly amount is accomplished by multiplying an actual or average amount as follows:

- Weekly amount x 4.3
- Biweekly amount (every two weeks) x 2.15
- Semimonthly (twice/month) x 2

Chapter 4 Appendix A: Income Limits
133% of the FPL for a three-person AG: $2,862
100% of the FPL for a three-person AG: $2,152

DISCUSSION

Pursuant to policy, the income limit for a three-person assistance group for Adult Medicaid benefits is $2,862, or 133% of the federal poverty level. A 5% disregard is applied if the deduction would bring the assistance group’s income below the 133% federal poverty level income limit.

The Respondent terminated the Appellant’s Adult Medicaid benefits when it was determined that the Appellant’s earned income exceeded the allowable limit. In Board of Review Action Number 24-BOR-3578, the Respondent’s October 21, 2024, decision to terminate Adult Medicaid benefits due to excessive income was upheld.

Subsequent to the hearing decision, the Appellant provided the Respondent with additional paystubs and an employer statement to recalculate her income. Based on the information submitted, the Respondent determined that the Appellant's gross monthly income of $3,027.80 exceeded the income limit of $2,862.

The question to be decided is whether the Respondent's determination that the Appellant's income continued to be excessive to receive Adult Medicaid benefits based on the income information submitted on December 2, 2024, resulting in the December 12, 2024, notice of termination.

The Appellant testified that she has been working more hours than usual due to the holidays and staffing issues. The Appellant contended that she usually works 32 hours per week, Monday through Thursday, and only works on Fridays when her employer is understaffed. The Appellant reapplied for Medicaid benefits on January 3, 2025, providing additional paystubs and an updated employer statement to confirm that the recent influx in hours cannot be anticipated (Exhibits A-1 and A-2).

Policy stipulates that the budgeting method is used to anticipate income expected to be received throughout the certification period. An average of the income that is received in the 30 days prior to the date of application or recertification is used. The Respondent used the two non-consecutive paystubs provided by the Appellant on December 2, 2024:

November 1	$1,446.28	76.2 hours	year-to-date $10,423.40
November 29	$1,370.28	72.12 hours	year-to-date $13,176.31

The Respondent testified that she did not consider overtime or holiday pay when calculating the Appellant's income. By using the Appellant's regular pay only from the November paystubs, the Appellant's gross earned income is: $3,027.80 ($1,116.28 plus $1,370.80 equals $2,816.56 divided by 2 equals $1,408.28 multiplied by 2.15). The employer statement the Appellant provided with the November paystubs indicated that the Appellant works Monday through Thursday, 7:30 to 5:00, and on Fridays as needed, which cannot be anticipated (Exhibits D-7 and D-8). Based on the employer statement, the Appellant is scheduled to work 9.5 hours a day, four days a week. The Appellant testified that her one-hour lunch break is unpaid, so the Appellant's anticipated earned income is 8.5 hours multiplied by 4 equals 34 hours per week, 68 hours per pay period, at $19 hour equals $1,292 multiplied by 2.15 equals $2,777.80. The Appellant's anticipated earnings are below the Adult Medicaid limit of $2,862.

Policy states that if the source of income or the amount of income from an old source is not expected to continue, the income from that source is not counted. If it is possible to reasonably anticipate a range of income, the minimum amount that is anticipated is used.

The Appellant provided credible testimony that her work hours fluctuate and any additional hours she received previously were due to staffing issued and cannot be anticipated. Whereas the Appellant's employer confirmed that additional work hours in excess of the Appellant's regular schedule cannot be anticipated, the Appellant's income is under the limit to continue receiving Adult Medicaid benefits.

CONCLUSIONS OF LAW

1) The income limit for a three-person assistance group for Adult Medicaid benefits is $2,862.

2) The Appellant's hours of work fluctuate from pay period to pay period.

3) The Appellant is scheduled to work 68 hours a pay period at $19 an hour.

4) The Appellant's anticipated monthly earned income is $2,777.80.

5) The Appellant continues to be eligible for Adult Medicaid benefits.

DECISION

It is the decision of the State Hearing Officer to **reverse** the decision of the Respondent to terminate the Appellant's Adult Medicaid benefits.

ENTERED this 4th day of February 2025.

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Kristi Logan
Certified State Hearing Officer