



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
4190 Washington Street, West  
Charleston, WV 25313

Earl Ray Tomblin  
Governor

Michael J. Lewis, M.D., Ph. D.  
Cabinet Secretary

November 8, 2011

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held November 1, 2011. Your hearing request was based on the Department of Health and Human Resources' action to deny your August 9, 2011, application for Qualified Child Medicaid for your son.

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 Health and Human Resources. These same laws and regulations are used in all cases to assure that all persons are treated alike.

Eligibility for the Qualified Child Medicaid program is based on current policy and regulations. Some of these regulations state that eligibility for aliens is based on whether the alien is a qualified or non-qualified alien. (West Virginia Income Maintenance Manual §18.2.B.2) An eligible alien includes one who is lawfully admitted to the United States on or after August 22, 1996, and has been a qualified alien for more than five years. (West Virginia Income Maintenance Manual §18.4.C.2)

The information submitted at your hearing fails to reveal that your son has been a qualified alien for more than five years.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to deny your application for Qualified Child Medicaid for your son.

Sincerely,

Cheryl Henson  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Michael Massaroni, [REDACTED] DHHR

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES  
BOARD OF REVIEW**

**IN RE:**       -----,

**Claimant,**

v.

**ACTION NO.: 11-BOR-2077**

**WEST VIRGINIA DEPARTMENT OF  
HEALTH AND HUMAN RESOURCES,**

**Respondent.**

**DECISION OF STATE HEARING OFFICER**

**I. INTRODUCTION:**

This is a report of the State Hearing Officer resulting from a fair hearing for ----- . This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This hearing was convened on November 1, 2011. It should be noted that the record was left open until November 7, 2011 to allow for additional written evidence to be submitted.

**II. PROGRAM PURPOSE:**

“Qualified Child” Medicaid provides coverage to children under the age of 19 whose family income is at or below 100% of the Federal Poverty Level and who are not eligible for SSI Related Medicaid.

**III. PARTICIPANTS:**

-----, Claimant  
Michael Massaroni, Department representative

Presiding at the hearing was Cheryl Henson, State Hearing Officer and a member of the State Board of Review.

It should be noted that the hearing was held by telephone conference call. The Claimant requested that a Department employee, Crystal Tabor, be present for the hearing; however, chose to move forward when she was unavailable for testimony.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether the Agency was correct in denying the Claimant's application for Qualified Child Medicaid for his son.

**V. APPLICABLE POLICY:**

West Virginia Income Maintenance Manual §18.2 and 18.4

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 Notification letter dated August 17, 2011
- D-2 Memorandum dated October 5, 2011 to Board of Review
- D-3 Letter from Claimant dated August 22, 2011
- D-4 Email correspondence dated September 30, 2011
- D-5 Copy of Claimant's driver's license and child's social security card
- D-6 Copy of certain pages from [REDACTED] passport for child
- D-7 The United States of America I-797C, Notice of Action form dated July 13, 2008
- D-8 Certain pages from VISA dated April 28, 2003
- D-9 Front page of [REDACTED] County, West Virginia, Court Order dated March 2, 2007
- D-10 Republic of [REDACTED] Birth Certificate for child
- D-11 Biometric Notification/Code 3 notification letter dated January 27, 2011
- D-12 Notification letter from [REDACTED] County, West Virginia, Department of Health and Human Resources dated November 9, 2010
- D-13 Notification letter from U.S. Department of Homeland Security dated November 17, 2010
- D-14 Notification letter from U.S. Department of Homeland Security dated November 15, 2010
- D-15 Notification letter from U.S. Department of Homeland Security dated November 15, 2010
- D-16 Letter from [REDACTED] dated February 20, 2009
- D-17 Notification letter from U.S. Department of Homeland Security dated January 27, 2011
- D-18 Email correspondence dated March 2, 2011

Claimant's Exhibits:

- C-1 Letter from Claimant dated October 20, 2011
- C-2 Copy of United States of America Permanent Resident card and social security card
- C-3 School attendance information for August 28, 2006 through October 30, 2006, and child's Permanent Resident Card

**VII. FINDINGS OF FACT:**

- 1) On August 17, 2011, the Department denied the Claimant's application for Qualified Child Medicaid for his son, and sent him a notification letter (D-1) which included the following relevant information:

ACTION: Your 08/09/11 application for Qualified Child Medicaid has been denied.

REASON: -----

This individual does not meet the alien eligibility requirements.

- 2) Policy in the West Virginia Income Maintenance Manual §18.2, B, 2, provides in pertinent part:

Aliens

Eligibility for aliens is based on whether the alien is a qualified or non-qualified alien. The term "qualified alien" includes aliens who are lawfully admitted for permanent residence in the United States under the Immigration and Nationality Act (INA), and certain refugees, asylees, individuals whose deportation has been withheld, Cuban or Haitian Entrants, and Amerasian.

- 3) Policy in the West Virginia Income Maintenance Manual §18.4, C, provides in pertinent part:

Medicaid

1. Medicaid Eligibility

Individuals who meet the eligibility requirements for Medicaid but are not citizens or nationals are Medicaid eligible only as provided below:

- \* For the purposes of qualifying as a United States citizen, the United States as defined by the Immigration and Naturalization Act include the fifty states, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands. Nationals from American Samoa, or Swain's Island are

also regarded as United States Citizens for purposes of Medicaid.

- \* Applicants for Medicaid whose documents presented raise a question about their alien status must provide documentation of their citizen/alien status before eligibility can be determined.

## 2. Medicaid Eligible Aliens

An eligible (qualified) alien is one who is:

- \* An alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA) and was admitted before August 22, 1996;
- \* An alien who is granted asylum under section 208-INA eligible for 7 years from entry to United States;
- \* A refugee who is admitted to the United States under section 207-INA including immigrants who have been certified by the U.S. Department of Health and Human Services to be victims of a severe form of trafficking in persons in accordance with the Victims of Trafficking and Violence Protection Act of 2000 (P.L. 106-386) eligible for 5 years from entry to United States;
- \* An alien who is paroled in the United States under section 212(d)(5) of INA for a period of at least 1 year, eligible for 7 years from date of status;
- \* An alien whose deportation is being withheld under section 243(h) of INA eligible for 7 years from date of status;
- \* An alien who is granted conditional entry pursuant to section 203(a) (7) and section 274a.12 (a) (3) of INA, eligible for 7 years from entry;
- \* Amerasian immigrant under 584 of FOEFRPAA 1988 entered the United States within last 5 years – participation limited to 7 years from entry into the United States;
- \* Is a Cuban or Haitian entrant under section 501(e) of REAA 1980 and entered the United States within the last 5 years, participation limited to 7 years from entry;
- \* Honorably discharged veterans, their spouses, and unmarried dependent children;

- \* An alien who is active duty in the United States Armed Forces, other than duty for training, their spouses, and unmarried dependent children;
- \* **An alien who is lawfully admitted to the United States on or after August 22, 1996, and has been a qualified alien for more than 5 years;**
- \* An alien who is a battered spouse or battered child of/or is a veteran or on active duty in the United States Armed Forces, or spouse or unmarried dependent child of the veteran or person on active duty. The non-abusive parent of a battered child may also be eligible. Likewise, a child of a battered parent may be eligible.

- 4) The Department representative, Michael Massaroni, explained that the local office was not capable of making the determination as to whether the child met the residence requirements; therefore, they relied on their Policy Unit to make the determination. He stated that the Policy Unit determined (D-4) that the applicable policy involved whether the child had been lawfully admitted to and living in the United States for more than 5 years. He added that the Policy Unit determined that the child was not eligible because it was not shown that he had been living in the United States for more than five (5) years.
- 5) The Department presented evidence (D-1) to show that as part of the application process it was provided and considered the following as evidence of the length of time the child had been a legal resident in the United States:

- D-3 Letter from Claimant dated August 22, 2011
- D-5 Child's social security number
- D-6 Passport from the [REDACTED]
- D-7 Document dated July 17, 2008 showing appointment with U.S. Department of Homeland Security
- D-8 Copy of page from unidentified individual's Visa dated April 23, 2003
- D-9 Front page from Court Order from Circuit Court of [REDACTED] County, West Virginia
- D-10 Child's birth certificate from [REDACTED]
- D-11 Document dated January 27, 2011 showing appointment with U.S. Department of Homeland Security for child
- D-12 Letter dated November 9, 2010 from Department by Cristal Tabor
- D-13 Document dated November 17, 2010 showing appointment with U.S. Department of Homeland Security
- D-14 Document dated November 15, 2010 from U.S. Department of Homeland Security

- D-15 Document dated November 15, 2010 from U.S. Department of Homeland Security
- D-16 Letter from [REDACTED] Law Firm dated February 20, 2009
- D-17 Document dated January 27, 2011 from U.S. Department of Homeland Security
- D-18 Email communication dated March 2, 2011 from attorney

- 6) The Claimant's August 22, 2011, letter (D-3) shows that he communicated to the Department that he has been unemployed for ten (10) months and that the child has no income. He purports in his letter that the child is a legal resident of the United States, and that he believes the child qualifies for assistance. He provides no timeframe for the child having been living in the United States. He asks that the Department worker speak with another employee, Crystal Tabor, in order to obtain proof of the child's legal residence.
- 7) The Department indicated that all additional documents reviewed were provided by Ms. Tabor from her records.
- 8) The evidence provided in Department's Exhibit D-5 shows that the Claimant has a driver's license issued in West Virginia, and that the child has a social security card. This evidence is not relevant in determining whether the child has been a legal resident for more than five (5) years.
- 9) The evidence provided in Department's Exhibit D-6 shows that the child's passport from the [REDACTED] is stamped, "THE GAMBIA - SEEN ON DEPARTURE" with a date of April 28, 2003. The Claimant purported that this is the date the child came to the United States. Although this document shows the child left [REDACTED] on April 28, 2003, it does not show that he entered the United States on that date.
- 10) The evidence provided in Department's Exhibit D-7 shows that the Department of Health and Human Resources in Princeton, West Virginia, applied for, "I-360 - Petition for Amerasian, Widow(er), or Special Immigrant" on July 13, 2008. The document does not provide specific information regarding the person seeking approval of the petition, and is of no value in showing the timeframe of the child's legal residence in the United States.
- 11) The evidence provided in Department's Exhibit D-8 shows one page of a Visa which is date stamped on April 28, 2003 by the United States Immigration service. There is no identifying information which shows the name of the individual being admitted. The Claimant purports this is evidence of the child entering the United States on the same date the child exited the Republic of Sierra Leone (D-6).
- 12) The evidence provided in Department's Exhibit D-9 shows that on March 2, 2007 a preliminary hearing was held in the Circuit Court of [REDACTED] County, West Virginia

involving the child in question. The exhibit includes only the first page of the Order, and shows that the Claimant was being detained in [REDACTED]. This document suggests that the child was believed by the Court to be living in the United States on the date of the hearing.

- 13) The evidence provided in Department's Exhibit D-10 shows that the child was born in [REDACTED] to the Claimant on September 5, 1995. This document is of no value in determining the timeframe of the child's residence in the United States.
- 14) The evidence provided in Department's Exhibit D-11 shows that the child had an appointment with the United States Department of Homeland Security on January 31, 2011, to continue processing his application. This document is of no value in determining the timeframe of the child's residence in the United States.
- 15) The evidence provided in Department's Exhibit D-12, dated November 9, 2010, shows that a Department employee wrote a letter on the Claimant's behalf stating that he is the biological father of the child, and that he has the responsibility of caring for the child both emotionally and financially. She adds that the Claimant has limited financial resources to care for the child due to his current immigration status, and that he is dependent on the kindness of others in many instances to insure the child's needs are met. This document supports that on November 9, 2010, the child was living in the United States with the Claimant.
- 16) The evidence provided in Department's Exhibit D-13 shows that a Department employee had an appointment with the United States Department of Homeland Security on December 7, 2010, in relation to the child in question. Additionally, Department's Exhibit D-14 shows that on November 15, 2010, the Department employee was requested to provide a medical examination and to appear for fingerprints at the same Agency. These documents are of no value in determining the timeframe the child has been lawfully living in the United States.
- 17) The evidence in Department's Exhibit D-15 shows that a Department employee had an appointment with the United States Department of Homeland Security on November 15, 2010, for fingerprints in relation to the child in question. Again, this document is of little value in relation to the timeframe of the child's lawful residence in the United States.
- 18) The evidence in Department's Exhibit D-16 shows that the Department corresponded with a law firm on February 20, 2009 in relation to arranging for medical examinations for the child. This document is of no value in relation to the timeframe of the child's residence in the United States.
- 19) The evidence provided in Department's Exhibit D-17 shows that the child had an appointment on March 22, 2011 with the U.S. Department of Homeland Security in relation to an interview for residency. This document has no value in showing the timeframe of the child's lawful residency in the United States.

- 20) The evidence provided in Department's Exhibit D-18 shows that the Department was corresponding by email with an attorney in relation to a proposed meeting on or about March 2, 2011. The document has no value in showing the timeframe of the child's lawful residency in the United States.
- 21) The Claimant submitted evidence (C-1) during the hearing process in the form of a written letter authored by him and dated October 20, 2011, in which he requested that Crystal Tabor be present for the hearing. He purports in his letter that Ms. Tabor has "proof" of his son's legal residency. Additionally, he submitted evidence (C-2) which includes a copy of his son's Permanent Resident Card and social security card. The Permanent Resident Card shows that the child has been a resident of the United States since May 11, 2011, and that the card is set to expire on May 11, 2011. The social security card is of no value in showing how long the child has been a permanent resident.
- 22) The hearing record was left open until November 7, 2011, to allow additional time for the parties to submit evidence in support of the length of the child's lawful residence in the United States. The Claimant submitted evidence (C-3) which shows a copy of the child's purported "old" Permanent Residence Card. The child's name and sex is legible on the card; however, the date of residence and expiration date is not legible. There is also a copy of the child's "new" Permanent Residence Card, which was previously submitted by the Claimant in Exhibit C-2. The evidence (C-3) also includes a copy of the child's attendance record from [REDACTED] Elementary School in [REDACTED] West Virginia, for the period of August 28, 2006 through October 30, 2006. This copy indicates that the child was enrolled and attended forty-five (45) days at the school for the period. This evidence (C-3) supports that the child lived in the United States during the period of August 28, 2006 through October 30, 2006.

#### **VIII. CONCLUSIONS OF LAW:**

- 1) The question for this hearing is whether the Department was correct to deny the Claimant's August 2011 application for Qualified Child Medicaid for his son who is an alien.
- 2) Policy provides that eligibility for Medicaid depends on whether the alien is qualified or non-qualified. The term "qualified alien" includes aliens who are lawfully admitted for permanent residence in the United States under the Immigration and Nationality Act (INA), and certain refugees, asylees, individuals whose deportation has been withheld, Cuban or Haitian Entrants, and Amerasian. Individuals who meet the eligibility requirements for Medicaid but are not citizens or nationals must also meet certain specific criteria and be determined a qualified alien. One way to meet this requirement for Medicaid is to be an alien who was lawfully admitted to the United States on or after August 22, 1996, who has also been a qualified alien for more than 5 years.

- 3) Testimony and evidence provided during the hearing shows that the child was lawfully admitted to the United States after August 22, 1996; however, the evidence fails to show that the Claimant's child has been a qualified alien for more than 5 years.
- 4) Although the Claimant submitted (C-2, C-3) two United States Permanent Resident Cards for his child, one of those was not legible. The legible Permanent Resident Card shows that the child has been a lawful permanent resident of the United States since May 11, 2011. The illegible card appears to show that the child was issued a previous Permanent Resident Card; however, the timeframes of eligibility are not clear. Additional evidence (D-9, D-12, and C-3) supports that the child was living in the United States and attending school during the timeframe of August 28, 2006 through October 30, 2006, as well as that he was living in the United States on the dates of March 2, 2007, and November 9, 2010. Although the Claimant purported that evidence in Department's Exhibit D-8 shows that the child legally entered the United States on April 28, 2003, there is no information on the evidence to show the name of the individual who entered the United States using that Visa.
- 5) As a result of these findings, the Department was correct in its decision to deny the Claimant's August 2011 application for Qualified Child Medicaid for his son.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the Department's decision to deny the Claimant's August 2011 application for Qualified Child Medicaid for his son.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 10<sup>th</sup> Day of November, 2011.**

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**Cheryl Henson  
State Hearing Officer**