



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General

Board of Review  
P.O. Box 1736  
Romney, WV 26757

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

Earl Ray Tomblin  
Governor

April 16, 2012

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held April 4, 2012. Your hearing request was based on the Department of Health and Human Resources' decision to deny your eligibility for Medicaid services.

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 Medicaid is based on current policy and regulations. These regulations provide that aliens must be considered a qualified alien before Medicaid eligibility can be established. Specifically, an eligible (qualified) alien is one 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 (West Virginia Income Maintenance Manual Chapter 18.4).

Information submitted at your hearing revealed that you do not meet the Medicaid eligibility requirements for ongoing services because you are not a qualified alien who has been a resident of the United States of America for more than five years. However, you may qualify for Emergency Medicaid for Illegal and Ineligible Aliens because you experienced a sudden onset of a life-threatening medical condition while awaiting final disposition of your application.

It is the decision of the State Hearing Officer to Uphold the action of the Department to deny your eligibility for ongoing Medicaid services. Additionally, the Department is hereby ORDERED, to evaluate your sudden onset of a life-threatening medical condition under the emergency services provision as outlined in policy and provide final determination of your eligibility.

Sincerely,

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

cc: Erika Young-Chairman, Board of Review  
Ann Hubbard-Economic Service Supervisor

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

**IN RE:** ---- ----,

**Claimant,**

**v.**

**ACTION NO.: 12-BOR-667**

**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 fair hearing was convened on a timely appeal, filed February 13, 2012.

**II. PROGRAM PURPOSE:**

The 1965 Amendments to the Social Security Act established, under Title XIX, a Federal-State medical assistance program commonly known as Medicaid. The Department of Health and Human Resources administers the Medicaid Program in West Virginia in accordance with Federal Regulations. The Bureau for Medical Services is responsible for development of regulations to implement Federal and State requirements for the program. The Department of Health and Human Resources processes claims for reimbursements to providers participating in the program.

**III. PARTICIPANTS:**

---- ----, Claimant  
---- ----, Claimant's Husband

Peter VanKleek, Economic Service Worker

Presiding at the hearing was Eric L. Phillips , State Hearing Officer and a member of the Board of Review.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether or not the Department was correct to deny the Claimant's eligibility for Medicaid services.

**V. APPLICABLE POLICY:**

West Virginia Income Maintenance Manual Chapter 18.4

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

**Department's Exhibits:**

- D-1 Hearing Summary
- D-2 Application for WV Health Care Coverage for Kids and Expectant Moms dated November 3, 2011
- D-3 Verification Checklist dated December 23, 2011
- D-4 Claimant's Passport from [REDACTED] and United States Immigrant VISA
- D-5 Notice of Decision dated January 24, 2012
- D-6 Claimant's Permanent Resident Card
- D-7 West Virginia Income Maintenance Manual Chapter 18.4

**Claimants' Exhibits:**

- C-1 Notice of Decision dated November 4, 2011

**VII. FINDINGS OF FACT:**

- 1) On November 3, 2011, the Claimant submitted Exhibit D-2, WV Health Care Coverage for Kids and Expectant Moms to the Department as an application for pregnancy related Medicaid services.
- 2) On December 23, 2011, the Department processed the Claimant's request and determined that additional information was needed to complete the application. On December 23, 2011, the Department issued the Claimant Exhibit D-3, Verification Checklist requesting verification of the Claimant's immigration status. This exhibit documents that the Claimant's application for Medicaid services would be denied if the requested information was not submitted to the Department by January 3, 2012.
- 3) On December 29, 2011, the Claimant submitted her passport and VISA status (Exhibit D-4) to the Department. The Claimant's VISA documents an issue date of September 2, 2011. Additionally, on February 1, 2012, the Claimant submitted a copy of her Permanent Resident

Card which documents the Claimant's residency with the United States of America since October 27, 2011.

- 4) Mr. Peter VanKleek, Economic Service Worker testified that the Department denied the Claimant's application for Medicaid services effective January 24, 2012, because the Claimant had not been a resident of the United States of America for five years. Notification of the Department's decision was issued on the same date (Exhibit D-5).
- 5) The Claimant's husband, ---- ----, testified that his wife was expected to give birth to their child on December 21, 2011. ---- ---- stated that his wife became ill on December 6, 2011 and was admitted into [REDACTED] Hospital in [REDACTED] West Virginia. While at [REDACTED] Hospital, the Claimant was diagnosis with malaria and was transferred to [REDACTED] Memorial Hospital in [REDACTED] West Virginia on or around December 7, 2011. After admission to [REDACTED] Memorial Hospital, the Claimant's condition was considered life-threatening and child labor was induced. ---- ---- indicated that his wife incurred several thousand dollars in medical expenses and these expenses have created a financial hardship due to his and his wife's unemployment.
- 6) West Virginia Income Maintenance Manual Chapter 18.4 documents in pertinent part:

To receive WV WORKS, Medicaid, or Supplemental Nutrition Assistance Program (SNAP) benefits, an individual applying must be a resident of the United States as a citizen or a legal alien and meet eligibility requirements for each program. Among those ineligible are alien visitors, tourists, diplomats and students who enter the United States temporarily with no intention of abandoning their residence in a foreign country. An illegal or ineligible alien residing in the United States who requires emergency medical care may qualify for Medicaid for the length of time medically required to avert the medical emergency. See Section 18.6.

## 2. Medicaid Eligible Aliens

Medicaid eligibility for aliens is based on the alien being a qualified alien regardless of whether the alien entered the United States before or on or after August 22, 1996. 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 into 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 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.

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#### 6. Medicaid Emergency Service

Any alien who is not an eligible qualified alien can be considered for Medicaid emergency service. See Section 18.9, Emergency Medicaid for Illegal and Ineligible Aliens.

#### 7) West Virginia Income Maintenance Manual Chapter 18.9 documents in pertinent part:

##### ELIGIBILITY OF NON-QUALIFIED ALIENS

Illegal/Ineligible aliens who meet the residence and other Medicaid policy eligibility criteria are eligible for Medicaid only for treatment of medical conditions meeting the following requirements. See Section 10.6.

## 1. Eligibility Requirement For Emergency Services

To be eligible for emergency services, an alien must meet all eligibility requirements. See Section 16.6,H. Pregnant alien women facing imminent delivery or other related problems are evaluated using Medicaid guidelines for all programs. The unborn child is considered as a child in the home.

**NOTE:** Aliens must provide their SSN(s), if one is available, but must not be required to apply for an SSN.

## 2. Care And Services For Emergency Services

Care and services are necessary for the treatment of an emergency medical condition of the alien provided such care and services are not related to either an organ transplant procedure or routine prenatal or post partum care. The alien must have, after sudden onset, a medical condition (including emergency labor and delivery) showing acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in

- Placing the patient's health in serious jeopardy;
- Serious impairment to bodily functions; or
- Serious dysfunction of any bodily organ or part.

**NOTE:** If an alien is in need of ongoing emergency medical this must be approved by DFA prior to the continuation of medical benefits.

## VIII. CONCLUSIONS OF LAW:

- 1) Policy requires that Medicaid eligibility for aliens is based on the alien being a qualified alien. Specifically, an eligible alien is one 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.
- 2) Evidence reveals that the Claimant has been a permanent resident of the United States of America since October 27, 2011, which has been less than 5 years. Therefore, the Claimant is not considered a qualified alien and ongoing Medicaid eligibility cannot be established.
- 3) Policy allows for an alien, who is not considered an eligible qualified alien, to be considered for Medicaid emergency services, when all eligibility criteria are met. The Claimant experienced a sudden onset of a life-threatening medical condition while awaiting disposition of her Medicaid application dated November 3, 2011; therefore, the Claimant should have been evaluated for emergency Medicaid assistance under the Emergency Medicaid for Illegal and Ineligible Aliens provision. The Department is hereby ORDERED, to evaluate the Claimant's eligibility under this provision and provide notice of final determination of eligibility to the Claimant.

**IX. DECISION:**

It is the decision of the State Hearing Officer to uphold the action of the Department to deny the Claimant's application for Medicaid services. The Department is hereby ORDERED to evaluate the Claimant's eligibility under the Emergency Medicaid for Illegal and Ineligible Aliens provision.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this \_\_\_\_\_ day of April , 2012.**

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**Eric L. Phillips**  
**State Hearing Officer**