



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL

Bill J. Crouch
Cabinet Secretary

BOARD OF REVIEW
Raleigh County DHHR
407 Neville Street
Beckley, WV 25801

Jolynn Marra
Inspector General

April 6, 2022

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 22-BOR-1336

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 Health and Human Resources. 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: Appellant's Recourse to Hearing Decision
Form IG-BR-29

cc: [REDACTED]

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

██████████,

Appellant,

v.

Action Number: 22-BOR-1336

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

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 West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on March 30, 2022, on an appeal filed February 17, 2022.

The matter before the Hearing Officer arises from the January 13, 2022, decision by the Respondent to deny the Appellant's application for Medicaid.

At the hearing, the Respondent appeared by Bonnie Price, Economic Service Supervisor. The Appellant appeared by ██████████ Patient Representative with ██████████. Both witnesses were sworn, and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Hearing Request Notification Form
- D-2 Application for Healthcare Coverage and Help Paying Costs faxed December 30, 2021
- D-3 Department of Homeland Security U.S. Citizenship and Immigration Services Supplemental Information for Spouse Beneficiary, page 1 of 6
- D-4 International Driver's License
- D-5 Email from SAVE Coordinator dated November 1, 2021
- D-6 Notice of Denial dated January 13, 2022
- D-7 West Virginia Income Maintenance Manual §15.2.2
- D-8 West Virginia Income Maintenance Manual §15.3.2.B
- D-9 West Virginia Income Maintenance Manual §7.2.3
- D-10 Hearing Summary

Appellant's Exhibits:

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) The Appellant applied for Medicaid using the Respondent's online system, PATH, on October 6, 2021.
- 2) The Appellant indicated that he was not a United States (U.S.) citizen or a U.S. national on the application.
- 3) On November 1, 2021, the Respondent received verification from SAVE, the electronic immigration status verification system administered by the U.S. Citizenship and Immigration Services, that the Appellant did not have an immigration status and was not lawfully admitted to the U.S. (Exhibit D-5).
- 4) The Respondent denied the Appellant's October 6, 2021, application for Medicaid as the Appellant was an ineligible noncitizen.
- 5) An application for Medicaid was faxed to the Respondent on behalf of the Appellant on December 30, 2021 (Exhibit D-2).
- 6) A representative from [REDACTED] was listed on Appendix C of the application as the Appellant's representative (Exhibit D-2).
- 7) The Respondent sent notice on January 13, 2022, advising the Appellant that his application had been denied as he was not a U.S. citizen (Exhibit D-6).
- 8) [REDACTED] with [REDACTED] requested a hearing on behalf of the Appellant on February 17, 2022, disputing that the Appellant was not evaluated for emergency Medicaid for noncitizens.

APPLICABLE POLICY

West Virginia Income Maintenance Manual §15.7.5.B.1 states a qualified noncitizen for Medicaid purposes is:

- noncitizen who is lawfully admitted for permanent residence (LPR) under the INA and was admitted before August 22, 1996

- A noncitizen who is granted asylum under Section 208 of the INA, eligible for seven years from entry to U.S.
- A refugee who is admitted to the U.S. under Section 207 of the INA, including immigrants who have been certified by the U.S. DHHS 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), and Afghan and Iraqi special immigrant visa holders eligible for seven years from entry to the U.S.
- A noncitizen whose deportation is being withheld under Section 243(h) of the INA, eligible for seven years from date of status
- An Amerasian immigrant under 584 of the FOEFRPAA who entered the U.S. within the last five years, participation limited to seven years from entry into the U.S.
- A Cuban or Haitian entrant under Section 501(e) of the REAA who entered the U.S. within the last five years, participation limited to seven years from entry
- An American Indian born in Canada to whom the provisions of 8 U.S.C. 1359 apply
- A member of an Indian tribe as defined in 25 U.S.C. 450B(e)
- An honorably discharged veteran, his spouse, and unmarried dependent children
- A noncitizen who is active duty in the U.S. Armed Forces, other than duty for training, their spouse, and unmarried dependent children
- The surviving spouse of a deceased veteran or service member, provided the spouse has not remarried and the marriage fulfills the following requirements:
 - Married for at least one year; or
 - Married before the end of a fifteen-year time span following the end of the period of military service in which the injury or disease was incurred or aggravated; or
 - Married for any period if a child was born of the marriage or was born before the marriage.
- Noncitizens receiving SSI
- Compact of Free Association (COFA) migrants, effective December 27th, 2020

Qualified noncitizens subject to a five-year waiting period:

- A noncitizen who is lawfully admitted to the U.S. for permanent residence (LPR) on or after August 22, 1996, and has been a qualified noncitizen for more than five years
- A noncitizen who is paroled into the U.S. under Section 212(d)(5) of the INA for at least one year and has been a qualified noncitizen for more than five years
- A noncitizen who is granted conditional entry pursuant to Section 203(a)(7) of the INA and has been a qualified noncitizen for more than five years
- A noncitizen who is a battered spouse or battered child the non-abusive parent of a battered child, or a child of a battered parent and has been a qualified noncitizen for more than five years

West Virginia Income Maintenance Manual §15.7.5.5 defines a non-qualified non-citizen as:

- Visitors, tourists, students, and diplomats
- Noncitizens who have applied for eligible status, but who have not been approved
- Noncitizens whose status is questionable or unverified

- Undocumented immigrants

West Virginia Income Maintenance Manual §15.7.6 states any noncitizen who is not a qualified noncitizen is not eligible for Medicaid except in emergency situations. Non-qualified noncitizens who meet the residence and other Medicaid policy eligibility criteria are eligible for Medicaid only for treatment of medical conditions meeting the following requirements.

To be eligible for emergency services, a noncitizen must meet all eligibility requirements of the Medicaid group for which they are applying. Pregnant noncitizen 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.

Care and services are necessary for the treatment of an emergency medical condition of the noncitizen, provided such care and services are not related to either an organ transplant procedure or routine prenatal or post-partum care.

The noncitizen 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
- Serious dysfunction of any bodily organ or part

West Virginia Income Maintenance Manual §23.13 states a noncitizen who is not otherwise eligible for Medicaid as a Qualified Noncitizen, refer to Chapter 15 is eligible when all of the following conditions are met.

- The noncitizen must meet the income, asset, and non-financial considerations (except for noncitizen status) of any full-coverage Medicaid group, with the exception of the long-term care groups; and,
- He must be diagnosed as having a severe medical condition that could reasonably be expected to result in one of the following, without immediate medical attention:
 - Serious jeopardy to the noncitizen's health
 - Serious impairment to bodily functions
 - Impaired or abnormal functioning of any body part or organ

Such medical conditions include labor and delivery. In judging sufficient severity, severe pain must be considered. Applications from or on behalf of these noncitizens must be made within 30 days of the need for emergency medical care. Individuals who apply based on disability must be approved by MRT, unless they receive a statutory disability benefit.

West Virginia Income Maintenance Manual §1.2.1.C states it is the Worker's responsibility to explain and make available all of the Department of Health and Human Resources' (DHHR) programs for which the applicant could qualify. The Worker must evaluate potential eligibility for all programs based on the available information, unless the applicant specifically states he is not

interested in being considered for a specific program. When an applicant has been evaluated and eligibility is confirmed, a client notice is issued from the eligibility system to inform the applicant that he may be eligible for a benefit for which he did not apply and that he must contact his local office for information or to apply.

West Virginia Income Maintenance Manual §1.2.3.A states the Worker has the following general responsibilities in the application process. Program-specific responsibilities are found in the program sections of this chapter. The Worker must:

- Ensure the client is given the opportunity to apply for all of the Department's programs on the date that he expresses an interest.

DISCUSSION

Policy stipulates that an individual must be a citizen of the United States or a qualified noncitizen to be eligible for Medicaid benefits. A nonqualified noncitizen may be eligible for the care and services necessary for the treatment of an emergency medical condition if certain criteria is met.

The Respondent denied Medicaid applications made on behalf of the Appellant due to his status as a nonqualified noncitizen. The Appellant was not evaluated for emergency Medicaid for nonqualified noncitizens.

██████████, representative for the Appellant, testified that the Appellant was hospitalized from September 23 to September 25, 2021, at ██████████ due to the onset of chest pain. ██████████ contended that her company, ██████████ initially submitted a Medicaid application on behalf of the Appellant on September 26, 2021, to the ██████████ County office. ██████████ stated ██████████ did not learn of the Appellant's Medicaid denial until December 29, 2021, at which point a hearing was requested on December 30, 2021, via fax. ██████████ indicated that the request for hearing included a signed authorization form and a copy of the September 2021 Medicaid application. ██████████ contested the Respondent's failure to evaluate the Appellant for emergency Medicaid.

The Respondent testified that there was no record of an application submitted for the Appellant by ██████████ prior to the faxed application received on December 30, 2021. The Respondent also stated it did not receive a request for hearing from ██████████ until February 17, 2022. The Respondent was unaware that the Medicaid applications for the Appellant were for emergency Medicaid.

The request for hearing faxed to the ██████████ County office included a copy of the first Medicaid application completed by ██████████ on the Appellant's behalf, which the Respondent processed as a new application on January 3, 2022. Although ██████████ contended that ██████████ initially applied for Medicaid for the Appellant in September 2021, there was no evidence submitted to support that a Medicaid application was made prior to the Appellant's online application on October 6, 2021.

There is no dispute that the Appellant does not qualify for Adult Medicaid based upon his immigration status. Pursuant to policy, applications for or on behalf of nonqualified noncitizens for emergency Medicaid must be made within 30 days of the need for emergency medical care. The Appellant applied for Medicaid on October 6, 2021, within 30 days of his hospitalization in September 2021. Policy requires that an individual must be evaluated for eligibility for all Medicaid programs at application, therefore, the Appellant should have been evaluated for emergency Medicaid for nonqualified noncitizens.

Whereas the Appellant applied for Medicaid within 30 days of an emergency hospital visit, he must be evaluated for eligibility under the emergency Medicaid program for nonqualified noncitizens.

CONCLUSIONS OF LAW

- 1) A nonqualified noncitizen may receive emergency Medicaid benefits to treat the onset of an emergency medical condition if the application is made within 30 days of the need for medical care.
- 2) The Appellant applied for Medicaid within 30 days of the need for medical care.
- 3) The Respondent must evaluate the Appellant for eligibility for emergency Medicaid for nonqualified noncitizens.

DECISION

It is the decision of the State Hearing Officer to **reverse** the Respondent's denial of the Appellant's application for Medicaid. The matter is hereby **remanded** for further evaluation of the Appellant's eligibility for emergency Medicaid for nonqualified noncitizens.

ENTERED this 6th day of April 2022.

Kristi Logan
Certified State Hearing Officer