



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Bill J. Crouch
Cabinet Secretary

Jolynn Marra
Inspector General

May 5, 2022

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 22-BOR-1518

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,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
Form IG-BR-29

Cc Kerstin Sutton, WVDHHR

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

██████████,

Appellant,

v.

Action Number: 22-BOR-1518

**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 May 4, 2022, on an appeal filed April 11, 2022.

The matter before the Hearing Officer arises from the April 7, 2022, decision by the Respondent to deny Medicaid benefits.

At the hearing, the Respondent appeared by Kerstin Sutton, Economic Services Supervisor, WVDHHR. The Appellant was present and was represented by her husband, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Medicaid application received by Respondent on March 21, 2022
- D-2 West Virginia Income Maintenance Manual Chapter 7.3 (Immigration Status)
- D-3 West Virginia Income Maintenance Manual Chapter 15.7
- D-4 Case Comments from Respondent's computer system
- D-5 Notice of Decision dated April 7, 2022
- D-6 Electronic Mail Transmission from Jane Scott, SAVE Coordinator, dated April 5, 2022
- D-7 Notice of Decision dated April 20, 2022

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 benefits on March 21, 2022 (Exhibit D-1).
- 2) The Appellant is not a U.S. citizen (Exhibit D-1).
- 3) The Appellant has been in the United States for less than two years (Exhibit D-6).
- 4) The Appellant was granted conditional U.S. resident status and employment authorization on December 10, 2021 (Exhibit D-6).
- 5) The Appellant was determined ineligible for Medicaid benefits because she has not resided in the United States for at least five years (Exhibit D-6).
- 6) The Respondent notified the Appellant that her Medicaid application had been denied in notices dated April 7, 2022, and April 22, 2022 (Exhibits D-5 and D-7).

APPLICABLE POLICY

West Virginia Income Maintenance Manual Chapter 15.7 states that to be eligible for WV WORKS, Medicaid, the West Virginia Children's Health Insurance Program (WVCHIP) or the Supplemental Nutrition Assistance Program (SNAP), an individual applying must be a resident of the United States (U.S.) as a citizen or a legal noncitizen and meet eligibility requirements for each program.

West Virginia Income Maintenance Manual Chapter 15.4.B.1 states that immigration status must be verified for WV WORKS, SNAP and Medicaid benefits. If any member of the household is a noncitizen, a copy of the front and back of the immigration identification documentation must be forwarded to the Systematic Alien Verification of Entitlement (SAVE) Coordinator. The documentation is verified by the USCIS through automated or manual methods. All USCIS responses are sent to the requesting worker with information regarding the noncitizen's eligibility for benefits.

West Virginia Income Maintenance Manual Chapter 7.3 states that immigration status must be verified at application or at redetermination if changes occur regarding immigration status (Exhibit D-2).

West Virginia Income Maintenance Manual Chapter 15.7.5.A states that a person must be a U.S. citizen, U.S. national, or a qualified noncitizen eligible to receive benefits. Applicants for Medicaid whose presented documents raise questions about their noncitizen status must provide documentation of their citizen/noncitizen status before eligibility can be determined (Exhibit D-3).

A qualified noncitizen is:

- A noncitizen who is lawfully admitted for permanent residence 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 the 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 date of status
- As 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 501e 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. 1369 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 requirements
- Noncitizens receiving SSI
- Compact of Free Association (COFA) migrants, effective December 27, 2020

Qualified noncitizens subject to a five-year waiting period:

- A noncitizen who is lawfully admitted to the U.S. for permanent resident (LPR) on or after August 22, 1996, and has been a qualified noncitizen for more than five years
- A noncitizen 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.

DISCUSSION

Policy states that qualified non-U.S. citizens are subject to a five-year waiting period before receiving Medicaid benefits.

During the hearing, the Appellant's husband, [REDACTED], who has been a U.S. citizen for several years, testified that the Appellant has been in the United States for about one year. The Appellant has a Green Card and a social security number.

Kerstin Sutton, Economic Services Supervisor with the Department, testified that the Appellant's immigration information was forwarded to the Respondent's SAVE Coordinator with the Department of Homeland Security. The SAVE Coordinator determined that the Appellant is ineligible for Medicaid benefits because she has not been in the United States for five years. Ms. Sutton indicated that noncitizens may be eligible for benefits in certain situations, including pregnancy and emergency.

As the Appellant does not meet the five-year residency requirement for qualified noncitizens, the Respondent acted correctly in denying Medicaid benefits.

CONCLUSIONS OF LAW

- 1) Policy states that qualified non-U.S. citizens are subject to a five-year waiting period before receiving Medicaid benefits.
- 2) The Appellant, who is not a U.S. citizen, has resided in the United States for less than two years.
- 3) The Appellant does not meet the five-year U.S. residency requirement for qualified noncitizens.
- 4) The Respondent correctly denied the Appellant's Medicaid application.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's action to deny the Appellant's Medicaid application.

ENTERED this 5th Day of May 2022.

**Pamela L. Hinzman
State Hearing Officer**