



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
Post Office Box 2590
Fairmont, WV 26555-2590

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

September 11, 2007

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 5, 2007. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for Medicaid coverage through the Breast and Cervical Cancer Program.

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. Some of these regulations state that eligibility for aliens is based on whether the alien is a qualified or nonqualified alien. Regardless of whether the alien entered the United States on or after August 22, 1996 (the date of enactment of P.L. 104-193), the previous categories of lawful permanent residents and aliens permanently residing under color of law (PRUCOL) no longer apply. 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 have been a qualified alien for more than 5 years.

The information which was submitted at your hearing reveals that you do not meet the "qualified alien" criteria as you have not been in a permanent residence status for more than 5 years.

It is the decision of the State Hearing Officer to **uphold** the action of the Department in denying your application for Medicaid coverage through the Breast and Cervical Cancer Program.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Kristen Freshwater, ESW, DHHR

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

_____,

Claimant,

v.

Action Number: 07-BOR-1653

**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 concluded on September 11, 2007 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 convened on September 5, 2007 on a timely appeal filed June 28, 2007.

II. PROGRAM PURPOSE:

The Program entitled **Medicaid** is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

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
Kristen Freshwater, ESW, DHHR

Presiding at the Hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the Agency is correct in its action to deny the Claimant Medicaid coverage through the Breast and Cervical Cancer Program.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 18.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Medicaid Application for BCCSP Participants dated 6/1/07
- D-2 CDC Certificate of Diagnosis (received 6/1/07)
- D-3 Notice of Decision dated 6/28/07
- D-4 CDC Certificate of Diagnosis (faxed to the Department on 6/26/07)
- D-5 Notice of Denial dated 6/12/07
- D-6 Claimant's Identification – Permanent Resident Card and WV Driver's License
- D-7 Case Comments from the Department's RAPIDS computer system dated 6/15/07
- D-8 E-mail correspondence dated 6/6/07
- D-9 WVIMM Chapter 4.3

Claimant's Evidence:

- C-1 Centers for Medicare & Medicaid Services (Internet cite)

VII. FINDINGS OF FACT:

- 1) The Claimant completed an application for Medicaid coverage through the Breast and Cervical Cancer Medicaid Program on June 1, 2007 (Exhibit D-1).
- 2) Because Exhibit D-2 (CDC Certificate of Diagnosis) failed to include a diagnosis, the Claimant was notified of denial in Exhibit D-3.

- 3) The Department received Exhibit D-4 (faxed copy of CDC Certificate of Diagnosis) on June 26, 2007 which included an eligible diagnosis, however, on June 12, 2007, the Department issued a denial notice indicating the Claimant failed to verify citizenship within the appropriate processing time frame for this benefit.
- 4) The Department cited policy from the WV Income Maintenance Manual, Chapter 4.3 and indicated that individuals must provide documentary evidence of United States citizenship or nationality when initially applying for Medicaid. Some Medicaid programs do not require documentation, however, the Breast and Cervical Cancer Medicaid Program does.
- 5) The Claimant submitted documentation found in Exhibit D-6 which includes a West Virginia Driver's License issued on 6/5/06 and a Permanent Resident Card that indicates the Claimant has been a permanent resident since 8/1/05.
- 6) The Claimant referred to her Visa and stated that she has been in the United States legally since April 1, 2001, however, she has only been a permanent resident since August 1, 2005. The Claimant testified that she can apply for citizenship in two years (5 years after the permanent residency card was issued.)
- 7) Policy found in the West Virginia Income Maintenance Manual, Chapter 4.3, states that Section 6036 of the Deficit Reduction Act of 2005 (DRA) enacted on February 8, 2006, requires individuals who claim United States citizenship to provide documentary evidence of citizenship or nationality when initially applying for Medicaid or upon a recipient's first Medicaid redetermination on or after July 1, 2006. This provision does not affect individuals who have declared they are aliens in a satisfactory immigration status.

The following applicants and recipients are exempt from this requirement:

- Current SSI recipients
 - RSDI recipients when receipt is based on disability
 - Medicare enrollees or those eligible to enroll in Medicare
 - Individuals covered under Title IV-B child welfare services or Title IV-E foster care or adoption services
 - Continuously Eligible Newborn Children (CEN) – Documentation of citizenship and identity is required at the child's first redetermination.
- 8) West Virginia Income Maintenance Manual, Chapter 18.2.B.2, states - Eligibility for aliens is based on whether the alien is a qualified or nonqualified alien regardless of whether the alien entered the United States on or after August 22, 1996 (the date of enactment of P.L. 104-193). The previous categories of lawful permanent residents and aliens permanently residing under color of law (PRUCOL) no longer apply.

The term "qualified alien" includes aliens who are **lawfully admitted for permanent residence in the United States under the Immigration and Nationality Act (INA)** [emphasis added], and certain refugees, asylees, individuals whose deportation has been withheld, Cuban or Haitian Entrants and Amerasians. It also includes certain aliens who have been paroled into the United States or who have been granted conditional entry and battered spouses and battered children. See Section 18.4 for extended definition.

- 9) West Virginia Income Maintenance Manual, Chapter 18.4.C.2 includes the following for Medicaid eligible aliens:

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.

Ineligible Aliens

Ineligible aliens are all other aliens and include the following:

- Visitors, tourists, students, and diplomats.
- Those admitted under color of law.
- Aliens who have applied for eligible status, but who have not been approved. Exception: battered spouses and children with a military connection.
- Aliens whose status is questionable or unverified.
- The children of any of these individuals, even those under the age of 18.

VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that eligibility for participation in the Medicaid Program can be established if the individual is a “qualified alien.” Among the reasons for which an individual can be considered a “qualified alien” is if they were lawfully admitted for permanent residence in the United States under the Immigration and Nationality Act (INA). Policy goes on to say that 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 is Medicaid eligible.
- 2) The evidence submitted in this case reveals that while the Claimant has been in the United States since April 1, 2001, she has only been lawfully admitted for permanent residence since August 1, 2005. Because the Claimant has not been in permanent residence status for a period of at least 5 years, the Department was correct to deny the Claimant’s application for Medicaid coverage through the Breast and Cervical Cancer Program.

IX. DECISION:

After reviewing the applicable policy and regulations, it is the decision of the State Hearing Officer to **uphold** the action of the Department in denying the Claimant's application for Medicaid coverage through the Breast and Cervical Cancer Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 11th Day of September, 2007.

Thomas E. Arnett
State Hearing Officer