



State of West Virginia  
**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**  
Office of Inspector General  
Board of Review  
PO Box 29  
Grafton WV 2354  
August 7, 2007

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Mr. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 27, 2007. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for Medicaid coverage under the Emergency Medicaid for Illegal/Ineligible Aliens 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 the Medicaid program is determined based on current regulations. An otherwise eligible Individual must be diagnosed as having a severe medical condition that could reasonably be expected to result in one of the following conditions, without immediate medical attention: serious jeopardy to the alien's health, serious impairment to bodily functions, Impaired or abnormal functioning of any body part or organ (West Virginia Income Maintenance Manual § 16.6)

The information which was submitted at the hearing revealed that criteria necessary to establish medical eligibility for the program has been met. According to the agency all other eligibility criteria is met.

It is the decision of the State Hearing Officer to **reverse** the action of the Agency to deny your June 5, 2007 application. All other eligibility factors being met the agency is to proceed to provide Medicaid coverage.

Sincerely,

Ron Anglin  
State Hearing Examiner  
Member, State Board of Review

cc: Chairman, Board of Review  
[REDACTED] County DHHR, Michele Berry

# **WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES**

\_\_\_\_\_,  
Claimant.

v.

**Action Number 07-BOR-1718**

**West Virginia Department of Health & Human Resources.**  
**Respondent.**

## **SUMMARY AND DECISION OF THE STATE HEARING OFFICER**

### **I. INTRODUCTION:**

This is a report of the State Hearing Examiner resulting from a fair hearing concluded on August 6, 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 was convened on July 27, 2007 on a timely appeal filed June 19, 2007.

### **II. PROGRAM PURPOSE:**

The program entitled Medicaid is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and Human Resources.

Emergency Medicaid For Illegal/Ineligible Aliens is a segment of the Medicaid Program available to individuals diagnosed as having a severe medical condition that could reasonably be expected to result in one of the following conditions, without immediate medical attention: serious jeopardy to the alien's health, serious impairment to bodily functions, Impaired or abnormal functioning of any body part or organ

### **III. PARTICIPANTS:**

\_\_\_\_\_, claimant

\_\_\_\_\_, friend to claimant

Michele Berry, ESW, Agency Representative.

Presiding at the hearing was Ron Anglin, State Hearing Examiner and a member of the State Board of Review.

#### **IV. QUESTION TO BE DECIDED:**

The question to be decided is whether the Agency was correct in denial of benefits under the Emergency Medicaid for Illegal/Ineligible Aliens Program.

#### **V. APPLICABLE POLICY:**

West Virginia Income Maintenance Manual §16.6 & §18.9.  
42 CFR § 435.601 & 435.831 Code of Federal Regulations:

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

##### Agency's Exhibits:

A-1 Case Comments, 6/14/07

A-2 Notification, 6/5/07

A-3 Notification, 6/6/07

A-4 WVIMM 16.6 H

##### Claimant's Exhibits:

C-1 Medical records, [REDACTED] Dr [REDACTED] 5/16 and 5/31/07.

C-2 Statement, Dr [REDACTED] 7/30/07 (received by HO 7/30/07)

#### **VII. FINDINGS OF FACT:**

1) The claimant was informed in notifications dated June 5 and 6, 2007 (A-1 & 2) that his Emergency Medicaid for Illegal/Ineligible Aliens application was denied. The claimant requested a hearing June 19, 2007. This hearing was convened July 27, 2007.

2) During the hearing Exhibits as noted in Section VI above were submitted. As was agreed during the hearing exhibit C-2 was secured and submitted by the claimant per fax July 30, 2007.

3) Testimony was heard from the individuals listed in Section III above. All persons giving testimony were placed under oath.

4) The agency provided testimony that the claimant's 6/5/07 application was denied 6/14/07 as he is not medically eligible for the program. The agency considered his medical condition not to be an emergency. The claimant has met all other eligibility criteria.

5) Testimony provided on behalf of the claimant reveals the claimant has no renal function. This was diagnosed May 16, 2007. He was in ICU for 16-17 days at the time. [REDACTED] is treating him temporarily as he will die otherwise. They are only doing this until he can get some medical coverage.

6) Exhibit C-2 Statement from Dr [REDACTED] 7/30/07 states: "Mr. \_\_\_\_\_ is a 29 year old male who suffers from Instage (sic) Renal Failure. He has no renal functions at this time and it is doubtful that it will ever reverse itself. This is a serious condition that is fatal without treatment. He is currently going to dialysis 3 times a week".

7) West Virginia Income Maintenance Manual § 16.6 H states in part. (An individual) must be diagnosed as having a severe medical condition that could reasonably be expected to result in one of the following conditions, without immediate medical attention:

- Serious jeopardy to the alien's health
- Serious impairment to bodily functions
- Impaired or abnormal functioning of any body part or organ

Such medical conditions include emergency labor and delivery. In judging sufficient severity, severe pain must be considered.

## VIII. CONCLUSIONS OF LAW:

1) To qualify medically for the program an individual must be diagnosed with a severe medical condition. The claimant's diagnosis consists of End Stage Renal Failure characterized by his physician as a serious condition thus qualifying as severe.

2) Policy directs that without medical attention an established severe medical condition must result in specified consequences. Evidence is clear that without treatment the claimant's condition will result in all 3 of the situations noted in policy.

## IX. DECISION:

After reviewing the information presented during the hearing and the applicable policy and regulations, I am ruling to **reverse** the determination of the Agency in denying the claimant's June 5, 2007 Emergency Medicaid For Illegal/Ineligible Aliens application.

Evidence supports a finding that the claimant's medical situation constitutes an emergency. The fact that a medical entity has chosen to provide treatment on a voluntary basis to extend his life while he seeks medical coverage fails to negate the critical or emergency nature of his current medical condition.

**X. RIGHT OF APPEAL:**

See Attachment.

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29

**ENTERED this 7<sup>th</sup> Day of August 2007.**

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**Ron Anglin**  
**State Hearing Examiner**

**For  
Public Assistance Hearings,  
Administrative Disqualification Hearings, and  
Child Support Enforcement Hearings**

**A. CIRCUIT COURT**

Upon a decision of a State Hearing Officer, the claimant will be advised he may bring a petition in the Circuit Court of Kanawha County within four months (4) from the date of the hearing decision.

The Court may grant an appeal and may determine anew all questions submitted to it on appeal from the decision or determination of the State Hearing Officer. In such appeals a certified copy of the hearing determination or decision is admissible or may constitute prima facie evidence of the hearing determination or decision. Furthermore, the decision of the circuit Court may be appealed by the client or petitioner to the Supreme Court of Appeals of the State of West Virginia.

**B. THE UNITED STATE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

If you believe you have been discriminated against because of race, color, national origin, age, sex or handicap, write immediately to the Secretary of the United States Department of health and Human Services, Washington, D.C. 20201.

**C. THE UNITED STATE DEPARTMENT OF AGRICULTURE**

If you believe you have been discriminated against because of race, color, national origin, age, sex or handicap, write immediately to the Secretary of the Department of Agriculture, Washington, D.C. 20250.