



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

**Bill J. Crouch  
Cabinet Secretary**

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

**Jolynn Marra  
Interim Inspector General**

August 24, 2020

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 20-BOR-1950

Dear Ms. [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  
State Hearing Officer  
Member, State Board of Review

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

cc: Leslie Bonds, [REDACTED] County DHHR

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

██████████,

**Appellant,**

**v.**

**Action Number: 20-BOR-1950**

**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 August 20, 2020, on an appeal filed July 30, 2020.

The matter before the Hearing Officer arises from the July 28, 2020, decision by the Respondent to deny the Appellant's application for Adult Medicaid benefits.

At the hearing, the Respondent appeared by Tammy Turner, Family Support Supervisor. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was her son, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Hearing Request Notification
- D-2 Notice of Denial dated July 28, 2020
- D-3 Notice of Denial dated July 31, 2020
- D-4 Application for Healthcare Coverage - Short Form – dated July 20, 2020
- D-5 West Virginia Income Maintenance Manual §15.2.3.K
- D-6 Case Comments for July 2020
- D-7 Copy of Permanent Residency Card (I-551)
- D-8 West Virginia Income Maintenance Manual §15.7.2.B
- D-9 Department's 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 Adult Medicaid on July 20, 2020 (Exhibit D-4).
- 2) The Appellant is not a citizen of the United States.
- 3) The Appellant was granted permanent residency on April 18, 2020 (Exhibit D-7).
- 4) The Appellant is not pregnant and does not have a medical emergency.
- 5) The Respondent denied the Appellant's application as she did not meet the criteria to receive Adult Medicaid as non-citizen (Exhibit D-2).

**APPLICABLE POLICY**

West Virginia Income Maintenance Manual §15.7 states that to be eligible for Medicaid 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 the program. An illegal noncitizen or ineligible noncitizen residing in the U.S. who requires emergency medical care may qualify for Medicaid for the length of time medically required to avert the medical emergency.

West Virginia Income Maintenance Manual §15.7.5.B states an eligible (qualified) noncitizen is:

- A noncitizen who is lawfully admitted for permanent residence (LPR) under the Immigration and Nationality Act (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
- Noncitizens receiving SSI

Eligible (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.B.2 states lawfully present pregnant women and children age 18 and under, who meet State residency requirements, and who are otherwise financially eligible, may qualify for Medicaid.

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.

West Virginia Income Maintenance Manual §15.7.6.B.2 states 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

Effective March 18, 2020, until the termination of the National State of Emergency, COVID-19 testing and treatment is included in the definition of an emergency medical condition for non-qualified non-citizens.

### **DISCUSSION**

Pursuant to policy, an individual must be a United States citizen, a U.S. national, or an eligible noncitizen to receive Medicaid benefits. An eligible noncitizen who is lawfully admitted for permanent residency under the Immigration and Nationality Act after August 22, 1996 is subject to a five-year waiting period before becoming eligible for Medicaid.

The Appellant became a permanent resident of the U.S. in April 2020. The Appellant applied for Medicaid in July 2020; however, the Respondent denied her application because she has not been a permanent resident of the U.S. for a minimum of five years.

The Appellant's son testified that Appellant visited the emergency room in July 2020 and has unpaid medical bills. Although policy allows for Medicaid coverage for noncitizens in the case of a medical emergency, including testing and treatment of COVID-19, there was no evidence submitted that the Appellant's emergency room visit was the result of the sudden onset of a medical condition with acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in placing the Appellant's health in serious jeopardy or result in serious impairment to bodily functions.

Whereas the Appellant has not been a permanent resident of the U.S. for five years, she is ineligible to receive Adult Medicaid benefits.

### **CONCLUSIONS OF LAW**

- 1) Pursuant to policy, an eligible noncitizen who is lawfully admitted for permanent residency after August 22, 1996 is subject to a five-year waiting period before becoming eligible for Medicaid.
- 2) The Appellant was lawfully admitted to the U.S. as a permanent resident on April 18, 2020.
- 3) The Appellant is ineligible for Medicaid benefits until the five-year waiting period has expired.

### **DECISION**

It is the decision of the State Hearing Officer to **uphold** the decision of the Respondent to deny the Appellant's application for Adult Medicaid benefits.

**ENTERED this 24<sup>th</sup> day of August 2020.**

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**Kristi Logan  
State Hearing Officer**