



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

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Board of Review
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Jolynn Marra
Interim Inspector General

October 19, 2021

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 21-BOR-2033

Dear Mr. [REDACTED]:

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter. In arriving at a decision, the Board of Review 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 that may be taken if you disagree with the decision reached in this matter.

Sincerely,

Tara B. Thompson, MLS
State Hearing Officer
State Board of Review

Enclosure: Appellant's Recourse
Form IG-BR-29

CC: Susan Baron, [REDACTED] County DHHR
Stephanie Smith, [REDACTED] County DHHR
Justin Thorne, [REDACTED] County DHHR

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

████████████████████,

Appellant,

v.

ACTION NO.: 21-BOR-2033

**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 of Chapter 700 of the West Virginia Department of Health and Human Resources' (DHHR) Common Chapters Manual. This fair hearing was convened on September 29, 2021 on an appeal filed with the Board of Review on September 2, 2021.

The matter before the Hearing Officer arises from the Respondent's August 25, 2021 decision to deny the Appellant eligibility for Medicaid benefits.

At the hearing, the Respondent appeared by Susan Baron, ██████████ County DHHR. The Appellant appeared *pro se*. All witnesses were sworn in and the following exhibits were entered as evidence.

Department's Exhibits:

- D-1 DHHR Notice, dated August 25, 2021
- D-2 DHHR Application for Health Coverage, Received August 6, 2021
- D-3 Department of Homeland Security F-20 Certificate of Eligibility for Nonimmigrant Student Status
- D-4 West Virginia Income Maintenance Manual §§ 15.7.5.D
- D-5 DHHR E-mail Correspondence, dated August 24, 2021
- D-6 DHHR Case Comments, dated August 23 through September 9, 2021

Appellant's Exhibits:

- A-1 West Virginia University (WVU) Hospitals History and Physical, dated August 2, 2021
- A-2 WVU Hospitals Progress Note, dated February 3, 2021

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 following Findings of Fact are set forth.

FINDINGS OF FACT

- 1) On August 6, 2021, the Appellant submitted an application for Medicaid eligibility (Exhibit D-2).
- 2) On August 25, 2021, the Respondent issued a notice advising the Appellant that he was ineligible for Medicaid benefits because he did not meet the alien eligibility requirements pursuant to West Virginia Income Maintenance Manual § 15.7.5 (Exhibit D-1).
- 3) The Appellant is not a United States citizen or a United States (hereafter, U.S.) national (Exhibits D-2 and D-3).
- 4) On his application, the Appellant indicated he had an eligible immigration status pursuant to documents I-20 and 1653-0038 (Exhibit D-2).
- 5) On July 22, 2021, the Appellant signed his I-20 Certificate of Eligibility for Nonimmigrant Student Status and indicated he was employed full-time and enrolled in a doctorate program of study at [REDACTED] (hereafter, [REDACTED]) (Exhibit D-3).
- 6) On his August 6, 2021 application for Medicaid eligibility, the Appellant indicated he was not a full-time student and was not employed (Exhibit D-2).
- 7) The Appellant has a history of medical diagnoses which cause him pain and require medical treatments, including injections to reduce pain (Exhibits A-1 and A-2).

APPLICABLE POLICY

West Virginia Income Maintenance Manual (WVIMM) § 15.7.5 provides in part:

A person must be a U.S. citizen, U.S. national, or a qualified noncitizen eligible to receive benefits.

WVIMM § 15.7.5.D Non-qualified Noncitizens provides in part:

Non-qualified noncitizens are all other noncitizens and include the following:

- 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

WV IMM §§15.7.5.G through 15.7.6.B.2 provide in part:

Any noncitizen who is not an eligible qualified citizen 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

The noncitizen must have, after sudden onset, a medical condition showing acute symptoms of sufficient severity 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

DISCUSSION

The Respondent denied the Appellant's eligibility for Medicaid because he did not meet the alien eligibility requirements reflected in the policy. The Appellant contested the Respondent's denial and contended he required Medicaid benefits to pay for necessary medical care.

The Respondent bears the burden of proof and had to demonstrate by a preponderance of evidence that the Appellant was a non-qualified noncitizen. Further, the preponderance of evidence had to verify that the Appellant was not eligible for Medicaid emergency services. There was no evidence submitted to verify that the Appellant met any of the conditions listed in WVIMM § 15.7.5.B.1 to establish he is a qualified noncitizen.

Non-Qualified Noncitizen

The evidence reflected that the Appellant obtained his Certificate of Eligibility for Nonimmigrant Student Status based on his enrollment in a doctorate program at [REDACTED]. During the hearing, the Appellant testified that he was unable to complete graduation from his academic program because of his medical conditions. Although the Appellant testified that he was not a student at the time of the hearing, there was no additional evidence submitted to indicate that the Appellant is present in the United States for reasons other than indicated on his Certificate of Eligibility for Nonimmigrant Student Status. Pursuant to the policy, students are non-qualified noncitizens and ineligible for Medicaid benefits.

Emergency Medicaid for Non-Qualified Noncitizens

The Appellant argued that his medical conditions required a facility level of care and that without Medicaid benefits, he would be unable to pay for necessary medical care. The documentation submitted by the Appellant indicates a history of ongoing pain and medical diagnoses which have required medical injections and outpatient medications.

The policy provides that any noncitizen who is not a qualified noncitizen is not eligible for

Medicaid except in emergency situations. To be eligible for Medicaid for treatment of medical conditions, the Appellant must meet the residence and other Medicaid policy eligibility criteria. Further, care and services provided must be necessary for the treatment of an emergency medical condition. Pursuant to the policy, the Appellant must have, after sudden onset, a medical condition showing acute symptoms of sufficient severity such that the absence of immediate medical attention could reasonably be expected to result in placing the Appellant's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part. Although the Appellant testified during the hearing that he required a facility level of care, there was no evidence submitted to establish when the Appellant was admitted to a facility for medical care or that the Appellant had experienced a sudden onset emergency medical condition requiring immediate medical attention that could result in bodily impairment or serious harm to the Appellant.

CONCLUSIONS OF LAW

- 1) To be eligible for Medicaid benefits, the Appellant must be a U.S. citizen, U.S. national, or a qualified noncitizen.
- 2) The evidence established that the Appellant is lawfully in the U.S. pursuant to his Certificate of Eligibility for Nonimmigrant Student Status.
- 3) Students are non-qualified noncitizens ineligible for Medicaid except in emergency situations.
- 4) The evidence established that the Appellant did not have a sudden onset medical condition showing acute symptoms of sufficient severity such that the absence of immediate medical attention could reasonably be expected to result in placing the Appellant's health in serious jeopardy, impairment to bodily functions, or dysfunction of any bodily organ or part.
- 5) The Respondent correctly denied the Appellant's application for Medicaid eligibility.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to

deny the Appellant Medicaid eligibility.

ENTERED this 19th day of October 2021.

Tara B. Thompson, MLS
State Hearing Officer