



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

Jeffrey H. Coben, M.D.
Interim Cabinet Secretary

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

Sheila Lee
Interim Inspector General

January 3, 2023

[REDACTED]

RE: [REDACTED]
ACTION NUMBER: 22-BOR-2543

Dear [REDACTED]:

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

In arriving at this decision, the State Hearing Officer was governed by the Public Welfare Laws of West Virginia and the rules and regulations established by the Department of Health and Human Resources and by Federal Regulations at 45 CFR Part 155, Subpart F. 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
Certified State Hearing Officer
Member, State Board of Review

Encl: Recourse to Hearing Decision
Form IG-BR-29

cc: Board of Review

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

Re: [REDACTED],
Appellant.

Action Number: 22-BOR-2543

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for [REDACTED]. This hearing was held in accordance with the provisions found in 45 CFR Part 155, Subpart F. This fair hearing was convened on December 14, 2022, on an appeal filed with the Federally Facilitated Marketplace on or about December 1, 2022. The Appellant chose to have her appeal heard by the entity for the State of West Virginia. The federal appeals entity electronically transmitted the Appellant's appeal file the Board of Review on December 1, 2022.

The matter before the Hearing Officer is whether the Federally Facilitated Marketplace was correct in determining that the Appellant was not eligible for Medicaid at the time of the application is determined de novo in this proceeding.

The hearing was held by telephone conference. The Appellant was self-represented. The Marketplace was not represented. The Appellant was placed under oath and submitted the following documents as evidence for the hearing.

- Exhibit 1 Permanent Residency Card (Form I-551)
- Exhibit 2 [REDACTED] Driver's License
- Exhibit 3 [REDACTED] Certificate of Live Birth
- Exhibit 4 [REDACTED] Passport
- Exhibit 5 [REDACTED] Visa
- Exhibit 6 Paystubs for [REDACTED] dated October 7 and November 18, 2022
- Exhibit 7 Paystubs for [REDACTED] dated October 21, November 4 and November 18, 2022

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 healthcare coverage through the Federally Facilitated Marketplace (FFM) on November 8, 2022.
- 2) The Appellant received notice on November 30, 2022, that she was ineligible for Medicaid as her declaration of citizenship had not been completed.
- 3) The Appellant is pregnant, and her expected date of delivery is January 29, 2023.
- 4) The Appellant did not file a federal income tax return for 2021 but will file a return for 2022.
- 5) The Appellant claims her three (3) children as tax dependents but files separately from her spouse.
- 6) The gross monthly earned income for the Appellant is \$5321.97 and is \$2284.03 for her spouse (Exhibits 6 and 7).
- 7) The Appellant was granted permanent residency in the United States on June 7, 2022 (Exhibit 1).

APPLICABLE POLICY

West Virginia Income Maintenance Manual Chapter 15 explains eligibility for citizens and noncitizens:

15.3.2.B Noncitizens

Eligibility for noncitizens is based on whether the noncitizen is a qualified or non-qualified noncitizen, regardless of whether the noncitizen entered the U.S. on or after August 22, 1996 (the date of enactment of P.L. 104-193). The previous categories of lawful permanent residents and noncitizens with Permanent Residence Under Color of Law (PRUCOL) no longer apply. The term “qualified noncitizen” includes noncitizens who are lawfully admitted for permanent residence in the U.S. under the INA, and certain refugees; asylees; individuals whose deportation has been withheld; Cuban or Haitian Entrants; Amerasian immigrants and Compact of Free Association (COFA) Migrants. It also includes certain noncitizens who have been paroled into the U.S. or who have been granted conditional entry, and battered persons.

15.7.5.A Medicaid Eligibility

- A person must be a U.S. citizen, U.S. national, or a qualified noncitizen eligible to receive benefits. For the purposes of qualifying as a U.S. citizen, the U.S. as defined by the INA includes the fifty states, the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, and West Virginia Income Maintenance Manual Chapter 15 West Virginia Income Maintenance Manual Page 52 Chapter 15 Noncitizens, Refugees, and Citizenship the Northern Mariana Islands. Nationals from American Samoa or Swains Island are also regarded as U.S. citizens for purposes of Medicaid.

- Individuals who meet the eligibility requirements of Medicaid, but who are not citizens or nationals, are Medicaid eligible only as provided below. 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.

15.7.5.B.1 Qualified Noncitizens – Medicaid

A qualified noncitizen is:

- **A noncitizen who is lawfully admitted for permanent residence (LPR) under the INA and was admitted before August 22, 1996** (emphasis added)
- 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, provided the spouse has not remarried and the marriage fulfills the following requirements:
 - Married for at least one year; or
 - Married before the end of a fifteen-year time span following the end of the period of military service in which the injury or disease was incurred or aggravated; or Married for any period if a child was born of the marriage or was born before the marriage.
- Noncitizens receiving SSI
- Compact of Free Association (COFA) migrants, effective December 27th, 2020

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

15.7.5.B.2 Lawfully Present Pregnant Women and Children Age 18 and Under

Lawfully present pregnant women and children age 18 and under, who meet the State residency requirements in Section 2.2, and who are otherwise financially eligible, may qualify for Medicaid. An individual is considered to be lawfully present if he resides in the U.S., and:

- Is qualified noncitizen as defined above and in 8 U.S.C. 1641 (b) and (c);
- Is a noncitizen with a valid nonimmigrant status, as defined 8 U.S.C. 1101(a)(15) or otherwise under the immigration laws, as defined in 8 U.S.C. 1101(a)(17);
- Is a noncitizen who has been paroled into the U.S. in accordance with 8 U.S.C. 1182(d)(5) for less than one year, except for an individual paroled for prosecution, for deferred inspection, or pending removal proceedings;
- Is a noncitizen who belongs to one of the following classes:
 - Granted temporary resident status in accordance with 8 U.S.C. 1160 or 1255a, respectively;
 - Granted Temporary Protected Status (TPS) in accordance with 8 U.S.C. §1254a, and individuals with pending applications for TPS who have been granted employment authorization;
 - **Granted employment authorization under 8 CFR 274a, 12(c);**
 - Family Unity beneficiaries in accordance with Section 301 of Pub. L 101-649, as amended;
 - Under Deferred Enforced Departure (DED) in accordance with a decision made by the President; Granted Deferred Action status;
 - Granted an administrative stay of removal under 8 CFR 241; or
 - Beneficiary of approved visa petition who has a pending application for adjustment of status;
- Is an individual with a pending application for asylum under 8 U.S.C. 1158, or for withholding of removal under 8 U.S.C. 1231, or under the Convention Against Torture who:
 - Has been granted employment authorization; or
 - Is under the age of 14 and has had an application pending for at least 180 days.
- Has been granted withholding of removal under the Convention Against Torture;
- Is a child who has a pending application for special Immigrant Juvenile status as described in 8 U.S.C. 1101(a)(27)(J);
- Is lawfully present in American Samoa under the immigration laws of American Samoa; or
- Is a victim of severe trafficking in persons, in accordance with the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106-386, as amended (22 U.S.C.7105[b]).

Code of Federal Regulations – 8 CFR §274a.12 states the following classes of aliens are authorized to be employed in the United States without restrictions as to location or type of employment as a condition of their admission or subsequent change to one of the indicated classes. Any alien who is within a class of aliens described in paragraphs (a)(3), (a)(4), (a)(6)-(a)(8), (a)(10)-(a)(15), or (a)(20) of this section, and who seeks to be employed in the United States, must apply to U.S. Citizenship and Immigration Services (USCIS) for a document evidencing such employment authorization. USCIS may, in its discretion, determine the validity

period assigned to any document issued evidencing an alien's authorization to work in the United States.

- An alien who is a lawful permanent resident (with or without conditions pursuant to section 216 of the Act), as evidenced by Form I-551 issued by the Service. An expiration date on the Form I-551 reflects only that the card must be renewed, not that the bearer's work authorization has expired.

West Virginia Income Maintenance Manual Chapter 3 explains eligibility determination groups:

3.7 Adult Medicaid Group

The Patient Protection and Affordable Care Act, amended by the Health Care and Education Reconciliation Act of 2010, enacted March 30, 2010, are together referred to as the Affordable Care Act (ACA). The ACA established the categorically mandatory coverage group known as the Adult Group. Effective January 1, 2014, Medicaid coverage is provided to individuals age 19 or older and under age 65 who are not otherwise eligible for and enrolled in another categorically mandatory Medicaid coverage group, and are not entitled to or enrolled in Medicare Part A or B. Eligibility for this group is determined using Modified Adjusted Gross Income (MAGI) methodologies.

3.7.1.B Who Cannot Be Included?

If a woman indicates at application or review that she is pregnant, she is not eligible to be included in the Adult Group; she must be evaluated for the Pregnant Women coverage group.

3.7.2 MAGI Household Income Group (IG)

Income of each member of the individual's MAGI household is counted. The income group is determined using the MAGI methodology established in Section 3.7.3.

3.7.3 MAGI Household Needs Group (NG)

The needs group is the number of individuals included in the MAGI household size based upon the MAGI rules for counting household members. To determine the MAGI household size, the following step-by-step methodology is used for each applicant. **In the case of married couples who reside together, each spouse must be included in the MAGI household of the other spouse, regardless of whether they expect to file a joint tax return or whether one spouse expects to be claimed as a tax dependent by the other spouse. The MAGI household of the pregnant woman also includes her unborn child(ren).**

This methodology must be applied to each applicant in the MAGI household separately:

STEP 1: IS THE APPLICANT A TAX FILER (and will NOT be claimed as a tax dependent)?

IF NO: Move to **STEP 2**.

IF YES: The applicant's MAGI household includes themselves, each individual he expects to claim as a tax dependent, and his spouse if residing with the tax filer. This is known as the tax filer rule.

STEP 2: IS THE APPLICANT CLAIMED AS A TAX DEPENDENT ON SOMEONE ELSE'S TAXES?

IF NO: Move to **STEP 3**.

IF YES: Test against the three exceptions below. If the answer to any of these exceptions is ‘yes’, then the applicant’s MAGI household size must be calculated using STEP 3.

- The applicant is claimed as a dependent by someone other than a spouse or parent.
- The applicant is a child under 19 who lives with both parents, but both parents do not expect to file taxes jointly.
- The applicant is a child under 19 who is claimed as a tax dependent to a non-custodial parent(s).

If none of these exceptions are true, then the applicant’s Medicaid household consists of the applicant, the tax filer claiming him as a dependent, this could be two people filing jointly, any other dependents in the tax filer’s household, and the applicant’s spouse if they reside together. This is known as the tax dependent rule.

STEP 3: IF THE APPLICANT IS NOT A TAX FILER, IS NOT CLAIMED AS A TAX DEPENDENT OR MEETS ONE OF THE EXCEPTIONS IN STEP 2:

- The Medicaid household consists of the applicant and the following individuals as long as they reside with the applicant:
 - The applicant’s spouse;
 - The applicant’s child(ren) under age 19;
 - For applicants under 19, their parents, and their siblings who are also under 19.

This is known as the non-filer rule.

STEP 4: CASES WHERE APPLICANT CANNOT REASONABLY ESTABLISH TAX DEPENDENT STATUS If an applicant/tax filer cannot reasonably establish that reported household members will be tax dependents of the applicant for the tax year in which Medicaid is sought, the inclusion of such individual in the MAGI household of the tax filer is determined using rules in STEP 3.

4.7.1 Determining Income Counted for the MAGI Household

Income of each member of the individual’s MAGI household is counted. The MAGI household is determined using the MAGI methodology established in Chapter 3.

4.7.4 Determining Eligibility

The applicant’s household income must be at or below the applicable MAGI standard for the MAGI coverage groups.

Step 1: Determine the MAGI-based gross monthly income for each MAGI household income group (IG).

Step 2: Convert the MAGI household’s gross monthly income to a percentage of the FPL by dividing the current monthly income by 100% of the FPL for the household size. Convert the result to a percentage. If the result from Step 2 is equal to or less than the appropriate income limit (185% FPL), no disregard is necessary, and no further steps are required.

Step 3: If the result from Step 2 is greater than the appropriate limit (185% FPL), apply the 5% FPL disregard by subtracting five percentage points from the converted monthly gross income to determine the household income. Step 4: After the 5% FPL income disregard has been applied, the remaining percent of FPL is the final figure that will be compared against the applicable modified adjusted gross income standard for the MAGI coverage groups.

Appendix A: Income Limits

100% of the FPL for six persons is \$3,100

185% of the FPL for six persons is \$5,734

DISCUSSION

The Appellant applied for pregnancy Medicaid benefits through the Federally Facilitated Marketplace and was denied as her declaration of citizenship had not been established. The Appellant contested the denial claiming she submitted proof of her citizenship and residency with her application.

Pursuant to policy, a person must be a U.S. citizen, a U.S. national, or a qualified noncitizen to be eligible to receive Medicaid benefits. A qualified noncitizen is an individual who is lawfully admitted for permanent residence under the INA and was admitted before August 22, 1996. Qualified noncitizens who are subject to a five-year waiting period are noncitizens who are lawfully admitted to the U.S. for permanent residence on or after August 22, 1996 and have been qualified noncitizens for more than five years. The Appellant was granted permanent residency on June 7, 2022 for skilled employment and would therefore be subject to a five-year wait period.

Policy states that a lawfully present pregnant woman may be eligible for Medicaid if she meets the definition of a qualified noncitizen or if she is a noncitizen who was granted employment authorization under Code of Federal Regulations Title 8 §274(a)12(c) and is otherwise financially eligible. The Appellant was granted permanent residency based upon skilled employment and meets the eligibility criteria as a noncitizen lawfully present pregnant woman.

However, the Appellant must meet the income guidelines to qualify for pregnancy Medicaid benefits. Policy requires that the Appellant's MAGI household must include her spouse with whom she resides, regardless of their tax filing status. The Appellant's MAGI household consists of herself, her spouse, three children and her unborn child.

The Appellant indicated on the FFM application that she earned \$1,804 each month and her spouse earned \$450 each month, which would be below the income threshold for pregnancy Medicaid. Testimony from the Appellant indicated that the amounts listed on the FFM application were what the Appellant and her spouse earned every two weeks, instead of monthly. The Appellant provided the following paystubs for herself and for her spouse to verify the household's income (Exhibits 6 and 7):

Appellant

10/21/2022 \$2,370.66

11/4/2022 \$2580.01
11/18/2022 \$2500.60

To convert this income into a monthly amount, an average of the three paystubs is used then converted using a biweekly multiplier (2.15): $\$7,451.27$ divided by 3 = $\$2,483.75$ x 2.15 = $\$5,340.07$ gross monthly earned income for the Appellant.

██████████
10/7/2022 \$287.50 (orientation, first pay)
11/18/2022 \$1,062.34

The October 7, 2022, paystub will not be used in eligibility calculations as it does not reflect what ██████████ earns from employment. ██████████ income, converted into a monthly amount, is $\$1,062.34$ x 2.15 = $\$2,284.03$ gross monthly earned income for ██████████. The household's total gross income is $\$7,624.10$.

To determine income eligibility for pregnancy Medicaid, the total gross income must be at or below 185% of the Federal Poverty Level for the size of the MAGI household. Policy lists 185% of the Federal Poverty Level for a six-person household as $\$5,734$. The Appellant's total gross income of $\$7,624.10$ exceeds the allowable limit to receive Medicaid benefits.

Whereas the Appellant's total countable income exceeds the allowable limit to receive Medicaid, the denial of the Appellant's November 8, 2022, application through the Federally Facilitated Marketplace is affirmed.

CONCLUSIONS OF LAW

- 1) The Appellant meets the criteria in policy as a lawfully present noncitizen pregnant woman as a permanent resident admitted under 8 CFR §274(a)12.
- 2) The Appellant's total monthly income is $\$7,624.10$.
- 3) The income limit for a six-person household for pregnancy MAGI Medicaid is $\$5,734$.
- 4) The Appellant's income is excessive to receive Medicaid benefits.

DECISION

It is the decision of the State Hearing Officer that the Appellant is ineligible for Medicaid due to excessive income.

ENTERED this 3rd day of January 2023.

Kristi Logan
Certified State Hearing Officer