



September 18, 2024

[REDACTED]

RE: [REDACTED] vs. WVDoHS  
ACTION No.: 24-BOR-2927

Dear [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 Human Services. These same laws and regulations are used in all cases to ensure 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,

Eric L. Phillips  
State Hearing Officer  
Member, State Board of Review

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

cc: Kristyne Hoskins, BFA

**WEST VIRGINIA OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW**

████████████████████,

**Appellant,**

v.

**Action Number: 24-BOR-2927**

**WEST VIRGINIA DEPARTMENT OF  
HUMAN SERVICES  
BUREAU FOR FAMILY ASSISTANCE,**

**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 Office of Inspector General Common Chapters Manual. This fair hearing was convened on September 11, 2024, on appeal filed August 8, 2024.

The matter before the Hearing Officer arises from the July 23, 2024 decision by the Respondent to deny the Appellant's application for Medicare Premium Assistance program benefits.

At the hearing, the Respondent appeared by Kristyne Hoskins, Economic Service Worker-Senior. The Appellant appeared pro se. Appearing as a witness for the Appellant was ██████████ Appellant's wife and ██████████ Appellant's daughter. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Application for Medicare Buy-In Program dated July 17, 2024
- D-2 Case Comments dated July 22, 2024
- D-3 Notice of Decision dated July 23, 2024
- D-4 WorkForce WV Income
- D-5 Case Comments dated July 22, 2024
- D-6 Case Comments dated July 25, 2024
- D-7 Systematic Alien Verification for Entitlement correspondence dated July 22, 2024
- D-8 Case Comments dated July 26, 2024
- D-9 Annual Report for ██████████ dated August 12, 2024.

- D-10 West Virginia Income Maintenance Manual §15.4
- D-11 West Virginia Income Maintenance Manual §15.7.5.B.1
- D-12 West Virginia Income Maintenance Manual §4.12

**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) On July 17, 2024, the Appellant applied for Medicare Premium Assistance benefits.
- 2) The Appellant’s household consisted of himself and his spouse.
- 3) The Appellant reported no earned income available to the household.
- 4) The Appellant maintains an average monthly income from [REDACTED] in the amount of \$6224.14. (Exhibit D-4)
- 5) The Appellant’s spouse has an average monthly income from [REDACTED] in the amount of \$1033.33. (Exhibit D-4)
- 6) The Appellant reported unearned income from the Social Security Administration in the amount of \$1600.00.
- 7) The Appellant reported unearned income from the Social Security Administration for his spouse in the amount of \$474.00.
- 8) The Appellant was lawfully admitted to the United States for permanent residence on December 15, 2022.
- 9) On July 23, 2024, the Respondent issued a Notice of Decision (Exhibit D-3) to the Appellant informing him that his Medicare Premium Assistance application had been denied due to excessive income and that the Appellant did not meet eligibility requirements for assistance.

**APPLICABLE POLICY**

West Virginia Income Maintenance Manual § 15.4.1 documents:

At the time of application, all individuals who apply for benefits are required to declare in writing whether they are citizens or nationals of the United States (U.S) or noncitizens. This is accomplished by the completion of the Declaration of Citizenship/Noncitizen.

West Virginia Income Maintenance Manual § 15.4.1.B documents:

Immigration status must be verified for WV WORKS, the Supplemental Nutrition Assistance Program (SNAP), and Medicaid benefits. If any member of the household is a noncitizen, a copy of the front and back of the immigration identification documentation must be forwarded to the SAVE Coordinator. The documentation is verified by the USCIS through automated or manual methods. All USCIS responses are sent to the requesting Worker with information regarding the noncitizen's eligibility for benefits. However, when the automated responses reads "Initiate Secondary Verification," an email is sent to the Worker advising that an additional request has been sent for information. When the response is received from SAVE, the information will be forwarded to the Worker.

West Virginia Income Maintenance Manual § 15.4.1.B.1 documents:

A qualified noncitizen is:

- A noncitizen who is lawfully admitted for permanent residence (LPR) under the 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, provided the spouse has not remarried and the marriage fulfills the following requirements:
  - o Married for at least one year; or
  - o 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
  - o 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
- Ukrainian nationals who enter the United States as parolees on or between February 24, 2022, and September 30, 2024.
- Ukrainian nationals who are paroled into the U.S. after September 30, 2024 and are the spouse or child of a parolee described above, or who is the parent, legal guardian, or primary caregiver of a parolee described above who is determined to be an unaccompanied child.
- Eligible parolees can also include individuals other than Ukrainian nationals (i.e., individuals who are stateless or have another nationality) who last habitually resided in Ukraine.

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.A documents:

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

West Virginia Income Maintenance Manual § 4.12 documents:

Countable income is determined by subtracting any allowable disregards and deductions from the total countable gross income.

Countable income is determined as follows:

Step 1: Determine the total countable gross unearned income and subtract the appropriate disregards and deductions. See Section 4.14.2.

Step 2: Determine the total countable gross earned income and subtract the appropriate disregards and deductions. See Section 4.14.2.

Step 3: Add the results from Step 1 and Step 2 to achieve the total monthly countable income.

Step 4: Compare the amount in Step 3 to the QMB, SLIMB, or QI-1 income levels for the appropriate number of persons. See Section 4.14 for SSI-Related deeming procedures. If the amount is less than or equal to the QMB, SLIMB, or QI-1 income levels, the client(s) is eligible.

Eligibility for these coverage groups is determined as follows:

- QMB – Income is less than or equal to 100% FPL.
- SLIMB – Income is greater than 100% FPL, but less than or equal to 120% FPL.
- QI-1 – Income is greater than 120% FPL, but less than or equal to 135% FPL.

## DISCUSSION

On July 23, 2024, the Respondent denied the Appellant's application for Medicare Premium Assistance due to citizenship requirements and excessive income. The Appellant appeals the Respondent's decision. The Respondent must prove by a preponderance of the evidence that it correctly denied the Appellant's application based on the Medicaid citizenship requirements and income guidelines set forth by policy.

On July 17, 2024, the Appellant completed an application for Medicare Premium Assistance reporting a total monthly household unearned income from the Social Security Administration in the amount of \$2074.00 (\$1600.00 and \$474.00). A data exchange with WorkForce West Virginia revealed that the household received additional monthly income from their business, ██████████ in the amounts of \$6224.14 and \$1033.33. The Respondent determined the Appellant's total household income to be \$7824.00. (\$6224.14+\$1600.00) After available income disregards, the Respondent determined that the Appellant's income exceeded the Medical Needy Income Limit. Additionally, the Respondent determined that the Appellant failed to meet Medicaid citizenship requires when a Systematic Alien Verification for Entitlement (SAVE) data exchange revealed that the Appellant was lawfully admitted to the United States for permanent residence on December 15, 2022, subjecting him to the five-year waiting period for qualified noncitizens.

The Appellant maintained that he has been a citizen of the United States since 2006. Since coming to the United States, the Appellant has operated his own business, paid all payroll taxes, and paid property taxes. The Appellant purported that he no longer receives income from his business because he has distributed his shares of the corporation to his children. During the Appellant's application, the Appellant provided documentation (Exhibit D-9) which demonstrates that the

shares of the Appellant's business from [REDACTED] have been redistributed between his family members as a gift.

For Medicaid eligibility, governing policy mandates that an individual must be a United States citizen, a United States national or a qualified noncitizen. An individual's immigration status must be verified for Medicaid benefits through the Systematic Alien Verification for Entitlement. (SAVE) Policy defines a qualified noncitizen as a noncitizen who is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA) and was admitted before August 22, 1996. A noncitizen who is lawfully admitted for permanent residence on or after August 22, 1996, is subject to a five-year waiting period. A noncitizen may be eligible for emergency services, provided that they meet the Medicaid eligibility requirements of the program. Emergency services are limited to the noncitizen having a medical condition, after sudden onset, which demonstrates acute symptoms of sufficient severity that the absence of immediate medical attention could result in placing the individual's health in serious jeopardy, serious impairment to bodily functions and serious dysfunction of any bodily organ.

The Respondent determined through a SAVE inquiry that the Appellant was lawfully admitted for permanent United States residence on December 15, 2022. Because the Appellant was not admitted for permanent residence until after August 22, 1996, he is ineligible for Medicaid services and subject to a five-year waiting period. Since the Appellant is serving a five-year waiting period the argument concerning excessive income is moot. Because the Appellant is subject to a five-year noncitizenship waiting period for Medicaid services and there was no testimony provided to establish an emergency need for Medicaid services, the Respondent was correct in its decision to deny the Appellant's application for Medicare Premium Assistance.

### **CONCLUSIONS OF LAW**

- 1) Policy requires that an individual be a United States citizen, a United States national, or a qualified noncitizen to be eligible to receive Medicaid benefits.
- 2) Policy defines a qualified noncitizen as an individual who is lawfully admitted for permanent residence (LPR) under the Immigration and Nationality Act (INA) and was admitted before August 22, 1996.
- 3) Policy requires that qualified noncitizens are subject to a five-year waiting period, when a noncitizen who is lawfully admitted to the United States for permanent residence (LPR) on or after August 22, 1996, and has been a qualified noncitizen for more than five years.
- 4) The Appellant was lawfully admitted for permanent residence to the United States on December 15, 2022. Therefore, the Appellant has not been a qualified noncitizen for more than five years, thus, is subject to a five-year waiting period for Medicaid eligibility.
- 5) The Respondent's decision to deny Medicare Premium Assistance benefits is affirmed.

**DECISION**

It is the decision of the State Hearing Officer to uphold the Respondent's decision to deny the Appellant's application for Medicare Premium Assistance.

**ENTERED this \_\_\_\_\_ day of September 2024.**

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Eric L. Phillips  
**State Hearing Officer**