



October 31, 2024

[REDACTED]

RE: [REDACTED] v. DoHS/BFA
ACTION NO.: 24-BOR-3126

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 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: Michael Tetreault, [REDACTED] DoHS

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

████████████████████

Appellant,

v.

Action Number: 24-BOR-3126

**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 October 15, 2024, on an appeal filed on September 4, 2024.

The matter before the Hearing Officer arises from the August 15, 2024, decision by the Respondent to deny the Appellant's application for Adult Medicaid benefits.

At the hearing, the Respondent appeared by Michael Tetreault, ██████████ DoHS. The Appellant represented herself. The witnesses were placed under oath and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Hearing Request Notification Form
- D-2 Hearing Request received September 4, 2024
- D-3 Notice of Denial dated August 16, 2024
- D-4 Email from Appellant dated July 28, 2024
- D-5 U.S. Citizenship and Immigration Services Form I-797C
- D-6 Asylum Approval for ██████████ dated February 14, 2018
- D-7 Email from SAVE Coordinator dated August 14, 2024
- D-8 West Virginia Income Maintenance Manual §15.4
- D-9 West Virginia Income Maintenance Manual §15.8.2
- D-10 West Virginia Income Maintenance Manual §15.7.5.B
- D-11 Medicaid Application dated August 4, 2024

- D-12 Case Comments for July 2024
- D-13 Hearing Summary

Appellant's Exhibits:

- A-1 U.S. Citizenship and Immigration Services Form I-94
- A-2 U.S. Citizenship and Immigration Services Form I-797C

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 August 4, 2024 (Exhibit D-11).
- 2) The Appellant reported that she was not a United States (U.S.) citizen (Exhibit D-11).
- 3) Prior to the date of application, the Appellant emailed U.S. Citizenship and Immigration Services Form I-797C and Asylum Approval for her father, [REDACTED], and her United States Citizenship and Immigration Services (UCSIS) number to the Respondent (Exhibit D-6).
- 4) The Respondent caseworker sent the documentation provided by the Appellant to the Systematic Alien Verification for Entitlement (SAVE) coordinator for confirmation of the Appellant's immigration status.
- 5) The Respondent caseworker received an email from the SAVE coordinator on August 14, 2024, advising that the Appellant was granted Lawful Permanent Resident (LPR) status as of June 9, 2021 (Exhibit D-7).
- 6) The Respondent issued a notice of denial on August 16, 2024, advising the Appellant that her application for Adult Medicaid had been denied as she had not met alien eligibility requirements (Exhibit D-3).

APPLICABLE POLICY

West Virginia Income Maintenance Manual Chapter 15 explains citizenship requirements:

15.3 Citizenship and Noncitizens

The first step in determining eligibility for federal benefits is the identification of the noncitizen's immigration status. Then, other considerations relevant to their specific situations have to be taken into account; if it appears that a noncitizen qualifies for a particular federal program, it should be ensured that receipt of that benefit will not affect that person's immigration status. The Personal Responsibility and Work Opportunity

Reconciliation Act of 1996 (PRWORA) (P.L. 104-193) significantly changed federal means-tested public benefit eligibility for individuals who are not citizens of the U.S. Federal means-tested public benefits must be provided to eligible citizens or nationals of the U.S. Individuals who meet the eligibility requirements for these benefits but who are not citizens or nationals of the U.S. are eligible only as provided in Section 15.7. Those noncitizens must also meet documentation and verification requirements as required.

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. See Section 15.7 for extended definition.

15.4 Systematic Alien Verification for Entitlement (SAVE)

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. If the applicant is a noncitizen, he must present original documentation of noncitizen registration. Noncitizens without documentation must be referred to the United States Citizenship and Immigration Services (USCIS) Office in Pittsburgh, Pennsylvania.

15.4.1.B Verified Immigration Status

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.

15.7.5.A Medicaid Eligibility for Noncitizens

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 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 citizen 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 Medicaid Eligible Noncitizens

15.7.5.B.1 Qualified Noncitizen

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:
 - 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
- 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 of 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.D Non-qualified Noncitizens

- 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

15.8.2 Asylee Eligibility Screening

All immigrants who have been granted asylum status will have in their possession United States Citizenship and Immigration Services (USCIS) documentation that shows proof of asylum status and the date asylum was granted.

15.8.2.A Asylee Status of Immigrant

15.8.2.A.1 Documentation

In order to determine an asylee's eligibility in accordance with the Office of Refugee Resettlement (ORR) regulations, the Worker must confirm the individual's status and date of entry through appropriate USCIS documentation. The following documents will confirm both status and date of entry for asylees:

- USCIS Form I-94 Arrival/Departure Card, noting that the individual has been admitted under Section 208 of the Immigration and Nationality Act (INA)
- USCIS Form I-94 Arrival/Departure Card with the admission codes AS-1, AS-2 or AS-3
- USCIS Form I-94 Arrival/Departure Card with Visa 92 (or V-92)
- Order of an Immigration Judge granting asylum under Section 208 of the INA will serve as proof of asylee status if the USCIS has waived the right to appeal the case; the date on the Immigration Judge Order will serve as the date the individual was granted asylum
- Asylum Approval Letter from an USCIS Asylum Office
- I-730 Approval Letter

- Written Decisions from the Board of Immigration Appeals (BIA)

15.8.2.B.1 Family Members Included in Principle Asylee’s Application

If the asylee includes his spouse and children on the asylum application, the family members have the same asylum grant date as the principal asylee. Family members will be included on the principal asylee’s asylum documents.

15.8.2.B.3 Family Members in U.S. – Not Included on Principle Asylee’s Application

The family will receive an I-730 approval letter with the date the application is approved. The approval date is the date to consider as the date asylum was granted. USCIS should issue Form I-94 reflecting the approval date as “entry” date and status as asylee.

DISCUSSION

Pursuant to policy, an individual must be a U.S. citizen, a U.S. national or a qualified noncitizen to be eligible for Medicaid. Qualified noncitizens include a noncitizen who is granted asylum under Section 208 of the Immigration Nationality Act (INA), eligible for seven years from entry to U.S. and individuals granted Legal Permanent Residence (LPR) status. Qualified noncitizens who were lawfully admitted to the U.S. for permanent residence (LPR) on or after August 22, 1996, are subject to a five-year waiting period to qualify for Medicaid.

The Appellant testified that she was admitted to the U.S. as an asylee on February 21, 2019, and noted that the I-797C form and I-94 form she submitted confirmed her asylum status (Exhibits A-1 and A-2). The Appellant contended that as an asylee, she was not subject to the five-year waiting period for Medicaid eligibility.

The Appellant provided sufficient documentation to confirm her entry into the U.S. was as an asylee. However, the Appellant applied for and was granted LPR status on June 9, 2021. Once the Appellant became a legal permanent resident, she was required to be evaluated under the qualified noncitizen policy. A noncitizen admitted to the U.S. on or after August 22, 1996, who has been granted LPR status is required to wait five years from the date of the LPR approval to qualify for Medicaid benefits.

Whereas the Appellant was granted LPR status on June 9, 2021, and is subject to the five-year waiting period, the Respondent acted in accordance with policy in the denial of the Adult Medicaid benefits.

CONCLUSIONS OF LAW

- 1) To be eligible for Medicaid, an individual must be a U.S. citizen, a U.S. national or a qualified noncitizen to be eligible for Medicaid.
- 2) The Appellant was granted legal permanent residence status on June 9, 2021, and meets the definition of a qualified noncitizen.

- 3) Qualified noncitizens that are subject to the five-year waiting period for Medicaid eligibility include legal permanent residents who were admitted to the U.S. after August 22, 1996.
- 4) The Appellant is ineligible for Adult Medicaid benefits until the five-year waiting period, effective June 9, 2021, has lapsed.

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 31st day of October 2024.

Kristi Logan
Certified State Hearing Officer