



October 3, 2024

[REDACTED]

RE: [REDACTED] v. WVDoHS
ACTION NO.: 24-BOR-3216

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,

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-3216

**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 3, 2024, on appeal filed September 17, 2024.

The matter before the Hearing Officer arises from the August 13, 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. The Appellant was represented by her Daughter-In-Law, ██████████. ██████████ provided translation services for the Appellant. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Systematic Alien Verification for Entitlement correspondence dated February 13, 2024.
- D-2 Application for Health Coverage dated July 18, 2024
- D-3 Notice of Decision dated August 13, 2024
- D-4 West Virginia Income Maintenance Manual §15.4
- D-5 West Virginia Income Maintenance Manual §15.7.5.B.1

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 18, 2024, the Appellant applied for Medicare Premium Assistance benefits. (Exhibit D-1)
- 2) The Appellant's household consisted of herself and her spouse.
- 3) The Appellant was lawfully admitted to the United States for permanent residence on February 28, 2023.
- 4) Non-citizens, lawfully admitted to the United States for permanent residence after August 22, 1996, are subject to a five-year waiting period to receive Medicaid services.
- 5) On August 13, 2024, the Respondent issued a Notice of Decision (Exhibit D-3) informing the Appellant of the denial of her Medicaid application because she did not meet alien eligibility requirements.

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.

DISCUSSION

On August 13, 2024, the Respondent denied the Appellant’s application for Medicare Premium Assistance due to citizenship requirements. 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 Medicaid citizenship requirements set forth by policy.

The Respondent determined that the Appellant failed to meet Medicaid citizenship requirements when a Systematic Alien Verification for Entitlement (SAVE) data exchange (Exhibit D-1) revealed that the Appellant was lawfully admitted to the United States for permanent residence on February 28, 2023, subjecting her to the five-year waiting period for qualified noncitizens.

██████████ the Appellant’s representative, indicated that the Appellant is dependent on her husband’s income and that the only income received by the household is from the Social Security Administration. ██████████ indicated that she understood the five-year waiting period and provided testimony that the Appellant came to the United States two-years ago, but her husband

has been in the United States since 2007.

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 February 23, 2023. Because the Appellant was not admitted for permanent residence until after August 22, 1996, she is ineligible for Medicaid services and subject to a five-year waiting period. 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 February 28, 2023. 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 October 2024.

Eric L. Phillips
State Hearing Officer