



January 31, 2025

[REDACTED]

RE: [REDACTED] v. WV DoHS/BFA
ACTION NO.: 24-BOR-3879

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,

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

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

cc: Stacy Kasprovicz, [REDACTED] DoHS

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

██████████,

Appellant,

v.

Action Number: 24-BOR-3879

**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 January 22, 2025.

The matter before the Hearing Officer arises from the Respondent's December 23, 2024 decision to deny the Appellant's eligibility for Medicaid Non-Qualified Noncitizen Emergency Coverage.

At the hearing, the Respondent appeared by Stacy Kasprovicz, ██████████ DoHS. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

D-1 IG-BR-29 Form, copy

Email Correspondence

Emergency Medicaid Application

Appellant's Passport photocopy

History and Physical Final Report:

Electronically signed by ██████████ dated August 16, 2024

Electronically signed by ██████████ dated August 19, 2024

History and Physical Final Report:
Electronically signed by [REDACTED] on August 20, 2024

ED Provider Note Final Report:
Electronically signed by [REDACTED] on August 20, 2024

History and Physical Final Report:
Electronically signed by [REDACTED] on August 25, 2024

ED Provider Note Final Report:
Electronically signed by [REDACTED] on August 25, 2024

DoHS Notice, dated December 23, 2024

Gmail message history, undated

West Virginia Income Maintenance Manual (WVIMM) excerpts: Chapter 15 and § 23.13

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 December 23, 2024, the Respondent issued a notice advising the Appellant his application for Medicaid Non-Qualified Noncitizen-Emergency Coverage was denied because the application was submitted on October 21, 2024, and the date of the emergency was August 16, 2024.
- 2) Between October 7, and October 21, 2024, the Appellant, with assistance, signed and submitted an application for Emergency Medicaid (Exhibit D-1).
- 3) On October 21, 2024, the Respondent stamped the Appellant’s application, “Received October 21, 2024 By _____” (Exhibit D-1).
- 4) The Appellant was seen for observation at [REDACTED], from August 15 through August 17, 2024 (Exhibit D-1).
- 5) The Appellant was seen at the emergency department at [REDACTED] on August 19, 2024, and was subsequently admitted to the medical surgical floor (Exhibit D-1).

- 6) On August 20, 2024, the Appellant was placed on observation (Exhibit D-1).
- 7) On August 22, 2024, the Appellant underwent a procedure (Exhibit D-1).
- 8) On August 23, 2024, the Appellant was discharged to home (Exhibit D-1).
- 9) On August 24, 2024, the Appellant was seen at the emergency department at [REDACTED] and was subsequently admitted to the medical floor for observation from August 24 through August 27, 2024 (Exhibit D-1).

APPLICABLE POLICY

West Virginia Income Maintenance Manual (WVIMM) § 23.13 *Non-Qualified Noncitizens – Emergency Coverage* provides:

The income and asset limits of the Medicaid group for which the noncitizen is applying (i.e., would otherwise be eligible) must be considered.

A noncitizen who is not otherwise eligible for Medicaid as a Qualified Noncitizen (refer to Chapter 15) is eligible when all the following conditions are met.

- The noncitizen must meet the income, asset, and non-financial considerations (except for noncitizen status) of any full-coverage Medicaid group, with the exception of the long-term care groups; and,
- He must be diagnosed as having a severe medical condition that could reasonably be expected to result in one of the following, without immediate medical attention:
 - Serious jeopardy to the noncitizen’s health
 - Serious impairment to bodily functions
 - Impaired or abnormal functioning of any body part or organ

Such medical conditions include labor and delivery. In judging sufficient severity, severe pain must be considered.

Applications from or on behalf of these noncitizens must be made within 30 days of the need for emergency medical care.

Individuals who apply based on disability must be approved by the Medical Review Team (MRT), unless they receive statutory disability benefit (See Chapter 13).

Code of Federal Regulations 42 CFR § 435.917(a) and (b) *Notice of agency’s decision concerning eligibility, benefits, or services* provide that the agency must provide all applicants with timely and adequate written notice of any decision affecting their eligibility, including an approval, denial, termination or suspension of eligibility, or a denial or change in benefits and services ...

(b)(2) provides that in notices of adverse action, including denial, must be consistent with § 431.210 of this chapter.

Code of Federal Regulations 42 CFR § 431.210(b) *Content of notice* provides that the notice must contain a clear statement of the specific reasons supporting the intended action.

Code of Federal Regulations 42 CFR § 435.406(b) *Citizenship and noncitizen eligibility* provides that the agency must provide payment for services described in § 440.225(c) to residents of the State who otherwise meet the eligibility requirements of the state plan, including those who are non-qualified non-citizens who meet all Medicaid eligibility criteria, except non-qualified noncitizens do not present a social security number or document immigration status.

Code of Federal Regulations 42 CFR § 440.255(c) *Limited services available to certain aliens* provides that effective January 1, 1987, aliens who are not lawfully admitted for permanent residence in the United States or permanently residing in the United States under the color of law must receive the services necessary to treat the condition defined in paragraph (1) of this section if –

- (1) The alien has, after sudden onset, a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:
 - (i) Placing the patient’s health in serious jeopardy;
 - (ii) Serious impairment to bodily functions; or
 - (iii) Serious dysfunction of any bodily organ or part, ...

DISCUSSION

The Appellant requested a fair hearing to protest the Respondent’s denial of Medicaid Non-Qualified Noncitizen-Emergency Coverage. The December 23, 2024 denial notice indicated that the Appellant’s eligibility was denied because he applied for benefits after the allowable timeframe.

During the hearing, the Respondent’s representative testified that the Appellant was hospitalized for observation from August 15 through August 17, 2024. The Respondent’s representative argued that observation did not qualify for Medicaid Non-Qualified Noncitizen-Emergency Coverage.

When denying an applicant’s eligibility, federal regulations require the Respondent to list the basis for the denial on the notice. While the failure to satisfy medical condition criteria may be a reason to deny the Appellant’s eligibility, diagnosis was not listed as a denial reason on the December 23, 2024 notice. Because a diagnostic basis for denial was not provided on the notice, evidence regarding non-qualifying diagnosis was given no weight by the Hearing Officer.

Federal regulations stipulate that State agencies must provide payment for medical services necessary under 42 CFR § 440.225(c) to non-qualified noncitizen residents of the state — who meet all Medicaid eligibility criteria except the requirement to provide a social security number or

document their immigration status. The Respondent's Medicaid policy requires the application to be made within 30 days of the need for emergency medical care.

The Respondent bears the burden of proof and had to demonstrate by a preponderance of the evidence that the Appellant applied for Medicaid Non-Qualified Noncitizen-Emergency Coverage beyond 30 days after his need for emergency medical care.

The Respondent's representative testified that because the medical services were provided from August 15 through August 17, 2024, and the Appellant's application was not submitted until October 21, 2024, the Appellant's application for Medicaid was denied. The submitted medical record verified that the Appellant received medical observation at [REDACTED] from August 15 through August 17, 2024. The records reflect the Appellant returned to the emergency department on August 19, 2024, was admitted to the surgical floor, underwent a procedure on August 22, 2024, and was discharged on August 23, 2024. The medical records demonstrate that the Appellant returned to the emergency department on August 24, 2024, was transferred to the medical floor for observation, and was discharged on August 27, 2024.

The Appellant's representative testified that the Appellant's application was emailed to the Respondent on October 7, 2024. The Respondent's received date stamp indicated the application was received on October 21, 2024, but did not indicate who received the form. The email, by which the Appellant's representative submitted the Appellant's application, was not presented as evidence by either party. Whether the Appellant's application was submitted on October 7 or October 21, 2024, both dates are beyond thirty days of the Appellant's need for emergency medical care. During the hearing, the Appellant's representative acknowledged that October 7, 2024 was still beyond the allowable timeframe. The policy does not provide any exceptions to the requirement that the application be submitted within thirty days of the Appellant's need for medical care.

CONCLUSIONS OF LAW

- 1) To be eligible for Medicaid Non-Qualified Noncitizens-Emergency Coverage, the application must be made within 30 days of the need for emergency medical care.
- 2) Thirty days before October 7, 2024, was September 7, 2024.
- 3) Thirty days before October 21, 2024 was September 21, 2024.
- 4) The preponderance of evidence demonstrated that the Appellant did not apply within thirty days of his August 2024 need for emergency medical care.
- 5) The Respondent correctly denied the Appellant's eligibility for Medicaid Non-Qualified Noncitizens-Emergency Coverage because his October 2024 application was submitted more than 30 days after his August 2024 emergent medical care.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to deny the Appellant's eligibility for Medicaid Non-Qualified Noncitizens-Emergency Coverage.

ENTERED this 31st day of January 2025.

Tara B. Thompson, MLS
State Hearing Officer