



January 16, 2025

[REDACTED]

RE: [REDACTED] v. WVDoHS
ACTION NO.: 24-BOR-3880

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,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

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

cc: Stacy Kasprowicz, WVDoHS

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

[REDACTED]

Appellant,

v.

Action Number: 24-BOR-3880

**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 [REDACTED]. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Office of Inspector General Common Chapters Manual. This fair hearing was convened on January 7, 2025.

The matter before the Hearing Officer arises from the September 17, 2024, decision by the Respondent to deny emergency Medicaid benefits.

At the hearing, the Respondent appeared by Stacy Kasprovicz, Economic Service Worker, WVDoHS. The Appellant was represented by [REDACTED] Patient Advocate, [REDACTED]. All witnesses were sworn, and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Electronic mail transmissions between Respondent and Department's Systematic Alien Verification for Entitlements (SAVE) Unit
- D-2 Appellant's medical documentation

Appellant's Exhibits:

- A-1 Appellant's medical documentation
- A-2 Copy of Appellant's identification card from [REDACTED]

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 is an undocumented noncitizen from [REDACTED] and is not a legal resident of the United States (Exhibit A-2).
- 2) The Appellant underwent a cholecystectomy at [REDACTED] on August 1, 2024, upon reporting worsening pain during an emergency room visit (Exhibit D-2).
- 3) Medical documentation reveals that the Appellant was found to have a gallstone and no bile duct dilation upon examination (Exhibit D-2).
- 4) Operative reports from [REDACTED] document that the Appellant had an inflamed gall bladder with a necrotic area that drained hydrops fluid. The “cystic plate was comprised of necrotic tissue. The tissue was released from the Appellant’s liver bed using electrocautery J-hook... The back wall was almost completely necrotic” (Exhibit D-2).
- 5) The final hospital report states that the Appellant had a robotic-assisted laparoscopic cholecystectomy for “acute necrotizing and hemorrhagic cholecystitis, a reactive cystic duct lymph node, and cholelithiasis.”
- 6) The Appellant applied for non-citizen emergency Medicaid benefits at [REDACTED]
- 7) The Respondent’s SAVE Unit, which certifies noncitizen eligibility for Department programs, determined that the Appellant does not meet non-citizen eligibility criteria for Medicaid benefits based on information submitted by the hospital.
- 8) The SAVE Unit indicated in e-mail correspondence dated August 20, 2024, that the documentation provided from [REDACTED] was insufficient to determine the Appellant’s eligibility for emergency medical services. The e-mail states that additional information was needed concerning the Appellant’s emergency hospitalization dates, as well as physician’s notes concerning testing and surgeries performed (Exhibit D-1).
- 9) The Respondent sent the Appellant’s representative a Notice of Decision on September 17, 2024, indicating that Medicaid benefits had been denied based on failure to meet alien eligibility requirements.

APPLICABLE POLICY

West Virginia Income Maintenance Manual §15.7.5.B.1 states that a qualified noncitizen for Medicaid purposes 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 27, 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.D defines a non-qualified non-citizen as:

- 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

West Virginia Income Maintenance Manual §15.7.6 states that any noncitizen who is not a qualified noncitizen is not eligible for Medicaid except in emergency situations. Non-qualified noncitizens who meet the residence and other Medicaid policy eligibility criteria are eligible for Medicaid only for treatment of medical conditions meeting the following requirements.

To be eligible for emergency services, a noncitizen must meet all eligibility requirements of the Medicaid group for which they are applying. Pregnant noncitizen women facing imminent delivery or other related problems are evaluated using Medicaid guidelines for all programs. The unborn child is considered as a child in the home.

Care and services are necessary for the treatment of an emergency medical condition of the noncitizen, provided such care and services are not related to either an organ transplant procedure or routine prenatal or post-partum care.

The noncitizen must have, after sudden onset, a medical condition (including emergency labor and delivery) showing acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

- Placing the patient's health in serious jeopardy
- Serious impairment to bodily functions
- Serious dysfunction of any bodily organ or part

Effective March 18, 2020, until the termination of the National State of Emergency, COVID-19 testing and treatment is included in the definition of an emergency medical condition for nonqualified noncitizens.

West Virginia Income Maintenance Manual §23.13 states that a noncitizen who is not otherwise eligible for Medicaid as a Qualified Noncitizen, refer to Chapter 15, is eligible when all of 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 MRT, unless they receive a statutory disability benefit.

DISCUSSION

Policy stipulates that an individual must be a citizen of the United States or a qualified noncitizen to be eligible for Medicaid benefits. A nonqualified noncitizen may be eligible for the care and services necessary for the treatment of an emergency medical condition if certain criteria is met. The noncitizen must meet the income, asset, and non-financial considerations (except for noncitizen status) of any full-coverage Medicaid group and must be diagnosed as having a severe medical condition that could reasonably be expected to result in serious jeopardy to the noncitizen's health without immediate medical attention.

[REDACTED], a Patient Advocate for [REDACTED] who is stationed at [REDACTED], testified that the Appellant had a blocked bile duct that required emergency gall bladder surgery at the facility. She stated that the Appellant had no immigration documents but informed her that he was attempting to obtain a work permit.

The Respondent's representative, Stacy Kasprovicz, testified that the Respondent's SAVE Unit determined that the Appellant was ineligible for emergency medical assistance because information was insufficient to determine whether he met program requirements.

The Respondent's evidence packet includes information concerning the Appellant's dates of service, test results and diagnosis, as well as an operative report. As the medical documentation shows "print

dates” of October 4, 2024, and December 2, 2024, at the bottom of the reports, it is unclear whether the evidence was sent to the SAVE Unit at the time of the Appellant’s Medicaid application.

However, evidence provided by the Respondent during the hearing is reflective of the Appellant’s condition at the time of his emergency procedure in August 2024 and is sufficient to make a de novo determination of whether medical eligibility criteria was met. Clearly, the Appellant had an emergent, life-threatening need for medical care based on a diagnosis of acute necrotizing and hemorrhagic cholecystitis. Therefore, the Respondent’s decision to deny emergency Medicaid benefits to the Appellant cannot be affirmed.

CONCLUSIONS OF LAW

- 1) A nonqualified noncitizen may be eligible for emergency Medicaid coverage if he has a severe condition that could reasonably be expected to result in serious jeopardy to his health without immediate medical attention.
- 2) The Appellant underwent an emergency medical procedure at [REDACTED] in August 2024 to remove a necrotic gall bladder.
- 3) The Appellant had a severe condition at the time of his procedure and failure to obtain medical attention would have put his health in serious jeopardy.
- 4) The Respondent’s action to deny emergency Medicaid coverage to the Appellant was incorrect.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Respondent’s action to deny emergency Medicaid coverage to the Appellant for his cholecystectomy and related services at [REDACTED] in August 2024. The case is **REMANDED** to the Respondent to determine whether the Appellant met the income, asset, and non-financial considerations (except for noncitizen status) of any full-coverage Medicaid group at the time of his emergency care.

ENTERED this 16th day of January 2025.

Pamela L. Hinzman
State Hearing Officer