

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant

Reg. No: 2009-6543
Issue No: 2005
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 30, 2009
Saginaw County DHS

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; and MCL 400.37 upon claimant's request for a hearing. After due notice, a hearing was held on June 30, 2009. Claimant and his wife appeared and testified.

ISSUE

Did the Department of Human Services properly remove Claimant's wife from Medical Assistance (MA) coverage due to Claimant's failure to provide proof of her citizenship?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

(1) Claimant's wife was an ongoing recipient of Medical Assistance (MA) benefits under Claimant's case. Claimant's benefit group consists of himself, his wife, and their two children.

(2) On September 15, 2008, Claimant was sent a Verification Checklist (DHS Form 3503) was sent out requesting proof of citizenship for both Claimant and his wife. The verifications were due October 1, 2008.

(3) On October 1, 2008, the Department had not received verification of Claimant's wife's citizenship.

(4) On October 9, 2008, another Verification Checklist (DHS Form 3503) was sent requesting proof of citizenship for Claimant's wife. The verification was due October 24, 2008.

(5) On October 24, 2008, the Department had not received verification of Claimant's wife's citizenship. Claimant was sent a Notice of Case Action (DHS-1605) stating his wife's MA would be cancelled on November 6, 2008.

(6) On November 3, 2008, Claimant submitted a request for hearing.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

In this case, Claimant and his wife assert she was born in California and they cannot afford to obtain a copy of her birth certificate. They assert the State of Michigan should obtain the birth certificate or accept one of the other forms of verification in Department policy like the affidavit listed. The caseworker asserts he cannot obtain birth records from any state other than Michigan.

Department policy provides the following guidance for case workers. The Department's policies are available on the internet through the Department's website.

PEM 225 CITIZENSHIP/ALIEN STATUS

DEPARTMENT POLICY

In this item:

- INA refers to the Immigration and Nationality Act.
- USCIS refers to the U.S. Citizenship and Immigration Services, formerly, the Bureau of Citizenship and Immigration or Immigration and Naturalization Service.

All Programs

Determine the alien status of each noncitizen requesting benefits at application, member addition, redetermination and when a change is reported.

MA and AMP

Citizenship/alien status is not an eligibility factor for emergency services only (ESO) MA. However, the person must meet all other eligibility factors including residency. (See [PEM 220](#)).

To be eligible for full MA coverage a person must be a U.S. citizen or an alien admitted to the U.S. under a specific immigration status. U.S. citizenship must be verified with an acceptable document to receive Medicaid.

VERIFICATION REQUIREMENTS

U.S. Citizenship FAP, AMP and CDC

Do not request verification from a person claiming U.S. citizenship **unless** the client's statements are questionable.

FIP, SDA and MA

U.S. citizenship must be verified.

VERIFICATION SOURCES CITIZENSHIP

FIP, SDA and MA

Primary evidence of citizenship is documentary evidence of the highest reliability that conclusively establishes that the person is a U.S. citizen. In general, obtain primary evidence of citizenship before using secondary evidence.

Primary Evidence

Primary evidence of citizenship is:

- A U.S. passport.
- A U.S. passport card.
- A Certificate of Naturalization (N-550 or N-570).
- A Certificate of Citizenship (N-560 or N-561).

Secondary Evidence

Secondary evidence of citizenship is documentary evidence of satisfactory reliability that is used when primary evidence is not available. Secondary evidence is:

- A U.S. public birth record showing birth in one of the 50 United States, District of Columbia, American Samoa, Swain's Island Puerto Rico (if born on or after January 13, 1941), Virgin Island of the U.S. (if born on or after January 17, 1917), Northern Mariana Islands (if born on or after November 4, 1986) or Guam (if born on or after April 10, 1899).

Third Level Evidence

Third level evidence of U.S. citizenship is documentary evidence that is used when neither primary nor secondary evidence is available. Third level evidence may be used **only** when primary evidence cannot be obtained within a reasonable length of time, secondary evidence does not exist or cannot be obtained, **and** the applicant or recipient alleges being born in the U.S. Third level evidence is usually a non-government document established for a reason other than to establish U.S. citizenship and showing a U.S. place of birth. The place of birth on the nongovernment document and the application must agree.

Third level evidence is:

- An extract of a hospital record on hospital letterhead, established at the time of birth and was created at least five years before the initial application date (or near the time of birth for children) and

indicates a U.S. place of birth. Do not accept a souvenir “birth certificate.”

- Life, health, or other insurance record showing a U.S. place of birth and was created at least five years before the initial application date.
- Religious record recorded in the U.S. within three months of birth showing the birth occurred in the U.S. and showing either the date of the birth or the individual’s age at the time the record was made. The record must be an official record recorded with the religious organization. Entries in a family bible are **not** considered religious records.
- Early school record showing a U.S. place of birth. The school record must show the name of the child, the date of admission to the school, the date of birth, a U.S. place of birth, and the name(s) and place(s) of birth of the applicant’s parents.

Fourth Level Evidence

Fourth level evidence should **only** be used in the rarest of circumstances and includes:

- Federal or State census record showing U.S. citizenship or a U.S. place of birth, generally for persons born 1900 through 1950. The census record must show the person’s age. To secure this information the applicant, recipient, or State should complete a Form BC-600, Application for Search of Census Records for Proof of Age. Add in the remarks section “U.S. citizenship data requested.” Also indicate that the purpose is for Medicaid eligibility. This form requires a fee.
- Seneca Indian tribal census record.
- Bureau of Indian Affairs tribal census records of the Navaho Indians.
- Bureau of Indian Affairs Roll of Alaskan Natives.
- U.S. State Vital Statistics official notification of birth that is amended more than five years after the person’s birth.
- Statement signed by the physician or midwife who was in attendance at the time of birth.
- Institutional admission papers from a nursing facility or other institution or medical records from a hospital, doctor, or clinic and was created at least five years before the initial application date and indicates a U.S. place of birth. Admission papers generally show biographical information including a place of birth. An immunization record is **not** considered a medical record for purposes of establishing U.S. citizenship.

- A written affidavit, **an affidavit should only be used in rare circumstances.** The affidavit must be completed by the applicant or recipient and at least two additional individuals of whom one is not related to the applicant/recipient and who have personal knowledge of the event(s) establishing the person's claim of citizenship. The individual making the affidavit must be able to provide proof of his/her own citizenship and identity. The affidavit is signed under penalty of perjury by the person making the affidavit but need not be notarized. The affidavit should include information explaining why other documentary evidence establishing the applicant's claim of citizenship does not exist or cannot be obtained. The policy cited above clearly states that "third level evidence may be used only when primary evidence cannot be obtained within a reasonable length of time, secondary evidence does not exist or cannot be obtained, and the applicant or recipient alleges being born in the U.S." Fourth level evidence should only be used in the rarest of circumstances.

The first question to resolving is whether Claimant's assertion they cannot afford to get the birth certificate meets the policy criteria that the secondary evidence "cannot be obtained". The policy does not say when it is "inconvenient to obtain" or "the benefit recipient does not want to have to obtain it." Claimant and his family have limited resources and the asserted minor cost to obtain the birth certificate will take a minor sacrifice in another area. However, there is no evidence in the record which shows that expending the minor cost to obtain the birth certificate would specifically cause irreparable harm to the family. Proving eligibility for public assistance is incumbent upon the applicant for public assistance. The Department of Human Services has a responsibility to provide reasonable assistance to applicants, and no more.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department of Human Services properly removed Claimant's wife from Medical Assistance (MA) coverage due to Claimant's failure to provide proof of her citizenship.

It is ORDERED that the actions of the Department of Human Services, in this matter, are UPHELD.

/s/


Gary F. Heisler
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: August 11, 2009

Date Mailed: August 11, 2009

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

GFH 

cc:

