

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: 2009-8255
Issue No: 3008; 2006
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 27, 2009
Barry County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne L. Keegstra

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 telephone hearing was held on May 27, 2009. The claimant did not appear for the hearing. The claimant's authorized hearing representative, [REDACTED] appeared for the hearing.

ISSUE

Did the department properly approve the claimant for Food Assistance Program (FAP) benefits beginning December 18, 2008 and did the department properly deny the claimant's Medical Assistance (MA) application in December, 2008?

FINDINGS OF FACT

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

1. The claimant applied for FAP (expedited service) and MA benefits in person on November 21, 2008. (Department Exhibit 1).

2. The claimant was interviewed on November 21, 2008, when he turned in the application. The claimant was handed a Verification Checklist (DHS-3503) at this time that indicated the claimant needed to provide the department with a copy of his birth certificate and driver's license or ID card. These items were marked as due on December 1, 2008. (Department Exhibit 2).

3. The claimant did not provide any verification of identity or citizenship, so the department mailed the claimant a second Verification Checklist (DHS-3503) on December 16, 2008, that again requested a birth certificate, driver's license or ID card and social security card for the claimant, which was due by December 28, 2009. (Department Exhibit 3)

4. On December 19, 2008, the department received a birth certificate and social security card for the claimant. (Department Exhibit 4, 5).

5. On December 19, 2008, the claimant was mailed a Verification Checklist (DHS-3503-C), requesting proof of identity for the claimant. Identity records are listed as: driver's license/ID card, school ID card, federal, state or local government ID card or U.S. military ID card. The form also indicates on the bottom "[a]ll individuals applying for Medicaid who claim U.S. citizenship/nationality must provide documentation of citizenship and identity." Citizenship was shown by the claimant's birth certificate, thus identity remained to be verified. (Department Exhibit 6).

6. As of the date of this hearing, the claimant has not provided any document establishing identity to the department.

7. The department received the necessary documentation for FAP (although not for MA) on December 19, 2009, so the department opened the claimant's FAP case and began benefits as of that date.

8. The claimant requested a hearing on December 10, 2008.

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).

The Food Assistance Program (FAP) (formerly known as the Food Stamp (FS) program) is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Department policy states:

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.

AMP does not require U.S. citizenship verification. The alien status of each non-citizen must be verified to be eligible for full MA coverage. See “CITIZENSHIP/ALIEN STATUS” section below.

Exception: RSDI and SSI recipients, Medicare recipients, newborns (PEM 145), safe delivery babies, and children receiving Title IV-B services or Title IV-E adoption assistance or foster care payments are not required to verify U.S. citizenship.

MA coverage is limited to emergency services for:

- Persons with certain alien statuses or U.S. entry dates as specified in policy, see “CITIZENSHIP/ALIEN STATUS” section below, or
- Persons refusing to provide citizenship/alien status information on the application, or
- Persons unable or refusing to provide satisfactory verification of alien information.

Note: All other eligibility requirements including residency (PEM 220) **MUST** be met even when MA coverage is limited to emergency services. PEM ITEM 225, pp. 1-2.

FIP, SDA and FAP

Disqualify a person who is unable to obtain verification **or refuses to cooperate** in obtaining it. For FIP, SDA and FAP, refer to “How Do I?”.

MA and AMP Emergency Services Only

The coverage of a person who is unable to obtain verification of alien status, or refuses to cooperate in obtaining it, is limited to emergency services until verification is obtained. Verify all other eligibility requirements, including residency, before authorizing emergency services coverage. PEM, Item 225, p. 16.

VERIFICATION SOURCES

CITIZENSHIP

FAP, AMP and CDC

See EXHIBIT III in this item for document titles and descriptions.

- Birth certificate or other birth record.
- U.S. passport.
- Voter registration card.
- Naturalization papers or USCIS identification card.

FAP

A client might offer good reason why none of the verification above can be obtained. In that situation, accept a U.S. citizen's signed statement under penalty of perjury that the person in question is a U.S. citizen. See EXHIBIT I in this item for information required on the statement. PEM, Item 225, pp. 16-17.

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. PEM, Item 225, p. 17.

Primary Evidence

Primary evidence of citizenship is:

- . A U.S. passport.
 - . A Certificate of Naturalization (N-550 or N-570).
 - . A Certificate of Citizenship (N-560 or N-561).
- PEM, Item 225, p. 17.

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).
- . Certification of Report of Birth (DS-1350). The Department of State issues a DS-1350 to U.S. citizens in the U.S. who were born outside the U.S. and acquired U.S. citizenship at birth based on the information shown on the FS-240.
- . Consular Report of Birth Abroad of a Citizen of the United States of America (FS-240). Children born outside the U.S. to U.S. military personnel usually have one of these.

- . Certification of Birth Abroad (FS-545). Before November 1, 1990, Department of State consulates also issued Form FS-545 along with prior version of the FS-240. In 1990, U.S. consulates ceased to issue Form FS-545. Treat an FS-545 the same as the DS-1350.
- . United States Citizen Identification Card (I-197 or I-179). INS issued Form I-179 and I-197 to naturalized U.S. citizens living near the Canadian or Mexican borders who needed it for frequent border crossings. Although neither form is currently issued, either form that was previously issued is still valid.
- . American Indian Card (I-873). INS issued this form to a collectively naturalized citizen of the U.S. who was born in the Northern Mariana Islands before November 4, 1986. The card is no longer issued, but those previously issued are still valid.
- . Final adoption decree. The decree must show the child's name and U.S. place of birth. In situations where an adoption is not finalized and the state in which the child was born will not release a birth certificate prior to final adoption, a statement from a state approved adoption agency that shows the child's name and U.S. place of birth is acceptable. The adoption agency must state in the certification that the source of the place of birth information is an original birth certificate.
- . Evidence of civil service employment by the U.S. government. The document must show employment by the U.S. government prior to June 1, 1976.
- . Official Military record of service. The document must show a U.S. place of birth (a DD-214 or similar official document showing a U.S. place of birth).
- . A verification with the Department of Homeland Security's Systematic Alien Verification for Entitlements (SAVE) database.
- . Evidence of meeting the automatic criteria for U.S. citizenship outlined in the Child Citizenship Act of 2000.

The Child Citizenship Act of 2000 allows certain foreign-born, biological and adopted children of American citizens to acquire American citizenship at birth, but they are granted citizenship

when they enter the United States as Lawful Permanent Residents (LPRs).

The child must meet **all** of the following requirements:

- . Have at least one American citizen parent by birth or naturalization.
- . Be under 18 years of age.
- . Live in the legal and physical custody of the American citizen parent.
- . Be admitted as an immigrant for lawful permanent residence.

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 non-government 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 (5) years before the initial application date (or near the time of birth of 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 (5) years before the initial application date.
- . Religious record recorded in the U.S. within 3 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. PEM, Item 225, p. 19.

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. States Vital Statistics official notification of birth, that is amended more than five (5) 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 that was created at least five (5) 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 identify. 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. PEM, Item 225, pp. 19-20.

This Administrative Law Judge will address some procedural issues at the outset of this discussion. The claimant did not attend this hearing. [REDACTED] appeared and purported to be the claimant's authorized hearing representative (AHR). The department representative testified that the claimant had signed a document authorizing [REDACTED] as his AHR and that this had been witnessed by a department staff member. While the document purporting to authorize [REDACTED] as the claimant's AHR appeared mostly illegible to this Administrative Law Judge, the department testified that the claimant had signed the authorization. Thus, the hearing proceeded with [REDACTED] acting as the claimant's AHR.

Secondly, after being on the record for a substantial amount of time and taking testimony, [REDACTED] interrupted the hearing and demanded this Administrative Law Judge stop the hearing and provide an in-person hearing. This Administrative Law Judge reviewed the hearing request and subsequent correspondence and there is no indication that an in-person hearing was requested. Thus, this Administrative Law Judge denied [REDACTED] request and continued the hearing as a telephone hearing.

Thirdly, this Administrative Law Judge points out that [REDACTED] was verbally abusive, hostile and derogatory in his manner with the county and this Administrative Law Judge. [REDACTED] was warned on multiple occasions to stop yelling at a witness or at this Judge, to stop interrupting and to stop quoting the federal regulations. He was told to provide any facts that he had first-hand knowledge of that would help this Administrative Law Judge

understand the claimant's situation. It became very evident that [REDACTED] had very little, if any, first-hand knowledge of this situation and could, or would, provide no testimony other than to quote the federal regulations. [REDACTED] admitted he was not present during any of the meetings between the caseworker and the claimant, thus, he could provide no probative evidence to actions the claimant may or may not have taken. After being warned several times to control his hostile and abusive behavior, this Administrative Law Judge was left with no choice but to terminate the hearing.

The claimant personally turned in an application for FAP (expedited service) and MA on November 21, 2008. The claimant was interviewed by Mr. Dejong, the department representative. Mr. Dejong testified that he handed the claimant a Verification Checklist (DHS-3503) requesting a driver's license/ID card and a birth certificate for the claimant. Mr. Dejong testified that the claimant did not tell him that he didn't have a driver's license or any type of identification and he did not request help in obtaining any of these required documents.

Although [REDACTED] attempted to disagree with the testimony of Mr. Dejong, as pointed out earlier, he was not present and can not attest to what happened at the meeting—only the claimant could do so, and he was not present to provide any testimony at the hearing.

The claimant's AHR indicates that the department failed to follow policy when they denied the claimant for expedited FAP assistance. PAM 117 pertains to the expedited service of FAP benefits. The policy states that a FAP group entitled to expedited service is required to "cooperate with certain verification requirements" and refers the reader to the section of that policy entitled "minimum verification." This section of the department policy indicates that "[i]n all cases, the applicant's **identity must** be verified (see PEM 221)." PEM 221 states that the grantee must verify his identity. Acceptable verification sources of identity for the FAP program are a driver's license, state-issued identification, school-issued identification, a document

indicating a client's receipt of benefits under a program which requires verification of identity, identification for health benefits, a voter registration card, a wage stub or a birth certificate.

PEM 221, pages 1 – 2. For the MA program, the sources of verification of identity are different. Acceptable sources include a driver's license with photograph, governmental ID card, school identification with photograph, U.S. military card, a U.S. passport, military dependent's identification card, etc. PEM 221, pages 2 – 3. This list DOES NOT include birth certificate or social security card. The only other option of verification sources for the MA program is three or more corroborating documents such as marriage licenses, divorce decrees, high school diplomas, college degrees or employer ID cards. PEM 221, page 3.

Department policy clearly requires the client's identity to be verified for all FAP benefits, even expedited service. Thus, when the claimant did not cooperate in providing the necessary information, the department was no longer bound by the standards of promptness (SOP) of expedited service. When the client does not cooperate for the department to treat the application as expedited, the SOP becomes 30 days. PAM 115, page 12; PAM 117, page 6. The department's hearing summary indicates that the claimant's FAP case was denied on December 6, 2008, for failure to provide the verifications. However, there is no denial notice as an exhibit and the claimant was mailed a second Verification Checklist on December 16, 2009, again requesting a driver's license, social security card and birth certificate. The information was due to the department by December 30, 2009. Thus, it appears as though the department chose to treat the application as still open, not denied at that time. The claimant provided a social security card and birth certificate on December 19, 2009 (which it is noted is within 30 days from the application date), which is an acceptable form of verification of identity for the FAP program. The department did then authorize benefits, but didn't start them until the date the

birth certificate and social security card were provided. However, the benefits should have begun from the date of application, November 21, 2009. PAM 115, page 15.

The claimant was issued a Verification Checklist (DHS-3503-C) on December 19, 2008, for the MA program. This document informed the claimant that a verification source for identity was needed and listed appropriate forms of verification. The verification was required to be returned by December 30, 2008. The department representative testified that no form of identity for MA purposes has been received by the department. While the department's hearing summary indicates that the MA request has been reinstated and remains pending, the application should have been denied due to the claimant's failure to provide the required verification. Thus, the claimant will have to re-apply for any MA benefits that he may be eligible for.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department did properly issue the claimant FAP benefits, but that the benefits should have begun effective the date of application, November 21, 2008. Further, the MA application should have been denied for failure to provide verifications. The department's decision is UPHELD in part and REVERSED in part.

Thus, the department shall:

1. Use the date of the application, November 21, 2009, as the effective date of the FAP benefits and issue any retroactive benefits between November 21, 2008 and December 19, 2008, that the claimant would have been eligible for.

2. Deny the claimant's MA application (if not already done) for failure to provide the required verifications.

SO ORDERED.

/s/

Suzanne L. Keegstra
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: July 14, 2009

Date Mailed: July 15, 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.

SLK 

cc: 