

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: 2009-18986

Issue No: 3019

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 21, 2009

Muskegon 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 21, 2009. The claimant personally appeared and provided testimony, through the use of an interpreter, [REDACTED]

ISSUE

Did the department properly terminate the claimant's and his wife's Family Independence Program (FIP), Food Assistance Program (FAP) and Medical Assistance (MA) benefits in March, 2009 because the family no longer met alien eligibility status?

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 and his family entered the United States from Iraq in August, 2008 (Department Exhibit #1).

2. The claimant was receiving FIP, FAP and MA under the special Iraqi alien status.

3. On March 5, 2009, the department mailed the claimant a Benefit Notice (DHS-176) that indicated the claimant's FIP and MA benefits would end on March 17, 2009 (Department Exhibit #4).

4. The claimant and his family remained eligible for medical coverage for emergency services only. The claimant's daughter also remained eligible for FAP benefits (Department Exhibit #3, 6).

CONCLUSIONS OF LAW

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 USC 601, *et seq.* The Department of Human Services (DHS or department) administers the FIP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3101-3131. The FIP program replaced the Aid to Dependent Children (ADC) program effective October 1, 1996. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM). 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 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:

ALL PROGRAMS

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

Note: For CDC, only determine the alien status of each child for whom care is requested, not other family members.

FIP, SDA, and FAP

A person must be a U.S. citizen or have an acceptable alien status for the designated programs. See the "CITIZENSHIP/ALIEN STATUS" section below. Persons who do not meet this requirement, **or who refuse to indicate their status**, are disqualified.

Others living with a person disqualified by this requirement can qualify for program benefits. However, the disqualified person's assets and income might have to be considered. See PEM 210, 212, and 550.

Non-immigrants (e.g., students, tourists) and undocumented non-citizens are **not** eligible. A non-immigrant temporarily enters the U.S. for a specific purpose such as business, study, temporary employment, or pleasure. When a person is admitted to the United

States, a USCIS official will assign a non-immigrant category according to the purpose of the visit. PEM, Item 225, p. 1.

FIP and SDA

To be eligible for FIP or SDA, 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 FIP or SDA. The alien status of each non-citizen must be verified to be eligible for FIP or SDA. See the “CITIZENSHIP/ALIEN STATUS” section below.

Exception: Recipients of RSDI, SSI, or Medicare or a newborn (PEM 145), or a safe delivery baby or a foster care child are not required to verify U.S. citizenship.

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.

CITIZENSHIP/ALIEN STATUS

All Programs

Persons listed under the program designations in “Acceptable Status” meet the requirement of citizenship/alien status. Eligibility may depend on whether or not the person meets the definition of “Qualified Alien.” PEM, Item 225, p. 2.

QUALIFIED ALIEN

All Programs

The definition of qualified alien includes specific alien statuses, but not all alien statuses. This definition is used in several of the acceptable alien statuses, in conjunction with other criteria. Not all acceptable alien statuses require that the person be a qualified alien.

Qualified alien means an alien who is:

- . lawfully admitted for permanent residence under the INA;
or
- . granted asylum under Section 208 of the INA; or
- . a refugee who is admitted to the U.S. under Section 207 of the INA; or
- . paroled into the U.S. under Section 212(d)(5) of the INA for a period of at least one year; or
- . an alien whose deportation is being withheld under Section 241(b)(3) or 243(h) of the INA; or
- . granted conditional entry pursuant to Section 203(a)(7) of the INA; or
- . a Cuban/Haitian entrant; or

- . an alien who has been battered or subjected to extreme cruelty in the U.S. by a U.S. citizen or legal permanent resident spouse or parent, or by a member of the spouse or parent's family living in the same household, or is the parent or child of a battered person.

PEM, Item 225, pp. 2-3.

FIP, SDA, MA and AMP

- . Alien admitted into the U.S. with one of the following immigration statuses:
 - .. Permanent resident alien with a class code on the I-551 other than RE, AM or AS
 - .. Alien paroled into the U.S. for at least one year under INA Section 212(d)(5)

Exception (both statuses above): The eligibility of an alien admitted into the U.S. on or after August 22, 1996 with one of these statuses is restricted as follows unless the alien is a qualified military alien or the spouse or dependent child of a qualified military alien:

- .. For **FIP**, he is disqualified for the first five years in the U.S.
- .. **For SDA**, he is disqualified
- .. **For MA and AMP**, he is limited to emergency services for the first five years in the U.S.
- . Alien granted conditional entry under INA Section 203(a)(7)
- . Permanent resident alien with an I-151, Alien Registration Receipt Card.

PEM, Item 225, p. 5.

FAP

- . A qualified alien who was lawfully residing in the U.S. on August 22, 1996, and was 65 years of age or older on August 22, 1996.

- . A person who is lawfully residing in the U.S. and was a member of a Hmong or Highland Laotian tribe at the time that the tribe assisted U.S. personnel by taking part in a military or rescue operation during the Vietnam era beginning August 5, 1964, and ending May 7, 1975, or
 - .. is the spouse or unmarried dependent child (claimed as a dependent child on the person's federal tax return) under age 18 of such a person, or
 - .. is the un-remarried surviving spouse of such a person who is deceased.

- . A person lawfully residing in the U.S. and disabled now. Disabled means:
 - .. Receives SSI, RSDI, MA, or Railroad Retirement benefits based on disability or blindness.
 - .. Is a veteran with a disability rated or paid as total by the Veterans Administration (VA).
 - .. Is a veteran or the surviving spouse of a veteran and considered by the VA to be in need of regular aid and attendance or permanently housebound.
 - .. Is a surviving child of a veteran and considered by the VA to be permanently incapable of self-support.
 - .. Is a surviving spouse or child of a veteran and considered by the VA to be entitled to compensation for a service-connected death or pension benefits for a nonservice-connected death and has a permanent disability.

- . A person who has lived in the U.S. as a qualified alien for at least five years since their date of entry.

Note: An alien who is eligible for FAP under a status that doesn't require 5 years U.S. residency, who later adjusts to a status that is subject to the 5-year limit, continues to be eligible.

- . A qualified alien who is under 18 years of age. PEM, Item 225, pp. 7-8.

Aliens Limited to Emergency MA Coverage

During Five-Year Bar

MA and AMP

An alien limited to emergency MA coverage during the five-year bar means the following aliens who entered the U.S. on or after 8-22-96.

- A permanent resident alien with class codes other than RE, AM or AS, and
- an alien paroled under INA Section 212(d)(5) for at least one year.

The person is limited to emergency MA coverage the first five years in the U.S. PEM, Item 225, p. 24.

A special immigrant visa (SIV) can be granted to certain Afghan and Iraqi individuals under section 101(a)(27) of the Immigration and Nationality Act (INA). Iraqi aliens with this status are given eight months of eligible alien status following their date of entry. PEM 225A. The department indicates the claimant qualifies under this status as an Iraqi alien. The claimant and his family entered the United States from Iraq in August, 2008. Thus, they are eligible for eight months of eligible status for DHS program eligibility. The claimant's eligibility ended in March, 2008, as the month of entry counts as the first month. PEM 225A.

Department policy indicates that at the end of the specified certification period (eight months), unless their alien status changes, the Iraqi alien will be considered a permanent resident alien, which is subject to a five-year bar on receiving DHS benefits. PEM 225A. A permanent resident alien is limited to only emergency MA coverage during the five-year bar. PEM 225. Thus, the department properly determined that the claimant and his family would no longer be eligible for FIP and MA (except emergency coverage) and the claimant and his wife would no longer be eligible for FAP, as the family had reached the eighth month since their entry into the United States.

The department continued the FAP coverage for the claimant's minor child. Department policy indicates that children under 18 years of age with this particular immigrant status (SIV) continue to have acceptable alien status for FAP even after the eight-month period following entry into the United States. PEM 225A. Thus, the department properly continued FAP coverage for the claimant's minor child.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly terminated the claimant's FIP, FAP and MA coverage. The department properly determined the claimant and his family are still eligible for emergency MA and the claimant's daughter is still eligible for FAP.

Accordingly, the department's actions are UPHeld. SO ORDERED.

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

Date Signed: May 26, 2009

Date Mailed: May 27, 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.

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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 [REDACTED]

cc:

[REDACTED]