

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: 2009-30451
Issue No: 2005; 3025
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 8, 2009
Saginaw 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 September 8, 2009. The claimant personally appeared and provided testimony, along with [REDACTED], the Services Coordinator at the claimant's housing complex.

ISSUE

Did the department properly terminate the claimant's Food Assistance Program (FAP) benefits and Medical Assistance (MA) benefits in June, 2009?

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's case was selected for a quality control review by the Office of Quality Assurance (OQA). After reviewing the case, the OQA found that the claimant did not have a valid or acceptable alien status to be approved to receive benefits. (Department Exhibit 4-7).

2. The department placed the claimant's MA and FAP case into closure on June 9, 2009, as a result of this investigation. (Department Exhibit 2 – 3).

3. The claimant submitted hearing requests on the MA and FAP closure on June 5, 2009.

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:

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.

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.

ACCEPTABLE STATUS

All Programs

- . U.S. citizen (including persons born in Puerto Rico)
- . Persons born in Canada who are at least 50 percent American Indian
- . Member of a federally-acknowledged American Indian tribe
- . **Qualified military alien**--a qualified alien on active duty in, or veteran honorably discharged from, the U.S. Armed Forces.

Active duty must not be for training, such as two weeks active duty training for National Guard. Discharge must not have been due to alien status.

Veteran means a person who:

- .. Served in the active military, naval, or air service for the shorter of 24 months of continuous active duty or the full period for which he was called to active duty; or
- .. Died while in the active military, naval, or air service; or

- .. Served in the military forces in the Commonwealth of the Philippines while such forces were in the service of the Armed Forces of the U.S. during the period from July 26, 1941, through June 30, 1946; or
- .. Served in the Philippine Scouts under Section 14 of the Armed Forces Voluntary Recruitment Act of 1945.
- . A qualified alien spouse and unmarried qualified alien dependent child of a qualified military alien.

Spouse includes the un-remarried qualified alien dependent child of a qualified military alien. The marriage must fulfill one of the following:

- .. The spouse was married to the veteran for one year or more; or
- .. A child was born to the spouse and veteran during or before the marriage; or
- .. The spouse was married to the veteran within the 15-year period following the end of the period of service in which an injury or disease causing the death of the veteran was incurred or aggravated.

Dependent child is a child:

- .. Claimed as a dependent on the qualified military alien's federal tax return and
- .. Under 18, or
- .. Under age 22 and a student regularly attending school.
- . Holder of one of the following immigration statuses:
 - .. Permanent resident alien with class code RE or AS on the I-551 (former refugee or asylee).

Note: For FAP, a client who enters the U.S. with one of the following categories is eligible for the first seven years. If they adjust to another category which requires them to meet the five-year requirement, they are still eligible for the first seven years.

- .. Refugee admitted under INA Section 207.
- .. Granted asylum under INA Section 208.
- .. Cuban/Haitian entrant.
- .. Amerasian under P.L. 100-202 (class code AM on the I-551).
- .. Victim of trafficking under P.L. 106-386 of 2000 (see "VICTIMS OF TRAFFICKING" below).
- .. Alien whose deportation (removal) is being withheld under INA Section 241(b)(3) or 243(h).

Exception: For FIP, eligibility is limited to five years following the date of the withholding order unless the alien is a qualified military alien or the spouse or dependent child of a qualified military alien. PEM Item 225, pp. 4-5.

- . Person who does not meet any of the MA citizenship/alien statuses above--limited to coverage of emergency services only. This includes, for example, undocumented aliens and non-immigrants who have stayed beyond the period authorized by USCIS. PEM, Item 225, p. 6.

LAWFULLY RESIDING IN THE U.S.

A person is (or was) lawfully residing in the U.S. if he meets (or met) one of the following criteria:

- . Is a **Qualified Alien**.
- . Has been inspected and admitted to the U.S. and has not violated the terms of the status under which he was admitted or to which he has changed after admission.
- . Has been paroled into the U.S. pursuant to Section 212(d)(5) of the INA for less than one year, unless:
 - .. He was paroled for deferred inspection or pending exclusion proceedings under 236(a) of the INA, or
 - .. He was paroled into the U.S. for prosecution under 8 CFR 212.5(a)(3).

- . Is in temporary resident status under Section 210 or 245A of the INA.
- . Is under temporary protected status under Section 244A of the INA.
- . Is a Family Unity beneficiary under Section 301 of P.L. 101-649, as amended.
- . Is under deferred enforced departure pursuant to a decision made by the President.
- . Is in deferred action status pursuant to Service Operations Instructions at OI 242.1(a)(22).
- . Is the spouse of child of a U.S. citizen whose VISA petition has been approved and who has a pending application for adjustment of status.
- . Is an applicant for asylum under Section 208(a) of the INA.
- . Is an applicant for withholding of deportation under Section 243(h) of the INA who has been granted employment authorization.
- . Is an applicant for asylum or withholding of deportation who is under the age of 14 and has had an application pending for at least 180 days.

PEM, Item 225, pp. 8-9.

- . For Cuban/Haitian Entrant status:
 - .. I-94 indicating admission into the U.S. from Cuba or Haiti, annotated with “Cuban/Haitian Entrant (status pending)”, “parole”, “212(d)(5)” or “Form I-589 filed”, or
 - .. I-94 indicating admission into the U.S. from Cuba or Haiti and letter or notice from BCIS indicating ongoing (not final) deportation, exclusion or removal proceedings. PEM, Item 225, p. 21.
- . For status as an alien whose deportation (removal) is withheld, a court order or letter from an immigration judge

stating that deportation (removal) is withheld per INA Section 241(b)(3) or 243(h). PEM, Item 225, p. 21.

In this case, the claimant is disputing the termination of his MA and FAP benefits due to a finding that he does not have a qualified alien status to receive benefits under DHS policy. The department's Office of Quality Assurance (OQA) conducted a quality control review of the claimant's case, which found the claimant was not eligible to receive any benefits because he no longer had an acceptable alien status. Specifically, the OQA found that the claimant was at one time a Cuban Entrant, which would qualify him under Cuban/Haitian Entrant status, but that the claimant's status had been revoked by Immigration and Naturalization Services (INS) and the claimant was ordered deported on [REDACTED] (due to a felony charge the claimant had served prison time for). However, because the United States does not have a repatriation agreement with Cuba, the claimant can not be deported, but is placed on an Order of Supervision, in lieu of being held in federal custody. The INS officer pointed out to the department that the claimant no longer has any "lawful status" to be in the United States. Thus, the OQA found that the claimant did not meet any acceptable alien statuses outlined in PEM 225 and that his benefits were issued in error.

Department policy indicates that persons listed under the program designations in "Acceptable Status" meet the requirement of citizenship/alien status and that eligibility may depend on whether or not the person meets the definition of "Qualified Alien." PEM 225. A "Qualified Alien" is defined in this same policy. Among the ways to meet the requirements of "Qualified Alien" is to be a Cuban/Haitian entrant. The claimant was born in Cuba on [REDACTED] (See Exhibit 5). This status would have made the claimant a "Qualified Alien". However, as pointed out by the INS officer in a telephone interview on [REDACTED], the claimant lost this lawful status on [REDACTED], when he was ordered deported due to a

felony charge that he had been found guilty of. The claimant testified that he did serve time in prison and was released in 2005, which is when INS changed the claimant's status. PEM 225 states that a lawfully residing alien is one that has been inspected and admitted to the U.S. and has not violated the terms of the status under which he was admitted or to which he has changed after admission. In this case, the claimant violated the terms of the status under which he was admitted, specifically, by committing a felony which makes his previous lawful status null and void and requires deportation (See Exhibit 7).

Department policy indicates that even if a deportation order has been issued, a claimant can still qualify as a "Qualified Alien" if the deportation is being withheld under section 241(b)(3) or 243 (h) of INS law. However, as the INS officer noted in his conversation with the department, the claimant is not under a status where his deportation is being withheld (which would be for humanitarian reasons). The claimant is under an Order of Supervision, which is issued in lieu of being placed into federal custody. The only reason the claimant's order of deportation can not be carried out is because the United States does not have a repatriation agreement with Cuba. Thus, the United States is powerless to deport the claimant back to Cuba.

The claimant's witness provided this Administrative Law Judge (see Claimant Exhibit A) with 8 U.S.C. section 435.408 (Immigration and Nationality Act) that indicates:

"This section describes aliens that the agency must accept as permanently residing in the United States under color of law and who may be eligible for Medicaid...."

(12) Aliens residing in the United States under orders of supervision pursuant to section 242 of the Immigration and Nationality Act (8 U.S.C. 1252(d))."

However, the language of this section of law is permissive, not mandatory. The language of the statute indicates that these individuals **may** be eligible for Medicaid, not that they **must** be considered eligible for Medicaid. The language of PEM 225 does not contemplate giving

benefits to all categories of aliens. PEM 225, page 3 states “[t]he definition of qualified alien includes specific alien statuses, but **not** all alien statuses.” In this case, department policy does not indicate that a “Qualified Alien” is an alien who is in the United States under an Order of Supervision. Thus, it does not appear that the State of Michigan contemplated extending benefits to the claimant as an alien in the United States under an Order of Supervision. The claimant does not meet any of the other policy criteria for lawfully residing qualified alien. Thus, the claimant is not entitled to receive MA benefits or FAP benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly determined that the claimant is not entitled to receive FAP or MA benefits as he does not have a "Qualified Alien" status.

Accordingly, the department properly terminated the claimant's MA and FAP benefits in June, 2009. The department's decision is UPHeld. SO ORDERED.

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

Date Signed: November 4, 2009

Date Mailed: November 6, 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 60 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt 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.

IR [REDACTED]

cc:

[REDACTED]