

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: 2010-9981

Issue No: 2005

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date: [REDACTED]

[REDACTED]

Houghton 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 telephone hearing was held on [REDACTED] Claimant and his wife appeared and testified.

ISSUE

Did the Department of Human Services properly close Claimant's wife's Medical Assistance (MA) case due to her residency 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) Claimant and his wife are in the US under a temporary student visa for Claimant.
- (2) Claimant applied for Medical Assistance (MA) for his pregnant wife. The Department mistakenly opened a Medical Assistance (MA) case for Claimant's wife.

(3) On July 11, 2009 the Department sent Claimant a Verification Checklist (DHS Form 3503) seeking verification of his wife's Social Security number.

(4) Subsequent investigation of the situation revealed that Claimant's wife does not have the required residency status to satisfy eligibility for Medical Assistance (MA).

(5) On October 19, 2009 Claimant was sent a Notice of Case Action (DHS-1605).

(6) On November 2, 2009 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

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

RESIDENCE

DEPARTMENT POLICY

All Programs

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

To be eligible, a person must be a Michigan resident. Bridges uses the requirements in the Residence section in this item to determine if a person is a Michigan resident.

RESIDENCE

MA Only (non-institutionalized persons)

A person is **not** a Michigan resident for any month in which he received an SSI state supplement payment from another state.

An individual is a Michigan resident if either of the following apply:

- He lives in Michigan, except for a temporary absence, **and** intends to remain in Michigan permanently or indefinitely. If the individual indicates an intent to remain in Michigan, but his official USCIS documents indicate a **temporary or time-limited period** to the visit, the individual does **not** meet the intent to remain requirements, unless he verifies that official steps are being taken with USCIS to apply for lawful permanent resident status. See BEM 225.
- He or a member of his MA fiscal group has entered the state of Michigan for employment purposes, and
 - Has a job commitment, or
 - Is seeking employment. BEM 220

In this case, neither Claimant nor his wife disputes their temporary visa status. Both argue that Claimant's pregnant wife should retain Medical Assistance (MA) benefits because she was initially given the benefits. Both also argue that other persons they know on student visa status are getting Medical Assistance (MA) benefits. The claimant's request is not within the scope of authority delegated to this Administrative Law Judge pursuant to a written directive signed by the Department of Human Services Director, which states:

Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals.

Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940); *Auto-Owners Ins Co v Elchuk*, 103 Mich App 542, 303 NW2d 35 (1981); *Delke v Scheuren*, 185 Mich App 326, 460 NW2d 324 (1990), and *Turner v Ford Motor Company*, unpublished opinion per curium of the Court of Appeals issued March 20, 2001 (Docket No. 223082).

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 closed Claimant's wife's Medical Assistance (MA) case due to her residency status.

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: April 2, 2010

Date Mailed: April 6, 2010

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.

GFH/alc

cc:

