

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 2010-50186,
2010-39602
Issue No: 1033, 2024
Case No: [REDACTED]
Hearing Date:
January 5, 2011
Kalamazoo County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

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 January 5, 2011. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED]

ISSUE

Did the Department of Human Services (the department) properly propose to cancel claimant's Medical Assistance (MA-P) and Family Independence Program (FIP) benefits based upon its' determination that claimant's family did not meet the residential requirement's?

FINDINGS OF FACT

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

- (1) This case is being decided in conjunction with register number 2010-39602, which was improperly withdrawn on July 8, 2010. The cases are consolidated as they arise out of the same factual situation.
- (2) Claimant was a Medical Assistance and Family Independence Program benefit recipient.
- (3) Claimant and his wife are [REDACTED] Claimant and his wife are in the United States on a temporary student visa from August 7, 2007, through August 6, 2012 and plan to return home to [REDACTED] after finishing school.

- (4) Claimant's Medical Assistance and Family Independence Program benefits were proposed to be cancelled.
- (5) On March 12, 2010, client filed a hearing request to dispute the closure of his Medicaid and Family Independence Program case. Benefits were restored due to timely filing of the request.
- (6) On April 9, 2010, the worker was informed by claimant that he and his family would not be living in the State of Michigan starting the month of April and would not return to the state until the [REDACTED] or the beginning of July.
- (7) On April 27, 2010, the worker and supervisor determined that claimant was no longer eligible for benefits from the State of Michigan because they would be absent from the State for more than 30 days.
- (8) On April 27, 2010, the department case worker sent claimant notice that his application was denied.
- (9) On July 8, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (10) On June 28, 2010, claimant applied online for other Healthy Kids.
- (11) On July 8, 2010, the department caseworker sent claimant a 1605 notice indicating that other Healthy Kids was approved effective May 1, 2010.
- (12) On July 13, 2010, a second 1605 notice was sent denying claimant other Healthy Kids effective August 1, 2010, for failure to meet residency requirements based upon the time limited student visa with an expiration date of [REDACTED].
- (13) On July 22, 2010, claimant filed a request for a hearing to contest the department's negative action.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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 (BAM), the Program Eligibility Manual (BEM) 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 (BAM), the Program Eligibility Manual (BEM) and the Program Reference Manual (PRM).

BEM 220, p.1, indicates that USCIS refers to US Citizenship and Immigrations Services, formerly the Bureau of Citizenship and Immigration or Immigration of Naturalization Services. To be eligible to receive benefits, a person must be a Michigan resident. BRIDGES uses the requirements in the residents section of this item to determine if a person is a Michigan resident. For purposes of Family Independence Program, a person is a resident if he:

- Is not receiving assistance from another state, and
- Is living in Michigan except for a temporary absence, and
- Intends to remain in the state permanently or indefinitely.

For Medical Assistance only, a person is not a Michigan resident for any month in which he receives an SSI state supplemental 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 that he intends to remain in Michigan, but his official USCIS document 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 residence 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, Item 220, pp. 1-2.

In the instant case, in the original application process when claimant and his wife and children left the State of Michigan for the month of April, May and June, they were leaving the state. A person must indicate intent to remain in Michigan but the individual's official USCIS documents indicated temporary time limited period to the visit and the individual does not meet the intent to remain requirements. BEM, Item 220, p.6.

BEM, Item 225, determines citizenship/alien status for purposes of benefit eligibility. For Medical Assistance citizenship/alien status is not an eligibility factor for emergency services only. To be eligible for full MA coverage a person must be a US Citizen or an Alien admitted to the US under a specific immigration status. US Citizenship must be verified with an acceptable document to continue to receive Medicaid. The Alien status of each non-citizen must be verified to be eligible for full MA coverage. A child born to a woman receiving Medicaid is considered a US Citizen. No further documentation of the child's citizenship is required. The exception is RSDI and SSI recipients, Medicare recipients, newborns, 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 US Citizenship. BEM, Item 225, p.2.

In the instant case, neither claimant nor his wife have ever met the qualifications to receive Medical Assistance or Family Independence Program benefits, based upon the fact that they are not US Citizens and are here on a temporary visa. Therefore, neither claimant nor his wife meets the residency requirements. However, claimant's children are US Citizens, being the ages of 1 and 3. They were both born in United States and therefore would qualify for Medical Assistance and Family Independence Program benefits regardless of their parent's status. Claimant and his wife would be disqualified from receiving benefits, based upon the fact that they do not meet the residency requirements.

Department policy at BEM, Item 225, p. 1, indicates that a person must be a US Citizen or have an acceptable alien status for designated programs. Persons who do not meet this requirement or who refuse to indicate their status are disqualified. Other living with the person disqualified by this requirement can qualify for program benefits. However, this qualified person's assets and income might have to be considered based on the programs requested. The example is, Fred and Sadie complete a DHS-117 1 Assistance Application to request that Family Independence Program benefits and Food Assistance Program benefits for only their two children born in the United States. Fred and Sadie are not applying for benefits for themselves and refuse to indicate their status so they are disqualified. The department must not require the parents to provide proof of their status or Social Security Numbers. The parents may have no assets, however, since they are both working they must provide a proof of their income to determine eligibility for the children. BEM, Item 225, pp. 1-2.

This Administrative Law Judge determined that the original hearing request register number 2010-50186, the department did not properly cancel claimant's Medicaid and Family Independence Program cases. The department should have disqualified

claimant and his wife from receipt of Medical Assistance based upon their student visa status from [REDACTED] and should have disqualified claimant and his wife from receiving Family Independence Program benefits for the same reason, as well as not meeting the residency requirement based upon their temporary student visa status, but since the children are American Citizens, the children are in a separate category and it should have been determined whether or not the children were eligible for Medical Assistance and Family Independence Program benefits with ineligible grantees as their parents.

For the second application, the department sent claimant's family conflicting letters. The first 1605 notice to claimant on July 8, 2010, approved the children for other Healthy Kids. On July 13, 2010, a second 1605 was sent to claimant denying other Healthy Kids to claimant's children for failure to meet residency requirements based upon the parents time limited student visa status. Department policy is somewhat confusing on this issue, however, 42 CFR 1396A section B states, The secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this section, except he shall not approve any plan which imposes, and is a condition of eligibility for Medical Assistance under the plan (i) an age requirement of more than 65 years; or (ii) any residence requirement which excludes any individual who resides in the state regardless of whether or not residence is maintained permanently or at a fixed address; or (iii) any citizenship requirement which excludes any citizen of the US. If the department's decision were allowed to stand, claimant's children, who are US Citizens, born in the US would be excluded from the receipt of Medical Assistance and Family Independence Program benefits based upon their parent's Alien residence status.

This Administrative Law Judge finds that the department has not established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it cancelled Medical Assistance and Family Independence Program benefits for the children only and when it denied claimant's children's application for other Healthy Kids. The department's decision must REVERSED.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has not established by preponderance of the evidence that it was acting in compliance with department policy when it cancelled Medical Assistance benefits and Family Independence Program benefits for claimant's children and when it denied claimant's children's application for other Healthy Kids.

Accordingly, the department's decision is REVERSED. The department is ORDERED to reinstate claimant's Medical Assistance and Family Independence Program benefit case and to re-determine claimant and his wife to be ineligible grantees for both Medicaid and Family Independence Program benefits. The department shall make a determination as to claimant's children's eligibility for Medical Assistance, Family Independence Program benefits and other Healthy Kids as of March 12, 2010, or the May 10, 2010, closure date. Once the department has made the determination of

claimant's children's eligibility or lack thereof, the department shall notify claimant's of his children's eligibility or lack thereof in writing.

The department's decision as to claimant and his wife's eligibility for Medicaid and Family Independence Program benefits is AFFIRMED.

Landis

/s/ _____
Y. Lain
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: March 28, 2011

Date Mailed: March 28, 2011

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.

LYL/alc

cc:

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