

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: 201056012

Issue No: 2005

[REDACTED]

ADMINISTRATIVE LAW JUDGE: Kandra Robbins

HEARING DECISION

This matter is before the undersigned Administrative Law Judge by authority of MCL 400.9 and MCL 400.37. Claimant's request for a hearing was received on November 9, 2010. After due notice, a telephone hearing was held on February 3, 2011. The Claimant and his Authorized Representative, [REDACTED] was present and testified. The Claimant does not speak English. A translator was present to provide Arabic / English translation.

ISSUE

Whether the Department of Human Services (Department) properly processed the Claimant's Medical Assistance (MA) and Retro MA Application?

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 submitted an application for Medicaid and Retroactive Medicaid.
2. On May 7, 2010, the Department sent a DHS 3503 Verification Checklist to the Claimant requesting verification of his Alien Status. (Department Exhibit pg 14-15).
3. On May 17, 2010, the Claimant's authorized representative requested and was granted an extension to obtain the documents to verify his Alien Status. (Department Exhibit pg 11).
4. On May 26, 2010, the Claimant's authorized representative requested and was granted a second extension to obtain the documents to verify his Alien Status. (Department Exhibit pg 10).

5. On June 4, 2010, the Claimant's authorized representative requested and was granted a third extension to obtain the documents to verify his Alien Status. (Department Exhibit pg 9).
6. On June 15, 2010, the Claimant's authorized representative gave the Department a copy of the Claimant's temporary ID, Social Security Card and Employment Authorization Card. (Department Exhibit 1, 7-8).
7. The Employment Authorization Card expired on April 28, 2010. (Department Exhibit 1).
8. On June 17, 2010, the Claimant was sent a DHS 1605 Notice of Case Action indicating that his MA and Retro MA Application were denied.
9. On September 13, 2010, the Department received the Claimant's 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), Reference Table Manual (RFT), and the Bridges Reference Manual (BRM). Department policy states:

BEM 105 DEPARTMENT POLICY

MA Only

The goal of the Medicaid program is to ensure that essential health care services are made available to those who otherwise could not afford them. Medicaid is also known as Medical Assistance (MA).

SSI-RELATED AND FIP-RELATED The Medicaid program is comprised of several sub-programs or categories. One category is FIP recipients. Another category is SSI recipients. There are several other categories for persons not receiving FIP or SSI. However, the eligibility factors for these categories are based on (related to) the eligibility factors in either the FIP or SSI program. Therefore, these categories are referred to as either FIP-related or SSI related.

To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. Families with

dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant, women receive MA under FIP-related categories.

BEM 225 DEPARTMENT POLICY

In this item:

- INA refers to the Immigration and Nationality Act.
- USCIS refers to the U.S. Citizenship and Immigration Services, formerly, the Bureau of Citizenship and Immigration or Immigration and Naturalization Service.
- SSA refers to the Social Security Administration.

All Programs

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

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 BEM 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 continue to receive Medicaid. Refer to BAM 130. A person claiming U.S. citizenship is not eligible for ESO coverage. The alien status of each noncitizen must be verified to be eligible for full MA coverage; see CITIZENSHIP/ALIEN STATUS in this item.

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.

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.
- Granted asylum under section 208 of the INA.
- A refugee who is admitted to the U.S. under section 207 of the INA; this includes Iraqi and Afghan special immigrants.
- Paroled into the U.S. under section 212(d)(5) of the INA for a period of at least one year.
- An alien whose deportation is being withheld under section 241(b)(3) or 243(h) of the INA.
- Granted conditional entry pursuant to section 203(a)(7) of the INA.
- A Cuban/Haitian entrant.
- 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.

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.

FIP, MA, FAP and AMP

- An alien who has been battered or subjected to extreme cruelty in the United States or whose child or parent has been battered or subjected to extreme cruelty in the United States.

Exception: The eligibility of a battered alien admitted into the U.S. on or after August 22, 1996, is restricted as follows:

- **For FIP**, he is disqualified for the first five years in the U.S.
- **For MA and AMP** he is limited to emergency services for the first five years in the U.S.

An alien is considered a battered alien if all of the following conditions are met:

- The USCIS or the Executive Office of Immigration Review (EOIR) has granted a petition or found that a pending petition sets forth a prima facie case that the alien is eligible for legal permanent residents status (LPR) by way of being one of the following:
 - A spouse or child of a U.S. citizen or LPR.
 - The widow or widower or a U.S. citizen to whom the alien had been married for at least two years before the citizen's death.

- A battered alien, or the alien parent of a battered child, or the alien child of a battered parent.
 - The abuse was committed by the alien's spouse or parent, or by a member of the spouse or parent's family residing in the same household as the alien, and the spouse or parent consented to or acquiesced in such battery or cruelty (and if the victim was the alien's child, the alien did not participate in or condone the abuse).
 - There is a substantial connection between the battery or extreme cruelty and the need for assistance.
 - The battered alien, child, or parent no longer lives in the same household as the abuser. **MA and AMP** • Alien paroled into the U.S. for less than one year under INA section 212(d)(5). Coverage is limited to emergency services
- Nonimmigrant--an alien temporarily in the U.S. for a specific purpose (for example, student, tourist). The alien must not have exceeded the time period authorized by USCIS. For both MA and AMP, coverage is limited to emergency services only.
- 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 nonimmigrant that have stayed beyond the period authorized by USCIS.

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 or was either:

- Paroled for deferred inspection or pending exclusion proceedings under 236(a) of the INA.
 - Paroled into the U.S. for prosecution under 8 CFR 212.5(a)(3).
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- 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 of the United States.
 - Is in deferred action status pursuant to service operations instructions at OI 242.1(a)(22).
 - Is the spouse or 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.

Alien Status All Programs

The alien status of each noncitizen requesting benefits **MUST** be verified. **Exception:** See MA and AMP Emergency Services Only (below). For **victims of trafficking**, verify the validity of the ORR certification and/or eligibility letter. See “VERIFICATION SOURCES” below. Verify each of the following dates **if** they affect an alien's eligibility:

- Date of entry into the U.S.
- Date asylum was granted under INA section 208.
- Date deportation (removal) was withheld under INA section 241(b)(3) or 243(h).

ALIEN STATUS All Programs

See EXHIBIT III in this item for document titles and descriptions. See Reference Forms & Publications Manual (RFF) for exhibits and document descriptions of I-94 and I-551.

- Permanent resident alien status is indicated on one of the following:
 - I-151 issued before June 1978 or I-551.
 - I-327 (unexpired).
 - I-94 stamped “Processed for I-551.”
 - Passport stamped “Processed for I-551 Temporary Evidence of Lawful Admission for Permanent Residence”.

- American Indian who enters the U.S. from Canada is indicated on one of the following:
 - I-151 issued before June 1978 or I-551.
 - I-181.
 - Other USCIS documentation.
 - Birth record or affidavit from a tribal official indicating the person is at least 50 percent American Indian.

Note: Such persons are not required to register with USCIS.

- Refugee, asylee or parolee status is indicated on an I-94 annotated with INA section 203(a)(7) (prior to April 1, 1980), 207, 208 or 212(d)(5).

- Afghan alien’s admitted under section 101(a)(27) of the INA is indicated on either:
 - Passport with category SI1, SI2, SI3.
 - An I-94 with date of entry.
 - I-551 with a IV code of SI6, SI7 or SI9. • Iraqi alien’s admitted under section 101(a)(27) of the INA is indicated on either:
 - Passport with category SI1, SQ1, SI2, SQ2, SI3, SQ3.
 - An I-94 with date of entry.
 - I-551 with a IV code of SQ6, SI6, SQ7, SI7, SQ9 or SI9.

- American status is indicated on one of the following documents annotated with class code AM:

- I-94.
- I-327 (unexpired).
- I-551.
- U.S. or Vietnamese Passport.
- Vietnamese Exit Visa (“Laissez Passer”).
- Cuban/Haitian Entrant status is indicated on one of the following:
 - 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.”
 - I-94 indicating admission into the U.S. from Cuba or Haiti and letter or notice from USCIS indicating ongoing (not final) deportation, exclusion or removal proceedings.
- Status as an alien whose deportation (removal) is withheld is indicated on a court order or letter from an immigration judge stating that deportation (removal) is withheld per INA section 241(b)(3) or 243(h)
- Victim of trafficking status is confirmed with both:
 - Original ORR certification and/or eligibility letter.
 - Telephone contact with the ORR trafficking verification line to verify the validity of the letters.
- Any alien status:
 - G-641 annotated at the bottom by an USCIS representative.
 - Information from the USCIS Records Section, 333 Mt. Elliott, Detroit, Michigan 48207.

MA and AMP

- Nonimmigrant status:
 - I-94, visa, passport or other USCIS correspondence granting nonimmigrant

status (see RFF, I-94 for nonimmigrant coding).

- Form I-20 ID (Student) Copy with a future “D/S” date verifies unexpired nonimmigrant student status.

DATES AFFECTING ALIEN ELIGIBILITY

All Programs

Verify date of entry as required, using the sources listed below.

- Refugees under section 207, date of entry is on an I-94 which has been endorsed with INA section number 207; see RFF, I-94.
- Former refugees (class code RE on the I-551), accept the client's statement regarding date of entry if the stated date:
 - Is *at least one year earlier* than the Date of Adjustment/ Admission on the I-551; see RFF, I-551;
 - Does not conflict with other information.
- Permanent resident aliens with class codes other than RE, AM,AS, SI or SQ date of entry is the Date of Adjustment/Admission on the I-551.

Exception: If the client disputes this date, accept the client's statement regarding date of entry if the stated date is *earlier than* the date of adjustment admission on the I-551, **and** does not conflict with other information.

Note: Date of entry is not an eligibility factor for permanent resident aliens presenting an I-151.

- For parolees under section 212(d)(5), date of entry is on an I-94 which has been endorsed with INA section number 212(d)(5). The end date (duration) of parole is also on the I-94.
- For Cuban/Haitian entrants, date of entry is on a properly

U.S. Citizenship and Immigration Services (USCIS)

USCIS documents regarding citizenship/alien status include:

Note: Information about forms and fees is available on the USCIS Web site. Some forms may be filled out online and

some are available for electronic filing. The Web site is <http://www.uscis.gov/portal/site/uscis>.

- G-641, Application for Verification of Information from U. S. Citizenship and Immigration Services Records.
- I-20 ID (Student) Copy is issued to nonimmigrant students authorized to study in the U.S. The D/S date (duration of status) indicates expiration of student status.
- I-94, Arrival-Departure Record. It is usually attached to the unexpired foreign passport of nonimmigrant aliens. The expiration date is on the document face.
- I-151, Alien Registration Receipt Card. It was issued prior to June 1978 to permanent resident aliens and is commonly referred to as a green card. The I-151 became obsolete on 3/20/96, and individuals should have requested the I-551 replacement.
- I-327, Permit to Reenter the United States. It is issued to permanent resident aliens before leaving the U.S. for one to two years. The expiration is on page 2.
- I-485, Application to Register Permanent Residence or to Adjust Status.
- I-539 Application to Extend/Change Nonimmigrant Status.
- I-551, Alien Registration Receipt Card (Resident Alien Card). It is a revised edition of the I-151, issued for a renewable 10-year period to permanent resident aliens. The expiration date is on the document face.
- I-551, Alien Registration Receipt Card (Conditional Resident Alien Card). It is issued for a two-year period (expiration date on the back) to conditional permanent residents such as alien spouses of U.S. citizens/permanent residents.
- I-571, Refugee Travel Document. It is issued to aliens granted refugee status who intend to travel abroad. The expiration date is on page 4.
- I-688B, Employment Authorization Card.
- I-698, Application to Adjust Status From Temporary to Permanent Resident.
- I-765, Application for Employment Authorization.
- I-766, Employment Authorization Document.

- I-797, Notice of Action. It is issued to applicants/petitioners to acknowledge receipt of applications, convey statuses, etc. It verifies permanent resident alien status when it acknowledges both receipt of application for a replacement I-551 and receipt of the old I-551.
- N-550 or N-570, Certificate of Naturalization. It is issued to naturalized U.S. citizens.
- N-560, Certificate of United States Citizenship. It is issued to persons with citizenship acquired through naturalization of a parent, birth by a U.S. citizen in another country, or application by adoptive parents.

USCIS Non-Immigrant Classifications

These classifications indicate temporary or time-limited status. They include but are not limited to the following:

- A. Foreign government representatives on official business and their families and servants; (A1-3).
- B. Visitors for business or pleasure, including exchange visitors; (B1, 2).
- C. Aliens in travel status while traveling directly through the U.S. (C1- 4).
- D. Crewman on shore leave. (D1,2). E. Treaty traders and investors and their families. (E1,2).
- F. Foreign students. (F1,2).
- G. International organization representation and personnel and their families and servants. (G1-5).
- H. Temporary workers including agricultural contract workers. (H1-4).
- I. Members of foreign press, radio, film or other information media and their families. (I).

BAM 130 DEPARTMENT POLICY All Type of Assistance (TOA)

Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements.

Obtain verification when:

- Required by policy. BEM items specify which factors and under what circumstances verification is required.
- Required as a local office option. The requirement **must** be applied the same for every client. Local requirements may **not** be imposed for MA, TMA-Plus or AMP.
- Information regarding an eligibility factor is unclear, inconsistent, incomplete or contradictory. The questionable information might be from the client or a third party.

Verification is usually required at application/redetermination **and** for a reported change affecting eligibility or benefit level.

If the individual indicates the existence of a disability that impairs their ability to gather verifications and information necessary to establish eligibility for benefits, offer to assist the individual in the gathering of such information. **Timeliness of Verifications MA and AMP**

Allow the client 10 calendar days (or other time limit specified in policy) to provide the verification you request. Refer to above policy for citizenship verifications. If the client cannot provide the verification despite a reasonable effort, extend the time limit up to three times. Verifications are considered to be timely if received by the date they are due. For electronically transmitted verifications (fax, email), the date of the transmission is the receipt date.

In this case, the Claimant filed an application for assistance after he was hospitalized. The Claimant is not a United States Citizen. He is an alien. Therefore, pursuant to policy, the Department sent a DHS 3503 Verification Checklist. The Verification Checklist required documentation to prove the Claimant's **alien status**. The Checklist listed the requested proof as an I-94 Arrival/Departure Record, an I-551 Alien Registration Card, I-151 Alien Registration Receipt Card, I-327 Permit to Reenter the US, Alien Registration Card, Order from Immigration Judge, or passport stamped "Processed for I-551. These documents would permit the Department to determine the Claimant's actual alien status as well as entry date. This information is required to determine eligibility. Neither the Claimant nor his authorized representatives ever provided the Department with the requested documentation. BAM 130 requires that Alien status be verified within 10 days. It provides the Department the authorization to

extend the deadline for verification up to three times. The Claimant through his authorized representative requested 3 extensions of time in order to provide the required proof. On June 15, 2010 after the three extension of time, the authorized representative finally submitted a Michigan Temporary Personal Identification Card, a Social Security Card stating "valid for work only with DHS authorization", and an Employment Authorization Card with an expiration date of 4/28/10 as verification of Alien status. These documents do not provide the Department with any information regarding the type of Alien status that the Claimant has nor the length of time the Claimant has been in the United States. The type of Alien status as well as length in the U.S. determines eligibility. For MA benefits, not every alien is a qualified alien. The Department is required to determine if the Claimant is a **qualified** alien as defined by policy. The documents requested on the Verification Checklist indicate the type of alien status. This is the reason that these particular documents are listed. The documents provided by the Claimant through his authorized representative do not allow the Department to make the necessary verifications. Therefore, the Claimant and his authorized representative did not provide the required documentation in order to make a determination of eligibility. The Claimant through his authorized representative claims that he made his best effort and the Department failed to assist them as required. This claim is not found to be credible. The Department gave the Claimant and his authorized representative 3 extensions to obtain the proper documentation. This is the most they were permitted to grant pursuant to policy. BAM 130. Furthermore, neither the Authorized Representative nor the Claimant indicated to the Department that they were not able to obtain the requested documentation. Actually, they did not state that any attempts that were made to obtain the requested documentation or any reason as to why the requested documentation could not be provided. The only step listed by the authorized representative was a "home call" made after 2 extensions had already been granted. However, there is nothing to indicate what actions were made to obtain the required documentation nor why the Claimant was unable to provide the requested documentation. It does not appear from the record or the testimony at the hearing that the Claimant or his Authorized Representatives made any reasonable efforts to obtain the requested documentation that would actually indicate the Claimant's alien status and permit the Department to determine eligibility. The fact that he is authorized to work in the United States does not in and of itself prove that he is a qualified alien for purposes of MA assistance as defined by policy.

