

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:

AYMAN MOHAMED
1452 SPARTAN VLG
APT C
EAST LANSING, MI 48823

Reg. No.: 2012-16747
Issue No.: 2005
Case No.: [REDACTED]
Hearing Date: January 18, 2012
County: Ingham

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, a telephone hearing was held on January 18, 2012, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED]. Participants on behalf of Department of Human Services (Department) included [REDACTED] (Eligibility Specialist).

ISSUE

Did the Department properly close Claimant's case for Medical Assistance (MA) for failure to show the Department that he met the Michigan residency requirements?

FINDINGS OF FACT

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

1. Claimant received benefits for Medical Assistance (MA).
2. Claimant was born in Egypt.
3. At all relevant times, Claimant was a student/graduate assistant/teaching assistant attending Michigan State University in East Lansing, Michigan.
4. Claimant intends to become a permanent resident of the United States.
5. On November 1, 2011, the Department sent Claimant a Notice of Case Action (DHS-1605) closing his MA case because Claimant failed to show that he meets the residency requirements.

6. On November 4, 2011, the Department received Claimant's Electronic Diversity Visa Form, which indicated that Claimant has been entered for the 2013 Diversity Visa Lottery.
7. The Department rejected Claimant's 2013 Diversity Visa Lottery because the documents indicated a temporary or time-limited period to the visit in the U.S.
8. The Department advised Claimant that he must submit an application from the United States Citizenship and Immigration Services (U.S.C.I.S.) for permanent residency in order to be eligible for MA benefits.
9. The Department did not provide Claimant with a phone number, website address or any other contact information for the U.S.C.I.S. nor did the Department provide any additional assistance to Claimant because Claimant did not ask.
10. On November 4, 2011, Claimant filed a hearing request protesting the closure of his MA case.

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 claim for assistance is 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 Medical Assistance (MA) program is established by the 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 (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105.

Department policy requires the Department determine the alien status of each non-citizen requesting benefits at application, member addition, redetermination and when a change is reported. BAM 225. 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. BEM 225. U.S. citizenship must be verified with an acceptable document to continue to receive Medicaid; see BAM 130. BEM 225.

The alien status of each non-citizen requesting benefits MUST be verified. BEM 225. The Department may disqualify a person who is unable to obtain verification or refuses

to cooperate in obtaining it. BEM 225. The alien status of each non-citizen must be verified to be eligible for full MA coverage. BEM 225.

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. BEM 225.

The definition of qualified alien includes specific alien statuses, but **not** all alien statuses. BEM 225. This definition is used in several of the acceptable alien statuses, in conjunction with other criteria. BEM 225. Not all acceptable alien statuses require that the person be a qualified alien. BEM 225.

“Qualified alien” means an alien who is: (1) lawfully admitted for permanent residence under the INA; (2) granted asylum under section 208 of the INA; (3) a refugee who is admitted to the U.S. under section 207 of the INA; this includes Iraqi and Afghan special immigrants; (4) paroled into the U.S. under section 212(d)(5) of the INA for a period of at least one year; (5) an alien whose deportation is being withheld under section 241(b)(3) or 243(h) of the INA; (6) granted conditional entry pursuant to section 203(a)(7) of the INA; (7) a Cuban/Haitian entrant; or (8) 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.

A person must be a U.S. citizen or have an acceptable alien status for the designated programs. BEM 225. Persons who do not meet this requirement, or who refuse to indicate their status, are disqualified. BEM 220.

To be eligible for MA, a person must be a Michigan resident. BEM 220. An individual is a Michigan resident if either of the following apply: (1) the individual lives in Michigan, except for a temporary absence, **and** intends to remain in Michigan permanently or indefinitely. BEM 220. If the individual indicates 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. When an adult in the MA fiscal group does not meet the residency requirement for eligibility, their children cannot meet the requirement either. BEM 220. The individual or a member of the MA fiscal group has entered the state of Michigan for employment purposes, and (1) has a job commitment, or (2) is seeking employment. BEM 220.

An individual who claims that a member of the MA fiscal group has entered the state for employment purposes must verify that there is a job commitment or is seeking employment. BEM 220. If the official USCIS documents indicate a status that does not permit the individual to work, the USCIS documents are verification that the individual did **not** enter Michigan for purposes of employment. BEM 220. When an adult in the MA fiscal group does not meet the residency requirement for eligibility, their children cannot meet the requirement either. BEM 220.

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).
- 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 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. BEM 225.

Clients must take actions within their ability to obtain verifications. However, DHS staff must assist when necessary. See BAM 130 and BEM 702. BAM, Item 105, p. 8. The local office must assist clients who ask for help in completing forms (including the DCH-0733-D) or gathering verifications. Particular sensitivity must be shown to clients who are illiterate, disabled or not fluent in English. BAM, Item 105, p. 10.

Here, Claimant, under oath during the hearing in this matter, states that he intends to remain in Michigan, but he has been unable to provide the Department with official USCIS documents to demonstrate his intentions. Claimant submitted a document to the Department, but the document provided indicated a temporary or time-limited period to his visit in Michigan. Rather than provide Claimant with a phone number, website address or other contact information for the USCIS (or another appropriate resource), the Department elected to wait until Claimant offered a document and then would reject the documents as insufficient. The Department should provide Claimant with a phone number, address, website or other contact information for the USCIS or any other resource so that Claimant can obtain the requested verifications. Here, the Department did not actively assist claimant but provided only passive assistance. Under the circumstances, the Department has failed to assist Claimant obtain the proper verification. The Department did not take adequate steps to provide assistance to Claimant who obviously did not have the knowledge to procure the necessary documentation. The Department did not specifically inform Claimant the precise document that he needs to provide to verify that official steps are being taken with USCIS to apply for lawful permanent resident status.

Based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, the Administrative Law Judge concludes that the Department did not act properly when it closed Claimant's MA case.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department did not act properly.

Accordingly, the Department's MA decision is REVERSED for the reasons stated above and for the reasons stated on the record.

THE DEPARTMENT IS ORDERED TO DO THE FOLLOWING WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

Provide Claimant with a telephone number and/or website contact information for the USCIS or other appropriate agency so that he may obtain the official USCIS documents to show that official steps are being taken with USCIS to apply for lawful permanent resident status. Once Claimant receives the Department's USCIS contact information, the Department shall allow Claimant an additional 14 days to provide appropriate residency documentation. In the event Claimant fails to provide the required documentation within this time period, the Department may determine Claimant's MA eligibility in accordance with policy.

/s/

C. Adam Purnell
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: 1/26/12

Date Mailed: 1/26/12

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS 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.

CAP/ds

■ [REDACTED]