

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201251412
Issue No: 2005, 3000
Case No: [REDACTED]
Hearing Date: June 13, 2012
Kalamazoo County DHS

ADMINISTRATIVE LAW JUDGE: Corey A. Arendt

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 June 13, 2012, in Lansing, Michigan. Participants on behalf of Claimant included [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

During the hearing, the Department agreed to initiate a redetermination as to the Claimant's eligibility for FAP benefits beginning September 1, 2011 and issue retroactive benefits if otherwise eligible and qualified. The Claimant indicated this would resolve his issue regarding his FAP application.

ISSUE

Whether the Department properly closed/denied the Claimant's case/application for Medical Assistance (MA) benefits due to Claimant's resident alien status.

FINDINGS OF FACT

I find as material fact, based upon the competent, material, and substantial evidence on the whole record:

1. In approximately 2008, the Claimant moved to the United States from Egypt on a J1 Visa.
2. Between 2008 and 2011, the Claimant had a child born in the United States.
3. In March of 2011, the Claimant moved to Michigan to work at [REDACTED] as a faculty member.

4. In September of 2011, the Claimant went from being a faculty member to being a student employee.
5. From September of 2011 through December of 2011, the Claimant's wife was employed as a student employee at [REDACTED].
6. On or around September 1, 2011, the Claimant applied for FAP and MA benefits.
7. At no point in time did the Department address the Claimant's FAP application.
8. Between September 1, 2011 and December of 2011, the Department requested the Claimant to produce several verifications.
9. In December of 2011, the Department issued several notices of case action regarding the Claimant's eligibility for MA benefits. The final case action issued in December indicated the Claimant and his family were not eligible for MA benefits due to resident/alien status.
10. On December 9, 2011 and December 27, 2011, the Claimant filed hearing requests in regards to the December 2011 MA notice of case actions.
11. In 2011, 2012 and 2013, the Claimant applied for the Diversity Visa Lottery Program. (Green Card Lottery).

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 was established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The department administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. 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).

The FAP (formerly known as the Food Stamp (FS) program) was 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 administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

For all programs, the Department must determine the alien status of each noncitizen requesting benefits at application, member addition, redetermination and when a change is reported. (BEM 225).

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. (BEM 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. U.S. 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. (BEM 225).

MA coverage is limited to emergency services for any:

- Persons with certain alien statuses or U.S. entry dates as specified in policy; see CITIZENSHIP/ALIEN STATUS in this item.
- Persons refusing to provide citizenship/alien status information on the application.
- Persons unable or refusing to provide satisfactory verification of alien information. (BEM 225).

Eligibility may depend on whether or not the person meets the definition of Qualified Alien. 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:

- U.S. citizens (including persons born in Puerto Rico).
- Non-immigrant--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 non-immigrants who have stayed beyond the period authorized by USCIS.

An alien limited to emergency services only (ESO) coverage during the five-year bar means the following aliens who entered the U.S. on or after 8/22/96. A permanent resident alien with class codes other than RE, AM or AS, and an alien paroled under INA section 212(d)(5) for at least one year. The individual is limited to emergency services only (ESO) Medicaid coverage the first five years in the U.S. (BEM 225).

It is undisputed that one of the Claimant's children is a U.S. citizen as the child was born in the United States. Therefore that child as long as the child meets the residency requirements is eligible for MA benefits. In regards to the Claimant, his wife and other child, each of them is eligible for ESO based on their Resident/Alien status providing they meet the residency requirements.

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. (BEM 220).

For purposes of MA, an individual is a Michigan resident **if either** of the following apply:

- The individual 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. When an adult in the MA fiscal group does not meet the residency requirement for eligibility, their children cannot meet the requirement either.
- The individual or a member of the MA fiscal group has entered the state of Michigan for employment purposes, and
 - Has a job commitment, or
 - Is seeking employment. (BEM 220).

During the hearing, the Department indicated the Claimant and his family were not eligible for MA benefits due to the residency requirement found in BEM 220. I am however in disagreement with the Department's interpretation of BEM 220. BEM 220, provides Claimant's with two separate ways of meeting the residency requirement. Although the Claimant might not meet the first requirement, the Claimant clearly meets the second requirement. In this case, the Claimant and his family moved to the State of Michigan after accepting an offer of employment at [REDACTED]. Therefore, the Claimant entered the State of Michigan for employment purposes and had a job commitment when he entered. Consequentially, the Claimant meets the residency requirement as outlined in BEM 220.

There could also be an argument made as to whether or not the Claimant meets the first requirement based upon the 2011, 2012 and 2013 applications for the Diversity Visa Lottery. However, since the Claimant meets the second requirement, I will not address this argument.

Accordingly, I find evidence to **reverse** the Department's action in this matter as the Claimant meets the residency requirement.

DECISION AND ORDER

I find, based upon the above findings of fact and conclusions of law, decide the Department did not act in accordance with policy in determining Claimant was ineligible for MA benefits due to resident/alien status.

The Department's actions are **REVERSED**.

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

1. Initiate a redetermination as to the Claimant's eligibility for FAP benefits beginning September 1, 2011 and issue retroactive benefits if otherwise eligible and qualified.
2. Initiate a redetermination as to the Claimant's eligibility for MA benefits beginning September 1, 2011 and issue retroactive benefits if otherwise eligible and qualified.

/s/ _____
Corey A. Arendt
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: June 15, 2012

Date Mailed: June 15, 2012

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.

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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.

CAA/cr

cc:

