

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201323417
Issue No.: 2024
Case No.: [REDACTED]
Hearing Date: June 25, 2013
County: Healthy Kids Program Office

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 three-way telephone hearing was held on June 25, 2013 from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] (Claimant's Authorized Hearing Representative (AHR)), [REDACTED] (Claimant) and [REDACTED] (Claimant's husband). Participants on behalf of Department of Human Services (Department) included [REDACTED] (Medicaid Eligibility Specialist) and [REDACTED] (Assistance Payments Supervisor).

ISSUE

Did the Department properly close Claimant's Medical Assistance (MA or "Medicaid") Other Healthy Kids (OHK) case due to failure to meet the 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 and her husband are originally from Kosovo.
2. In 2004, Claimant's family came to Michigan to obtain medical treatment for their son.
3. Claimant's family remained in the Michigan for several years while their son received continued medical treatment.
4. Claimant gave birth to three children while in Michigan.

5. On September 10, 2012, Claimant submitted an online MA “Healthy Kids” application for assistance seeking MA coverage for her family.
6. On September 12, 2012, the Department mailed Claimant a Notice of Case Action (DHS-1605) which provided Claimant with MA-Healthy Kids for Pregnant Women and granted full OHK benefits to Claimant’s three children.¹
7. On September 18, 2012, the Department mailed Claimant a Verification Checklist (DHS-3503) which requested verification of residency for Claimant and her son. The verifications were due by September 28, 2012.
8. On December 20, 2012, the Department mailed Claimant a Notice of Case Action (DHS-1605) which closed MA benefits for Claimant and all group members for various reasons. The case comments indicated, “Please disregard the denial reason below. The verifications you submitted were reviewed and you are not eligible for Medicaid because per policy you do not meet residency requirements.”
9. On January 4, 2013, Claimant’s AHR submitted a hearing request challenging the MA closure based on the residency issue.

CONCLUSIONS OF LAW

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

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.

Other Healthy Kids (OHK) provides MA to a person who is under age 19 when net income does not exceed 150% of the poverty level. BEM 131. All eligibility factors must be met in the calendar month being tested. BEM 131.

To be eligible, one must meet certain financial and non-financial requirements. The non-financial eligibility requirements require the person be under age 19. BEM 131. The MA eligibility factors in the following items also must be met: (1) Residence (BEM 220); (2) Identify (BEM 221); (3) Social Security Numbers (BEM 223); (4) Citizenship/Alien Status (BEM 225); (5) Child Support (BEM 255); (6) Third Party Resource Liability (BEM 257); (7) Institutional Status (BEM 265); and (8) Pursuit of Benefits (BEM 270).

To be eligible, a person must be a Michigan resident. BEM 220.

¹ This was based on presumptive eligibility. Claimant and her son were approved for emergency services only while Claimant’s other two children were approved for full MA-OHK benefits.

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 [her] official USCIS² 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 pp 1-2.

or

- 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 p 2.

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. 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. 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 p 2.

Citizenship/alien status is not an eligibility factor for emergency services only (ESO) MA. BEM 225. However, the person must meet all other eligibility factors, including residency; see BEM 220. 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. BEM 225. U.S. citizenship must be verified with an acceptable document to continue to receive Medicaid; see BAM 130. BEM 225.

A person claiming U.S. citizenship is not eligible for ESO coverage. BEM 225. The alien status of each non-citizen must be verified to be eligible for full MA coverage; see CITIZENSHIP/ALIEN STATUS in this item. 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.

² USCIS refers to the U.S. Citizenship and Immigration Services, formerly the Bureau of Citizenship and Immigration or Immigration and Naturalization Service. BEM 225.

All other eligibility requirements including residency **must** be met even when MA coverage is limited to emergency services; see BEM 220. BEM 225.

Persons listed under the program designations in Acceptable Status meet the requirement of citizenship/alien status. BEM 225.

Here, the Department takes the position that Claimant returned verifications that showed each of Claimant's group members are not eligible for MA because none are proper Michigan residents. Claimant, on the other hand, contends that two of their children are U.S. Citizens. Claimant attached birth certificates from her two daughters, both of whom were born in Michigan.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). The weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. The Department provided a copy of a January 4, 2011 letter from the U.S. Citizenship and Immigration Services to Claimant's husband. The letter indicates that Claimant had a "B-2" status, which expired on March 13, 2005. The entire family was granted deferred action status on February 21, 2010. According to the January 4, 2011 letter, Claimant's deferred action status was extended for two years and will terminate on January 4, 2013. During the hearing, Claimant's husband testified that he does not know whether or not he plans to return to Kosovo. In addition, Claimant did not have any evidence to show that the deferred action period has been extended following the January 4, 2013 deadline.

The record further demonstrates that Claimant does not intend to remain in Michigan permanently or indefinitely as required for eligibility under BEM 220. Moreover, Claimant's official USCIS documents indicate a temporary or time-limited period to the visit. Here, Claimant entered the U.S. for the limited purpose of obtaining needed medical treatment for her son. Claimant has not provided any evidence to verify that official steps are being taken with USCIS to apply for lawful permanent resident status. Claimant's B-2 status is not listed as Acceptable Status under BEM 225. Accordingly, Claimant does not meet the intent to remain requirements. According to BEM 220 pp. 1-2 cited above, "[W]hen an adult in the MA fiscal group does not meet the residency requirement for eligibility, their children cannot meet the requirement either." Based on the competent, material, and substantial evidence presented during the hearing, this Administrative Law Judge finds that the Department properly closed Claimant's MA cases due to failure to meet the residency requirement.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department did act properly.

Accordingly, the Department's MA decision is **AFFIRMED**.

IT IS SO ORDERED.

/s/ _____
C. Adam Purnell
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: July 1, 2013

Date Mailed: July 2, 2013

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. (60 days for FAP cases)

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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

201323417/CAP

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CAP/aca

cc: [REDACTED]