

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201328180
Issue No: 2005
Case No: [REDACTED]
Hearing Date: July 18, 2013
DHS Healthy Kids/Plan 1st

ADMINISTRATIVE LAW JUDGE: Suzanne D. Sonneborn

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 received by the Department of Human Services (department) on February 4, 2013. After due notice, a telephone hearing was held on July 18, 2013 at which Claimant appeared by three-way conference call and provided testimony. Claimant was represented by his brother, attorney [REDACTED], P [REDACTED]. The department was represented by [REDACTED], an assistance payments supervisor with the department's Healthy Kids/Plan First Program office.

ISSUE

Whether the department properly determined Claimant's eligibility for the Medical Assistance (MA) program?

FINDINGS OF FACT

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

1. On January 8, 2013, Claimant applied for MA benefits for his pregnant wife and two children. In his application, Claimant reported that he, his wife and one of his children are not U.S. citizens and Claimant did not provide documentation of their immigration status. (Department Exhibit A)
2. On January 10, 2013, the department mailed Claimant a Notice of Case Action (DHS 1605) advising him that his application for MA benefits for his wife and two children had been approved effective January 1, 2013 for emergency services only for the children and for Healthy Kids for Pregnant Woman services for Claimant's wife. (Department Exhibit B)

3. On January 10, 2013, the department also mailed Claimant a Verification Checklist, requesting that Claimant provide a copy of all alien documentation for him and his family. This information was due to the department on January 22, 2013. (Department Exhibit C)
4. On January 22, 2013, Claimant provided the department with all required verifications, specifically, the required I-94 documentation as well as I-20 Certificate of Eligibility for Nonimmigrant Student for Claimant, his wife, and their child, [REDACTED]. (Department Exhibit D)
5. On January 22, 2013, the department mailed Claimant a Notice of Case Action (DHS 1605) advising him that his MA benefits for his wife and two children would be closed effective March 1, 2013 because Claimant and his wife do not meet alien status Michigan residency requirements. (Department Exhibit E)
6. On February 4, 2013, the department's Healthy Kids/Plan First office received Claimant's hearing request protesting the closure of his MA benefits. (Request for a Hearing)

CONCLUSIONS OF LAW

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. Department of Human Services Bridges Administrative Manual (BAM) 600 (2011), p. 1. The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in sections 400.901 to 400.951 of the Michigan Administrative Code (Mich Admin Code). An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance is denied. Mich Admin Code R 400.903(1).

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. Department policies are found in the BAM, the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

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. BAM 130.

Moreover, to be eligible for all programs, including the MA program, a person must also be a Michigan resident. BEM 220. For purposes of the MA program, department policy provides that 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 or her official U.S. Citizenship and Immigration Services (USCIS) documents indicate a **temporary or time-limited period** to the visit, the individual does **not** meet the intent to remain requirements, unless he or she verifies that official steps are being taken with USCIS to apply for lawful permanent resident status. BEM 225. (Emphasis in original).
- The individual or a member of his or her MA fiscal group has entered the state of Michigan for employment purposes, and has a job commitment, or is seeking employment. BEM 220. An individual who claims that he or a member of his MA fiscal group has entered the state for employment purposes must verify that he has 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. BEM 200. (Emphasis in original).

Department policy further provides that a child who is born in the United States but whose parents are not U.S. citizens must also meet the Michigan residency requirement. BEM 220. Specifically, because the child is under the age of 18 and unmarried, the child is unable to independently establish Michigan residency as the child's residency is dependent on that of the child's parents. BEM 220.

In this case, at the July 18, 2013 hearing, the department's representative, [REDACTED], testified that Claimant and his wife and children did not meet the "intent to remain" in Michigan residency requirement of BEM 200 because the I-94 student visa and I-20 Certificate of Eligibility for Nonimmigrant Student issued to Claimant, as set forth in Department Exhibit D, indicate a temporary or time-limited period.

Claimant's attorney, [REDACTED], testified at the hearing that Claimant and his wife are not U.S. citizens and that they are in the country and in Michigan pursuant to a student visa issued to Claimant to complete an associate degree at [REDACTED]. [REDACTED] further testified, however, that Claimant's intent to remain in Michigan with his family should be evidenced by the fact that Claimant pays taxes here and is employed pursuant to an Employment Authorization Card issued by the U.S. Customs and Immigration Services (USCIS), as set forth in Claimant's Exhibit 1. However, [REDACTED] also acknowledged that Claimant has not taken official steps with USCIS to apply for lawful permanent resident status. Moreover, Claimant's Employment Authorization Card, issued to Claimant on April 12, 2013, has an expiration date of April 11, 2014.

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). Moreover, 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).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record and finds that, based on the competent, material, and substantial evidence presented during the July 14, 2013 hearing, because Claimant's official USCIS documents indicate a temporary or time-limited period for his stay in Michigan,¹ the department acted in accordance with policy in determining that Claimant did not meet the alien status Michigan residency requirements and the department properly closed Claimant's MA benefits case effective March 1, 2013.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly closed Claimant's MA benefits case effective March 1, 2013. Accordingly, the department's actions in this regard are **UPHELD**.

IT IS SO ORDERED.

/s/_____

Suzanne D. Sonneborn
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: July 31, 2013

Date Mailed: July 31, 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.

The Claimant may appeal this 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.

¹ Indeed, in the I-20 Certificate of Eligibility for Nonimmigrant Student signed by Claimant on February 13, 2012, Claimant certified with his signature that he "**seek(s) to enter or remain in the United States temporarily**, and solely for the purpose of pursuing a full course of study at the school named on page 1 of this form." (Department Exhibit D) (Emphasis added)

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 errors, or other obvious errors in the hearing decision that affect the substantial rights of Claimant;
 - The failure of the ALJ to address other relevant issues in the hearing decision.

A request for a rehearing or reconsideration must be submitted through the local DHS office or directly to MAHS by mail at:

Michigan Administrative Hearings System
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, MI 48909-07322

SDS/aca

cc:

