

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

IN THE MATTER OF:

[REDACTED]

MAHS Reg. No.: 15-019915
Issue No.: ESO
Agency Case No.: [REDACTED]
Hearing Date: January 28, 2016
County: DHHS Special
Processing Office

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION

Pursuant to a September 8, 2014 federal lawsuit, the Department of Health and Human Services (Department) issued notices to Medicaid applicants who were potentially denied full Medicaid coverage based on immigration status between January 2014 and May 2015. The notice included information about how to request a hearing. Petitioner filed a request for a hearing and accordingly this matter is before the undersigned Administrative Law Judge pursuant to Michigan Administrative Hearing Rules (R 792.10101 – R 792.11903) and the Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.201 *et seq.*

After due notice, a three-way telephone conference hearing was held on January 28, 2016, from Lansing, Michigan. The Petitioner was represented by [REDACTED] (Petitioner's mother). The Department was represented by [REDACTED] (Eligibility Specialist). [REDACTED] ([REDACTED]) served as Spanish-English translator during the hearing.

ISSUE

Did the Department properly determine Petitioner's immigration status or citizenship when determining Medicaid (MA) eligibility?

FINDINGS OF FACT

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

1. On October 15, 2013, the Department received Petitioner's application for MA benefits. [Exhibit 1, pp. 4-22].
2. On the application, Petitioner (DOB [REDACTED]) was listed as a non-U.S. citizen who entered the U.S. on September 19, 2013. [Exh. 1, p. 9].

3. On October 28, 2013, the Department mailed Petitioner a Notice of Case Action (DHS-1605), which approved Petitioner's application for Emergency Services Only (ESO) MA coverage effective October 1, 2013, ongoing. [Exh. 1, pp. 28-29].
4. In August, 2015, the Department issued a notice to the Petitioner indicating that he may have been denied full MA coverage based on immigration status between January 2014 and May 2015.
5. On August 31, 2015, Petitioner requested a hearing. [Exh. 1, p. 2].

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

In this case, Petitioner requested a hearing disputing the activation of ESO MA coverage and/or denial of full MA coverage. Petitioner's mother, who attended the hearing, indicated that at the time of application her son was a permanent U.S. resident. The Department contends that Petitioner was only entitled to ESO MA coverage because he listed on the application that he was not a U.S. citizen. The Department further contends that it mailed Petitioner requests for verification concerning his immigration status and that the Department later received a copy of his Visa. The Department failed to include these documents in the hearing packet.

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. BEM 225 (1-1-2014), p. 1.

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, p. 2. The alien status of each non-citizen must be verified to be eligible for full MA coverage. BEM 225, p. 2.

U.S. citizenship must be verified with an acceptable document to continue to receive Medicaid. BEM 225, p. 2. 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, p. 2.

MA coverage is limited to emergency services for any: (1) persons with certain alien statuses or U.S. entry dates as specified in policy; (2) persons refusing to provide citizenship/alien status information on the application; and/or (3) persons unable or refusing to provide satisfactory verification of alien information. BEM 225, p. 3. All other eligibility requirements including residency **must** be met even when MA coverage is limited to emergency services. BEM 225, p. 3.

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, p. 3.

"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, or an alien who has been **battered** or subjected to **extreme cruelty** in the U.S. by a U.S. citizen, a **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. BEM 225, p. 4 (Emphasis added).

The coverage of a person who is unable to obtain verification of alien status or refuses to cooperate in obtaining it is limited to emergency services **until verification is obtained.** BEM 225, p. 20. (Emphasis added).

In this case, Petitioner's mother testified that on the date of MA application, the Petitioner was a permanent U.S. resident. However, the Department did not include a copy of any responses to verification requests that may have been sent to Petitioner nor did the Department provide any objective documents to show Petitioner's immigration status at the time of application. Although the hearing packet was not devoid of records, none of the records effectively shed light on the precise issue in controversy. Based on the lack of documentation in the record, the Administrative Law Judge is unable to make a reasoned, informed decision concerning Petitioner's immigration status at the time of application. This is necessary to determine whether the Department properly processed Petitioner's MA application and whether he was properly eligible for full MA or ESO MA benefits. Accordingly, this Administrative Law Judge finds that the Department did not provide information necessary to enable this ALJ to determine whether the Department followed policy.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department **did not** properly determine Petitioner's immigration status or citizenship when determining MA eligibility.

DECISION AND ORDER

Accordingly, the Department's determination about MA eligibility based on immigration status is **REVERSED**.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Redetermine MA eligibility in accordance with Department policy.
2. Notify Petitioner in writing of the Department's new MA eligibility determination.



C. Adam Purnell
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human
Services

Date Mailed: **1/28/2016**

CAP/las

NOTICE: The law provides that within 30 days of receipt of the above Decision and Order, the Petitioner may appeal it to the circuit court for the county in which he/she lives or the circuit court in Ingham County.

cc:

