

**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.: 15-020299
Issue No.: ESO
Agency Case No.: [REDACTED]
Hearing Date: January 20, 2016
County: DHHS SSPC OFFICE

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a 3-way hearing was held on January 20, 2016, from Detroit, Michigan. The Petitioner was represented by the Petitioner, [REDACTED]. The Department of Health and Human Services (Department) was represented by [REDACTED], Eligibility Specialist.

ISSUE

Did the Department properly grant the Petitioner Emergency Services Only (ESO) Medical Assistance (MA) based upon her immigration status?

FINDINGS OF FACT

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

1. The Petitioner applied for Medicaid on July 26, 2012, and was determined by the Department to be eligible for ESO coverage ongoing through September 1, 2015. Exhibit 1, p. 6 and Exhibit 2.
2. The Petitioner entered the U.S. on December 15, 2010, under a student visa.
3. The Petitioner received ESO coverage from the period June 2012 through September 2015. Exhibits 2 and 4.
4. Based upon her application, the Petitioner did not provide proof of U.S. citizenship or proof of an eligible immigration status. The application answered that Petitioner was not a U.S. citizen. Exhibit 1, p. 6.

5. In May 2015, the Petitioner was granted Temporary Protected Status by the U.S. Citizenship & Immigration Service. This document was provided to the Department on August 31, 2015. Exhibit 3.
6. The Petitioner does not have a green card or permanent resident status.
7. The Petitioner requested a hearing on August 27, 2015.

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 (formerly known as the Department of Human Services) 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 Department granting her ESO MA rather than full-coverage MA. To be eligible for full coverage MA, a person must be a U.S. citizen or an alien admitted to the U.S. under a specific immigration status. BEM 225 (January 2014), p. 2. An individual who is a permanent resident alien with a class code on the permanent residency card other than RE, AM or AS is eligible only for ESO MA coverage for the first five years in the U.S. unless the alien is a qualified military alien or the spouse or dependent child of a qualified military alien. BEM 225, pp. 7-8, 30; MREM, § 3.6. A qualified military alien is a qualified alien on active duty in, or veteran honorably discharged from, the U.S. Armed Forces. BEM 225, p. 5; MREM, § 3.6.

A person who does not meet an acceptable alien status, including undocumented aliens and non-immigrants who have stayed beyond the period authorized by the U.S. Citizenship and Immigration Services, are eligible only for ESO MA coverage. BEM 225, p. 9. The alien status of each non-citizen must be verified to be eligible for full MA coverage. BEM 225, p. 2. Non-citizens receiving ESO MA do not have to verify alien status. BEM 225, p. 20. A person who is unable to obtain verification of alien status or refuses to cooperate in obtaining it is limited to ESO until verification is obtained. BEM 225, p. 20.

In this case, the Department testified that because Petitioner indicated in her application that she did not have eligible immigration status, it approved her for ESO coverage. The Petitioner was issued and granted temporary protected status as of May 20, 2015, by the U.S. Citizenship and Immigration Services. Exhibit 3. At the time of the

application and at the time of the hearing, the Petitioner did not have permanent resident status.

BEM 225 provides that a person under temporary protected status under Section 244A of the INA is a person who is considered lawfully residing in the U.S. and meets this status. In this case the Petitioner has temporary protected status from May 20, 2015 through September 30, 2016. Exhibit 3. The Notice issued by the INA Service advises that such status will not be considered as permanently residing in the United States.

In this case, the Petitioner entered the U.S. with a student visa and thus, at the time of entry was a Non-Immigrant. Thereafter, the Petitioner remained in this status at the time of her application for MA July 26, 2012, as she did not advise the Department of her immigration status on the application. Thus, at the time of the application, the Department correctly found the Petitioner eligible for ESO MA only. Department policy provides:

- 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 MA, 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. BEM 225, (October 1, 2015), p. 9.

At the hearing the evidence indicated that a FORM I 797 A was produced. Department policy provides the following as regards the purpose of the form:

- I-797, Notice of Action. It is issued to applicants/petitioners to acknowledge receipt of applications, convey statuses, etc. It verifies permanent resident alien status when it acknowledges both receipt of application for a replacement I-551 and receipt of the old I-551. BEM 225, p. 35

In this case, the form did not verify permanent resident alien status as there was no acknowledgement of receipt of an application for a replacement I-1551 and receipt of an old I-551. The I-551 is an Alien Registration Receipt card (conditional Resident Alien Card), issued to conditional permanent residents such as alien spouses of U.S. citizens/Permanent residents (commonly referred as a green card). BEM 225 p.34.


The INA Form I-797 did not serve to convey Permanent Resident Status on the Petitioner and specifically provides that persons issued such status will be considered a

nonimmigrant and will not be considered to be permanently residing in the U.S. Thus ultimately, the Petitioner has not established permanent residence in the U.S. even with a temporary protected status and thus remains eligible for ESO Medical Assistance only.

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 acted in accordance with Department policy when it determined that the Petitioner is eligible for ESO medical assistance only and not full Medicaid coverage.

DECISION AND ORDER

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



Lynn M. Ferris
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Mailed: **2/19/2016**

LMF/jaf

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date. A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from MAHS within 30 days of the mailing date of this Hearing Decision, or MAHS **MAY** order a rehearing or reconsideration on its own motion. MAHS **MAY** grant a party's Request for Rehearing or Reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The party requesting a rehearing or reconsideration must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A request must be *received* in MAHS within 30 days of the date this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

cc:

