

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

IN THE MATTER OF:

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MAHS Reg. No.: 15-022643
Issue No.: ESO
Agency Case No.: ██████████
Hearing Date: February 18, 2016
County: SSPC Special
Processing Center

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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, an in-person hearing was held on February 18, 2016, from Southfield, Michigan. Petitioner appeared and represented herself. ██████████ ██████████, Petitioner's husband, appeared on Petitioner's behalf. The Department was represented by ██████████, Eligibility Specialist, who participated via telephone conference. ██████████ and ██████████ served as translators ██████████ during the hearing, participating via telephone conference. ██████████, Hearing Facilitator, appeared at the hearing but did not participate.

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 August 2, 2014, Petitioner applied for MA (Exhibit A, pp. 5-43).
2. On the date of MA application, Petitioner was not a United States citizen.

3. The Department approved Petitioner for Emergency Services Only (ESO) MA coverage for May 1, 2014 ongoing (Exhibit A, p. 13).
4. On an unknown date, the Department issued a notice to the Petitioner indicating she might have been denied full MA coverage based on immigration status between January 2014 and May 2015.
5. On August 28, 2015, the Department received Petitioner's hearing requesting (Exhibit A, 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), Department of Health and Human Services Modified Adjusted Gross Income (MAGI) Related Eligibility Manual (MREM), 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 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.

In this case, the Department testified that after Petitioner filed her hearing request, it reassessed her MA eligibility. Based on Petitioner's statements in her MA application that she was not a U.S. citizen but had eligible immigration status and that she was a

permanent resident, it reassessed her eligibility and activated full-coverage MA for her from May 1, 2014 to November 30, 2015. On December 2, 2015, the Department sent Petitioner a Benefit Notice showing she was eligible for full-coverage MA for May 2014 through November 2015 (Exhibit A, pp. 14-15). The Department also provided a Medicaid eligibility summary showing that Petitioner received full-coverage MA between October 1, 2014 and November 30, 2015 (Exhibit A, pp. 44-45; Exhibit B).

The Department changed Petitioner's coverage back to ESO beginning December 1, 2015. The evidence presented by the Department, namely the copy of Petitioner's permanent residency card, established that Petitioner had entered the U.S. from [REDACTED] in March 2014 with a category DV1 (Exhibit A, p. 12). There was no eligible asylum or refugee status identified on the permanent residency card. Further, Petitioner and her husband acknowledged that neither had served in the U.S. military. Because Petitioner had not been a resident alien for 5 years, had not served in the U.S. military, and did not have asylum or refugee status, she was not eligible for full-coverage MA.

However, the evidence at the hearing established that Petitioner was pregnant and gave birth in November 2015. An individual is entitled to the most beneficial MA for which they are eligible. BEM 105 (October 2014), p. 2. Under the Maternity Outpatient Medical Services (MOMS) MA program, a pregnant women who is eligible for ESO coverage is entitled to services for routine prenatal care, labor and delivery, and routine post-partum care. MREM, §§ 3.3, 1.2. The evidence at the hearing failed to establish that the Department provided the most beneficial program available to Petitioner in light of her immigration and pregnancy status.

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 from the date Petitioner became pregnant ongoing in accordance with Department policy.
2. Notify Petitioner in writing of the Department's new MA eligibility determination.



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

Date Signed: **2/25/2016**

Date Mailed: **2/25/2016**

ACE / tlf

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.

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]