



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

MIKE ZIMMER
DIRECTOR

[REDACTED]

Date Mailed: March 31, 2016
MAHS Docket No.: 15-023915
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 telephone hearing was held on March 8, 2016, from Lansing, Michigan. [REDACTED], the Petitioner, appeared on her own behalf. [REDACTED], sister in law, appeared as a witness for Petitioner. The Department was represented by [REDACTED], Eligibility Specialist. [REDACTED], [REDACTED], provided interpretation services during the hearing.

During the hearing proceedings, the Department's Hearing Summary packet was admitted as Department Exhibit A, pp. 1-19.

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 November 20, 2014, Petitioner applied for MA through the Federally Facilitated Marketplace. (Department Exhibit A, pp. 6-13)
2. Petitioner's application was initially approved for Emergency Services Only (ESO) MA coverage. (Department Exhibit A, pp. 1)
3. On September 3, 2015, a Health Care Coverage Determination Notice was issued to Petitioner stating she was eligible for ESO MA coverage for November 1, 2014 through ongoing. (Department Exhibit A, pp. 17-19)
4. On October 7, 2015, Petitioner filed a hearing request contesting the Department's determination. (Department Exhibit A, p. 2)
5. The Department subsequently approved full MA coverage for November 2014 through September 2015. (Department Exhibit A, pp. 14-15)

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 denial of full MA coverage. (Department Exhibit A, p. 2)

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 (October 1, 2014), p. 2.

BEM 225, pp. 5-9, addresses acceptable status:

All Programs

- U.S. citizens (including persons born in Puerto Rico).
- See Exhibit IV, HOW TO BECOME A UNITED STATES CITIZEN, in this item.

- Persons born in Canada who are at least 50 percent American Indian.
- Member of a federally acknowledged American Indian tribe.
- **Qualified military alien**--a qualified alien on active duty in, or veteran honorably discharged from, the U.S. armed forces.

Active duty must **not** be for training, such as two weeks of active duty training for National Guard. Discharge must **not** have been due to alien status.

Veteran means a person who either:

- Served in the active military, naval or air service for the shorter of 24 months of continuous active duty or the full period for which he or she was called to active duty.
- Died while in the active military, naval or air service.
- Served in the military forces of the Commonwealth of the Philippines while such forces were in the service of the armed forces of the U.S. during the period from July 26, 1941, through June 30, 1946.
- Served in the Philippine Scouts under Section 14 of the Armed Forces Voluntary Recruitment Act of 1945.
- A qualified alien spouse and unmarried qualified alien dependent child of a qualified military alien.

Note: Dependent child is a child claimed as a dependent on the qualified military alien's federal tax return and under 18, or under age 22 and a student regularly attending school.

Spouse includes the unremarried surviving spouse of a deceased qualified military alien. The marriage must fulfill one of the following:

- The spouse was married to the veteran for one year or more.
 - A child was born to the spouse and veteran during or before the marriage.
 - The spouse was married to the veteran within the 15-year period following the end of the period of service in which an injury or disease causing the death of the veteran was incurred or aggravated.
- Holder of one of the following immigration statuses:
 - Permanent resident alien with class code RE, AS, SI or SQ on the I-551 (former refugee or asylee).

Note: For FAP, clients who enter the U.S. with one of the following categories are eligible for the first seven years. If they adjust to another category which requires them to meet the five-year requirement, they are still eligible for the first seven years.

 - Refugee admitted under INA Section 207.
 - Granted asylum under INA Section 208.
 - Cuban/Haitian entrant.
 - Amerasian under P.L. 100-202 (class code AM on the I-551).
 - Victim of trafficking under P.L. 106-386 of 2000; see VICTIMS OF TRAFFICKING in this item.
 - Alien whose deportation (removal) is being withheld under INA Sections 241(b)(3) or 243(h).

- **For FIP**, eligibility is limited to five years following the date of the withholding order unless the alien is a qualified military alien or the spouse or dependent child of a qualified military alien.

FIP, SDA and MA

- Alien admitted into the U.S. with one of the following immigration statuses:
 - Permanent resident alien with a class code on the I-551 other than RE, AM or AS.
 - Alien paroled into the U.S. for at least one year under INA Section 212(d)(5).

Exception (both statuses above): The eligibility of an alien admitted into the U.S. on or after August 22, 1996, with one of these statuses is restricted as follows unless the alien is a qualified military alien or the spouse or dependent child of a qualified military alien:

- **For FIP**, an individual is disqualified for the first five years in the U.S.
 - **For SDA**, an individual is disqualified.
 - **For MA** an individual is limited to emergency services for the first five years in the U.S.
- Alien granted conditional entry under INA section 203(a)(7).
 - Permanent resident alien with an I-151, Alien Registration Receipt Card.

FIP, MA and FAP

- An alien who has been battered or subjected to extreme cruelty in the United States or whose child or parent has been battered or subjected to extreme cruelty in the United States.

Exception: The eligibility of a battered alien admitted into the U.S. on or after August 22, 1996, is restricted as follows:

- **For FIP**, clients are disqualified for the first five years in the U.S.
- **For MA**, clients are limited to emergency services for the first five years in the U.S.
- **For FAP**, clients are disqualified unless they meet one of the applicable footnotes listed in Exhibit II- CITIZENSHIP/ALIEN STATUS TABLE at the end of this item.

An alien is considered a battered alien if all of the following conditions are met:

- The USCIS or the Executive Office of Immigration Review (EOIR) has granted a petition or found that a pending petition sets forth a prima facie case that the alien is eligible for legal permanent residents status (LPR) by way of being one of the following:
 - A spouse or child of a U.S. citizen or LPR.
 - The widow or widower or a U.S. citizen to whom the alien had been married for at least two years before the citizen's death.
 - A battered alien, or the alien parent of a battered child, or the alien child of a battered parent.
- The abuse was committed by the alien's spouse or parent, or by a member of the spouse or parent's family residing in the same household as the alien, and the spouse or parent consented to such battery or cruelty (and if the victim was the alien's child, the alien did not participate in or condone the abuse).

- There is a substantial connection between the battery or extreme cruelty and the need for assistance.
- The battered alien, child or parent no longer lives in the same household as the abuser.

MA

- Alien paroled into the U.S. for less than one year under INA Section 212(d)(5). Coverage is limited to emergency services only.
- 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, pp. 5-9

When an applicant for Medicaid claims to be a U.S. citizen or to have qualified immigrant status, and all other eligibility factors are met, certify benefits. Once the case has been open and coverage entered in Bridges, verification of citizenship must be completed. Attempt to verify citizenship through a data match such as the Social Security Administration or a DCH vital records match. MAGI- related applicants will have citizenship and identity verified if the application comes to DHS via the Federally Facilitated Marketplace (FFM) or MAGI rules engine. If there is a discrepancy with the information or it is not available then contact with the beneficiary is necessary; see BEM 221 and 225. BAM 130, (October 1, 2014), p. 4. (Underline added by ALJ)

On November 20, 2014, Petitioner applied for MA through the Federally Facilitated Marketplace. (Department Exhibit A, pp. 6-13) Petitioner's application was initially approved for Emergency Services Only (ESO) MA coverage. (Department Exhibit A, pp. 1) Further, on September 3, 2015, a Health Care Coverage Determination Notice

was issued to Petitioner stating she was eligible for ESO MA coverage for November 1, 2014 through ongoing. (Department Exhibit A, pp. 17-19)

The Department's Hearing Summary indicates that the Department determined Petitioner was not eligible for full MA coverage because she did not attest to being a U.S. citizen or having eligible immigration status on the MA application. (Department Exhibit A, p. 1)

However, it appears that the Department subsequently determined that the BAM 130 policy allowing for full MA coverage to be certified pending verification should have been applied because Petitioner's MA application was filed through the Federally Facilitated Marketplace (FFM). The Department has approved full MA coverage for November 2014 through September 2015. (Department Exhibit A, pp. 14-15) This would be the verification period from the month Petitioner applied for MA through the month the verification of her immigration status was received by the Department. (Department Exhibit A, pp. 6-13 and 16)

As discussed during the hearing proceedings, there was no dispute that Petitioner was residing in the U.S. lawfully. Rather, the Department was reviewing whether Petitioner was eligible for full MA coverage based on her immigration status. Petitioner credible testified that she first came to the US on a tourist visa. Petitioner has subsequently obtained an Employment Authorization Card. (Department Exhibit A, p. 16)

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 has already updated their determination about MA eligibility based on Petitioner's immigration status for the relevant time period to full MA coverage.

DECISION AND ORDER

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

CL/mc



Colleen Lack
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

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

DHHS

[REDACTED]

[REDACTED]

Petitioner

[REDACTED]