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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 11, 2016
MAHS Docket No.: 15-019379
15-019378

Agency No.: [REDACTED]
Petitioners: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

Pursuant to a September 8, 2014 federal lawsuit, the Michigan Department of Health and Human Services (MDHHS) issued notices to Medicaid applicants and recipients who were potentially denied full Medicaid coverage from January 2014 through May 2015, based on immigration status. The notices 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.*

A single hearing was conducted concerning two different hearing requests; the requests were for Petitioner (registration # 15-019379), and Petitioner's sibling ([REDACTED] - [REDACTED]) (registration # 15-019378). This hearing decision is controlling on both hearing requests. For purposes of this decision, the siblings will be referenced as "Petitioners."

After due notice, a 3-way telephone hearing was held on March 9, 2016, from Detroit, Michigan. Neither petitioner appeared for the hearing. Petitioners' mother, [REDACTED] represented her children. [REDACTED] and [REDACTED] of [REDACTED] appeared as [REDACTED] translators for Petitioners' mother. MDHHS was represented by [REDACTED], specialist.

ISSUE

The issue is whether MDHHS properly restricted Petitioners' Medical Assistance (MA) eligibility to emergency-services-only (ESO) due to immigration/citizenship 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. In October 2014, Petitioners applied for MA coverage.
2. On an unspecified date, MDHHS determined Petitioners to be eligible for Medicaid restricted to ESO, effective February 2015.
3. During the time in dispute, Petitioners were not eligible for Medicaid without restriction due to immigration status.
4. On [REDACTED], Petitioners' mother requested a hearing to dispute her children's ESO Medicaid eligibility.

CONCLUSIONS OF LAW

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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Reference Tables Manual (RFT), Modified Adjusted Gross Income (MAGI) manual, and Related Eligibility Manual (REM).

Petitioners' mother requested a hearing to dispute her children's MA eligibility. Petitioners' mother's hearing request was specifically tied to a dispute concerning ESO coverage. Petitioners' mother's testimony conceded the dispute of Medicaid coverage began February 2015. It was not disputed that the ESO restriction was imposed because of the immigration status of Petitioners.

Citizenship/alien status is not an eligibility factor for emergency services only (ESO) MA. BEM 225 (October 2014), 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. *Id.* For MA benefits, qualified alien status can also be met for aliens admitted into the U.S. with a class code on the I-551 other than RE, AM or AS. *Id.*, p. 7. For non-qualified aliens, MA eligibility is limited to emergency services only for the first five years in the United States. *Id.*, p. 8. Any of the following persons are considered to have an acceptable alien status (*Id.* pp. pp. 3-4, 5-9, 11-19, 31-33):

- United States citizens (includes those born in Puerto Rico)
- born in Canada and at least 50% American Indian
- member of American Indian tribe
- qualified military alien, spouse or child of qualified military alien,
- refugee under Section 207
- asylee under Section 208
- Cuban/Haitian entrant

- Amerasian
- victim of trafficking
- permanent resident alien with class code of RE, AS, SI or SQ
- permanent resident alien and has I-151
- deportation withheld (under certain conditions)
- granted conditional entry under 203(a)(7)
- paroled under 212(d)(5) for at least one year (under certain conditions)
- battered aliens, if more than five years in the United States
- permanent resident alien with a class code other than RE, AM or AS, if in the United States for longer than 5 years

Petitioners' mother conceded her children were immigrants without green cards. She testified that her children were recognized by the United States through Deferred Action for Childhood Arrivals (DACA). DACA is understood to be an immigration policy that grants work permits to certain undocumented immigrants. One of the purposes of DACA is understood to exempt certain recognized immigrants from deportation.

Though Petitioners may be exempt from deportation and eligible for work permits, DACA has no effect on Petitioners' Medicaid eligibility. For purposes of MA eligibility, Petitioners are undocumented immigrants, and therefore, not eligible for full Medicaid. MDHHS does not provide exceptions for immigrants recognized by DACA. It is found MDHHS properly restricted Petitioners' Medicaid eligibility to ESO, effective February 2015.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly restricted Petitioners' Medicaid eligibility to ESO, effective February 2015. The actions taken by MDHHS are **AFFIRMED**.

CG/hw



Christian Gardocki
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]

Petitioners

[REDACTED]

[REDACTED]

Authorized Representative

[REDACTED]