



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 28, 2016
MAHS Docket No.: 15-024635
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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 telephone hearing was held on March 21, 2016, from Madison Heights, Michigan. The Petitioner was represented by [REDACTED], her Authorized Hearing Representative. The Department was represented by [REDACTED], Assistance Payments Supervisor.

ISSUE

1. Did the Department properly determine Petitioner's immigration status or citizenship when determining Medicaid (MA) eligibility and Food Assistance Program (FAP) Eligibility?
2. Did the Department properly remove Petitioner from the FAP group and reduce the FAP benefits based upon her immigration status as a permanent resident alien of less than five (5) years?

FINDINGS OF FACT

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

1. Petitioner was an ongoing recipient of MA and was included in the FAP group.
2. On the date of the Department's determinations regard FAP and MA eligibility, Petitioner was not a United States (U.S.) citizen.

3. Beginning September 17, 2015, Petitioner's **full-coverage MA case** was **converted/approved** for Emergency Services Only (ESO) MA coverage effective October 1, 2015. Exhibit 5.
4. On September 17, 2015, the Petitioner's FAP group benefits were reduced due to the Petitioner not having been a permanent resident in the United States for five (5) years effective October 1, 2015. Exhibit 4.
5. The Petitioner's FAP group consists of two (2) persons and is based on earned income of \$ [REDACTED] monthly; the rent is \$ [REDACTED] and the Petitioner's group has a heat and utility allowance of \$ [REDACTED]. Exhibit 3.
6. The Petitioner has been a Permanent U.S. resident since [REDACTED], although she had been in the U.S. as a student for more than five (5) years. Exhibits 1 and 2.
7. On September 29, 2015, Petitioner requested a timely hearing.

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 Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-119b, and Mich Admin Code, R 400.3001-3011.

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's finding her eligible for ESO instead of full MA coverage. 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 Petitioner credibly testified that she had a U.S. date of entry as of [REDACTED], as permanent residence on her green card. This fact was not disputed by the Department. The Petitioner also had a student visa dated [REDACTED]. Exhibits 1 and 2.

The Department changed Petitioner's MA Healthy Michigan coverage back to ESO beginning October 1, 2015. Exhibit 5. The only issue presented is whether coverage was properly converted back to ESO. The evidence presented by the Department, from its Bridges system and the Petitioner's testimony, established that Petitioner obtained permanent residence with an entry date of [REDACTED]. Exhibit 1. There was no eligible asylum or refugee status identified as evidence presented regarding the permanent residency card. Further, there was no evidence that Petitioner had served in the U.S. military or was the spouse of a service person. Because Petitioner had not been a resident alien for five (5) years, had not served in the U.S. military, and did not have asylum or refugee status, Petitioner was not eligible for full-coverage MA. Therefore, the Department properly converted the Petitioner's MA coverage to ESO coverage effective October 1, 2015. The Petitioner will be potentially eligible after attaining five (5) years as a permanent resident. An individual entering as a student under a student visa does not meet the eligibility requirement for full MA, a non-immigrant alien temporarily in the U.S. for a specific purpose (for example, a student, tourist, etc., does not qualify for full MA but is entitled to ESO, and in this case, is due to permanent residency. BEM 225, p. 9.

An alien limited to emergency services only (ESO) coverage during the five-year bar means the following aliens who entered the U.S. on or after 8/22/96.

A permanent resident alien with class codes other than RE, AM or AS, and an alien paroled under INA section 212(d)(5) for at least one year.

The individual is limited to emergency services only (ESO) Medicaid coverage the first five years in the U.S. BEM 225, p. 37.

In this case, the Petitioner's Resident alien class code is CR6; and thus, the Department correctly found her eligible for ESO only.

As regards FAP benefits, the Department policy provides that for the first five (5) years in the U.S., a resident alien with Petitioner's code of CR 6 is not eligible for FAP until five (5) years permanent residency is completed. BEM 225, p. 32.

The FAP budget was reviewed during the hearing; and all the factual information regarding group size, () income \$, rent \$ and heat and utility allowance \$ was correct. The Department also used an earned income credit of 20% of earned income (\$) which was deducted from the earned income, and Standard deduction of \$ for a group of) was deducted. The budget was correct, and it was determined that the Department properly calculated the FAP benefits; and the reduction in FAP to \$ was correct. Exhibit 3.

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** properly determine Petitioner's immigration status or citizenship when determining MA eligibility and properly also found Petitioner was not eligible based upon her immigration status to receive FAP benefits. The Department also properly reduced the Petitioner FAP benefits as the Petitioner was not eligible to receive FAP, and thus, was properly removed as a group member.

DECISION AND ORDER

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

LMF/jaf



Lynn M. Ferris
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

Petitioner

[REDACTED]

DHHS

[REDACTED]

cc:

[REDACTED]