



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: October 17, 2016
MAHS Docket No.: 16-012746
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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 October 11, 2016, from Lansing, Michigan. Petitioner appeared and represented herself. [REDACTED], Eligibility Specialist (ES) represented the Department of Health and Human Services (Department). [REDACTED], Assistance Payments Supervisor (APS) testified as a witness for the Department.

The Department offered the following exhibits which were admitted into evidence: **[Department Exhibit 1:** Request for Hearing (page 1), Federally Facilitated Marketplace Application Transfer (pages 2-14), Employment Authorization Card (pages 15-16), Notice of Action Petition for Green Card (page 17), Health Care Coverage Determination Notice (page 18-20). Petitioner's proposed exhibits were duplicative and were not admitted into evidence. The record closed at the conclusion of the hearing.

ISSUE

Did the Department properly determine Petitioner's Medical Assistance (MA) or "Medicaid" 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. Petitioner is a citizen of [REDACTED]. [Department's Exhibit 1, pp. 15-16].

2. Petitioner came to the United States in or around 1997. [Petitioner's Hearing Testimony].
3. In or around 1998, Petitioner sought and was provided with a Work Authorization Card from the U.S. Immigration and Naturalization Service (INS). [Pet. Hrg. Testimony].
4. On January 26, 2016, Petitioner submitted an online application seeking health care coverage. On the application, Petitioner indicated, among other things, that she was not a U.S. Citizen, but that she has eligible immigration status. [Dept. Exh. 1, pp. 2-14].
5. On July 28, 2016, the INS renewed Petitioner's Employment Authorization Card. [Exh. 1, pp. 15-16].
6. On August 22, 2016, the Department mailed Petitioner a Health Care Coverage Determination Notice (DHS-1606), which determined, among other things, that Petitioner was eligible for Emergency Services Only (ESO) effective August 1, 2016. [Exh. 1, pp. 18-20].
7. On September 2, 2016, Petitioner requested a hearing indicating that she requested a hearing because she is disabled, she wanted to dispute her MA spenddown for October through December 2015 and she challenges the ESO coverage rather than full MA. [Exh. 1, p. 1].

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 the instant matter, Petitioner provided three reasons in support of her request for a hearing. Each of the three reasons will be analyzed separately below.

Disability

Petitioner, in her request for hearing, declared that she is disabled and needs a second surgery. To the extent that Petitioner requests a hearing concerning disability, the record does not show that she applied for disability benefits nor is there any evidence the Department took any negative action in this regard.

Regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in Mich Admin Code, R 792.10101 to R 792.10137 and R 792.11001 to R 792.11020. Rule 792.11002(1) provides as follows:

An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance is denied or is not acted upon with reasonable promptness, has received notice of a suspension or reduction in benefits, or exclusion from a service program, or has experienced a failure of the agency to take into account the recipient's choice of service.

Because there was no evidence in the record that Petitioner requested assistance due to a disability, that the Department denied her claim for disability assistance related to disability, or that her claim for disability assistance was not acted upon with reasonable promptness, her claim for "disability" should be dismissed for lack of jurisdiction.

MA Deductible or "spend-down"

Petitioner also requests a hearing to challenge the Department's decision to provide her with an MA spend-down or deductible. According to Petitioner's request for hearing, the Department placed her on a deductible or spend-down for October through December 2015 and the worker failed to provide her with coverage. [Dept. Exh. 1, p. 1].

BAM 600 (10-1-2015), page 1, provides that a request for hearing must be received in the Department local office within 90 days of the date of the written notice of case action. Here, Petitioner's request for hearing was received on September 2, 2016, but the Department did not provide her with written notice of case action concerning an MA deductible for October through December 2015 within 90 days. In other words, Petitioner's request for hearing concerning the MA deductible was received well beyond the 90-day deadline to request a hearing.

Emergency Services Only (ESO)

Finally, Petitioner's request for hearing also indicates that she disputes the Department's decision to provide her with ESO rather than full MA coverage. The applicable policy for ESO cases are set forth below.

Department policy requires the Department to determine the alien status of each non-citizen requesting benefits at application, member addition, redetermination and when a change is reported. BEM 225 (10-1-2015), p. 1.

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, p. 2. The alien status of each non-citizen must be verified to be eligible for full MA coverage. BEM 225, p. 2. A person claiming U.S. citizenship is not eligible for ESO coverage. BEM 225, p. 2. U.S. citizenship must be verified with an acceptable document to continue to receive Medicaid. BEM 225, p. 2.

MA coverage is limited to emergency services for any: (1) persons with certain alien statuses or U.S. entry dates as specified in policy; (2) persons refusing to provide citizenship/alien status information on the application; and/or (3) persons unable or refusing to provide satisfactory verification of alien information. BEM 225, p. 3. All other eligibility requirements, including residency, must be met even when MA coverage is limited to emergency services. BEM 225, p. 3.

Persons listed under the program designations in Acceptable Status meet the requirement of citizenship/alien status. Eligibility may depend on whether or not the person meets the definition of Qualified Alien. BEM 225, p. 3. "Qualified alien" means an alien who is lawfully admitted for **permanent residence** under the INA. BEM 225, p. 4 (Emphasis added).

The coverage of a person who is unable to obtain verification of alien status or refuses to cooperate in obtaining it is limited to emergency services until verification is obtained. BEM 225, p. 20.

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. Here, there was no dispute that the Petitioner was not a U.S. citizen. Although Petitioner was present in the U.S. for at least five years at the time of application, the record does not show that she met the definition of a qualified alien under BEM 225. In order to receive full MA, Petitioner must be lawfully admitted to the U.S. for permanent residence under the INA. Here, the record shows that Petitioner had a Work Authorization Card at the time of application, but did not have a permanent resident card or "green card." During the hearing, Petitioner stated that she had applied for a permanent resident card, but that the application was still pending at the time. Based on this evidence, Petitioner does not meet the eligibility requirements for full MA and she is eligible for ESO benefits.

Based on the material, competent, and substantial evidence on the whole record, this Administrative Law Judge finds that the Department acted properly when it found that Petitioner was eligible for ESO rather than full MA.

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.


DECISION AND ORDER

Accordingly, the Administrative Law Judge orders the following:

- For the reasons stated above, Petitioner's request for a hearing concerning disability and to dispute the MA deductible (spend-down) amount is **DISMISSED** due to lack of jurisdiction.
- The Department's decision concerning Petitioner's MA-ESO benefits is **AFFIRMED**.

IT IS SO ORDERED.

CAP/mc



C. Adam Purnell
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]

Petitioner

[REDACTED]