



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

Date Mailed: January 20, 2017
MAHS Docket No.: 16-018817
Agency No.: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 January 18, 2017, from Detroit, Michigan. Petitioner appeared and was unrepresented. [REDACTED], Petitioner's spouse, testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], specialist. [REDACTED] translated for Petitioner and her spouse.

ISSUES

The first issue is whether MDHHS properly determined Petitioner's family's Medical Assistance (MA) eligibility.

The second issue is whether MDHHS properly determined Petitioner's Food Assistance Program (FAP) 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 [REDACTED], Petitioner, her spouse, and 3 children entered the United States based on a student visa.
2. Petitioner and her family were subsequently approved for FAP benefits.
3. Petitioner and her family were subsequently approved for emergency-services-only (ESO) Medicaid.

4. On an unspecified date, while in the United States, Petitioner gave birth to her 4th child.
5. On an unspecified date. Petitioner and her oldest 3 children applied for asylum status.
6. On an unspecified date, Petitioner reported to MDHHS that she, her spouse, and 3 oldest children applied for asylum status.
7. On [REDACTED], MDHHS determined Petitioner's family was eligible to receive \$ [REDACTED] in FAP benefits, effective January 2017, in part, based on a 1-person group.
8. On [REDACTED], Petitioner requested a hearing to dispute FAP eligibility from January 2017 and ongoing ESO restrictions for herself, her spouse, and 3 oldest children.

CONCLUSIONS OF LAW

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. MDHHS (formerly known as the Family Independence Agency) 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), and Reference Tables Manual (RFT).

Petitioner requested a hearing, in part, to dispute a restriction on MA benefits. MDHHS presented a Health Care Coverage Determination Notice (Exhibit 1, pp. 5-8) dated [REDACTED]. The notice stated Petitioner and her spouse were restricted ESO Medicaid. It was not disputed the determination extended to Petitioner's 3 oldest children.

MDHHS presented Employee Authorization Cards (Exhibit 1, p. 9) for Petitioner, her spouse, and three children restricted to ESO coverage. The cards were valid from [REDACTED]. It was noted Petitioner's family arrived to the United States from [REDACTED].

Petitioner testified she and her family arrived on a now-expired student visa. Petitioner testified she has since applied for asylum status in the United States. Petitioner contended her asylum application justifies issuance of unrestricted Medicaid. MDHHS policy states an application for asylum verifies "lawfully residing" in the United States (see *Id.*, p. 25). MDHHS policy does not state that legal residence in the United States justifies issuance of full Medicaid coverage.

Citizenship/alien status is not an eligibility factor for emergency services only (ESO) MA. BEM 225 (October 2016), 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 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, 11-12, 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
- 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

If Petitioner and/or her family were granted asylum status, full Medicaid coverage would be justified. Petitioner testimony conceded her application was still pending. A student is specifically identified as a person not eligible for unrestricted MA coverage (see *Id.*, p. 33). There was no evidence that Petitioner and/or her family met any other criteria justifying issuance of unrestricted Medicaid. It is found MDHHS properly restricted Petitioner's, her spouse's, and her 3 oldest children's MA eligibility to ESO coverage.

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. MDHHS (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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing, in part, to dispute FAP benefits. MDHHS presented a Notice of Case Action (Exhibit 1, pp. 1-4) dated [REDACTED]. The notice stated Petitioner was eligible for \$ [REDACTED] in FAP benefits based on a group size of 1 person. The only dispute concerned FAP benefit group size.

[For FAP benefit eligibility,] a person must be a U.S. citizen or have an acceptable alien status... BEM 225 (October 2016), p. 1. Any of the following persons are considered to have an acceptable alien status (see *Id.* pp. 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

Persons with a class code other than RE, AM or AS who entered the United States after August 22, 1996 may be eligible for FAP benefits if any of the following circumstance are applicable (*Id.*, p. 32.):

- U.S. entry before August 22, 1996
- has 40 countable Social Security credits
- age 65 or older as of August 22, 1996, and was residing in United States on August 22, 1996
- Hmong or Laotian (with other requirements)
- received SSI on August 22, 1996
- currently blind or currently disabled
- under 18 years of age

Petitioner's and her family's status as asylum applicants in the United States based on an expired student visa do not justify FAP eligibility. The only eligible member of Petitioner's FAP benefit group is her child born in the United States. It is found MDHHS properly determined Petitioner's FAP eligibility based on a group size of 1 person.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly determined Petitioner's family's ongoing MA eligibility. It is further found MDHHS properly determined Petitioner's FAP eligibility, effective January 2017. 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]

[REDACTED]

Petitioner

[REDACTED]