



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
Date Mailed: November 25, 2019
MOAHR Docket No.: 19-011545
Agency No.: [REDACTED]
Petitioner: [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; 42 CFR 438.400 to 438.424; 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 November 21, 2019, from Detroit, Michigan. Petitioner appeared for the hearing and was represented. [REDACTED] participated as Petitioner's authorized hearing representative (AHR); additionally, Petitioner's AHR participated as a Bengali translator and witness for Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by Markita Mobley, specialist.

ISSUES

The first issue is whether MDHHS properly denied Petitioner's application for Food Assistance Program (FAP) eligibility.

The second issue is whether MDHHS properly approved Petitioner for Medicaid limited to emergency services.

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] 2015, Petitioner was granted entry into the United States from Bangladesh for being a sibling of a United States citizen.
2. On [REDACTED], 2019, Petitioner applied for FAP and MA benefits.
3. On [REDACTED] 2019, MDHHS denied Petitioner's application for FAP benefits.

4. On an unspecified date, MDHHS approved Petitioner for Medicaid limited to emergency services only (ESO).
5. On [REDACTED], 2019, Petitioner requested a hearing to dispute the denial of FAP eligibility and ESO restriction on Medicaid. Exhibit A, p. 1.

CONCLUSIONS OF LAW

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

Petitioner requested a hearing to dispute a denial of FAP benefits. MDHHS presented a Notice of Case Action dated October 8, 2019 stating that Petitioner's application was denied due to Petitioner not meeting the citizenship/alien status requirements.

For FAP benefits, a person must be a U.S. citizen or have an acceptable alien status. BEM 225 (July 2017), p. 1. Any of the following persons are considered to have an acceptable alien status:

- 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, AM, 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
- Id.* pp. 33-35.

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 for their first five (5) years in the United States if any of the following circumstance are applicable:

- 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)
- currently blind or currently disabled
- under 18 years of age

Id., pp. 33-35.

Petitioner's permanent resident card listed a United States residency begin date of [REDACTED], 2015. Given Petitioner's entry date, Petitioner has not been a U.S. resident for five years. Thus, Petitioner is not eligible for FAP benefits for being a resident for longer than five years.

Petitioner's permanent resident card listed a class code of F41. The code corresponds to U.S. entry for being a sibling of a citizen.¹ The basis for Petitioner's U.S. entry does not qualify her for FAP benefits.

Petitioner's permanent resident card listed [REDACTED] as the country of birth. Petitioner's country of birth is not indicative of FAP eligibility with a U.S. residency of less than five years. The evidence did not suggest that Petitioner meet acceptable alien status requirements to receive FAP benefits.

Given the evidence, Petitioner is not eligible for FAP benefits due to failing to meet citizenship/alien status requirements. Accordingly, the denial of Petitioner's application for FAP benefits was proper.

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

Petitioner also requested a hearing to dispute an ESO restriction to Medicaid eligibility. MDHHS did not present a written notice stating why Petitioner was restricted but credibly testified that the restriction was due to Petitioner not meeting citizenship/alien status requirements.

¹ <https://www.justice.gov/sites/default/files/eoir/legacy/2008/03/26/fr20mr08.pdf>

Citizenship/alien status is not an eligibility factor for emergency services only (ESO) MA. *Id.*, 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, 33-35):

- 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

The above list of methods to qualify for full Medicaid closely resembles the list for qualifying for FAP benefits. As considered in the FAP analysis, Petitioner's residency of less than five years in the United States, basis for U.S. entry, country of birth, and lack of other qualifying circumstances preclude Petitioner's receipt of unrestricted Medicaid.

Petitioner testified that she is a senior and in great need of benefits. Unfortunately for Petitioner, neither age nor need are considered in determining whether an alien meets the citizenship/alien status requirements for Medicaid.

Given the evidence, Petitioner does not meet the citizenship/alien status for full Medicaid. Thus, MDHHS properly determined Petitioner to be eligible for Medicaid-ESO.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly denied Petitioner's application for FAP benefits dated [REDACTED] 2019. It is further found that MDHHS properly restricted Petitioner's Medicaid eligibility to emergency services only. The actions taken by MDHHS are **AFFIRMED**.

CG/cg



Christian Gardocki

Administrative Law Judge
for Robert Gordon, 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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

Via Email:

MDHHS-Oakland-4-Hearings
M. Holden
D. Sweeney
D. Smith
EQAD
BSC4- Hearing Decisions
MOAHR

**Petitioner –
Via First-Class Mail:**

[REDACTED]
[REDACTED]
[REDACTED]

**Authorized Hearing Rep.-
Via First-Class Mail:**

[REDACTED]
[REDACTED]
[REDACTED]