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GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: December 23, 2019
MOAHR Docket No.: 19-012324
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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 December 19, 2019, from Lansing, Michigan. The Petitioner was represented by Petitioner, [REDACTED] and his spouse, [REDACTED]. The Department of Health and Human Services (Department or Respondent) was represented by Natalie McLaurin, Hearings Facilitator.

Respondent's Exhibit A pages 1-33 were admitted as evidence.

ISSUE

Did the Department properly determine that Petitioner was only entitled to receive Medical Assistance (MA) 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], 2019, Petitioner filed an assistance application for himself, his spouse and two children.
2. On November 4, 2019, a Health Care Coverage Determination Notice (DHS-1606) was sent to Petitioner approving his family members for MA emergency services.
3. On November 7, 2019, Petitioner filed a Request for Hearing, asking for more benefits.

4. Petitioner is a citizen of [REDACTED] and does not have American citizenship. He has INS-B-2 immigration status – temporary visitor for pleasure.
5. Petitioner has filed an application for asylum, which has not been currently granted.
6. On November 19, 2019, the Michigan Office of Administrative Hearings and Rules received a copy of the Hearing Summary and attached documents.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a Department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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.

Pertinent Department policy states:

In this item:

- INA refers to the Immigration and Nationality Act.
- USCIS refers to the U.S. Citizenship and Immigration Services, formerly the Bureau of Citizenship and Immigration or Immigration and Naturalization Service.
- SSA refers to the Social Security Administration.

The Department must determine the alien status of each non-citizen requesting benefits at application, member addition, redetermination and when a change is reported. BEM 225, page 1

Citizenship/alien status is not an eligibility factor for emergency services only (ESO) MA. However, the person must meet all other eligibility factors, including residency; see BEM 220.

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.

U.S. citizenship must be verified with an acceptable document to continue to receive Medicaid; see BAM 130.

A person claiming U.S. citizenship is not eligible for ESO coverage.

The alien status of each non-citizen must be verified to be eligible for full MA coverage; see CITIZENSHIP/ALIEN STATUS in this item. BEM 225, page 2 (Emphasis added)

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.

The definition of qualified alien includes specific alien statuses, but not all alien statuses. This definition is used in several of the acceptable alien statuses, in conjunction with other criteria. Not all acceptable alien statuses require that the person be a qualified alien. Qualified alien means an alien who is:

- Lawfully admitted for permanent residence under the INA.
- Granted asylum under Section 208 of the INA.
- A refugee who is admitted to the U.S. under Section 207 of the INA; this includes Iraqi and Afghan special immigrants.
- Paroled into the U.S. under Section 212(d)(5) of the INA for a period of at least one year.
- An alien whose deportation is being withheld under Section 241(b)(3) or 243(h) of the INA.
- Granted conditional entry pursuant to Section 203(a)(7) of the INA.
- A Cuban/Haitian entrant.

- An alien who has been battered or subjected to extreme cruelty in the U.S. by a U.S. citizen or legal permanent resident spouse or parent, or by a member of the spouse's or parent's family living in the same household, or is the parent or child of a battered person. BEM 225, pages 3-4

Petitioner testified that he cannot leave the country, but he cannot work or sustain his family with his current status.

Petitioner's allegation is a compelling equitable argument to be excused for the Department's program policy requirements. However, this Administrative Law Judge has no equity powers. A review of Petitioner's case reveals that the alien/citizenship policy is set by Medicaid eligibility policy and cannot be changed by the Department or this Administrative Law Judge.

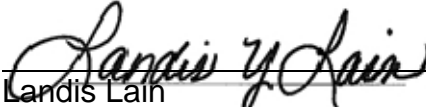
In the instant case, Petitioner arrived in the United States with a B2 immigration status. He has filed for asylum but not yet been granted such asylum status. Thus, he does not have the appropriate status to be eligible for other benefits.

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 has established by the necessary competent, substantial and material evidence on the record that it acted in accordance with Department policy when it determined that Petitioner was only eligible to receive Medical Assistance – Emergency Services only because of his citizenship/alien status. The Department established its case by a preponderance of the evidence.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.

LL/nr



Landis Lain
Administrative Law Judge
for Robert Gordon, Director
Department of Health and Human Services

