



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

ORLENE HAWKS
DIRECTOR

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██████████, MI ██████████

Date Mailed: May 6, 2019
MOAHR Docket No.: 19-003444
Agency No.: ██████████
Petitioner: ██████████

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 May 2, 2019, from Detroit, Michigan. Petitioner appeared but did not testify. During the hearing, Petitioner consented to having her daughter, ██████████ participate as her authorized hearing representative (AHR). The Michigan Department of Health and Human Services (MDHHS) was represented by Dionere Craft, hearing facilitator, and Danielle Chisolm, specialist. ██████████ (no affiliation to Petitioner, MDHHS or an agency) participated as a Bengali-English translator.

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 Medicaid limited to emergency services for Petitioner.

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 ██████████ 2016, Petitioner was granted entry into the United States for being a parent of a United States citizen.
2. On March 18, 2019, Petitioner applied for FAP and MA benefits.

3. On March 26, 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 March 31, 2019, Petitioner requested a hearing to dispute the denial of FAP eligibility and ESO restriction on Medicaid.

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 (Exhibit A, pp. 4-7) dated March 26, 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 (see *Id.* pp. 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, 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

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 (*Id.*, pp. 33-35.):

- 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

Petitioner's permanent resident card listed a United States residency begin date of [REDACTED] 2016. 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 daughter testified that Petitioner was a permanent resident in or near 2005 for approximately 1½ years before leaving the U.S. Petitioner's daughter contended that her mother could qualify for being in the United States for longer than five years if her earlier residency was factored. Petitioner's earliest residency was not verified but for the sake of argument will be accepted as true. First, if a previous residency could be factored, Petitioner's combined total residency would not exceed five years. Secondly, previous residencies are not factored in determining whether someone has been in the United States for five years.

Petitioner's permanent resident card listed a class code of IR0 which is indicative of a person granted entry for being a parent of a United States citizen.¹ Petitioner's daughter's testimony corroborated that her mother was granted U.S. entry for being the parent of a citizen. The basis of Petitioner's entry does not qualify her for FAP benefits.

Petitioner's permanent resident card listed Bangladesh as Petitioner's country of birth. Petitioner's country of birth is not indicative of a basis for which Petitioner could receive FAP benefits despite U.S. residency of less than five years.

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

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

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 a restriction limiting her Medicaid coverage to ESO. MDHHS did not present a written notice stating why Petitioner was restricted but credibly testified that the restriction was due to Petitioner not meeting the citizenship/alien status requirements for unrestricted Medicaid.

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 from receipt of unrestricted Medicaid.

Petitioner's daughter testified that her mother is disabled and elderly.² Neither Petitioner's age nor disability are considered in determining whether Petitioner meets the citizenship/alien status requirements for Medicaid.

² Based on the date of birth from Petitioner's permanent residence card, Petitioner is ■ years old.

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 March 18, 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/jaf



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

DHHS

Keisha Koger-Roper
MDHHS-Wayne-55-Hearings

Petitioner

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M Holden
D Sweeney
D Smith
EQAD