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GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

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Date Mailed: May 4, 2023  
MOAHR Docket No.: 23-001508  
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 hearing was held via telephone conference line on April 20, 2023. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Valarie Foley, hearing facilitator. ██████████, Petitioner's friend, participated as an Arabic-English translator.

**ISSUE**

The issue is whether MDHHS properly determined Petitioner's Medical Assistance (MA) 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 May 11, 2022, Petitioner legally entered the United States from Lebanon under a category code of FX1.
2. On October 27, 2022, MDHHS approved Petitioner for Emergency Services Only (ESO)-MA benefits.
3. On March 17, 2023, Petitioner requested a hearing to dispute the determination of ESO-MA benefits.

## CONCLUSIONS OF LAW

The 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 administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k. MA policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute MA eligibility.<sup>1</sup> Exhibit A, pp. 3-4. A Health Care Coverage Determination Notice dated October 27, 2022, stated that Petitioner was eligible to receive ESO-Medicaid beginning December 2022.<sup>2</sup> Exhibit A, p. 7. Petitioner specifically disputed receiving MA limited to emergency services.

To be eligible for full Medicaid coverage (i.e., unrestricted Medicaid), a person must be a United States citizen or an alien admitted to the U.S. under a specific immigration status. BEM 225 (October 2022) p. 2. Citizenship/alien status is not an eligibility factor for MA-ESO. *Id.* Any of the following persons are considered to have an acceptable citizenship or alien status (*Id.* 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 (5) 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 five (5) years

MDHHS presented a copy of Petitioner's Permanent Resident Card (aka, Green Card). Exhibit A, p. 9. The card listed Petitioner's country of birth as Lebanon, date of U.S.

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<sup>1</sup> Clients have 90 days from the date of written notice to request a hearing (see BAM 600). Arguably, Petitioner's hearing request dated March 17, 2023, was untimely to dispute a written notice dated October 27, 2022. For purposes of this decision, Petitioner's hearing request will be accepted as timely.

<sup>2</sup> The evidence did not establish whether MDHHS's determination was in response to an application by Petitioner or a change in ongoing benefit eligibility.

entry as May 11, 2022, and category code of FX1. Lebanon is not among the countries that qualify Petitioner for unrestricted MA. Petitioner's U.S. entry date within the past five years would not qualify Petitioner for unrestricted Medicaid. A category code of FX1 allows U.S. entry for a spouse of a permanent resident and does not confer an exception to receive unrestricted MA benefits.<sup>3</sup>

A document from a physician stated that Petitioner was pregnant. Exhibit A, p. 6. Pregnancy is not an exception to the citizenship/alien requirements (see BEM 225). For pregnant/recently pregnant women limited to ESO, MDHHS offers prenatal and postpartum outpatient services through Maternity Outpatient Medical Services (MOMS). BEM 657 (July 2016) p. 1. MDHHS credibly testified that Petitioner was advised of the application process to qualify for MOMS. Given the evidence, MDHHS properly determined Petitioner to be eligible for ESO-MA services.

### **DECISION AND ORDER**

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly determined Petitioner to be eligible for ongoing ESO-MA. The actions taken by MDHHS are **AFFIRMED**.

CG/mp

  
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**Christian Gardocki**  
Administrative Law Judge

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<sup>3</sup> <https://www.justice.gov/sites/default/files/eoir/legacy/2008/03/26/fr20mr08.pdf>

**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-Electronic Mail :**

**DHHS**  
MDHHS-Wayne-19-Hearings  
EQAD Hearings  
M. Schaefer  
MOAHR  
BSC4

**Via-First Class Mail :**

**Petitioner**  
[REDACTED]  
[REDACTED]  
[REDACTED] MI [REDACTED]