



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
SUZANNE SONNEBORN  
EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA  
DIRECTOR



Date Mailed: May 10, 2024  
MOAHR Docket No.: 24-003592  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Caralyce M. Lassner**

### **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 by telephone on May 2, 2024. Petitioner was represented by their Authorized Hearing Representative (AHR), [REDACTED] [REDACTED] [REDACTED]. The Department of Health and Human Services (Department) was represented by Dania Ajami, Lead Eligibility Specialist.

### **ISSUE**

Did the Department properly deny Petitioner and his spouse for Food Assistance Program (FAP) benefits?

Did the Department properly determine Petitioner's minor son's eligibility for Medicaid (MA) and when it determined that he was eligible for Emergency Services Only (ESO) coverage?

### **FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioner and his wife, [REDACTED] [REDACTED] (Spouse), are legal permanent residents who entered the United States (US) on or around October 26, 2023. (Exhibit A, p. 10).
2. Petitioner's minor son, [REDACTED] [REDACTED] (FR), is 13 years old and is also a legal permanent resident who entered the US on October 27, 2023. (Exhibit A, p. 9).

3. Petitioner, Spouse, and their minor children, including FR, immigrated from Bangladesh for purposes of joining family in the US.
4. On Thursday, December 28, 2023<sup>1</sup>, the Department received an electronic application for MA and FAP from Petitioner.
5. On February 20, 2024, the Department sent Petitioner a Notice of Case Action (NOCA), denying Petitioner's application for FAP benefits.
6. On February 20, 2024, the Department sent Petitioner a Health Care Coverage Determination Notice (MA notice), approving FR for ESO coverage effective September 1, 2023 through November 30, 2023. (Exhibit A, p. 3).
7. On March 28, 2024, the Department received a request for hearing from Petitioner, disputing denial of his application for FAP benefits.
8. On March 28, 2024, the Department received a request for hearing from Petitioner, disputing the type of MA coverage for FR, specifically asserting that FR should be eligible for full coverage MA. (Exhibit A, p. 3).
9. On April 5, 2024, the Department sent Petitioner a NOCA, approving Petitioner for FAP benefits for a group of three, comprised of his and Spouse's minor children.
10. On April 5, 2024, the Department sent Petitioner a Health Care Coverage Determination Notice (MA notice), approving FR for full coverage MA for the period of September 1, 2023 through April 30, 2024, and ESO coverage effective May 1, 2024 ongoing. (Exhibit A, pp. 17 – 20).

### **CONCLUSIONS OF LAW**

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).

Petitioner requested a hearing regarding denial of his FAP application and denial of full coverage MA for FR.

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<sup>1</sup> Petitioner's application was submitted on Wednesday, [REDACTED] 2023 at 7:01 pm. Applications and other documents submitted to the Department after regular business hours and on holidays are deemed to be received on the next business day. Note, for MA applications submitted to the Department electronically, the date of the application is the submission date regardless of the time received, though the date of Petitioner's MA application is not at issue in this case. BAM 110 (October 2023), p. 6.

## **FAP**

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.

Petitioner requested a hearing regarding denial of his application for FAP. At the hearing, Petitioner's AHR stated that the dispute regarding FAP has been resolved and requested to withdraw the request for hearing on that issue. Therefore, Petitioner's request for hearing regarding his FAP application is dismissed.

The only remaining issue to be decided is whether the Department properly determined FR's eligibility for Medicaid (MA) in determining that he was eligible for ESO coverage only.

## **MA**

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.

To be eligible for full coverage MA, a person must be a US citizen or a non-citizen admitted to the US under a specific immigration status, subject to certain restrictions. BEM 225 (January 2024), pp. 2, 5, 7 – 8. A non-citizen who is

- a) a lawful permanent resident with an I-551<sup>2</sup> class code<sup>3</sup> other than Refugee (RE), Amerasian (AM), or Asylee (AS), or
- b) or a noncitizen paroled into the US for at least one year under the Immigration and Nationality Act (INA), Section 212(d)(5),

and who was admitted to the US on or after August 22, 1996, is eligible for ESO coverage only for the first five years they are in the US, unless the individual is a qualified military non-citizen or the spouse or dependent child of a qualified military non-citizen. BEM 225, pp. 7 – 8. If an individual was granted conditional entry to the US based on their capability to perform qualified skilled labor, they may not be subject to

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<sup>2</sup> An I-551 is the permanent resident card issued, by the US Citizenship and Immigration Services (USCIS), to individuals granted lawful permanent residence status by USCIS.

<sup>3</sup> Class codes are used to describe the visa category used to admit an immigrant to the US as a permanent or temporary resident.

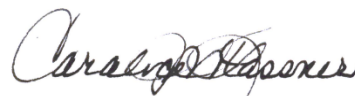
the five year residency restriction for MA. BEM 225, p. 8; see also INA 203(a)(7), 8 USC 1153. Additional circumstances may exist for an exception to the five year residency restriction in the case of cruelty or battery. BEM 225, pp. 8 – 9. A non-citizen who does not meet one of the limited exceptions set forth in BEM 225, is limited to MA ESO coverage only for the first five years they are in the US. BEM 225, pp. 32 – 33.

In this case, both parties agreed that FR is a non-citizen of the US and became legal permanent resident of the US on October 27, 2023, upon immigrating from Bangladesh. The Department testified that FR's class code, as indicated on his I-551, is F43. F43 is the class code for new arrival children of brothers or sisters of US citizens<sup>4</sup>. Petitioner's AHR testified that the purpose of his and his family's, including FR's, immigration to the US was to join family. Petitioner's AHR also testified that FR is a minor and does not have, and did not immigrate to perform, a skilled trade. No evidence was offered that Petitioner or Spouse are qualified military non-citizens. Therefore, because FR has not been a permanent non-citizen resident for five or more years, does not have an eligible class code, is not the dependent child of a qualified military non-citizen or the spouse of a qualified military non-citizen, he is not eligible for full coverage MA at this time. The only MA coverage available to FR at this time is ESO.

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 acted in accordance with Department policy when it processed Petitioner's MA application and determined that FR was eligible only for ESO MA coverage.

### **DECISION AND ORDER**

Accordingly, Petitioner's request for hearing with respect to FAP is **DISMISSED**; and the Department's decision is **AFFIRMED** with respect to FR's MA coverage.



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**Caralyce M. Lassner**  
Administrative Law Judge

CML/nr

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<sup>4</sup> Immigration Classes of Admission, US Department of Homeland Security; <https://www.dhs.gov/ohss/topics/immigration/lpr/classes-of-admission>. Last accessed May 7, 2024.

**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**  
Caryn Jackson  
Wayne-Hamtramck-DHHS  
12140 Joseph Campau  
Hamtramck, MI 48212  
**MDHHS-Wayne-55-  
Hearings@michigan.gov**

**Interested Parties**  
Wayne 55 County DHHS  
BSC4  
M. Holden  
N. Denson-Sogbaka  
B. Cabanaw  
D. Smith  
EQAD  
MOAHR

**Via-First Class Mail :**

**Petitioner**

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

**Authorized Hearing Rep.**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED], NY [REDACTED]