



GRETCHEN WHITMER
GOVERNOR

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

MARLON BROWN
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: June 5, 2024
MOAHR Docket No.: 24-002691
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 7, 2024, from Lansing, Michigan. The Petitioner was represented by Clare DeVeau, Medical Social Worker, Corewell Health Helen Devos Hospital, Authorized Hearing Representative (AHR). [REDACTED], the Petitioner, and [REDACTED] spouse, were present. [REDACTED] Treating Oncologist, Corewell Health Helen Devos Hospital, appeared as a witness for Petitioner. The Department of Health and Human Services (Department) was represented by Angela Drost, Supervisor. Interpreter number 417787 provided interpretation services during the hearing.

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-26 and Petitioner's additional documentation was admitted as Exhibit 1, pp. 1-12.

ISSUE

Did the Department properly determine Petitioner's family's eligibility for Medical Assistance (MA)?

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 February [REDACTED] 2024, an application for MA was filed on Petitioner's behalf requesting MA coverage for Petitioner, his wife, and their child. It was reported that they were not citizens. The field regarding eligible immigration status was not completed. (Exhibit A, pp. 11-20)

2. On February ■ 2024, a Verification Checklist was issued requesting verification of Social Security Numbers with a due date of February 26, 2024. (Exhibit A, pp. 21-22)
3. On February ■ 2024, a Health Care Coverage Determination Notice was issued to Petitioner approving Petitioner and his wife for Emergency Services Only MA (MA-ESO coverage) effective February 1, 2024, and approving their child for MA-ESO coverage effective November 1, 2023. (Exhibit A, pp. 23-26)
4. On March 6, 2024, Petitioner filed a hearing request contesting the Department's determination. (Exhibit A, pp. 4-10)

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).

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.

BEM 225 addresses citizenship/non-citizenship status for MA coverage:

Citizenship/non-citizen 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 a non-citizen 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 status of each non-citizen must be verified to be eligible for full MA coverage; see CITIZENSHIP/NON-CITIZEN STATUS in this item.

A child born to a woman receiving Medicaid is considered a U.S. citizen. No further documentation of the child's citizenship is required.

Exception: RSDI and SSI recipients, Medicare recipients, newborns (BEM 145), safe delivery babies, and children receiving Title IV-B services or Title IV-E adoption assistance or foster care payments are not required to verify U.S. citizenship.

MA coverage is limited to emergency services for any:

- Persons with certain non-citizen statuses or U.S. entry dates as specified in policy; see CITIZENSHIP/NON-CITIZEN STATUS in this item.
- Persons refusing to provide citizenship/non-citizen status information on the application.
- Persons unable or refusing to provide satisfactory verification of non-citizen information.

Note: All other eligibility requirements including residency **must** be met even when MA coverage is limited to emergency services; see BEM 220.

BEM 225, January 1, 2024, pp. 2-3.

CITIZENSHIP/ NON-CITIZEN STATUS

All Programs

Persons listed under the program designations in Acceptable Status meet the requirement of citizenship/non-citizen status. Eligibility may depend on whether or not the person meets the definition of Qualified Non-citizen.

QUALIFIED NON-CITIZEN

All Programs

The definition of qualified non-citizen includes specific non-citizen statuses, but **not** all non-citizen statuses. This definition is used in several of the acceptable non-citizen statuses, in conjunction with other criteria. Not all acceptable non-citizen statuses require that the person be a qualified non-citizen

Qualified non-citizen means a non-citizen 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.
- A non-citizen 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.
- A non-citizen 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, January 1, 2024, pp. 3-4.

ACCEPTABLE STATUS

All Programs

- U.S. citizens (including persons born in Puerto Rico).
- See Exhibit IV, HOW TO BECOME A UNITED STATES CITIZEN, in this item.
- Persons born in Canada who are at least 50 percent American Indian.
- Member of a federally acknowledged American Indian tribe.
- **Qualified military** non-citizen--a qualified non-citizen on active duty in, or veteran honorably discharged from, the U.S. armed forces. Active duty must **not** be for training, such as two weeks of active duty training for National Guard. Discharge must **not** have been due to non-citizen status.
Veteran means a person who either:
 - Served in the active military, naval or air service for the shorter of 24 months of continuous active duty or the full period for which he or she was called to active duty.
 - Died while in the active military, naval or air service.
 - Served in the military forces of the Commonwealth of the Philippines while such forces were in the service of the armed forces of the U.S. during the period from July 26, 1941, through June 30, 1946.
 - Served in the Philippine Scouts under Section 14 of the Armed Forces Voluntary Recruitment Act of 1945.
- A qualified non-citizen spouse and unmarried qualified non-citizen dependent child of a qualified military non-citizen.

Note: Dependent child is a child claimed as a dependent on the qualified military non-citizen's federal tax return and under 18, or under age 22 and a student regularly attending school.

Spouse includes the unremarried surviving spouse of a deceased qualified military non-citizen. The marriage must fulfill one of the following:

- The spouse was married to the veteran for one year or more.
 - A child was born to the spouse and veteran during or before the marriage.
 - The spouse was married to the veteran within the 15-year period following the end of the period of service in which an injury or disease causing the death of the veteran was incurred or aggravated.
- Holder of one of the following immigration statuses:
 - Lawful permanent resident with class code RE, AS, SI or SQ on the I-551 (former refugee or asylee).

Note: For FAP, clients who enter the U.S. with one of the following categories are eligible for the first seven years. If they adjust to another category which requires them to meet the five-year requirement, they are still eligible for the first seven years.
 - Refugee admitted under INA Section 207.
 - Granted asylum under INA Section 208.
 - Cuban/Haitian entrant.
 - Amerasian under P.L. 100-202 (class code AM on the I-551).
 - Victim of trafficking under P.L. 106-386 of 2000; see VICTIMS OF TRAFFICKING in this item.
 - Non-citizen whose deportation (removal) is being withheld under INA Sections 241(b)(3) or 243(h).
 - **For FIP**, eligibility is limited to five years following the date of the withholding order unless the non-citizen is a qualified military non-citizen or the spouse or dependent child of a qualified military non-citizen.

FIP, SDA and MA

- Non-citizen admitted into the U.S. with one of the following immigration statuses:
 - Lawful Permanent Resident with a class code on the I-551 other than RE, AM or AS.
 - Non-citizen paroled into the U.S. for at least one year under INA Section 212(d)(5).

Exception (both statuses above): The eligibility of a non-citizen admitted into the U.S. on or after August 22, 1996, with one of these statuses is restricted as follows unless the non-citizen is a

qualified military non-citizen or the spouse or dependent child of a qualified military non-citizen:

- **For FIP**, an individual is disqualified for the first five years in the U.S.
- **For SDA**, an individual is disqualified.
- **For MA** an individual is limited to emergency services for the first five years in the U.S.
- Non-citizen granted conditional entry under INA section 203(a)(7).
- Lawful Permanent Resident with an I-151, Alien Registration Receipt Card. (not acceptable for MA verification)

FIP, MA and FAP

- An non-citizen who has been battered or subjected to extreme cruelty in the United States or whose child or parent has been battered or subjected to extreme cruelty in the United States.
Exception: The eligibility of a battered alien admitted into the U.S. on or after August 22, 1996, is restricted as follows:
 - **For FIP**, clients are disqualified for the first five years in the U.S.
 - **For MA**, clients are limited to emergency services for the first five years in the U.S.
 - **For FAP**, clients are disqualified unless they meet one of the applicable footnotes listed in Exhibit II-CITIZENSHIP/NON-CITIZEN STATUS TABLE at the end of this item.

A non-citizen is considered a battered alien if all of the following conditions are met:

- The USCIS or the Executive Office of Immigration Review (EOIR) has granted a petition or found that a pending petition sets forth a prima facie case that the non-citizen is eligible for legal permanent resident status (LPR) by way of being one of the following:
 - A spouse or child of a U.S. citizen or LPR.
 - The widow or widower or a U.S. citizen to whom the non-citizen had been married for at least two years before the citizen's death.
 - A battered alien, or the non-citizen parent of a battered child, or the non-citizen child of a battered parent.
- The abuse was committed by the non-citizen's spouse or parent, or by a member of the spouse or parent's family residing in the same household as the non-citizen, and the spouse or parent consented to such battery or cruelty (and if the victim was the non-citizen's child, the non-citizen did not participate in or condone the abuse).
- There is a substantial connection between the battery or extreme cruelty and the need for assistance.

- The battered alien, child or parent no longer lives in the same household as the abuser.

MA

- Non-citizen paroled into the U.S. for less than one year under INA Section 212(d)(5). Coverage is limited to emergency services only.
- Non-immigrant--a non-citizen temporarily in the U.S. for a specific purpose (for example, student, tourist). The non-citizen must not have exceeded the time period authorized by USCIS. For MA, coverage is limited to emergency services only.
- Person who does not meet any of the MA citizenship/non-citizen statuses above--limited to coverage of emergency services only. This includes, for example, undocumented non-citizens and non-immigrants who have stayed beyond the period authorized by USCIS

BEM 225, January 1, 2024, pp. 4-9.

In this case, Petitioner is requesting full MA coverage for his child due to the need for life saving treatment. Petitioner's child has B-Cell Acute Lymphoblastic Leukemia (B-Cell ALL) and is under the care of the pediatric hematology/oncology team at Corewell Health Helen Devos Children's Hospital. Without prompt, appropriate, and uninterrupted chemotherapy treatment B-Cell ALL is 100% fatal. The standard of care chemotherapy treatment that has been started. Petitioner's child has an excellent prognosis and an estimated relapse-free survival of 95-97% with completion of his current treatment regimen. Ongoing treatment would consist of inpatient and outpatient chemotherapy as well as lumbar punctures and bone marrow procedures under sedation over the next 2.5 years. The majority of treatment would involve outpatient therapy and/or administration of chemotherapy by mouth at home. (Exhibit A, pp. 6-7; Exhibit 1, pp. 1-12; Petitioner and Treating Oncologist Testimony).

However, pursuant to the above cited BEM 225 policy, to be eligible for full MA coverage a person must be a U.S. citizen or a non-citizen admitted to the U.S. under a specific immigration status. Petitioner's testimony indicated they do not have any type of legal papers or work permit. Petitioner came to the U.S. two to two and a half years ago with nothing and later called for his family to join him. Petitioner is just seeking help for his son for the needed medical treatment. (Petitioner Testimony).

Petitioner's AHR asserted that there is an exception to the citizenship requirement when there is a need for life saving treatment. However, the AHR was not able to cite any specific law or policy to support the exception. Rather, Petitioner's AHR indicated they

are aware of others that were approved for MA with similar circumstances. (AHR Testimony).

In reviewing the Department policy, no exception to the citizenship requirement was found based on the need for life saving treatment. The only exception found in the BEM 225 policy is for RSDI and SSI recipients, Medicare recipients, newborns (BEM 145), safe delivery babies, and children receiving Title IV-B services or Title IV-E adoption assistance or foster care payments. There was no evidence that Petitioner meets any of the listed exceptions.

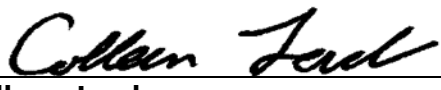
This Administrative Law Judge has no authority to change or make any exceptions to the applicable regulations and policy, including the citizenship/non-citizenship status requirements for full MA coverage. Overall, the evidence establishes that the Department properly determined eligibility for MA for Petitioner's household based upon the available information.

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 determined MA eligibility for Petitioner's household.

DECISION AND ORDER

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

CL/dm



Colleen Lack
Administrative Law Judge

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
Kimberly Kornoelje
Kent County DHHS
MDHHS-Kent-
Hearings@michigan.gov

SchaeferM

EQADHearings

BSC3HearingDecisions

MOAHR

Via-First Class Mail :

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]