

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

FILED

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DEPT OF CHILDREN & FAMILIES

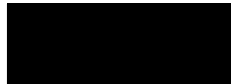


PETITIONER,

Vs.

APPEAL NO. 15F-00058

CASE NO.



FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 17 Broward
UNIT: 88071

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on January 28, 2015 at 1:08 p.m. All parties appeared telephonically from different locations.

APPEARANCES

For the petitioner: [REDACTED] petitioner's daughter.

For the respondent: Tarah Bloomfield, ACCESS Supervisor.

STATEMENT OF ISSUE

At issue is the Department's action to deny the petitioner's application for Medicaid benefits.

PRELIMINARY STATEMENT

The petitioner presented no evidence for the undersigned to consider. The Department presented a total of 19 pages of evidence for the undersigned to consider, of which pages 1,2,3,6,7,17, and 18 were accepted and admitted as Respondent's Composite Exhibit "1". The record was closed.

FINDINGS OF FACT

1. On October 15, 2014, the Department sent a Notice of Cast Action (NOCA) to the petitioner informing her that her application for Medicaid was denied as the household member does not meet citizenship requirements. This resulted from an application she submitted on October 13, 2014. The petitioner timely appealed this action of October 27, 2014. A second NOCA was sent on December 1, 2014 resulting from an application submitted on October 31, 2014 for the same benefit with the same denial reason. She is 72 years old. The petitioner is from Jamaica and became a Lawful Permanent Resident (LPR) on May 9, 2011.

2. The Department denied the petitioner's application for Medicaid, as she has not been a LPR for at least five years. It is a requirement for a person to be a LPR for five years before they are eligible for Medicaid. This hearing was to address Medicaid only.

3. The petitioner's daughter asserts that her mother has gone back and forth between the United States and Jamaica for more than 30 years but never applied to become a LPR. The petitioner now needs a lot of medical care and her daughter is unable to give it to her. She would like for all of the years her mother lived in the United

States counted as time towards her five-year requirement or for her mother not e held to the five-year ban that is written into law.

CONCLUSIONS OF LAW

4. The Department of Children and Families, Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to Fla. Stat § 409.285. This order is the final administrative decision of the Department of Children and Families under Fla. Stat. § 409.285.

5. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056.

6. In accordance with Fla. Admin. Code R. 65-2.060 (1), the burden of proof was assigned to the petitioner.

7. Fla. Admin. Code R. 65A-1.301, Citizenship, states:

(1) The individual whose needs are included must meet the citizenship and noncitizen status established in: P.L. 104-193, The Personal Responsibility and Work Opportunity Reconciliation Act of 1996; P.L. 105-33, the Balanced Budget Act of 1997; P.L. 105-185, the Agricultural Research, Extension, and Education Reform Act of 1998; P.L. 105-306, the Noncitizen Benefit Clarification and Other Technical Amendments Act of 1998; P.L. 109-171, the Deficit Reduction Act of 2005; and, the Immigration and Nationality Act....

(3) The eligibility specialist must verify the immigration status of noncitizens through the United States Citizenship and Immigration Service (USCIS), formerly the United States Bureau of Citizenship and Immigration Services. Verification will be requested electronically using the alien number, or based on a USCIS or prior Immigration and Naturalization Services (INS) document provided by the applicant. The system of verification is known as the Verification Information System-Customer Processing System (VIS-CPS), which is part of the Systematic Alien Verification for Entitlements (SAVE) Program...

8. The Code of Federal Regulations at 42 C.F.R. § 435.406, Citizenship and alienage sets forth:

- (a) The agency must provide Medicaid to otherwise eligible residents of the United States who are—
 - (1) Citizens: (i) Under a declaration required by section 1137(d) of the Act that the individual is a citizen or national of the United States; and
 - (ii) The individual has provided satisfactory documentary evidence of citizenship or national status, as described in § 435.407.
 - (iii) An individual for purposes of the declaration and citizenship documentation requirements discussed in paragraphs (a)(1)(i) and (a)(1)(ii) of this section includes both applicants and beneficiaries under a section 1115 demonstration (including a family planning demonstration project) for which a State receives Federal financial participation in their expenditures, as though the expenditures were for medical assistance.
 - (iv) Individuals must declare their citizenship and the State must document the individual's citizenship in the individual's eligibility file on initial applications and initial redeterminations effective July 1, 2006.
 - (v) The following groups of individuals are exempt from the requirements in paragraph (a)(1)(ii) of this section:
 - (A) Individuals receiving SSI benefits under title XVI of the Act.
 - (B) Individuals entitled to or enrolled in any part of Medicare.
 - (C) Individuals receiving disability insurance benefits under section 223 of the Act or monthly benefits under section 202 of the Act, based on the individual's disability (as defined in section 223(d) of the Act).
 - (D) Individuals who are in foster care and who are assisted under Title IV-B of the Act, and individuals who are beneficiaries of foster care maintenance or adoption assistance payments under Title IV-E of the Act.
 - (2)(i) Except as specified in 8 U.S.C. 1612(b)(1) (permitting States an option with respect to coverage of certain qualified aliens), qualified aliens as described in section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641) (including qualified aliens subject to the 5-year bar) who have provided satisfactory documentary evidence of Qualified Alien status, which status has been verified with the Department of Homeland Security (DHS) under a declaration required by section 1137(d) of the Act that the applicant or beneficiary is an alien in a satisfactory immigration status.
 - (ii) The eligibility of qualified aliens who are subject to the 5-year bar in 8 U.S.C. 1613 is limited to the benefits described in paragraph (b) of this section.
- (b) The agency must provide payment for the services described in § 440.255(c) of this chapter to residents of the State who otherwise meet the eligibility requirements of the State plan (except for receipt of AFDC, SSI, or State Supplementary payments) who are qualified aliens subject to

the 5-year bar or who are non-qualified aliens who meet all Medicaid eligibility criteria, except non-qualified aliens need not present a social security number or document immigration status.

9. The above Code states that qualified non-citizens are subject to a five-year ban on receiving Medicaid unless they met an exception. The petitioner does not meet an exception.

10. The ACCESS Florida Program Policy Manual (The Policy Manual), 165-22, section 1440.0106 addresses Lawful Permanent Resident (MSSI, SFP). It states:

A lawful permanent resident (LPR) is a noncitizen who lawfully immigrates to the U.S. and has permission to live and work in the U.S. LPRs may be eligible for Medicaid based on citizenship if they entered the U.S.:

1. prior to 8/22/96 and have remained continuously present,
2. on or after 8/22/96 under a prior asylee, refugee, Amerasian, deportation withheld, or Cuban/Haitian Entrant status, or
3. on or after 8/22/96 and have lived in the U.S. as a qualified noncitizen for at least five years.

Proof of this status includes:

1. resident alien card, (I-551)(commonly referred to as a "green card");
2. re-entry permit (I-327), or
3. foreign passport with a stamp stating "temporary evidence of lawful permanent resident status".

Note: LPRs who entered after 8/22/96 are subject to the five-year ban, unless otherwise noted. (emphasis added)

LPRs who are in the five-year ban may be eligible for Emergency Medicaid for Aliens, (EMA).

11. The Policy Manual, section 1440.0114 addresses Verification Requirements for Noncitizens (MSSI, SFP). It states, "The eligibility specialist must verify the immigration status of all non-citizens applying for or receiving Medicaid through the U.S. Citizenship and Immigration Services (USCIS). The Verification Information System-Customer Processing System (VIS-CPS) is used to verify the immigration status".

12. According to the above authority and policy, a non-citizen who entered the U.S. after August 22, 1996, must have resided in the United States as a Legal Permanent Residence (LPR) for a period of five years to be eligible for Medicaid benefits. The petitioner resided in the United States as a LPR as of May 9, 2011.

13. Petitioner's daughter argued that she has been residing in the United States for more than five years. Although the petitioner has been in the United States, she must have been a qualified Noncitizen as defined above for Medicaid eligibility. She has not provided proof of her status prior to May 9, 2011; therefore, based on the immigration documentation presented, she is not eligible for Medicaid according to the above authority. The petitioner must meet the five-year requirement, which she will complete as of May 9, 2016.

14. In careful review of the cited authorities and policy, the undersigned concludes the respondent followed the rules and correctly denied Medicaid benefits for the petitioner.

15. The petitioner would be eligible for Emergency Medicaid Assistance for Aliens (EMA) benefits and may apply for that benefit at any time.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is denied and the Department's action is affirmed.

NOTICE OF RIGHT TO APPEAL

This decision is final and binding on the part of the Department. If the petitioner disagrees with this decision, the petitioner may seek a judicial review. To begin the judicial review, the petitioner must file one copy of a "Notice of Appeal" with the Agency Clerk, Office of Legal Services, Bldg. 2, Rm. 204, 1317 Winewood Blvd., Tallahassee, FL 32399-0700. The petitioner must also file another copy of the "Notice of Appeal" with the appropriate District Court of Appeal. The Notices must be filed within thirty (30) days of the date stamped on the first page of the final order. The petitioner must either pay the court fees required by law or seek an order of indigency to waive those fees. The petitioner is responsible for any financial obligations incurred as the Department has no funds to assist in this review.

DONE and ORDERED this 19th day of March, 2015,

in Tallahassee, Florida.



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Copies Furnished To: [REDACTED] Petitioner
Office of Economic Self Sufficiency