

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

FILED

APR 17 2015

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES

APPEAL NOS. 15F-1725
15F-1726

PETITIONER,

Vs.

CASE NO. [REDACTED]

FLORIDA DEPT OF
CHILDREN AND FAMILIES
CIRCUIT: 11 Dade
UNIT: 88601

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on March 20th, 2015 at 10:30 a.m.

APPEARANCES

For the petitioner: [REDACTED] pro se.

For the respondent: Carlos Yulee, Economic Self-Sufficiency Specialist II for the Economic Self-Sufficiency (ESS) Program

STATEMENT OF ISSUE

The petitioner is appealing the respondent's action to deny his application for Food Assistance (15F-1725). The petitioner is also appealing the respondent's action to deny his application for Medicaid (15F-1726). The petitioner carries the burden of proof in both appeals.

PRELIMINARY STATEMENT

Appearing as a witness for the petitioner was his wife, [REDACTED]

Appearing as a non-participating observer was Eduardo Villoch, Supervisor for ESS.

Serving as a translator was Eduardo Del Rey with ESS.

Petitioner's Exhibits 1-4 were moved into evidence. Respondent's Exhibits 1 and composite 2 were moved into evidence.

By way of a Notice of Case Action (Spanish version) dated January 27th, 2015, the respondent informed the petitioner that his FA application of January 22nd, 2015 was denied. The reason given on the notice is that "No members of the household meet the requirements for the program." The same notice informed the petitioner that his Medicaid application of January 22nd, 2015 was also denied. The reason given on the notice is that "No members of the household meet the requirements for this program. On February 16th, 2015, the petitioner filed a timely appeal to challenge these actions.

FINDINGS OF FACT

1. The petitioner applied for benefits for himself and his wife on January 22nd, 2015. A copy of the application was not submitted into evidence; however, this is not in dispute. As part of the application process, the respondent is required to explore and verify all factors of eligibility which include, but are not limited to, non-citizen status.

2. The petitioner (age 59) and his wife (age 56) reside together as a single household. Neither the petitioner nor his wife is disabled.

3. The respondent submitted into evidence as part of its composite exhibit 2 screen prints from the Department's System Alien for Entitlements (SAVE). This system is used by the respondent to verify an applicant's non-citizen status with the Department of Homeland Security. The screen prints reflect that both the petitioner and his wife entered the United States on May 19th, 2014 with "Lawful Permanent Resident-Employment Authorized" status. The SAVE screen prints also indicate that the petitioner and his wife were assigned Class of Admission (COA) code of IR-5, which signifies "parent of a US Citizen, new arrival".

4. Upon further exploration, the respondent ascertained that the petitioner and his wife entered the United States under the sponsorship of their adult son. The respondent's position is that due to the sponsorship of their son, the petitioner and his wife are ineligible for FA for the first five years of their residence in the United States.

5. The petitioner acknowledged that he and his wife are under the sponsorship of their son. He acknowledged that the respondent's policy of their five-year ban from receiving FA was explained to them, and that they understood. The petitioner asserts, however, that when they first entered the United States, they went to reside with their son and his wife. However, soon thereafter, their son and his wife separated, and their son moved out. It was not possible for the petitioner and his wife to stay with their soon-to-be ex-daughter-in-law, and they were forced to move on their own. The petitioner explained that their son now has added expenses brought on by his new situation and can no longer bear the financial burden of sponsoring his parents. The petitioner stated that he understands that he and his wife are not eligible, but he contends that under

these circumstances, an exception needs to be granted to the policy and that benefits should be authorized, if only for a short term while the petitioner and his wife work toward a more stable situation.

PRINCIPLES OF LAW

6. Federal Food Assistance Regulations at 7 C.F.R. §273.4, Citizenship and alien status, states in relevant part:

(a) Household members meeting citizenship or alien status requirements. No person is eligible to participate in the Program unless that person is:

(1) A U.S. citizen;...

(2) A U.S. non-citizen national

(5) An individual who is both a qualified alien as defined in paragraph (a)(5)(i) of this section and an eligible alien as defined in paragraph (a)(5)(ii) of this section.

(i) A qualified alien is:

(A) An alien who is lawfully admitted for permanent residence under the INA;

(B) An alien who is granted asylum under section 208 of the INA;

(C) A refugee who is admitted to the United States under section 207 of the INA;

(D) An alien who is paroled into the U.S. under section 212(d)(5) of the INA for a period of at least 1 year;

(E) An alien whose deportation is being withheld under section 243(h) of the INA as in effect prior to April 1, 1997, or whose removal is withheld under section 241(b)(3) of the INA;

(F) an alien who is granted conditional entry pursuant to section 203(a)(7) of the INA as in effect prior to April 1, 1980;

(G) an alien who has been battered or subjected to extreme cruelty in the U.S. by a spouse...

(H) an alien who is a Cuban or Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980.

(ii) A qualified alien, as defined in paragraph (a)(5)(i) of this section, *must* a/so be at least one of the following to be eligible to receive food stamps:

(A) An alien lawfully admitted for permanent residence under the INA who has 40 qualifying quarters as determined under title II of the Social Security Act, including qualifying quarters of work not covered by Title II of the Social Security Act, based on the sum of: quarters the alien worked; quarters credited from the work of a parent of the alien before the alien became 18 (including quarters worked before the alien was born or adopted); and quarters credited from the work of a spouse of the alien during their marriage if they are still married or the spouse is deceased. ...

(2) After December 31, 1996, a quarter in which the alien actually received any Federal means-tested public benefit, as defined by the agency providing the benefit, or actually received food stamps is not creditable toward the 40-quarter total. Likewise, a parent's or spouse's quarter is not creditable if the parent or spouse actually received any Federal means-tested public benefit or actually received food stamps in that quarter. ...

(B) An alien admitted as a refugee under section 207 of the INA. ...

(C) An alien granted asylum under section 208 of the INA. ...

(D) An alien whose deportation is withheld under section 243(h) of the INA as in effect prior to April 1, 1997, or whose removal is withheld under section 241(b)(3) or the INA. ...

(E) An alien granted status as a Cuban or Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980). ...

(iii) Each category of eligible alien status stands alone for purposes of determining eligibility. Subsequent adjustment to a more limited status does not override eligibility based on an earlier less rigorous status. Likewise, if eligibility expires under one eligible status, the State agency must determine if eligibility exists under another status.

(6) For purposes of determining eligible alien status in accordance with paragraphs (a)(4) and (a)(5)(ii)(H) through (a)(5)(ii)(J) of this section "lawfully residing in the U.S." means that the alien is lawfully present as defined at 8 CFR 103.12(a).

(b)(2) When a household indicates inability or unwillingness to provide documentation of alien status for any household member, the State agency must classify that member as an ineligible alien. When a person indicates inability or unwillingness to provide documentation of alien status, the State agency must classify that person as an ineligible alien. In such cases the State agency must not continue efforts to obtain that documentation.

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7. Fla. Admin. Code 65A-1.301(1) refers to Citizenship and states in part:

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...

8. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996,

Section 403 [8 U.S.C. 1613] states in part:

(a) In General.—Notwithstanding any other provision of law and except as provided in subsections (b), (c), and (d) of this section, an alien who is a qualified alien (as defined in section 1641 of this title) and who enters the United States on or after August 22, 1996, is not eligible for any Federal means-tested public benefit for a period of 5 years beginning on the date of the alien's entry into the United States with a status within the meaning of the term "qualified alien".

(b) Exceptions.—The limitation under subsection (a) of this section shall not apply to the following aliens:

(1) Exception for refugees and asylees.—

(A) An alien who is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act [8 U.S.C. 1157].

(B) An alien who is granted asylum under section 208 of such Act [8 U.S.C. 1158].

(C) An alien whose deportation is being withheld under section 243(h)...

(D) An alien who is a Cuban and Haitian entrant as defined in section 501(e) of the Refugee Education Assistance Act of 1980.

9. In the Food Stamp Program, in accordance with the Public Assistance Policy

Manual at 1410.0105 and 1410.0106:

Qualified noncitizens are defined as noncitizens who meet at least one of the following sections of the Immigration and Nationality Act (INA).

Lawful Permanent Resident (LPR):

A 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 food stamps 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. Entered the U.S. on or after 8/22/96 and have lived in the U.S. as a qualified noncitizen for at least five years *or* if they can be credited with 40 quarters of work. Quarters are the basic unit used by the Social Security Administration to determine an individual's coverage status for benefits. The term "calendar quarter" refers to a period of three calendar months ending on March 31, June 30, September 30, or December 31. An individual may accumulate quarters by earning at least a certain amount of income for a calendar quarter or earning at least a designated amount of money during the calendar year. At no time may an individual earn more than four qualifying quarters in one calendar year. Quarters of coverage are based on wages or self-employment income, which require the payment of Social Security taxes.

Individuals may be credited with qualifying quarters from the following sources:

1. individual's work history;
2. quarters earned by a spouse during the period of the legal marriage, unless the marriage ends in divorce;
3. unremarried surviving spouses may count quarters earned during the period of their legal marriage; and
4. quarters earned by parents (biological and adoptive) while the individual was under 18 years of age and unmarried (include quarters earned by the parents prior to the individual's birth.)

10. The Florida Administrative Code, Section 65A-1.710 et seq., sets forth the rules of eligibility for Elderly and Disabled Individuals Who Have Income of Less Than the Federal Poverty Level. For an individual who does not have custody of minor children, is not pregnant, and is less than 65 years of age, to receive benefits he or she

must meet the disability criteria of Title XVI of the Social Security Act appearing in 20 C.F.R. §416.905. The regulations state, in part:

The law defines disability as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. To meet this definition, you must have a severe impairment which makes you unable to do your previous work or any other substantial gainful activity which exists in the national economy...

ANALYSIS

The hearing officer will first address the petitioner's eligibility for Food Assistance.

11. The above-cited guidelines state that an individual who enters the United States as a Lawful Permanent resident is ineligible for Food Assistance for a period of five years unless that person can be credited with 40 quarters (10 years) of work. The guidelines also explain in detail that the 40 quarters of work can be credited by the individual's own work history, that of one's spouse, or in the case of an individual under 18 years of age, that of one's parents.

12. Based on a review of the evidence and the above-cited guidelines, the hearing officer concludes that neither the petitioner nor his wife can be credited with 40 quarters of work because they have not resided in the United States for that period of time.

13. As established in the Findings of Fact, the petitioner stated that he understands that he and his wife are ineligible for Food Assistance but is seeking an exception, if only for a short term, based on his current circumstances. However, the hearing officer must follow all applicable regulations, and does not have the authority to

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arbitrarily grant an exception based on an individual's circumstances. Based on the above-cited regulations, the hearing officer concludes that the petitioner is not eligible for Food Assistance for a period of five years, due to his immigration status, beginning May 9th, 2014 (the date he entered the United States), and ending on May 9th, 2019.

The hearing officer will now address the petitioner's eligibility for Medicaid.

14. The above-cited regulations state that in order for individuals who are under the age of 65 years, not pregnant, and who do not have parental responsibility for minor children to qualify for Medicaid must meet the disability criteria of Title XVI of the Social Security Act. As the petitioner and his wife are both under the age of 65, they must both meet one of these criteria in order to qualify for Medicaid. As no claim of disability was made at the hearing, the hearing officer concludes that neither the petitioner nor his wife is eligible for Medicaid. Therefore, the respondent's action to deny this benefit is affirmed.

DECISION

Based on the foregoing Findings of Fact and Principles of Law, both appeals are DENIED and the respondent'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

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petitioner is responsible for any financial obligations incurred as the Department has no funds to assist in this review.

DONE and ORDERED this 17th day of April, 2015,

in Tallahassee, Florida.


Justin Enfinger
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