

FILED

Dec 29, 2015

Office of Appeal Hearings
Dept. of Children and Families

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



APPEAL NO. 15F-08895

PETITIONER,
Vs.

CASE NO. 

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 09 Osceola
UNIT: 88999

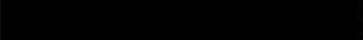
RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on December 2, 2015 at 1:41 p.m. All parties appeared in different locations by phone.

APPEARANCES

For Petitioner:  petitioner's daughter

For Respondent: Nydia Galarza, ACCESS Supervisor

STATEMENT OF ISSUE

At issue is the Department's action to deny the petitioner's application for Medicaid. The petitioner is asserting the affirmative and bears the burden of proving her case by a preponderance of the evidence.

PRELIMINARY STATEMENT

The respondent submitted six (6) exhibits that were accepted into evidence and marked as Respondent's Exhibits "1" through "6" respectively. The record was held open until the close of business on December 4, 2015 for the petitioner and the respondent to supplement the record. The petitioner timely provided the additional documentation, which was accepted into evidence and marked as Petitioner's Exhibits "1" through "3". The respondent also timely provided the additional documentation, which was accepted into evidence and marked as Respondent's Exhibits "7". The record closed on December 4, 2015.

FINDINGS OF FACT

1. On September 24, 2015, the petitioner submitted an electronic application for Food Assistance, Cash Assistance and Medicaid benefits.
2. The petitioner is 88 years old.
3. The petitioner is from the country of [REDACTED]. The petitioner first became a Lawful Permanent Resident (LPR) in 1977. The petitioner then returned to [REDACTED] in 1986. In 1988, the petitioner returned to the United States and then back to [REDACTED]. The LPR status remained current until mid-1989 when it expired. The petitioner remained in [REDACTED] until 2015 when she returned to the United States and regained her LPR status effective September 1, 2015.
4. The Department provided a document from the Department of Homeland Security that confirmed the petitioner's date of entry as September 1, 2015 and her status as an LPR.

5. The Department indicates that even though the petitioner had been in the United States prior to August 22, 1996, she did not remain continuously in the United States. Additionally, since her current LPR status is effective September 1, 2015, which is later than the date of August 22, 1996, the petitioner's LPR status must be at least five years from the status date of September 1, 2015, in order to be potentially eligible for Medicaid.

6. On September 28, 2015, the Department mailed a Notice of Case Action denying the petitioner's application for Medicaid with the reason, "(n)o household member meets the requirements for this program."

7. The petitioner's daughter asserts that her mother has gone back and forth between the United States and [REDACTED] due to medical issues. The petitioner needs medical care and her daughter is unable to provide her assistance with her healthcare but she provides for all of her mother's other needs.

CONCLUSIONS OF LAW

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

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

10. Fla. Admin. Code R. 65A-1.301, Citizenship, states in part:

(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...

11. 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.

12. The Department's Program Policy Manual, CFOP 165-22 (Policy Manual), passage 1440.0106, Lawful Permanent Resident (MSSI), states in part:

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,

...

3. on or after 8/22/96 and have lived in the U.S. as a qualified noncitizen for at least five years.

...

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

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

13. The Policy Manual, at passage 1440.0114 addresses Verification Requirements for Noncitizens (MSSI, SFP) states, "(t)he 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)."

14. 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 September 1, 2015.

15. Though the petitioner had a prior LPR status before August 22, 1996, she did not remain continuously in the United States.

16. Based on the immigration documentation presented, the petitioner is not eligible for Medicaid according to the above authority. The petitioner must meet the five-year requirement, which she will complete as of September 1, 2020.

17. 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.

18. 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

FINAL ORDER (Cont.)

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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 29 day of December, 2015,

in Tallahassee, Florida.



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