



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

BCS/170936

PRELIMINARY RECITALS

Pursuant to a petition filed December 22, 2015, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on January 26, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services (the agency) correctly ended BadgerCare+ benefits for Petitioner's wife, effective February 1, 2016.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [Redacted] HSPC, Sr.
Milwaukee Enrollment Services
1220 W. Vliet St., Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County.
2. Petitioner's wife was born in Israel, but in 1999, at the age of five, she immigrated to the United States with her parents and entered the United States under a Visa. She has lived in the United States since that time. (Testimony of Petitioner; Exhibits 3 and 4)

3. The Petitioner and his wife were married in 2013. As of October 9, 2013, the United States issued the Petitioner's wife a permanent resident card. She has not yet become a U.S. citizen. (Testimony of Petitioner; Exhibit 6)
4. On November 20, 2015, the Petitioner or his wife contacted the agency to report the birth of their third child. (Exhibit 7, pg. 3)
5. On November 25, 2015, the agency sent the Petitioner a notice indicating that as of January 1, 2016, he would not be enrolled in BadgerCare+ because his income was over the program limit. (Exhibit 7, pgs. 14-20)
6. On December 22, 2015, the agency sent the Petitioner a notice indicating that as of January 1, 2016, he and his three children would, in fact, be enrolled in BadgerCare+, but that his wife would not be enrolled as of February 1, 2016, because she was no longer pregnant and it had been more than 60 days since her pregnancy ended. (Exhibit 8, pgs. 28-33)
7. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on December 22, 2015. (Exhibit 1)
8. On December 23, 2015, the agency sent the Petitioner another notice, indicating that as of February 1, 2016, his wife would not be enrolled in BadgerCare+ because she was not a U.S. citizen or qualified immigrant. (Exhibit 8, pgs. 34-40)

DISCUSSION

The criteria that an immigrant must meet to receive BadgerCare+ benefits, are different than the eligibility criteria for the FoodShare program.

BadgerCare+ Eligibility Handbook (BEH) §4.3 lists the types of immigrants who are eligible for BadgerCare+ benefits. The most relevant category to this appeal is found in paragraph 6, which states that a person who is lawfully admitted for permanent residence under the INA (Immigration and Nationality Act) 8 USC 1101 et seq., may be eligible for benefits. BEH §4.3 goes on to state:

*If these immigrants lawfully entered the U.S. on or after August 22, 1996, they must also be one of the following:

- a. Lawfully residing in Wisconsin and an honorably discharged veteran of the U.S. Armed Forces, or
- b. Lawfully residing in Wisconsin and on active duty (other than active duty for training) in the U.S. Armed Forces, or
- c. Lawfully residing in Wisconsin and the spouse, unmarried dependent child, or surviving spouse of a person described in "a" or "b" or
- d. An Amerasian, or
- e. Resided in the U.S. for at least five years since his or her date of entry. See 4.3.3 Continuous Presence

... Pregnant women who are...lawfully admitted for Permanent Residence...no longer have to wait 5 years to be eligible for full benefit Medicaid and BadgerCare Plus...Women have the 5-year ban lifted when their pregnancy is verified and continues for an additional 60-days after the last day of pregnancy and through the end of the month in which the 60th day occurs." *Id*

The Petitioner's wife emigrated from Israel and has been living in United States since 1999. She initially entered and remained in the U.S. under a visa. In October 2013, the United States issued a permanent resident card to Petitioner's wife.

Petitioner's wife was previously eligible for BadgerCare+ benefits, because she had been admitted for permanent residency and she became pregnant. Their child was born in November 2015, so the 60th day after the pregnancy ended would have fallen in January 2016. As such, the agency ended benefits for Petitioner's wife, effective February 1, 2016.

The agency contends that once her pregnancy ended, Petitioner's wife was no longer eligible for benefits, because under BEH §4.3.4, immigrants admitted for permanent residence, are not eligible for benefits, unless they have resided in the U.S. for five years.

Petitioner argues that his wife has met the five year residency requirement, because she has been in the United States for 17 years, since 1999.

The question that must be answered here is whether the required five year period of residency begins when Petitioner's wife first entered the country in 1999, or when she obtained qualified immigrant status in October 2013.

Under BEH §4.3, above, the immigrant must have, "resided in the U.S. for at least five years since his or her date of entry." *Emphasis added.*

However, the "date of entry" language in BEH §4.3 is in conflict with BEH §4.3.3, paragraph 3., which states, "for those non-citizens who arrived in the U.S. with or without documentation on or after August 22, 1996 or those for who continuous presence cannot be verified, the five year ban applies from the date the individual obtained qualified immigrant status." *Emphasis added*

Since BadgerCare+ is a Medicaid waiver / Medicaid subprogram for low income individuals, and because Medicaid is a Federally funded program, one must turn to the Federal Regulations for clarification.

Under 42 CFR §435.406(a)(2), "The [state] agency must provide Medicaid to otherwise eligible residents of the United States who are – 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..."

8 U.S.C. §1641(b) defines "qualified alien" as "an alien who, at the time the alien applies for, receives, or attempts to receive a Federal public benefit, is—

- (1) an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.],
- (2) an alien who is granted asylum under section 208 of such Act [8 U.S.C. 1158],
- (3) a refugee who is admitted to the United States under section 207 of such Act [8 U.S.C. 1157],
- (4) an alien who is paroled into the United States under section 212(d)(5) of such Act [8 U.S.C. 1182(d)(5)] for a period of at least 1 year,

- (5) an alien whose deportation is being withheld under section 243(h) of such Act [8 U.S.C. 1253] (as in effect immediately before the effective date of section 307 of division C of Public Law 104–208) or section 241(b)(3) of such Act [8 U.S.C. 1231(b)(3)] (as amended by section 305(a) of division C of Public Law 104–208),
- (6) an alien who is granted conditional entry pursuant to section 203(a)(7) of such Act [8 U.S.C. 1153(a)(7)] as in effect prior to April 1, 1980; [1] or
- (7) an alien who is a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980).

Under 8 U.S.C. §1613(a), a qualified alien, "...is not eligible for any Federal means-tested public benefits 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'." Thus, the five-year clock begins to run on the date the alien/immigrant is both in the United States and has obtained qualified alien status.¹

Petitioner's wife was not in the United States with a Permanent Resident status until October 2013. As such, she has not met the 5 year residency requirement and is, therefore, ineligible for BadgerCare+ benefits.

CONCLUSIONS OF LAW

The agency correctly ended BadgerCare+ benefits for Petitioner's wife, effective February 1, 2016.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in

¹ See also <https://www.healthcare.gov/immigrants/lawfully-present-immigrants/> and,

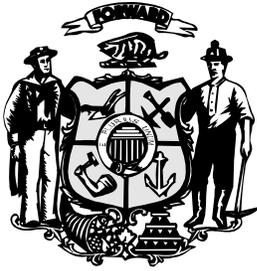
<https://www.medicaid.gov/medicaid-chip-program-information/by-topics/outreach-and-enrollment/downloads/overview-of-eligibility-for-non-citizens-in-medicaid-and-chip.pdf>

this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 4th day of February, 2016

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 4, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability