



**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

BCS/156993

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 21, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Outagamie County Department of Human Services in regard to Medical Assistance, a hearing was held on May 28, 2014, at Appleton, Wisconsin.

The issue for determination is whether the respondent correctly denied Medical Assistance enrollment to petitioner.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Vicki Schrimpf

Outagamie County Department of Human Services  
401 S. Elm Street  
Appleton, WI 54911-5985

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Outagamie County.
2. On or about March 10, 2014, the petitioner filed an application for Medical Assistance benefits.

3. The respondent denied the application from May, 2014, and on-going, because petitioner does not meet the 5-year residency requirement.
4. Petitioner spent seven years in Iraq with the U.S. military working as a combat translator.

### **DISCUSSION**

As a nonfinancial condition of MA eligibility, a person must be either a U.S. citizen or a lawfully admitted alien who falls into one of several precise categories. See, *Medicaid Eligibility Handbook*, §7.3.1, et. seq.; and see, 8 U.S.C. 1613(a). The *Handbook* provides the following lengthy guidance with respect to alien eligibility:

#### **7.3.1 Immigrants Introduction**

Immigrants are persons who reside in the U.S., but are not U.S. citizens or nationals. The immigrants described below, who apply for Medicaid and meet all eligibility requirements, are entitled to receive Medicaid benefits.

1. A refugee admitted under Immigration & Nationality Act (INA) Section 207.

A refugee is a person who flees his/her country due to persecution or a well-founded fear of persecution because of race, religion, nationality, political opinion, or membership in a social group.

An immigrant admitted under this refugee status may be eligible for Medicaid even if his/her immigration status later changes.

2. An asylee admitted under INA Section 208.

Similar to a refugee, this is a person who seeks asylum and is already present in the U.S. when s/he requests permission to stay.

An immigrant admitted under this asylee status may be eligible for Medicaid even if his/her immigration status later changes.

3. An immigrant whose deportation is withheld under INA Section 243(h) and such status was granted prior to April 1, 1997, or an immigrant whose removal is withheld under INA Section 241(b)(3) on or after April 1, 1997.

An immigrant admitted under this status may be eligible for Medicaid even if his/her immigration status later changes.

4. A Cuban/Haitian entrant.

An immigrant admitted under this Cuban/Haitian entrant status may be eligible for Medicaid even if his/her immigration status later changes.

5. An American Indian born in Canada who is at least 50% American Indian by blood, or an American Indian born outside the U.S. who is a member of a Federally recognized Indian tribe.

6. Victims of a severe form of trafficking in accordance with 107(b)(1) of the Trafficking Victims Protection Act of 2000 (P.L. 106-386).

7. Lawfully admitted for permanent residence under the INA.
8. Paroled into the U.S. under INA Section 212(d)(5).
9. Granted conditional entry under immigration law in effect before April 1, 1980 [INA Section 203(a)(7)]
10. An immigrant who has been battered or subjected to extreme cruelty in the U.S. and meets certain other requirements.
11. An immigrant whose child has been battered or subjected to extreme cruelty in the U.S. and meets certain other requirements.
12. An immigrant child who resides with a parent who has been battered or subjected to extreme cruelty in the U.S. and meets certain other requirements.

### **7.3.1.1 Special Provisions for Immigrants in items 7-12**

\*\*If these immigrants (from items 7-12) 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/her date of entry.

Beginning, October 1, 2009, children under the age of 19 and pregnant women who are either:

1. Lawfully Admitted for Permanent Residence (CARES TCTZ Code #1 in the Immigration Status Chart below),
2. Lawfully present under Section 203(a)(7) (Code #3 in the Immigration Status Chart below),
3. Lawfully present under Section 212(d)(5) (Code #6 in the Immigration Status Chart below), **or**
4. Who suffer from domestic abuse and are considered to be a battered immigrant (Code #16 in the Immigration Status Chart below),

no longer have to wait 5 years to be eligible for full benefit Medicaid and BadgerCare Plus. This policy applies to both persons in existing open cases and new applicants. 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.

Immigrants, who do not appear in the lists above, who apply for Medicaid and meet all eligibility requirements except for citizenship are entitled to receive Medicaid Emergency Services only (See the BC+ Handbook).

Pregnant immigrants who do not appear in the list above, who apply for the BadgerCare Plus Prenatal Program (BC+PP) (See the BC+ Handbook) and who meet the eligibility requirements except for citizenship are entitled to receive those benefits.

Immigration status is an individual eligibility requirement. It does not affect the eligibility of the Medicaid Group. The citizen spouse or child of an ineligible immigrant may still be eligible even though the immigrant is not.

Verify immigration status using the procedures in the SAVE Manual.

### **7.3.2 Public Charge**

The receipt of Medicaid by an undocumented, non-qualifying, or qualifying immigrant or by the children or spouse for whom the individual is legally responsible does not establish the person as a public charge.

Undocumented, non-qualifying, or qualifying immigrants are considered to be a public charge if while receiving Medicaid, s/he is in a medical institution for more than the length of a rehabilitative stay.

Undocumented, non-qualifying, or qualifying immigrants concerned about being considered a "public charge", should be directed to contact the INS field office to seek clarification of the difference between rehabilitative and other types of institutional stays.

### **7.3.3 INS Reporting**

Do not refer an immigrant to Immigration and Naturalization Service (INS) unless information for administering the Medicaid program is needed. For example, if Medicaid needs to determine an individual's location for repayment or fraud prosecution, or to determine his/her immigration status.

### **7.3.4 Immigration Status Chart**

<b>CARES TCTZ Code</b>	<b>Alien Status</b>	<b>Arrived Before 08/22/96</b>	<b>Veteran*/ Amerasian Arrived before 8-22-96</b>	<b>Arrived on or after 8-22-96</b>	<b>Veteran*/ Amerasian Arrived on or after 8-22-96</b>	<b>Children under 19 and pregnant women</b>
01	Lawfully admitted for permanent residence	Eligible	Eligible	Ineligible for 5 years	Eligible	Eligible effective 10-01-09
02	Permanent resident under color of law (PRUCOL)	Ineligible	Ineligible	Ineligible	Ineligible	Ineligible
03	Lawfully present under Section 203(a)(7)	Eligible	Eligible	Ineligible for 5 years	Eligible	Eligible effective 10-01-09
04	Lawfully present under Section 207(c)	Eligible	Eligible	Eligible	Eligible	Eligible
05	Lawfully present under Section 208	Eligible	Eligible	Eligible	Eligible	Eligible
06	Lawfully present under Section 212(d)(5)	Eligible	Eligible	Ineligible for 5 years	Ineligible for 5 years	Eligible effective 10-01-09
07	IRCA (No longer valid)	N/A	N/A	N/A	N/A	N/A
08	Lawfully admitted -	Ineligible	Ineligible	Ineligible	Ineligible	Ineligible

	temporary					
09	Undocumented Alien	Ineligible	Ineligible	Ineligible	Ineligible	Ineligible
10	Illegal Alien	Ineligible	Ineligible	Ineligible	Ineligible	Ineligible
11	Cuban/Haitian Entrant	Eligible	Eligible	Eligible	Eligible	Eligible
12	Permanent Resident	Ineligible	Ineligible	Ineligible	Ineligible	Ineligible
13	Special agricultural worker under Section 210(A)	Ineligible	Ineligible	Ineligible	Ineligible	Eligible
14	Additional special agricultural worker under Section 210(A)	Ineligible	Ineligible	Ineligible	Ineligible	Eligible
15	Withheld deportation - Section 243(h)	Eligible	Eligible	Eligible	Eligible	Eligible
16	Battered Alien	Eligible	Eligible	Ineligible for 5 years	Ineligible for 5 years	Eligible effective 10-01-09
17	Amerasian	Eligible	Eligible	Eligible	Eligible	Eligible
18	Foreign-born American Indian	Eligible	Eligible	Eligible	Eligible	Eligible
19	Victims of Trafficking	Eligible	Eligible	Eligible	Eligible	Eligible
20	Lawfully Residing - to be used for all persons admitted under one of the Class of Admission Codes found in the table in section <u>7.4.4</u>	Ineligible	Ineligible	Ineligible	Ineligible	Eligible

\* "Veteran" includes certain veterans and active duty servicemen and women, their spouses, dependent children, or certain surviving spouses.

*Medicaid Eligibility Handbook*, § 7.3.1, et. seq.

Federal law would indicate that an applicant's veteran status may provide for eligibility:

**FIVE-YEAR LIMITED ELIGIBILITY OF QUALIFIED ALIENS FOR FEDERAL MEANS-TESTED PUBLIC BENEFIT.**

(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) 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).

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

(E) An alien admitted to the United States as an Amerasian immigrant as described in section 1612(a)(2)(A)(i)(V) of this title.

(2) VETERAN AND ACTIVE DUTY EXCEPTION.—**An alien who is lawfully residing in any State and is—**

(A) **a veteran (as defined in section 101, 1101, or 1301, or as described in section 107 of title 38) with a discharge characterized as an honorable discharge and not on account of alienage and who fulfills the minimum active-duty service requirements of section 5303A(d) of title 38,**

(B) on active duty (other than active duty for training) in the Armed Forces of the United States, or

(C) the spouse or unmarried dependent child of an individual described in subparagraph (A) or (B) or the unremarried surviving spouse of an individual described in clause (i) or (ii)<sup>[207]</sup> who is deceased if the marriage fulfills the requirements of section 1304 of title 38.

8 U.S.C. 1613, SEC. 403 (emphasis added).

The U.S. Department of Health and Human Services published a Summary of Immigrant Eligibility Restrictions Under Current Law, which provided, in part: ...

D. “Federal Means-Tested Public Benefits” — TANF, Medicaid, and CHIP

Five year ban for Qualified Aliens who entered the country on or after 8/22/96

Most “qualified aliens” entering the country on or after enactment are banned from receiving “Federal means-tested public benefits” for a period of 5 years beginning on the date of the alien’s entry with a qualified alien status (Sec 403) (*see exceptions below*). The HHS interpretation, published in the *Federal Register* on August 26, 1997 (62 FR 45256), designated TANF and Medicaid (except assistance for an emergency medical condition under Medicaid) as the Federal means-tested public benefits administered by the Department. Subsequently, HHS has communicated that the Children’s Health Insurance Program (CHIP) is also a “Federal means-tested public benefit.” The Social Security Administration has stated that Supplemental Security Income is a “Federal means-tested public benefit.” The Department of Agriculture has also stated that SNAP benefits (formerly food stamps) are also means-tested. No other program has been determined to be a “*Federal means-tested public benefit*” program.

*Exceptions to the 5-year ban on “Federal Means-Tested Public Benefits”:*

- States have the option to provide Medicaid and CHIP assistance to children and pregnant women who are lawfully residing in the United States without a 5-year delay, and no debt accrues to a sponsor under an affidavit of support on the basis of receipt of such assistance, and the cost of such assistance is not considered an unreimbursed cost. (Sec. 214, P.L. 111-3, *Children's Health Insurance Program Reauthorization Act of 2009*)
- Refugees, Asylees, aliens whose deportation is being withheld, Amerasians, and Cuban/Haitian entrants and victims of a severe form of trafficking.. (Sec 403(b)(1))
- Veterans, members of the military on active duty, and their spouses and unmarried dependent children. (Sec 403(b)(2))
- Certain Indians, Hmong, and Highland Laotians are eligible for SNAP. (Sec 403(d))

The respondent has provided documentation of recognition he has received from the U.S. military, including recognition of his injuries received while working in that capacity. However, that documentation clearly identifies the petitioner as a civilian interpreter working with a Department of Defense contractor. The petitioner's attorney has asserted that the U.S. has granted civilian contractors the designation of "military service personnel" if they have served in a war zone; unfortunately he has not provided any citation for that assertion. Nor has he established that military service personnel are exempt from the 5 year qualification period for aliens.

The petitioner has not established that he is a U.S. military veteran, and therefore exempt from the 5-year requirement. The petitioner has not presented any evidence that would indicate that he meets any of the classes of defined qualified aliens. He is a permanent U.S. resident who arrived in the United States on October 5, 2012.

The petitioner has not established that he is an asylee, refugee, or any other type of qualified alien. Accordingly, I can only conclude that he cannot be eligible for Medical Assistance until he has resided in the United States for at least 5 years after the date of entry.

### CONCLUSIONS OF LAW

The respondent has correctly terminated the petitioner's eligibility for Medical Assistance effective May, 2014.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be, and the same hereby 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 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 Madison,  
Wisconsin, this 18th day of July, 2014

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\sPeter McCombs  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on July 18, 2014.

Outagamie County Department of Human Services  
Division of Health Care Access and Accountability

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