



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact
Redact
Redact

DECISION

BCS/164150

PRELIMINARY RECITALS

Pursuant to a petition filed February 20, 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 April 28, 2015, at Milwaukee, Wisconsin. At the request of petitioner, a hearing set for March 17, 2015, was rescheduled.

The issue for determination is whether the county agency correctly denied petitioner's Medical Assistance application because he did not meet the necessary immigration status in order to be eligible for Medical Assistance or BadgerCare benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact
Redact
Redact

Respondent:

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

By: Redact

Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a resident of Milwaukee County, a native of Egypt, and has been a legal permanent resident of the U.S. since July 28, 2014. See Exhibit 1.

2. The petitioner applied for Medical Assistance (MA) on February 3, 2015¹. Exhibit 5.
3. Milwaukee Enrollment Services (MES) issued a Notice of Decision to the petitioner informing him that his application for Medicaid/BadgerCare was denied because he was not a U.S. citizens or a qualified alien. See, Exhibit 7.

DISCUSSION

BadgerCare+ (BC+) is a state/federal medical insurance program for working families. BC+ replaces the former AFDC-Medicaid, Healthy Start and BadgerCare. BadgerCare + Eligibility Handbook (BC+ Handbook), § 1.1. (Available online at <http://www.emhandbooks.wi.gov/bcplus/>). A person is eligible if s/he meets all BC+ non-financial and financial requirements.

The BC+ Handbook states, in pertinent part, as follows:

4.3 IMMIGRANTS

Immigrants are persons who reside in the U.S., but are not U.S. citizens or nationals. The immigrants described below, who apply for BC+ and meet all eligibility requirements, are entitled to receive BC+ 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 BC+ 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 BC+ 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 BC+ 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 BC+ even if his/her immigration status later changes.

¹ Petitioner also applied for Medical Assistance on December 11, 2014, and on January 20, 2015. Both applications were denied because petitioner was not qualified alien.

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. **Lawfully admitted for permanent residence under the INA. 8 USC 1101 et seq.
7. **Paroled into the U.S. under INA Section 212(d)(5).
8. **Granted conditional entry under immigration law in effect before April 1, 1980 [INA Section 203(a)(7)].
9. **An immigrant who has been battered or subjected to extreme cruelty in the U.S. and meets certain other requirements.
10. **An immigrant whose child has been battered or subjected to extreme cruelty in the U.S. and meets certain other requirements.
11. **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.
12. 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).

**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.
- e. Resided in the U.S. for at least five years since his/her date of entry. See 4.3.3 Continuous Presence, or

Beginning, October 1, 2009, children under the age of 19, young adults under age 21 residing in an *IMD*, and pregnant women who are either:

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

In addition, children under the age of 19, young adults under age 21 residing in an IMD, and pregnant women who are legally present in the U.S., under any of the non-immigrant statuses listed in the table below may also qualify for BC+ if otherwise eligible. ...

See also Medicaid Eligibility Handbook, sec. 7.3.4.

In this case, neither petitioner nor her representative were able to provide any reliable testimony or evidence to refute that petitioner had a July 24, 2014 date of entry into the U.S, and therefore has not resided in the U.S for the required period of time. Petitioner testified that he understood that he had been denied due to his employment status. The respondent's representative explained the reason for the denial. Milwaukee Enrollment Services correctly denied the petitioner's application for MA-BadgerCare because he is neither a U.S. citizen nor a qualified immigrant. Particularly, petitioner has not been in the U.S. for more than 5 years since his date of entry.

CONCLUSIONS OF LAW

Milwaukee Enrollment Services correctly denied petitioner's MA application because more than five years have not passed since his date of entry into the United States.

THEREFORE, it is

ORDERED

The petition for review herein be and the same is hereby 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 10th day of June, 2015.

\sPeter McCombs
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 June 10, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability