



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MGE/167775

PRELIMINARY RECITALS

Pursuant to a petition filed August 3, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability (Division or DHCAA) in regard to a Medical Assistance (MA)-related program, a hearing was held on September 22, 2015, by telephone.

The issue for determination is whether the Department correctly denied the petitioner's application for Wisconsin Well Woman Medicaid.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Ms. [Redacted], supervisor
Division of Health Care Access and Accountability
Madison, WI

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is currently living in Dane County.
2. The petitioner filed a Wisconsin Well Woman Medicaid (WWWM) application with the Department on July 23, 2015. The Division issued written notice of application denial on July 28, 2015. The petitioner then filed a timely appeal.

3. The Division's basis for denial was that the petitioner, a non-citizen, was not eligible to receive WWWM benefits due to lack of appropriate immigrant status.
4. The petitioner is not a U.S. citizen. She legally arrived in the U.S. with a visa issued January 13, 2010. She was admitted to attend school, and has been physically present in the U.S. since February 2010. The petitioner is not a veteran or active duty member of the U.S. military, and has no familial affiliation with the U.S. military.
5. Per the federal Alien Verification System (SAVE), the petitioner first acquired the status of Lawful Permanent Resident on March 16, 2015.
6. The petitioner became a "qualified alien" for Medicaid purposes on March 16, 2015. The federal Medicaid definition of a "qualified alien" is as follows:

(b) Qualified alien

For purposes of this chapter, the term "qualified alien" means 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.], ...

8 U.S.C. §1613(a),(b). *See, in accord*, Wis. Admin. Code §DHS 103.03(2); *MEH*, §7.3.1.

DISCUSSION

WWWM is a variant of MA. *Medicaid Eligibility Handbook (MEH)*, § 36.1 *et seq.*, viewable online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>. To receive MA, a person must be both nonfinancially and financially eligible for the program. The financial criteria consist of asset and income limits. To be nonfinancially eligible, a person must fit into any one of several nonfinancial eligibility categories, as listed in the state and federal statutes.

One of the nonfinancial requirements for MA is that a person must be a citizen or qualified alien. 42 C.F.R. §435.406(a). The citizenship/qualified alien requirements that apply to Elderly/Blind/Disabled MA also apply to WWWM. *Id.*, § 36.3. A qualified alien includes a person who is lawfully admitted for residence under the Immigration and Nationality Act, 8 U.S.C. 1101 *et seq.* 8. U.S.C. § 1641(b). The petitioner is *now* such a qualified alien. The federal law goes on to bar a qualified alien from receipt of non-emergency MA for five years from entry *as a qualified alien*, unless s/he fits into one of several exceptions related to asylum and veterans. The petitioner does not fit within any of the exceptions.

The federal statutory language creating the five-year bar is as follows:

§1613. Five-year limited eligibility of qualified aliens for Federal means-tested public benefit

(a) In general

... 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 ... after ... 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...

(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, ...

[emphasis added]

Thus, the five year clock does not start running when an alien legally enters this country for any purpose (here, in 2010). The five year clock starts when the alien has become a lawful permanent resident. Because the petitioner became a lawful permanent resident in 2015, her five year clock has not run, and she is not eligible for this benefit.

Informational note: Although the petitioner does not qualify at this time for MA non-emergency coverage, federal law does allow MA payment for some *emergency* treatments:

...this section shall not apply with respect to the following Federal public benefits:

(A) Medical assistance under title XIX of the Social Security Act for care and services that are necessary for the treatment of an emergency medical condition (as defined in section 1903(v)(3) of such Act of the alien involved and are not related to an organ transplant procedure, if the alien involved otherwise meets the eligibility requirements for medical assistance under the State plan approved under such title

8 U.S.C. §§ 1611(b) & 1641(b)(1)(A), online at <http://www.law.cornell.edu/uscode/text>.

CONCLUSIONS OF LAW

1. The Division correctly denied the petitioner’s WWWM application because the petitioner has not been present in the U.S. in the status of lawful permanent resident for at least five years.

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

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 31st day of October, 2015

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals
Medalien



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 2, 2015.

Division of Health Care Access and Accountability
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