

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES  
APPEALS OFFICE - LOUIS PASTEUR BUILDING  
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Date: November 7, 2014

Docket # 14-1198  
Hearing Dates: October 6, 2014



**ADMINISTRATIVE HEARING DECISION**

The Administrative Hearing that you requested has been decided against you. During the course of the proceeding, the following issue(s) and Agency policy reference(s) were the matters before the hearing:

**THE MEDICAID CODE OF ADMINISTRATIVE RULES (MCAR)  
SECTION 1305.12 Citizenship and Immigration Status  
SECTION 0304 Citizenship and Immigration Status Requirements**

The facts of your case, the Agency policy, and the complete Administrative Decision made in this matter follow. Your rights to judicial review of this decision are found on the last page of this decision.

Copies of this decision have been sent to the following: You (the appellant), and Agency representatives Kristen Grosso, Betty Perez, and Denise Tatro.

Present at the first hearing were: You, your brother, and Agency representative Kristen Grosso.

**ISSUE:** Should the appellant's Medicaid health benefits have been terminated effective July 31, 2014 because he is a legal immigrant subject to a 5-year waiting period?

**DHS POLICIES:**

Please see the attached APPENDIX for pertinent excerpts from the Rhode Island Department of Human Services Policy Manual.

**APPEAL RIGHTS:**

Please see attached NOTICE OF APPELLATE RIGHTS at the end of this decision.

**DISCUSSION OF THE EVIDENCE:****The Agency representative testified:**

- The appellant applied for Medicaid.
- The appellant's Medicaid application was denied based on the program's five year waiting period.
- Unless an applicant is a United States (U.S.) citizen, policy requires them to be in the country legally for at least five years.
- The appellant's Permanent Resident Card states that he has been a resident of the U.S. since April 8, 2010, which is less than five years.

**The appellant, with the assistance of his brother and a Spanish Interpreter, testified:**

- He was never in the country illegally.
- He first came to the U.S. in September or October 1993 on a tourist visa.
- His visa was extended because he was in a treatment program through Butler Hospital.
- He remained in the country on his extended tourist visa until he got his Permanent Resident Card.
- He only left the U.S. once for 15 days in the year 2000.

**FINDINGS OF FACT:**

- The appellant was sent a notice dated July 15, 2014 informing him that his Medicaid health benefits would be terminated effective July 31, 2014 because he was a Legal immigrant subject to a 5-year waiting period.
- The appellant filed a written request for hearing, received by the Agency on July 23, 2014.
- An Administrative Hearing was convened on October 6, 2014.
- The record of hearing was held open for two weeks, through the close of business on October 20, 2014, to allow for the submission of additional evidence.
- Additional evidence was submitted and made part of the record of hearing.

- The appellant was born in Venezuela on January 21, 1969.
- The appellant entered the U.S. on August 8, 1994 with a non-immigrant tourist visa.
- The appellant entered the U.S. for a second time on December 2, 1999 with a non-immigrant tourist visa.
- The appellant entered the U.S. for a third time on June 1, 2000 with a tourist visa.
- The appellant attained status as a Legal Permanent Resident (LPR) on April 8, 2010.

### **CONCLUSION:**

The issue to be decided is whether the appellant's Medicaid health benefits should have been terminated effective July 31, 2014 because he is a legal immigrant subject to a 5-year waiting period.

Per the Medicaid Code of Administrative Rules (MCAR), non-citizen individuals applying for Medicaid must meet the program's immigration status requirements to qualify. Non-citizens are categorized as qualified or non-qualified non-citizens. Non-qualified non-citizens are not eligible for Medicaid. While certain qualified non-citizens are potentially eligible for full Title XIX Medicaid, qualified non-citizens age 19 or older who entered the U.S on or after August 22, 1996 are ineligible for a period of five years unless they meet one of the program's exemptions.

There is no dispute that the appellant is not a U.S. citizen. There is also no dispute that on July 31, 2014, the closure date of his Medicaid health benefits, the appellant was a Legal Permanent Resident (LPR), having attained such status on April 8, 2010. The MCAR clearly stipulates that a LPR who entered the U.S. on or after August 22, 1996 is a qualified non-citizen subject to the five year ban. The appellant argued at hearing that not only has he been in the U.S. longer than five years, but that he entered the U.S in 1993. With the assistance of his brother, the appellant explains that he entered the U.S. on a tourist visa which was subsequently extended, thereby allowing him to remain in the U.S. until being granted his LPR status. He further claimed that from the time he entered the U.S in 1993 he has only left the U.S. once for a period of 15 days in the year 2000.

The record of hearing was held open in order to allow the appellant the opportunity to submit documentation to support his claim that he entered the U.S. prior to August 22, 1996 and remained in the U.S. on a continuous basis except for a period of 15 days. Per the evidence submitted post hearing, the appellant documents that he entered the U.S. as a tourist on August 8, 1994, December 2, 1999, and June 1, 2000. As no evidence of departure dates was submitted, the evidence fails to establish how long the appellant was absent from the U.S. between entries, but the appellant reports in his

post hearing submission that while he made his first visit to the U.S in August 1994, he remained continuously in the U.S only after his second visit in December 1999.

In summary, the appellant is a LPR who prior to becoming a LPR last entered and continuously remained in the U.S. after August 22, 1996. While policy does allow for some non-citizens to be exempt from the five-year ban regardless of their date of entry, a full review of the record finds no evidence to establish that the appellant falls within any of those exempt categories/groups. As a non-exempt qualified non-citizen who entered the U.S. after August 22, 1996, the appellant is thereby subject to the five-year ban.

Further review of the MCAR finds that the five-year period of ineligibility begins on the date a qualified non-citizen entered the U.S. or the date a previously unqualified non-citizen attained qualified non-citizen status. The record establishes that the appellant entered the U.S as a tourist, or a non-qualified non-citizen, and became a LPR, or a qualified non-citizen, as of April 8, 2010. The appellant's five year bar to MA eligibility thereby begins on April 8, 2010, rendering him ineligible for full Title XIX Medicaid due to the five year ban until April 2015.

After a careful review of the Medicaid rules, as well as the evidence and testimony given, this Appeals Officer finds that the termination of the appellant's Medicaid health benefits effective July 31, 2014 because he is a legal immigrant subject to a 5-year waiting period is correct. The appellant's request for relief is thereby denied.



Debra L. DeStefano  
Appeals Officer

**APPENDIX**

## MEDICAID CODE OF ADMINISTRATIVE RULES (MCAR)

### 1305.12 Citizenship and Immigration Status

The citizenship requirements for Medicaid eligibility for individuals and families in MACC groups vary depending on the basis of eligibility. All applicants must provide information about citizenship, whether U.S. citizens or lawfully present non-citizens.

01. Categories of Non-citizens Qualified v. non-qualified non-citizens – Under federal law, non-citizens are categorized into two groups – qualified and non-qualified non-citizens.

(01) **Qualified non-citizens.** The qualified non-citizens category includes persons who are citizens of other nations who are lawfully present in the United States. Qualified non-citizens are barred from Medicaid for a period of five (5) years under federal law. Certain exemptions from the bar apply:

- Qualified non-citizen children up to age 19 who are lawfully present in the United States but were born in another nation are eligible for Medicaid as members of the MACC group for children and young adults. The State elected to offer children in this subcategory of qualified non-citizens eligibility during the five (5) year bar under an option in Title XXI, the Children's Health Insurance Program (CHIP). Qualified non-citizen pregnant women are also eligible for Medicaid in the MACC group, again under an option in CHIP.

- There are several other subcategories of non-citizens who are exempt from the five (5) year bar as specified in MCAR section 0304.05.15.

- All non-exempt qualified non-citizens are eligible to obtain coverage through state and federal health insurance marketplaces, such as HealthSourceRI.com in Rhode Island, and may be qualified for certain tax credits.

(02) **Non-qualified non-citizens.** The non-qualified category of non-citizens includes citizens of other nations who are not considered to be immigrants under current federal law, including those in the United States on temporary or time-limited visa (such as visitors and students) and those who are present in the country without proper documentation (includes people with no or expired status).

- Non-qualified non-citizens are not eligible for Medicaid, except in emergency situations (see MCAR section 0304). Non-emergency services may be obtained through Federally Qualified Community Health Centers. See Rhode Island Community Health Association at [www.richa.org](http://www.richa.org).

- Non-qualified non-citizen pregnant women in the applicable MACC group are eligible for Medicaid coverage. The pregnant woman's eligibility is tied to the eligibility of the baby she is carrying. For the purposes of MACC group eligibility, the baby *in utero* is deemed to be a United States citizen and Rhode Island resident and remains so as a newborn as long the birth occurs in Rhode Island.

More detailed information on the citizenship and immigration status is located in MCAR section 0304.05

**02. Verification of status** — Any members of a household who are applying for Medicaid coverage must provide their immigration and citizenship status. Non-applicants are exempt from the requirement. Any information provided by an applicant or electronically must be used only for verifying state. Under the ACA, citizenship and immigration status are verified:

(01) **Electronically.** The Medicaid agency must use electronic verification through the federal hub (see MCAR section 1308.08.04 d) to the full extent feasible through:

- Social Security Administration (SSA) or RI Department of Health, Division of Vital Statistics for citizens.
- U.S. Citizenship and Immigration Services (USCIS) for non-U.S. citizens via the Systematic Alien Verification for Entitlements (SAVE) database.

(02) **Non-electronic.** If unable to verify immigration status electronically, enrollees have an opportunity to provide other documents or to fix the records.

(03) **Self-Attestation.** An applicant's attestation is accepted without electronic verification providing appropriate paper documentation is provided to the Medicaid agency within ninety (90) days of the eligibility determination. Failure to provide the required documentation within that period results in a termination of Medicaid and the initiation of the Medicaid recoupment process.

## **0304 Citizenship and Immigration Status Requirements**

### **0304.05 Requirements of Citizenship and Immigration Status**

REV: October 2013

**A. Immigration Status** -- An individual must meet the requirement for citizenship or immigration status in order to qualify for Medicaid. An otherwise eligible individual must be a member of one of the following categories:

1. A qualified non-citizen (Section 0304.05.15)
  - a. Exempt from the five (5) year ban
  - b. Subject to the five (5) year ban
2. A lawfully residing member of the state-funded coverage group described in Section 0304.05.45
3. A pregnant woman as described in Section 0304.05.15 and 1305.05
4. A child under 19 as described in Section 0304.05.45 and 1305.05

**B.** The Federal Deficit Reduction Act (DRA) of 2005 (Public Law 109-171) as well as Public Laws (PL) 104-193, 104-208 and 105-33 restricts eligibility for federally reimbursed Title XIX Medicaid to U.S. citizens and certain qualified non-citizens. PL 105-306 restricts eligibility to lawfully residing non-citizens who receive SSI.

1. Individuals who are not U.S. citizens must comply with the requirements for non-citizen eligibility established in the Personal Responsibility and Work Opportunity Act of 1996 (PL104-193) (PRWOA) and may not be eligible for Title XIX Medicaid benefits.
2. Non-qualified non-citizens are not eligible for Title XIX Medicaid benefits.

**C.** The Federal Children's Health Insurance Program Reauthorization Act (CHIPRA) of 2009 (PL111-3) authorized States to elect the CHIPRA option to provide full Medicaid coverage to:

1. Qualified non-citizens under the age of nineteen (19) who are lawfully present in the United States as identified in Section 0304.05.15, paragraph B, if otherwise eligible under Section 1305.
  2. Non-citizen pregnant women, without regard to immigration status, who are residents of Rhode Island including qualified non-citizen pregnant women identified in Section 0304.05.15 and both lawfully present and non-immigrant non-citizen pregnant women who are otherwise eligible under Section 1305.
- D. Title XIX Medicaid for emergency services as stated in EOHHS Policy Section 0316.10 is accessible to individuals regardless of immigration status, provided they are residents of Rhode Island and meet all other financial and non-financial criteria for the Medicaid Program. This includes persons who, but for citizenship status, meet the criteria for Medicaid under any of the coverage groups identified in Sections 1303 and 0351.15.

### **0304.05.15 Eligibility as a Qualified Non-Citizen**

REV: October 2013

#### **A. QUALIFIED NON-CITIZENS EXEMPT FROM THE FIVE (5) YEAR BAR:**

1. The following "qualified" non-citizens are exempt from the five (5) year bar and meet immigration requirements for Title XIX Medicaid regardless of date of entry into the U.S.:
  - a. Refugees admitted under Section 207 of INA including Afghan and Iraqi Special Immigrants (SIV's) as permitted under PL 111-118;
  - b. Non-citizens granted Asylum under Section 208 of INA;
  - c. Non-citizens who have had deportation withheld under 243(h) of INA;
  - d. Amerasian entrants pursuant to Section 584 of the Foreign Operations, Export Financing and Related Programs Appropriations Act of 1988 (as contained in Section 101(e) of PL 100-202 and amended by the 9th provision under Migration and Refugee Assistance in Title II of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1988, PL 100-461 as amended);
  - e. Cuban or Haitian entrants as defined in Section 501(e) of the Refugee Education Assistance Act of 1980;
  - f. Lawfully residing honorably discharged veterans (except one discharged for reasons of immigration status), non-citizens on active duty in the U.S. Armed forces, their lawfully residing spouses and unmarried dependent children, and the unremarried widow or widower of the veteran;
  - g. Certain battered spouses, battered children or parents, or children of a battered person with a petition approved or pending under Section 204(a)(1)(A) or (B) or Section 244(a)(3) of INA;
  - h. An American Indian born outside the U.S. who:
    - i. was born in Canada and is at least fifty percent 50% American Indian blood and to whom the provisions of Section 289 of the INA apply; or
    - ii. is a member of a federally recognized tribe as defined in Section 4(e) of the Indian Self-Determination and Education Act.
  - i. An individual certified by the U.S. Department of Human Services (HHS) Office of Refugee Resettlement pursuant to Section 107(b.) of the Victims of Trafficking and Violence Protection Act of 2000, as a victim of a severe form of trafficking.
  - j. Disability Assistance for any qualified non-citizen, subject to the five (5) year bar, who legally entered the U.S. on or after 8/22/96 and received disability related benefits for a

condition that is a disability or is pending a disability determination in accordance with 42 USC Sub Section 1381.

k. Under provisions of PL 105-306, SSI benefits, and associated Title XIX Medicaid were continued for "non-qualified" aliens who were lawfully residing in the U.S. and receiving SSI on 8/22/96.

**B. QUALIFIED NON-CITIZENS ABOVE AGE NINETEEN (19) SUBJECT TO THE FIVE**

1. The following "qualified" non-citizens who are age nineteen (19) or above are subject to the five (5) year bar. They meet the immigration requirement and are potentially eligible for Title XIX benefits if they entered the U.S. prior to 8/22/96. When entering the U.S. on or after 8/22/96, they meet the immigration requirement for Title XIX Medicaid only after the five (5) year bar described in Section 0304.05.15.05.

a. Lawful permanent residents (LPRs);

b. Non-citizens granted parole for at least one (1) year under 212(d)(5) of the Immigration and Nationality Act (INA);

c. Non-citizens granted conditional entry under 203(a)(7) of immigration law in effect before April 1, 1980.

2. Under provisions contained in PL 105-306, Title XIX Medicaid is also provided to certain SSI recipients who were lawfully residing in the U.S. and receiving SSI on 8/22/96.

**C. QUALIFIED NON-CITIZEN CHILDREN UNDER AGE NINETEEN (19) AND PREGNANT WOMEN EXEMPT FROM THE BAR**

1. The following qualified non-citizen children and pregnant women are NOT subject to the five (5) year bar regardless of date of entry in the U.S. and are potentially eligible for Title XIX or XXI benefits.

a. Lawful permanent residents (LPRs)

b. Non-citizens granted parole for at least one (1) year under 212(d)(5) of the Immigration and Nationality Act (INA);

c. Non-citizens granted conditional entry under 203(a)(7) of immigration law in effect before April 1, 1980.

d. Legal non-immigrants whose admission to the United States is not conditioned on having a permanent residence in a foreign country (such immigrants include citizens of the Compact of Free Association States who are considered permanent non-immigrants but does not include visitors for business or pleasure or students) as described in Section 0304.05.15.

2. In addition, the following categories of children under age nineteen (19) and pregnant women are eligible for Medicaid under Title XIX or XXI as authorized under the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) and as described in 8 CFR 103.12(a)(4).

a. Aliens currently in temporary resident status pursuant to Section 210 or 245A of the Immigration and Nationality Act (INA)

b. Aliens currently under Temporary Protected Status (TPS) pursuant to section 244 of the INA

c. Cuban-Haitian entrants, as defined in section 202(b) P. L. 99-603, as amended

d. Family Unity beneficiaries pursuant to section 301 of P. L. 101-649, as amended, as well as pursuant to section 1504 of PL 106-554

e. Aliens currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President

- f. Aliens currently in deferred action status pursuant to Service Operations Instructions at OI 242.1(a)(22)
  - g. Aliens who are the spouse or child of a United States citizen whose visa petition has been approved and who have a pending application for adjustment of status.
3. The following categories of non-immigrant children and pregnant women under 101(a)(15) of the immigration and Nationality Act (INA) are also eligible for coverage under Title XXI.
- a. Parents or children of individuals with special immigration status under section 101(a)(27) of the INA as permitted under section 101(a)(15)(N) of the INA
  - b. Fiance(ee) of a citizen as permitted under section 101(a)(15)(K) of the INA
  - c. Religious workers under section 101(a)(15)(R)
  - d. Aliens who the Attorney General of the United States has determined are in possession of critical reliable information concerning a criminal or terrorist organization, enterprise or operation as permitted under section 101(a)(15)(S) of the INA
  - e. Aliens who are or have been victims of trafficking as permitted under section 101(a)(15)(T) of the INA
  - f. Individuals assisting the Department of Justice in a criminal investigation as permitted under section 101(a)(15)(U) of the INA
  - g. Battered aliens
  - h. Individuals with a petition pending for 3 years or more as permitted under section 101(a)(15)(V) of the INA

#### **0304.05.15.05 Five Year Ban**

REV: October 2013

- A. Unless exempt, qualified non-citizens who are age nineteen (19) or older, entering the U.S. on or after 8/22/96 are subject to a five (5) year bar during which they are ineligible for full Title XIX Medicaid.
- B. The five (5) year period of ineligibility begins on the date the qualified non-citizen entered the U.S., or the date a previously unqualified non-citizen attained qualified non-citizen status.
  - 1. To determine the five (5) year bar:
    - a. From USCIS Form I-94, the date of the qualified non-citizen's admission is the start of the five (5) year bar on Title XIX eligibility;
    - b. If the non-citizen presents a USCIS grant letter or court order, derive the date qualified noncitizen status was granted from the date of the letter or court order. This date starts the five (5) year bar.
    - c. If the non-citizen presents an employment authorization document, ask the individual to present Form I-94. If Form I-94 is not available, further contact with USCIS will be needed to ascertain the date status was granted. Obtain signed release or signed SAVE-1 before contacting USCIS.
  - 2. Eligibility for Title XIX emergency services may be established during the five (5) year bar period.
  - 3. Pregnant women who are ineligible for full Title XIX benefits due to the five (5) year bar, may establish eligibility for state-funded coverage. (See Sections 0305.05.45 and 0348.)

### **NOTICE OF APPELLATE RIGHTS**

This Final Order constitutes a final order of the Department of Human Services pursuant to RI General Laws §42-35-12. Pursuant to RI General Laws §42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.