

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
Executive Office of Health and Human Services
Appeals Office
Louis Pasteur Building
57 Howard Avenue
Cranston, Rhode Island 02920
(401) 462-2132/Fax# (401) 462-0458
TDD# (401) 462-3363

November 6, 2014

Docket # 14-1646
Date of Hearing 11/05/14

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 DHS POLICY MANUAL: **Medical Assistance**
SECTION: 0304.05 Requirements of Citizenship/Alienage

The facts in your case, the Agency policy, and the complete administrative decision 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: Fina Cicerchia and Betty Perez.

Present at the hearing were: You, and the Spanish interpreter and Agency representative: Fina Cicerchia.

ISSUE: Is the appellant under the five year ban?

DHS POLICIES: Please see the attached **Appendix** for pertinent excerpts from the 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 that:

DISCUSSION OF THE EVIDENCE:

The Agency representative testified that:

- The appellant applied for Medical Assistance (MA) in July 2014.
- The appellant indicated that she was a Legal Permanent Resident of the United States.
- The appellant had been in the United States since 2010.
- She was accepted for Medicaid in error.
- The Agency sent a denial notice on August 1, 2014.

The Appellant with the aid of the Spanish Interpreter testified:

- She did apply for Medical Assistance.
- She is a Legal Permanent Resident of the United States.
- She came to this country in 2010.
- She was told at first she was eligible for Medicaid.
- She still needs medical insurance.
- She will have been a permanent resident for five years in March 2015.
- She will apply for Obama care in the meantime.
- She has chronic health problems that need to be treated.

Findings of fact:

- The appellant was active on Medical assistance in July 2014.
- She was on Medicaid in error.
- The Agency did send a denial notice on August 1, 2014.
- The appellant filed an appeal.
- The appeal was heard on November 5, 2014.

CONCLUSION:

The issue to be decided is whether or not the appellant should have been denied because she has not been a permanent resident for five years.

A review of Agency Medical Assistance Policy reveals that an individual must meet the requirements for citizenship or immigration status in order to qualify for Medical Assistance. A Legal Permanent Resident (LPR) that has been in the country for five years has potential eligibility. Unless exempt, applicants for Medical Assistance programs must declare in writing that they are United States citizens or nationals, or that they are in satisfactory immigration status. The DHS/SAV-1 is used for the declaration of Citizenship or Alienage.

In this case there is no argument that the appellant is an LPR that has been in the United States since 2010. The Agency does argue that she has not been a Legal permanent resident for five years and is therefore under the five year ban until March of 2015.

In this case the appellant testified that she has been a legal permanent resident since March 22, 2010.

Further review of Agency policy reveal that an individual must meet the requirement for citizenship or immigration status in order to qualify for Medical Assistance.

The Federal Deficit Reduction Act of 2005 as well as Public Laws 104- 193, 104-208 and 105-33 restricted eligibility for federally reimbursed Title XIX Medical Assistance to U.S. citizens and certain "qualified" non-citizens. Public Law 105- 306 restricted eligibility to lawfully residing non-citizens who receive SSI.

The Federal Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA or Public Law 111-3) authorized States to elect the CHIPRA option to provide full Medicaid coverage to otherwise eligible aliens lawfully residing in the United States (pending approval from the Centers for Medicaid and Medicare Services): such aliens consist of qualified aliens subject to the 5-year bar, aliens described in 8 CFR 103.12(a)(4), and legal non-immigrants whose admission to the U.S. is not conditioned on having a permanent residence in a foreign country (such non-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).

To meet the citizenship/immigration status requirement for Medical Assistance, an otherwise eligible individual must be a member of one of the following categories: U.S. citizen or national (Title XIX); a qualified non-citizen described in Section 0304.05.15(sub-section A), and(B) who entered the U.S. prior to 8/22/96 (Title XIX); A qualified non-citizen described in Section 0304.05.15(A) who entered the country on or after 8/22/96, and is exempt from the five (5) year ban (Title XIX);

After careful review of the Agency's policies as well as the evidence and testimony given, this Appeals Officer finds that the appellant has not been a legal permanent resident for five years; therefore her request for relief is denied.

A handwritten signature in cursive script, appearing to read "G. Stanford".

Geralyn B. Stanford
Appeals Officer

APPENDIX

0304 TECHNICAL ELIGIBILITY REQUIREMENTS

0304.05 REQUIREMENTS OF CITIZENSHIP/ALIENAGE

REV:10/2009

An individual must meet the requirement for citizenship or immigration status in order to qualify for Medical Assistance.

The Federal Deficit Reduction Act of 2005 as well as Public Laws 104- 193, 104-208 and 105-33 restricted eligibility for federally reimbursed Title XIX Medical Assistance to U.S. citizens and certain "qualified" non-citizens. Public Law 105-306 restricted eligibility to lawfully residing non-citizens who receive SSI.

The Federal Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA or Public Law 111-3) authorized States to elect the CHIPRA option to provide full Medicaid coverage to otherwise eligible aliens lawfully residing in the United States (pending approval from the Centers for Medicaid and Medicare Services): such aliens consist of qualified aliens subject to the 5-year bar, aliens described in 8 CFR 103.12(a)(4), and legal non-immigrants whose admission to the U.S. is not conditioned on having a permanent residence in a foreign country (such non-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).

R.I.G.L. 40-8-1 and 42-12.3 provide the legal authority to extend State-funded Medical Assistance to pregnant women and to certain lawfully residing groups of non-citizens, who are ineligible for Title

XIX solely due to immigration status requirements. R.I.G.L. 40-8-1 and 40-8.4-2 also provide State authority to implement the CHIPRA option to provide full Medicaid coverage to otherwise eligible alien children under the age of 19 lawfully residing in the United States, including alien children subject to the 5-year bar.

To meet the citizenship/immigration status requirement for Medical Assistance, an otherwise eligible individual must be a member of one of the following categories:

- 0 U.S. citizen or national (Title XIX);
- 0 (A) a qualified non-citizen described in Section 0304.05.15(sub-section A), and

(B) who entered the U.S. prior to 8/22/96 (Title XIX);

0 A qualified non-citizen described in Section 0304.05.15(A) who entered the country on or after 8/22/96, and is exempt from the five (5) year ban (Title XIX);

0 After the five (5) year ban, a qualified non-citizen described in Section 0304.05.15(B), who entered the U.S.

on or after 8/22/96 (Title XIX);

0 A lawfully residing member of the state-funded coverage group described in Sections 0304.05.45 and 0304.05.45.05 (State-funded); or

0 A pregnant woman as described in Section 0348

0 A child under 19 as described in Section 0304.05.45, pending approval from the

Centers for Medicaid and Medicare Services (CMS)

Note: Title XIX Medical Assistance for emergency services as stated in DHS 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 Medical Assistance Program. This includes persons who, but for citizenship status, meet the criteria for MA under SSI- related, family-related, or Rite Care rules. In addition, each applicant must have a medical condition including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that inpatient hospital or hospital emergency room treatment is required.

0304.05.05 The SAVE Program

REV: 10/2009

An individual must meet the requirement for citizenship or immigration status in order to qualify for Medical Assistance.

The Federal Deficit Reduction Act of 2005 as well as Public Laws 104- 193, 104-208 and 105-33 restricted eligibility for federally reimbursed Title XIX Medical Assistance to U.S. citizens and certain "qualified" non-citizens. Public Law 105-306 restricted eligibility to lawfully residing non-citizens who receive SSI.

Pending approval from the Centers for Medicaid and Medicare Services (CMS),

the Federal Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA or Public Law 111-3) authorized States to elect the CHIPRA option to provide full Medicaid coverage to otherwise eligible aliens lawfully residing in the United States: such aliens consist of qualified aliens subject to the 5-year bar, aliens described in 8 CFR 103.12(a)(4), and legal non-immigrants whose admission to the U.S. is not conditioned on having a permanent residence in a foreign country (such non-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.

R.I.G.L. 40-8-1 and 42-12.3 provide the legal authority to extend State-funded Medical Assistance to pregnant women and to certain lawfully residing groups of non-citizens, who are ineligible for Title XIX solely due to immigration status requirements. Pending approval

from the Centers for Medicaid and Medicare Services (CMS), R.I.G.L. 40- 8-1 and 40-8.4-2 also provide State authority to implement the CHIPRA option to provide full Medicaid coverage to otherwise eligible alien children under the age of 19 lawfully residing in the United States, including alien children subject to the 5-year bar.

To meet the citizenship/immigration status requirement for Medical Assistance, an otherwise eligible individual must be a member of one of the following categories:

- 0 U.S. citizen or national (Title XIX);
- 0 (A) a qualified non-citizen described in Section 0304.05.15(sub-section A), and
(B) who entered the U.S. prior to 8/22/96 (Title XIX);
- 0 A qualified non-citizen described in Section 0304.05.15(A) who entered the country on or after 8/22/96, and is exempt from the five (5) year ban (Title XIX);
- 0 After the five (5) year ban, a qualified non-citizen described in Section 0304.05.15(B), who entered the U.S. on or after 8/22/96 (Title XIX);
- 0 A lawfully residing member of the state-funded coverage group described in Sections 0304.05.45 and 0304.05.45.05 (State-funded);
- o Pending approval from the Centers for Medicaid and Medicare Services (CMS), a child under age nineteen (19) who is lawfully residing in the United States as described in Section 0304.05.15;

- 0 A pregnant woman or child under the age of nineteen
(19) as described in Section 0348

Note: Title XIX Medical Assistance for emergency services as stated in DHS 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 Medical Assistance Program. This includes persons who, but for citizenship status, meet the criteria for MA under SSI-related, family-related, or Rite Care rules. In addition, each applicant must have a medical condition including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that inpatient hospital or hospital emergency room treatment is required.

0304.05.10 Eligibility as a United States Citizen

REV:06/1994

A United States citizen is defined in the Immigration and Nationality Act as any person born in any of the 50 States, the District of Columbia, Puerto Rico, Guam or the United States Virgin Islands.

Nationals from American Samoa or Swain's Island are also regarded as United States citizens, as are those persons who are naturalized U.S. Citizens.

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.