



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

PO Box 712

TRENTON, NJ 08625-0712

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

CAROLE JOHNSON
Commissioner

JENNIFER LANGER JACOBS
Assistant Commissioner

STATE OF NEW JERSEY DEPARTMENT OF HUMAN SERVICES DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

M.K.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE :

AND HEALTH SERVICES and :

CAMDEN COUNTY BOARD OF :

SOCIAL SERVICES, :

RESPONDENTS. :

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 2692-2020

As Assistant Commissioner of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision, the OAL case file and the documents filed below. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to file a Final Decision is December 31, 2020 in accordance with an Order of Extension.

This matter concerns the denial of Petitioner's application for Medicaid benefits. At

issue is Petitioner's citizen status. At the time of the application, Petitioner had attained permanent resident status as of July 8, 2018. Pursuant to 8 U.S.C. §1612 and §1613 and N.J.A.C. 10:71-3.3(d), a legal alien who entered the country after August 22, 1996 is not eligible to receive Medicaid benefits for a period of five years. As such, Camden County denied Petitioner's application for benefits.

The Initial Decision reversed the denial concluding that the regulation at N.J.A.C. 10:71-3.3(d) only required that Petitioner was present in the United States for five years regardless of when he became a legal permanent resident (LPR). That conclusion misconstrues the totality of the regulation and the overarching federal law controlling Medicaid coverage of non-citizens. As such for the reasons that follow, I hereby REVERSE the Initial Decision and reinstate the denial.

The requirement that prevents Petitioner from being eligible for Medicaid is commonly known as the five-year bar and originated in the 1996 federal legislation called Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA). The Appellate Division set forth the law in Guaman v. Velez, 421 N.J. Super. 239 (App. Div. 2011).

In 1996, Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), 8 U.S.C.A. §§ 1601 to 46, and significantly limited a non-citizen's access to federally-subsidized medical benefits. *A.B. v. Div. of Med. Assistance & Health Servs.*, 407 N.J. Super. 330 (App.Div.), cert. denied, 200 N.J. 210,(2009). PRWORA's self-declared purpose was "to remove the incentive for illegal immigration provided by the availability of public benefits." 8 U.S.C.A. § 1601(6).

To that end, PRWORA divided aliens into two categories — qualified and unqualified — and limited Medicaid eligibility to "qualified aliens," which it narrowly defined as lawful permanent residents, designated refugees, aliens granted asylum, and other specified categories of lawfully-present aliens. 8 U.S.C.A. §§ 1612(b), 1641(b). Only qualified aliens who entered the country prior to August 22, 1996, or otherwise lived in the country for five years from the date of lawful permanent resident designation (the five-year bar), however, were eligible for non-emergency federal Medicaid benefits. 8 U.S.C.A. §§ 1612(b)(2)(B), 1613(a). For all intents and purposes, federally-funded Medicaid is largely unavailable for people arriving in the United States after August 22, 1996 unless they have resided in this country for at least five years. 8 U.S.C.A. § 1613(a).

Ibid at 249-50.

The federal law clearly requires that this five year bar start after the individual becomes a LPR. The regulations at N.J.A.C. 10:71-3.3(d) reflect this requirement when read in totality with the federal law. The requirement is that the individual is lawfully admitted for permanent residence but only eligible for Medicaid after having been present for five years. As only qualified aliens can receive full Medicaid benefits imposing the five year requirement based on their status as an unqualified alien is a misreading of the law. See 8 U.S.C.A. § 1613 “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”. See also Odi v. Alexander, 378 F. Supp. 3d 365, 380 (E.D. Pa. 2019); holding that “federal law mandates that states administering Medicaid must implement the five-year bar for Medicaid programs, and qualified aliens—including those with LPR status—must be present in the country with that status for five years before they can be eligible for Medicaid benefits.”

As such, I FIND that Camden County properly denied Petitioner’s application. The five year bar would end in 2023 at which point he can reapply. In the meantime, Petitioner may be eligible for coverage through New Jersey’s Health Insurance Marketplace GetCoveredNJ www.nj.gov/getcoverednj/ or 1-833-677-1010.

THEREFORE, it is on this 3rd day of DECEMBER 2020,

ORDERED:

That the Initial Decision is hereby REVERSED; and

That the denial of benefits is hereby AFFIRMED.

A handwritten signature in cursive script, appearing to read "Jennifer Langer Jacobs".

Jennifer Langer Jacobs, Assistant Commissioner
Division of Medical Assistance
and Health Services