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**State of New Jersey**  
**DEPARTMENT OF HUMAN SERVICES**

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**DEPARTMENT OF HUMAN SERVICES**  
**DIVISION OF MEDICAL ASSISTANCE**  
**AND HEALTH SERVICES**

A.O.,	:	
	:	
PETITIONER,	:	<b>ADMINISTRATIVE ACTION</b>
	:	
v.	:	<b>ORDER OF RETURN</b>
	:	
HUNTERDON COUNTY DIVISION OF SOCIAL SERVICES	:	<b>OAL DKT. No. HMA 13397-2025</b>
AND DIVISION OF MEDICAL	:	
ASSISTANCE AND HEALTH	:	
SERVICES,	:	
	:	
RESPONDENT.	:	

As Assistant Commissioner for the Division of Medical Assistance and Health Services (DMAHS), I have reviewed the record in this case, including the Initial Decision and the Office of Administrative Law (OAL) case file. Both parties filed exceptions in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is December 29, 2025, in accordance with an Order of Extension.

The issue in this matter arises from the denial of Petitioner's application for New Jersey Family Care Medicaid benefits due to her alien status.

An applicant for Medicaid must be a resident of the United States who is either a citizen or an alien who can be classified as an eligible alien. N.J.A.C. 10:71-3.2(a). Moreover, there is different criteria for an alien entering the United States on or after August 22, 1996, who falls within one of the exceptions to the requirement that an alien be a permanent resident for five years before becoming eligible for Medicaid. N.J.A.C.

10:71-3.2(c)(1). One example is when deportation has been withheld pursuant to section 243 (h) of the Immigration and Nationality Act. N.J.A.C. 10:71-3.2(c)(4). In this situation an alien would be entitled to full Medicaid benefits if the individual meets the eligibility criteria. N.J.A.C. 10:71-3.2(c)(1).

In this case, Petitioner has resided in the United States for twenty years. ID at 2. At some point, Petitioner made application to the Immigration Court seeking asylum and withholding of removal. P-1, Exhibit C. On November 29, 2006, the Immigration and Naturalization Court granted Petitioner's request for withholding of removal. Ibid. Petitioner's application for asylum was withdrawn on the same day. Ibid. On July 19, 2024, Petitioner obtained legal permanent resident status. ID at 2. Shortly thereafter, on May 21, 2025, Petitioner applied for NJ Family Care.<sup>1</sup> Ibid. On June 30, 2025, Petitioner's application was denied on the grounds that Petitioner was not "a United States Citizen, a qualified non-citizen, or a non-citizen lawfully admitted for permanent residence who has resided in the country for five years." Ibid.

In the Initial Decision, the Administrative Law Judge (ALJ) determined that the statement to Rule Proposal, 31 N.J.R. 97(a) provided that "for aliens entering the United States on or after August 22, 1996, legal resident aliens may qualify for Medicaid five years after the date of entry, without regard to their work history (emphasis added)." ID at 3. The ALJ also determined that the "plain reading of the regulation requires one must be a legal permanent resident and have been in the United States for five years. The regulation does not state that one must have legal alien status for five years." Ibid. Further, the ALJ relied on A.S. v. Hudson County Board of Social Services, 2016 W.L. 4726405 (N.J. Admin. 2016) in support of her decision. In A.S., a case analogous to the

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<sup>1</sup> Petitioner had been previously approved for services with the Division of Developmental Disabilities. See Petitioner's exceptions dated October 7, 2025.

matter at hand, the analysis focused on 1) the alien's date of entry to the United States rather than the date legal permanent residency had been obtained and 2) the date the Immigration Order was signed that withheld deportation. Ibid. As a result, the A.S. court in part, determined that residing in the United States for more than five years and the Immigration Court's issuance of an Order withholding deportation formed a factual basis to reverse the agency's denial of Medicaid benefits for A.S. Ibid.

In this matter, after reviewing the totality of facts for this matter, the ALJ determined that Petitioner satisfied the requirements under N.J.A.C. 10:72-3.2(c)(1) and that Petitioner is eligible for Medicaid. R-3. While I agree Petitioner has satisfied the criteria set forth in N.J.A.C. 10:72-3.2(c)(1) since she obtained an Order in November 2006 withholding deportation and because she has resided in the United States for more than five years, income and program eligibility remains unclear and must be determined by Hunterdon County.

Both parties filed exceptions in this matter. Respondent argues that Petitioner does not meet the eligibility requirements for the Aged, Blind and Disabled Medicaid (ABD) program because Petitioner is neither aged, blind, or disabled as set forth in N.J.A.C. 71:3.10 through 3.13. However, according to the record this was not the issue before the Court. ID at 2, 4. Rather, the sole issue being considered was whether Petitioner needed to be a legal permanent alien for five years "preceding the application or have legal alien status and been present for five years." Ibid. As such, no consideration will be given to the question of whether Petitioner's medical condition establishes eligibility for the ABD program since this issue was not addressed during the hearing.

Second, Respondent argues that Petitioner fails to fit within the exceptions to the five-year permanent resident alien status set forth in N.J.A.C. 10:72-3.2(c)(2) because

she is not a refugee or asylee. Respondent is mistaken. While I agree that Petitioner is not a refugee or asylee, Petitioner's alien status after having been granted by Order to have deportation withheld by the Immigration Court qualifies as one of the exceptions set forth in N.J.A.C. 10:72-3.2(c)(4). To that end, a review of N.J.A.C. 10:72-3.2(c)(4) provides in part that aliens entering the United States on or after August 22, 1996, that meet the specified eligibility criteria, are entitled to Medicaid benefits. Thus, if Petitioner meets eligibility criteria, she would be entitled to full Medicaid benefits.

Petitioner argues that if consideration is given to Respondent's assertion that Petitioner would not be eligible for the ABD program in its exceptions, it would violate Petitioner's right to due process because this issue was not raised during the hearing and any post hearing consideration would deprive Petitioner the opportunity to defend those allegations. I agree. To review an issue asserted in exceptions but not raised during the OAL hearing is inappropriate. N.J.A.C. 1:1-18.4(c).

Petitioner also argues that Petitioner is eligible for Medicaid and even if denied for the ABD program, Respondent must explore other options pursuant to Med. Com. No. 22-04. I agree. Since Petitioner is eligible for Medicaid based on her alien status at the time of application for Medicaid, it follows that even if ineligible for the ABD program, other Medicaid programs should be considered.

Thus, for the reasons set forth above and those contained in the Initial Decision, I hereby ADOPT the Initial Decision's conclusion that Hunterdon County's denial of Petitioner's application be reversed and as such, I am RETURNING this matter to Hunterdon County to determine whether Petitioner is eligible for Medicaid.

THEREFORE, it is on this 23rd day of DECEMBER 2025,

ORDERED:

That the Initial Decision is hereby ADOPTED and RETURNED as set forth above.

*Gregory Woods*  
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Gregory Woods, Assistant Commissioner  
Division of Medical Assistance  
and Health Services