



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

PO Box 712

TRENTON, NJ 08625-0712

CHRIS CHRISTIE

Governor

KIM GUADAGNO

Lt. Governor

JENNIFER VELEZ

Commissioner

VALERIE HARR

Director

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

N.A.,

PETITIONERS,

v.

DIVISION OF MEDICAL ASSISTANCE :

AND HEALTH SERVICES AND :

WARREN COUNTY BOARD :

OF SOCIAL SERVICES, :

RESPONDENTS. :

ADMINISTRATIVE ACTION

ORDER OF RETURN

OAL DKT. NO. HMA 09781-14

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this matter, consisting of the Initial Decision, the documents in evidence and the entire contents of the OAL case file. No exceptions to the Initial Decision were filed. Procedurally, the time period for the Agency Head to render a Final Agency Decision is December 11, 2014 in accordance with an Order of Extension. The Initial Decision was received on September 10, 2014.

This matter arises from the denial of Petitioner's application for New Jersey Family Care benefits due to his alien status and his failure to have been present in the United States for five years since his lawful admission for permanent residence. Petitioner entered the United States on a temporary visa in the 1980's. ID at 4. He overstayed his visa, but remained in the country since his arrival. ID at 5. In 2009, Petitioner married a citizen and became eligible for permanent residency. ID at 4. On November 12, 2012, Petitioner obtained permanent residency status. ID. at 4. On July 3, 2014, Petitioner's application for New Jersey Family Care was denied because he had not been a legal resident of this country for a period of five years pursuant to N.J.A.C. 10:78-3.2(e)(2).

At the hearing, Respondent argued that Petitioner was not eligible for benefits because changes to the New Jersey Family Care Program eliminated coverage for restricted aliens who had not obtained five years of legal residency in the United States. N.J.A.C. 10:78-3.2(e)(2). Petitioner argued that pursuant to the Personal Responsibility and Work Reconciliation Act of 1996, his presence in the country prior to August 22, 1996 meant that he was not a restricted alien and not subject to a five year waiting period. For the reasons that follow, I hereby ADOPT in part and REVERSE in part the Initial Decision and RETURN to the County for determination regarding Petitioner's eligibility for benefits.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) imposed several limitations on the availability of Medicaid benefits to aliens. 8 U.S.C. §1601 to 1646. Pursuant to the PRWORA, a legal alien who entered the country after August 22, 1996 is not eligible to receive

Medicaid benefits for a period of five years. 8 U.S.C. §1612 and §1613. However those immigrants who entered the country prior to August 22, 1996 and remained continuously present in the United States until becoming a qualified alien, are eligible for Medicaid benefits immediately upon obtaining qualified alien status. See Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the PRWORA of 1996, 632 Federal Register 61344 at 6141-61416 (November 17, 1997). The ALJ found that Petitioner entered the United States prior to August 22, 1996 and was continuously present in the country until he achieved permanent resident status on November 12, 2010. ID at 4-5. Consequently, Petitioner is an eligible alien not subject to the traditional PRWORA five-year ban and, if otherwise eligible, able to receive benefits as early as November 12, 2012.

The New Jersey Family Care Program is a federal and state funded Medicaid program. Originally, New Jersey granted eligibility to aliens lawfully admitted for permanent residence regardless of the date of entry into the United States. N.J.A.C. 10:78-3.2. Effective November 1, 1998, New Jersey implemented the five year ban established by PRWORA. Med Comm. No. 98-20. However, revisions to the New Jersey Family Care Program in 2010 identified a new class of ineligible individuals, restricted aliens. N.J.A.C. 10:78-3.2(e)(1) defined restricted aliens as “any alien lawfully admitted for permanent residence, who has lived in the United States for less than five full years after such lawful admittance.” The Appellate Division upheld the constitutionality of this regulation because the eligibility requirement for state-funded benefits directly conformed to

federal requirements, mirrored federal objectives and corresponded to congressional policy. Guaman v. Velez et al., 421 N.J. Super. 239, 266 (App. Div. 2011). Unlike Petitioner, the plaintiffs in Guaman were not present in the United States prior to August 22, 1996. Accordingly, they did not meet the federal five-year residency requirement set forth in the PRWORA or N.J.A.C. 10:78-3.2(e)(1).

For the reasons set forth above, the Petitioner is not subject to the federal five year residency requirement. As a pre-enactment eligible alien, Petitioner is entitled to Medicaid benefits if otherwise eligible. The 2010 revisions to New Jersey Family Care cannot discount the federal requirement that the Medicaid eligibility of aliens, in this country prior to August 22, 1996 and continuously present thereafter, is not subject to the five year ban. The denial of Petitioner's application is inconsistent federal requirements and objectives. With the enactment of PRWORA, the federal government distinguished between those immigrants already in the country from those yet to arrive by requiring states to provide Medicaid coverage to otherwise eligible, qualified aliens in the country prior to August 22, 1996. The Administrative Law Judge found that Petitioner was in the United States prior to August 22, 1996 and continuously present thereafter until he received his legal permanent residency card. As such, Petitioner is not subject to the five year ban and his application should be evaluated for eligibility.

THEREFORE, it is on this 17th day of NOVEMBER 2014,

ORDERED:

That the Initial Decision is hereby ADOPTED with regard to the finding that Petitioner is not subject to the five year residency requirements established by PRWORA; and

That the Initial Decision is hereby REVERSED with regard to the finding that Petitioner is a restricted alien within the meaning of N.J.A.C. 10:78-3.2(e)(1); and

That the matter is REMANDED to Warren County Board of Social Services to determine if Petitioner is otherwise eligible for benefits.

A handwritten signature in black ink, appearing to read "Valerie J. Harr", with a horizontal line underneath.

Valerie J. Harr, Director
Division of Medical Assistance
and Health Services