



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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

J.G.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

UNION COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 5293-2016

As Director 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. Procedurally, the time period for the Agency Head to file a Final Decision is November 10, 2016 in accordance with an Order of Extension.

The matter arises regarding the denial of Petitioner's application for Medicaid to cover services he received at Trinitas Hospital. Petitioner is a citizen of Columbia and

arrived in the United States in June 2015 under a visa that permitted him to remain here for six months. Petitioner visited Trinitas Hospital two times for treatment - on September 24, 2015 and on October 6, 2015, where he remained until November 9, 2015.

Trinitas Hospital is seeking to have Petitioner's bills paid by Medicaid under the rules that permit individuals who are subject to the five year waiting period for qualified aliens and individuals who are not qualified aliens to be covered for an emergency medical condition. However, this requires that these individuals meet all other Medicaid requirements but for their alien status.

The Initial Decision determined that Petitioner failed to meet the Medicaid residency requirements. Petitioner is not a resident of New Jersey and, as developed by the ALJ, appears to have come to New Jersey for the purpose of receiving medical care for a limited time which negates a determination of residency pursuant to N.J.A.C.10:73-3.3. ID at 5.

A "resident" is defined as "a person who is living in the State voluntarily and not for a temporary purpose, that is, with no intention of presently removing therefrom." N.J.A.C. 10:71-3.5.(a). Petitioner is not a resident of New Jersey as he is a temporary visitor to this country. As Florida Medicaid has stated "[n]oncitizens in the United States for a temporary reason, such as tourists or those traveling for business or pleasure are not eligible for Emergency Medical Assistance (EMA), or any other Medicaid benefits." See <https://www.dcf.state.fl.us/programs/access/docs/fammed factsheet.pdf>.

In a State Health Official (SHO) letter dated July 1, 2010, the Centers for Medicare and Medicaid Services (CMS) addressed the residency issue by explaining "a nonimmigrant visitor for business or pleasure may be lawfully present under immigration

regulations, but not meet Medicaid or CHIP residency requirements, and therefore will not be able to qualify for Medicaid or CHIP.” Petitioner here is a nonimmigrant. He has entered this country for a temporary period of time and applied for Medicaid benefits while present in this country under an unexpired tourist visa. Other states as well as courts follow this principle. For example, North Carolina explains for purposes of Medicaid residency requirements, “[i]n order for a non-immigrant to be allowed to come to the U.S., he must demonstrate that he maintains a residence outside the U.S. to which he plans to return and that he will stay in the U.S. for limited period of time.” See <https://www2.ncdhhs.gov/info/olm/manuals/dma/abd/man/MA2220-02.htm>. Similarly New York guidance, effective January 2016, states “it is highly unlikely that short-term visa holders, including tourists, would be able to establish State residency.” See https://www.health.ny.gov/health_care/medicaid/publications/docs/gis/16ma002.pdf.

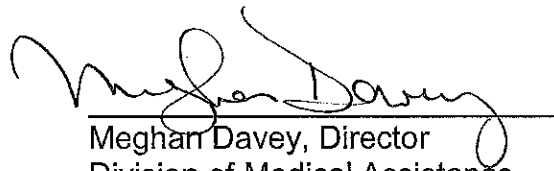
When other state courts have reviewed the ability of visa holders to qualify as state residents to access emergency medical care in light of 42 U.S.C. § 1320b–7, they have reached the same conclusion. This statute removes the affirmative requirement to produce documents so that the application cannot be denied for failing to produce the documents, as would be the case with undocumented or illegal immigrants. In Okale v. North Carolina Department of Health and Human Services, 570 S.E. 2nd 741 (N.C. Ct. App. 2002), the North Carolina Court of Appeals held that a person holding a tourist visa by definition could not have the requisite intent to reside in the state. See also, Chrisdiana v. Dep’t of Cmty. Health, 278 Mich. App. 685 (Mich. Ct. App. 2008) and Clark v. Div. of Soc. Servs., 2003 N.C. App. LEXIS 1855 (N.C. Ct. App. Oct. 7, 2003), an application filed by an individual with an unexpired tourist visa could not intend to remain in North Carolina by operation of law.

Thus, for the reasons expressed in the Initial Decision and expanded above, I hereby ADOPT the Initial Decision affirming Union County's denial of Petitioner's application for benefits.

THEREFORE, it is on this ^{7th} day of NOVEMBER 2016,

ORDERED:

That the Initial Decision is hereby ADOPTED.


Meghan Davey, Director
Division of Medical Assistance
and Health Services