

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06105-3725

██████████ 2016
Signature Confirmation

Application ID# ██████████
Hearing Request # 775326

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2016, the Health Insurance Exchange Access Health CT (“AHCT”) sent ██████████ (“the Appellant”) a notice of action discontinuing his Medicaid/Husky D healthcare coverage effective ██████████ 2016 because he failed to provide verification that he had qualifying immigration status.

On ██████████ 2016, The Appellant requested an administrative hearing because he disagrees with the denial.

On ██████████ 2016, the Office of legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ 2016.

On ██████████ 2016, in accordance with sections 17b-60, 17b-264 and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, chapter 45 Code of Federal Regulations (“CFR”) §§ 155.505(b) and 155.510 and/or 42 CFR § 457.1130, OLCRAH held an administrative hearing.

The following individuals were present at the hearing:

██████████ Appellant
██████████ Appellant’s mother

10. The Appellant is not an asylee, refugee, Cuban or Haitian entrant, Amerasian immigrant, veteran legally residing in the state or on active duty or the spouse or dependent of such person, a victim of human trafficking, a Canadian born Native American or a Native American in a federally recognized tribe, a person whose deportation has been withheld, an Iraqi or Afghan Special immigrant or family member within the first eight months of arrival in the United States: or a member of the Hmong or Highland Laotian Tribe during the Vietnam era. (Hearing Record)
11. The Appellant is not a Veteran. (Appellant's Testimony)
12. The Appellant has 21 qualifying work quarters through the Social Security Administration. He is not eligible for Social Security Disability payments. The Appellant is not a recipient of Supplemental Security Income ("SSI"). (Appellant's Mother's Testimony)
13. The Appellant is not a victim of battery or extreme cruelty. (Appellant's Testimony)

CONCLUSIONS OF LAW

1. Section 17b-260 of the Connecticut General Statutes ("Conn. Gen. Stat.") provides that the Commissioner of Social Services is authorized to take advantage of the medical assistance programs provided in Title XIX, entitled "Grants to States for Medical Assistance Programs", contained in the Social Security Amendments of 1965 and may administer the same in accordance with the requirements provided therein, including the waiving, with respect to the amount paid for medical care, of provisions concerning recovery from beneficiaries or their estates, charges and recoveries against legally liable relatives, and liens against property of beneficiaries
2. Section 17b-264 of the "Conn. Gen. Stat." provides that all of the provisions of sections 17b-22, 17b-75 to 17b-77, inclusive, 17b-79 to 17b-83, inclusive, 17b-85 to 17b-103, inclusive, and 17b-600 to 17b-604, inclusive, are extended to the medical assistance program except such provisions as are inconsistent with federal law and regulations governing Title XIX of the Social Security Amendments of 1965 and sections 17b-260 to 17b-262, inclusive, 17b-264 to 17b-285, inclusive, and 17b-357 to 17b-361, inclusive.
3. Title 45 of the Code of Federal Regulations ("CFR") § 155.505(c)(1) provides that Exchange eligibility appeals may be conducted by a State Exchange appeals entity or an eligible entity described in paragraph (d) of this section that is

designated by the Exchange, if the Exchange establishes an appeals process in accordance with the requirements of this subpart.

4. 45 CFR § 155.505(d) provides that an appeals process established under this subpart must comply with § 155.110(a).
5. 45 CFR § 155.110(a)(2) provides that the State may elect to authorize an Exchange established by the State to enter into an agreement with an eligible entity to carry out one or more responsibilities of the Exchange. Eligible entities are: the State Medicaid agency, or any other State agency that meets the qualification of paragraph (a)(1) of this section.
6. 42 CFR § 435.406(a)(2)(i) provides for eligibility of qualified aliens. Except as specified in 8 U.S.C. 1612(b)(1) (permitting States an option with respect to coverage of certain qualified aliens), qualified aliens as described in section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641) (including qualified aliens subject to the 5-year bar) who have provided satisfactory documentary evidence of Qualified Alien status, which status has been verified with the Department of Homeland Security (DHS) under a declaration required by section 1137(d) of the Act that the applicant or beneficiary is an alien in a satisfactory immigration status

Uniform Policy Manual (“UPM”) § 3005.08 B provides for eligible non-citizens who arrived in the United States on or after August 22, 1996.

B. Eligible Non-citizens -- Arriving in U.S. on or after 8/22/96

An eligible non-citizen is one who arrives in the U.S. on or after August 22, 1996 and:

1. is admitted to the U.S. as a refugee under section 207 of the Immigration and Nationality Act; or
2. is granted asylum under section 208 of such act; or
3. whose deportation is being withheld under section 243(h) of such act (as in effect immediately before the effective date of section 307 of division C of Public Law 104-208) or section 241(b)(3) of such act (as amended by section 305(a) of division C of Public Law 104-208); or
4. is lawfully residing in the state and is:
 - a. a veteran (as defined in section 101, 1101, or 1301, or as described in section 107 of title 38, United States Code) with a discharge characterized as an honorable discharge and not on account of alienage and who fulfills the minimum active-duty service requirements of section 5303A(d) of title 38 U.S.C.; or

- b. on active duty (other than active duty for training) in the Armed Forces of the United States; or
 - c. the spouse or unmarried dependent child of an individual described in subparagraph a or b or the unremarried surviving spouse of a deceased individual described in subparagraph a or b if the marriage fulfills the requirements of section 1304 of title 38, U.S.C.; or
5. is granted status as a Cuban and Haitian entrant under section 501 (e) of the Refugee Education Assistance Act of 1980; or
 6. is admitted to the U.S. as an Amerasian immigrant pursuant to section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in section 101 (e) of Public Law 100-202 and amended by the 9th proviso under MIGRATION AND REFUGEE ASSISTANCE in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989, Public Law 100-461, as amended); or
 7. is an American Indian born in Canada to whom the provisions of section 289 of the Immigration and Nationality Act apply; or
 8. is a member of an Indian tribe under section 4 (e) of the Indian Self-Determination and Education Assistance Act; or
 9. is receiving SSI; or
 10. has lawfully resided in the U.S. for at least five years and:
 - a. is lawfully admitted to the U.S. for permanent residence under the Immigration and Nationality Act; or
 - b. is paroled into the U.S. under section 212 (d) of such act for a period of at least one year; or
 - c. is granted conditional entry pursuant to section 203 (a) (7) of such act as in effect prior to April 1, 1980; or
 - d. has been battered or subjected to extreme cruelty in the U.S. by a spouse or parent, or by a member of the spouse or parent's family living with the non-citizen and the spouse or parent allowed such battery or cruelty to occur, but only if:
 - (1) the Department determines that the battery or cruelty has contributed to the need for medical assistance; and
 - (2) the non-citizen has been approved or has an application pending with the INS under which he or she appears to qualify for:
 - (a) status as a spouse or child of a U.S. citizen pursuant to clause (ii), (iii) or (iv) of section 204(a)(1)(A) of the Immigration and Nationality Act; or

- (b) classification pursuant to clause (ii) or (iii) of section 204(a)(1)(B) of such act; or
 - (c) suspension of deportation and adjustment of status pursuant to section 244(a)(3) of such act; or
 - (d) status as a spouse or child of a U.S. citizen pursuant to clause (i) of section 204(a)(1)(A) of such act, or classification pursuant to clause (i) of section 204(a)(1)(B) of such act; and
- (3) the individual responsible for such battery or cruelty is not presently residing with the person subjected to such battery or cruelty; or
- e. is a non-citizen whose child has been battered or subjected to extreme cruelty in the U.S. by a spouse or parent of the non-citizen (without the active participation of the non-citizen in the battery or cruelty), or by a member of the spouse or parent's family living with the non-citizen and the spouse or parent allowed such battery or cruelty to occur, but only if the criteria in subparagraph d (1), (2) and (3) above are met; or
 - f. is a non-citizen child living with a parent who has been battered or subjected to extreme cruelty in the U.S. by that parent's spouse or by a member of the spouse's family living with the parent and the spouse allowed such battery or cruelty to occur, but only if the criteria in subparagraph d (1), (2) and (3) above are met; or
 - g.. is lawfully residing in the United States and who was a member of a Hmong or Highland Laotian Tribe at the time that tribe rendered assistance to United States personnel during the Viet Nam era. The individual's spouse, surviving spouse and unmarried dependent children are also eligible.
7. The Appellant is not a qualified non-citizen.
 8. AHCT correctly found the Appellant ineligible for Medicaid/Husky D healthcare coverage.
 9. 42 CFR § 435.919(a) provides that the agency must give beneficiaries adequate notice of proposed action to terminate, discontinue, or suspend their eligibility or reduce or discontinue services they may receive under Medicaid.
 10. UPM § 1570.10(A)(1) provides that the Department gives adequate notice at least ten days prior to the date of the intended action if the Department intends to discontinue, terminate, suspend or reduce benefits
 11. AHCT incorrectly failed to give the Appellant a minimum of ten day notice prior to discontinuing his Medicaid coverage.
 12. The Appellant is eligible to receive the Medicaid for the month of [REDACTED] 2016.

DISCUSSION

The Appellant and his representatives provided credible testimony on the Appellant's immediate need for medical care. Federal Regulations however are very clear that his citizenship status prohibits him from receiving Medicaid coverage regardless of medical need.

Access Health was correct to discontinue the Appellant from the Medicaid program because of his citizenship status however they failed to discontinue his Medicaid properly as they did not give adequate notice of the discontinuance. When Access Health was notified by the Department of Homeland Security of the Appellant's status as having less than five years as a Legal Permanent Resident they discontinued his Medicaid with only three day notice not the required ten.

DECISION

The Appellant's appeal on the discontinuance of his Medicaid HUSKY D is **DENIED**

The Appellant's appeal on the date of the discontinuance is **GRANTED.**

ORDER

1. AHCT shall immediately reinstate the Medicaid/Husky D medical insurance and allow the Appellant a 10 day adverse action period. The Appellant shall remain Husky D eligible through [REDACTED] 2016.
2. The Appellant's new termination date shall be [REDACTED] 2016.
3. Compliance with this order shall be submitted to the undersigned no later than [REDACTED] 2016.

Marci Ostroski

Marci Ostroski
Fair Hearings Officer

CC: Judy Boucher, Health Insurance Exchange Access Health CT

APTC/CSR

Right to Appeal

For APTC or CSR eligibility determinations, the Appellant has the right to appeal to the United States Department of Health and Human Services (HHS) within 30 days of the date of this decision. To obtain an Appeal Request Form, go to <https://www.healthcare.gov/can-i-appeal-a-marketplace-decision/> or call 1-800-318-2596 (TTY: 1-855-889-4325). HHS will let the Appellant know what it decides within 90 days of the appeal request. There is no right to judicial review of the decision by HHS.

There is no right to request reconsideration for denials or reductions of Advanced Premium Tax Credits (APTC) or Cost Sharing Reduction (CSR).

MEDICAID AND CHIP

Right to Request Reconsideration

For denials or reductions of MAGI Medicaid and CHIP, the appellant has the right to file a written reconsideration request within 15 days of the mailing date of the decision on the grounds there was an error of fact or law, new evidence has been discovered or other good cause exists. If the request for reconsideration is granted, the appellant will be notified within 25 days of the request date. No response within 25 days means that the request for reconsideration has been denied. The right to request a reconsideration is based on §4-181a(a) of the Connecticut General Statutes.

Reconsideration requests should include specific grounds for the request: for example, indicate what error of fact or law, what new evidence, or what other good cause exists.

Reconsideration requests should be sent to: Department of Social Services, Director, Office of Legal Counsel, Regulations, and Administrative Hearings, 55 Farmington Ave, Hartford, CT 06105.

There is no right to request reconsideration for denials or reductions of Advanced Premium Tax Credits (APTC) or Cost Sharing Reduction (CSR).

Right to Appeal

For denials, terminations or reductions of MAGI Medicaid and CHIP eligibility, the appellant has the right to appeal this decision to Superior Court within 45 days of the mailing of this decision, or 45 days after the agency denies a petition for reconsideration of this decision, provided that the petition for reconsideration was filed timely with the Department. The right to appeal is based on §4-183 of the Connecticut General Statutes. To appeal, a petition must be filed at Superior Court. A copy of the petition must be served upon the Office of the Attorney General, 55 Elm Street, Hartford, CT 06106 or the Commissioner of the Department of Social Services, 55 Farmington Ave, Hartford, CT 06105. A copy of the petition must also be served on all parties to the hearing.

The **45** day appeal period may be extended in certain instances if there is good cause. The extension request must be filed with the Commissioner of the Department of Social Services in writing no later than **90** days from the mailing of the decision. Good cause circumstances are evaluated by the Commissioner or his designee in accordance with §17b-61 of the Connecticut General Statutes. The Agency's decision to grant an extension is final and is not subject to review or appeal.

The appeal should be filed with the clerk of the Superior Court in the Judicial District of New Britain or the Judicial District in which the appellant resides.

