

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

██████████, 2022
Signature Confirmation

Client ID # ██████████
Case ID # ██████████
Request # 190319

NOTICE OF DECISION

PARTY

██
████████████████████
██

PROCEDURAL BACKGROUND

On ██████████, 2021, The Health Insurance Exchange, Access Health CT (“AHCT”) issued a Notice of Action (“NOA”) to ██████████ (the “Appellant”) that denied HUSKY D Medicaid healthcare coverage for failure to meet an eligible immigration status.

On ██████████, 2022, the Appellant requested a hearing to contest the denial of the Medicaid/HUSKY D coverage.

On ██████████, 2022, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the Administrative Hearing for ██████████, 2022.

On ██████████, 2022, the Appellant requested to reschedule the Administrative Hearing.

On ██████████, 2022, the OLCRAH issued a notice rescheduling the Administrative Hearing for ██████████, 2022.

On ██████████, 2022, the Appellant requested to reschedule the Administrative Hearing.

On ██████████, 2022, the OLCRAH issued a notice rescheduling the Administrative Hearing for ██████████, 2022.

On [REDACTED], 2022, the Appellant requested to reschedule the Administrative Hearing.

On [REDACTED], 2022, the OLCRAH issued a notice rescheduling the Administrative Hearing for [REDACTED], 2022.

On [REDACTED], 2022, in accordance with sections 17b-60, 17b-264 and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, Title 45 Code of Federal Regulations (“CFR”) §§ 155.505(b) and 155.510 and/or 42 CFR § 457.113, OLCRAH held an Administrative Hearing by telephone.

The following individuals participated telephonically in the hearing:

[REDACTED], Appellant
[REDACTED], Authorized Representative (“AREP”)
Cathy Davis, AHCT Representative
Jessica Gulianello, Hearing Officer

The hearing record remained open to allow the Appellant time to submit additional information. Additional information was received and on [REDACTED], 2022, the hearing record closed accordingly.

STATEMENT OF THE ISSUE

The issue to be decided is whether AHCT correctly denied the Adult Medicaid medical coverage (“HUSKY D”) for [REDACTED] for failing to meet an eligible immigration status.

FINDINGS OF FACT

1. The Appellant is [REDACTED]. He was born [REDACTED]. (Hearing Record)
2. The Appellant is a resident of [REDACTED]. (Hearing Record)
3. The Appellant is a student, he is employed, and he files taxes. (Appellant’s Testimony, AREP’s Testimony)
4. The Appellant has [REDACTED] that have been substantiated by a medical professional. (AREP’s Testimony, Exhibit D: [REDACTED], Statement of [REDACTED] Eligibility, 2017)
5. The Appellant has not been evaluated or determined to be disabled [REDACTED]. (AREP’s Testimony)
6. The Appellant is not enrolled in [REDACTED]. (AREP’s Testimony)

7. The Appellant does not receive [REDACTED] Income [REDACTED]. (AREP's Testimony)
8. The Appellant entered the US in [REDACTED] 2005 by way of a [REDACTED] Visa. (Appellant's Testimony, AREP's Testimony)
9. In 2007, the US Citizenship and Immigration Services ("USCIS") granted the Appellant Deferred Action for Childhood Arrivals ("DACA") status. (Appellant's Testimony, AREP's Testimony)

10. On [REDACTED], 2021, USCIS issued the Appellant a [REDACTED]: Notice of Action ("NOA"). Notice Type: Approval Notice. Valid from [REDACTED]/2021 to [REDACTED]/2023. The NOA states the following:

"This notice is to inform you regarding U.S. Citizenship and Immigration Services's (USCIS) decision on your Form [REDACTED], Consideration of Deferred Action for Childhood Arrivals."

"USCIS in the exercise of its prosecutorial discretion, has decided to defer action in your case. Deferred action is an exercise of prosecutorial discretion by USCIS not to pursue the removal of an individual from the United States for a specific period. Deferred action does not confer or alter any immigration status."

"Unless terminated, this decision to defer removal action will remain in effect for the duration of the validity period noted above."

"This notice does not constitute employment authorization, nor may it be used in place for an Employment Authorization Document."

(Exhibit D: [REDACTED] NOA, [REDACTED]/2021)

11. On [REDACTED], 2021, the Appellant was issued an [REDACTED] Card. The card reflects a Category of [REDACTED] and it expires on [REDACTED], 2023. (Exhibit B: [REDACTED] Card)

12. On [REDACTED], 2021, the Appellant completed a change healthcare application [REDACTED] with AHCT. The application reflected the Appellant has an [REDACTED] [REDACTED] Card [REDACTED]. (Exhibit 4: Application Summary, Department's Testimony)

13. The application results reflect the Appellant was determined ineligible for Husky D Medicaid healthcare coverage based on the following explanation: "Available data from the [REDACTED] shows that the person is not a U.S. Citizen or does not have an eligible immigration status to get healthcare coverage through the Exchange." (Exhibit: 3: Eligibility Results: Application ID [REDACTED], Department's Testimony)

14. On [REDACTED], 2021, AHCT sent the Appellant a NOA stating he was determined ineligible for Medicaid healthcare coverage based on failure to meet an eligible immigration status. (Exhibit 2: 1301: NOA, Department's Testimony)
15. The issuance of this decision is timely under section 17b-61(a) of Connecticut General Statutes, which requires that a decision be issued within 90 days of the request for an Administrative Hearing. The Appellant requested an Administrative Hearing on [REDACTED], 2022. This decision, therefore, was due no later than [REDACTED], 2022. The hearing, however, which was originally scheduled for [REDACTED], 2022, was rescheduled for [REDACTED], 2022, at the request of the Appellant. The hearing that was rescheduled for [REDACTED], 2022, was rescheduled for [REDACTED], 2022, at the request of the Appellant. The rescheduled hearing for [REDACTED], 2022, was rescheduled to [REDACTED], 2022, at the request of the Appellant. Furthermore, the hearing record which had been anticipated to close on [REDACTED], 2022, did not close for admission of evidence until [REDACTED], 2022, at the Appellant's request. Because the [REDACTED] delay resulted from the Appellant's requests, this decision is not due until [REDACTED], 2022, and is therefore timely. (Hearing Record)

CONCLUSIONS OF LAW

1. Conn. Gen. Stat. § 17b-2 provides the Department of Social Services is designated as the state agency for the administration of (6) the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Sec. 17b-260 provides for the acceptance of federal grants for medical assistance. 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.

The Department has the authority to administer and determine eligibility for the Medicaid program.

3. 45 C.F.R. § 155.110(a) provides the following: 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: (1) An entity: (i) Incorporated under, and subject to the laws of, one or more States; (ii) That has demonstrated experience on a State or regional basis in the individual and small group health insurance markets and in benefits coverage; and (iii) Is not a health insurance issuer or treated as a health insurance issuer under

subsection (a) or (b) of section 52 of the Code of 1986 as a member of the same controlled group of corporations (or under common control with) as a health insurance issuer; or (2) The State Medicaid agency, or any other State agency that meets the qualifications of paragraph (a)(1) of this section.

Access Health is the Department's designated state entity to administer the Health Insurance Exchange Program.

4. 45 C.F.R § 155.505(c)(1) provides the following: 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.
5. 45 C.F.R § 155.505(d) provides the Following: An appeals process established under this subpart must comply with § 155.110(a).
6. 45 C.F.R § 155.110(a)(2) provides the following: 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.

Access Health has the authority to participate in Administrative Hearings.

7. 42 CFR § 435.403(a) provides the following: The agency must provide Medicaid to *eligible* residents of the State, including residents who are absent from the State.

UPM § 3010.15 (A) provides the following: Capable of Indicating Intent

1. Individual Criteria

This group of individuals includes those who are:

a. age 21 and over; and both of the following:

(1) capable of indicating intent; and

(2) not receiving State Supplement

8. UPM § 3010.15(A) provides the following: Residency Requirement.

2. The Residency requirement for this group is met by living in the state and meeting one of the additional following requirements:

a. indicates intent to remain permanently or indefinitely; or

- b. whether or not currently employed, entered the state either;
 - (1) with a job commitment; or
 - (2) seeking employment.

The Appellant lives in ■■■, is employed, and files taxes. As such, the Appellant is a resident of the state. Therefore, he meets the ■■■ residency requirement for Medicaid.

9. US Code 2020 Title 8: Aliens and Nationality: Subchapter IV – General Provisions § 1641. Definitions:

(a) In general Except as otherwise provided in this chapter, the terms used in this chapter have the same meaning given such terms in section 101(a) of the Immigration and Nationality Act [8 U.S.C. 1101(a)].

(b) Qualified alien For purposes of this chapter, the term “qualified alien” means an alien who, at the time the alien applies for, receives, or attempts to receive a Federal public benefit, is—

(1) an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.],

(2) an alien who is granted asylum under section 208 of such Act [8 U.S.C. 1158],

(3) a refugee who is admitted to the United States under section 207 of such Act [8 U.S.C. 1157],

(4) an alien who is paroled into the United States under section 212(d)(5) of such Act [8 U.S.C. 1182(d)(5)] for a period of at least 1 year,

(5) an alien whose deportation is being withheld under section 243(h) of such Act [8 U.S.C. 1253] (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 [8 U.S.C. 1231(b)(3)] (as amended by section 305(a) of division C of Public Law 104–208),

(6) an alien who is granted conditional entry pursuant to section 203(a)(7) of such Act [8 U.S.C. 1153(a)(7)] as in effect prior to April 1, 1980,

(7) an alien who is a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980), or

(8) an individual who lawfully resides in the United States in accordance with a Compact of Free Association referred to in section 1612(b)(2)(G) of this title, but only with respect to the designated Federal program defined in section 1612(b)(3)(C) of this title (relating to the Medicaid program)

10.42 CFR § 435.406 provides for Citizenship and non-citizen eligibility.

(a) The agency must provide Medicaid to otherwise eligible individuals who are—

(1) Citizens and nationals of the United States, provided that—

(i) The individual has made a declaration of United States citizenship, as defined in §435.4, or an individual described in paragraph (a)(3) of this section has made such declaration on the individual's behalf, and such status is verified in accordance with paragraph (c) of this section; and

(ii) For purposes of the declaration and citizenship verification requirements discussed in paragraphs (a)(1)(i) of this section, an individual includes applicants under a section 1115 demonstration (including a family planning demonstration project) for which a State receives Federal financial participation in its expenditures.

(iii) The following groups of individuals are exempt from the requirement to provide documentation to verify citizenship in paragraph (c) of this section:

(A) Individuals receiving SSI benefits under title XVI of the Act.

(B) Individuals entitled to or enrolled in any part of Medicare.

(C) Individuals receiving disability insurance benefits under section 223 of the Act or monthly benefits under section 202 of the Act, based on the individual's disability (as defined in section 223(d) of the Act).

(D) Individuals who are in foster care and who are assisted under Title IV-B of the Act, and individuals who are beneficiaries of foster care maintenance or adoption assistance payments under Title IV-E of the Act.

(E)

(1) Individuals who are or were deemed eligible for Medicaid in the State under §435.117 or §457.360 of

this chapter on or after July 1, 2006, based on being born to a pregnant woman eligible under the State's Medicaid or CHIP state plan or waiver of such plan;

(2) At State option, individuals who were deemed eligible for coverage under §435.117 or §457.360 of this chapter in another State on or after July 1, 2006, provided that the agency verifies such deemed eligibility.

(2) (i) Except as specified in 8 U.S.C. 1612(b)(1) (permitting States an option with respect to coverage of certain qualified non-citizens), qualified non-citizens as described in section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641) (including qualified non-citizens subject to the 5-year bar) who have provided satisfactory documentary evidence of Qualified Non-Citizen 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 non-citizen in a satisfactory immigration status.

(ii) The eligibility of qualified non-citizens who are subject to the 5-year bar in 8 U.S.C. 1613 is limited to the benefits described in paragraph (b) of this section.

(3) For purposes of paragraphs (a)(1) and (2), of this section, a declaration of citizenship or satisfactory immigration status may be provided, in writing and under penalty of perjury, by an adult member of the individual's household, an authorized representative, as defined in §435.923, or if the applicant is a minor or incapacitated, someone acting responsibly for the applicant provided that such individual attests to having knowledge of the individual's status.

(b) The agency must provide payment for the services described in §440.255(c) of this chapter to residents of the State who otherwise meet the eligibility requirements of the State plan (except for receipt of AFDC, SSI, or State Supplementary payments) who are qualified non-citizens subject to the 5-year bar or who are non-qualified non-citizens who meet all Medicaid eligibility criteria, except non-qualified non-citizens need not present a social security number or document immigration status.

(c) The agency must verify the declaration of citizenship or satisfactory immigration status under paragraph (a)(1) or (2) of this section in accordance with §435.956.

11). UPM § 3005.08 (B) provides the following: Eligible Non-Citizens – Arriving in U.S on or after 8/22/1996 :

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 provision 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

11. 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.

12). UPM § 3005.08 (C) provides the following: Non-citizens Eligible Due to Medical Emergency: A non-citizen who does not fall into one of the categories listed in A or B is eligible for MA only to cover an emergency medical condition and only if the non-citizen is otherwise eligible for Medicaid.

13). 42 CFR § 435.540(a) provides the following: Definition. The agency must use the same definition of disability as used under SSI, except that -

(1) In determining the eligibility of individuals whose Medicaid eligibility is protected under §§ 435.130 through 435.134, the agency must use the definition of disability that was used under the Medicaid plan in December 1973; and

(2) The agency may use a more restrictive definition to determine eligibility under § 435.121, if the definition is no more restrictive than that used under the Medicaid plan on January 1, 1972.

14). DHS Office of Immigration Statistics: Immigration Classes of Admission, (DRAFT 2/11/08) provides the following: The Class of Admission ("COA") or Category reflects the immigration law provision pursuant to which an alien is eligible for admission to the US either as an immigrant or non-immigrant. The Appellant's COA of C33 is described as follows: "Child of an alien classified as C31 or C36. C31 and C36 are both described as follows: "Married son or daughter who is a step-child of a U.S. citizen."

Proof of an individual's citizenship or their status as an eligible non-citizen is a technical eligibility requirement for Husky D Medicaid.

The Appellant arrived [REDACTED] in 2005 (after [REDACTED]/1996).

The Appellant is a non-citizen.

The Appellant is subject to the non-citizen provisions as outlined above.

The Appellant maintains valid DACA status [REDACTED].

The Appellant also holds a valid [REDACTED] Card.

The Appellant does not meet any of the non-citizen eligible immigration status requirements for Medicaid as cited above.

14). 42 § CFR 435.917 provides the following:

(a) Notice of eligibility determinations. Consistent with §§ 431.206 through 431.214 of this chapter, the agency must provide all applicants and beneficiaries with timely and adequate written notice of any decision affecting their eligibility, including an approval, denial, termination or suspension of eligibility, or a denial or change in benefits and services. Such notice must –

(1) Be written in plain language;

(2) Be accessible to persons who are limited English proficient and individuals with disabilities, consistent with § 435.905(b), and

(3) If provided in electronic format, comply with § 435.918(b).

(b) Content of eligibility notice - (1) Notice of approved eligibility. Any notice of an approval of Medicaid eligibility must include, but is not limited to, clear statements containing the following information –

(i) The basis and effective date of eligibility;

(ii) The circumstances under which the individual must report, and procedures for reporting, any changes that may affect the individual's eligibility;

(iii) If applicable, the amount of medical expenses which must be incurred to establish eligibility in accordance with § 435.121 or § 435.831.

(iv) Basic information on the level of benefits and services available based on the individual's eligibility, including, if applicable –

(A) The differences in coverage available to individuals enrolled in benchmark or benchmark-equivalent coverage or in an Alternative Benefits Plan and coverage available to individuals described in § 440.315 of this chapter (relating to

exemptions from mandatory enrollment in benchmark or benchmark-equivalent coverage);

(B) A description of any premiums and cost sharing required under Part 447 Subpart A of this chapter;

(C) An explanation of how to receive additional detailed information on benefits and financial responsibilities; and

(D) An explanation of any right to appeal the eligibility status or level of benefits and services approved.

Access Health correctly determined the Appellant is not eligible for [REDACTED] Medicaid coverage under the Husky D medical program.

Access Health properly issued the Appellant a NOA on [REDACTED], 2021.

The NOA correctly informed the Appellant he does not currently meet the eligible immigration status for Husky D Medicaid.

DECISION

The Appellant's appeal is **DENIED**.

Jessica Gulianello

Jessica Gulianello
Hearing Officer

**Modified Adjusted Gross Income (MAGI) Medicaid and
Children's Health Insurance Program (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 Avenue, Hartford, CT 06105-3725.

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 Avenue, 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 extensions 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.

