

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**


D [REDACTED] T [REDACTED],
Petitioner,

v.

DHS, FAMILY & CHILDREN
SERVICES
Respondent.

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Docket No.:
OSAH-DFCS-FMN-[REDACTED] Malihi
Agency Reference No.: [REDACTED]


OCT 21 2015
Kelli
Kelli Griffin, Legal Assistant

INITIAL DECISION

I. INTRODUCTION

Petitioner D [REDACTED] T [REDACTED] appeals Respondent's denial of his application for Medicaid coverage for his two children. Mr. T [REDACTED] represented himself at the hearing and Patrick Dudley, a DFCS case manager, appeared for Respondent. For the reasons stated herein, Respondent's action is **AFFIRMED**.

II. FINDINGS OF FACT

The following facts are not in dispute:

1.

Mr. T [REDACTED] entered the United States with his wife and two children on or about October 18, 2012. They have continuously resided in the United States since that time.

Testimony of D [REDACTED] T [REDACTED]

2.

Mr. T [REDACTED] and all of his family members were born outside of the United States. They entered the United States under a “diversity visa.” Therefore, they are classified as “qualified aliens.”¹ *Testimony of D [REDACTED] T [REDACTED]*.

3.

Mr. T [REDACTED]’s children were born on October 30, 2004 and April 29, 2009. *Testimony of D [REDACTED] T [REDACTED]*.

4.

Mr. T [REDACTED] applied for Medicaid coverage for his children but was denied, whereupon he requested a hearing. At the administrative hearing, Mr. Dudley explained that Mr. T [REDACTED] and his family were ineligible for Medicaid because, as qualified aliens, they were subject to a “waiting period” of five years following the date they entered the United States. *Testimony of Patrick Dudley.*

III. CONCLUSIONS OF LAW

Based on the above findings of fact, the undersigned makes the following conclusions of law:

1.

Medicaid is a joint federal-state program that provides comprehensive medical care for certain classes of eligible recipients whose income and resources are determined to be insufficient to meet the costs of necessary medical care and services. 42 U.S.C. §§ 1396 *et seq.*; *Moore v. Reese*, 637 F.3d 1220, 1232 (11th Cir. 2011). Participation is voluntary, “but once a state opts to participate it must comply with federal statutory and regulatory requirements.” *Id.* All states have opted to participate and, thus, each must designate a single state agency to administer its Medicaid plan. *Id.*; 42 C.F.R. § 431.10(a), (b)(1). In Georgia, individuals may

¹ See 8 U.S.C. §§ 1255(a), 1641(b).

apply for Medicaid through Respondent, which issues guidelines on Medicaid eligibility in Section 3480 of its Economic Support Services Manual (hereinafter “MEDICAID MANUAL”).²

2.

Under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“the Welfare Reform Act”), qualified aliens who entered the United States on or after August 22, 1996 [the date the Welfare Reform Act was enacted] are ineligible for any Federal means-tested public benefit, including non-emergency Medicaid, for a period of five years from the date of their entry into the United States, unless they meet a statutorily-prescribed exception. 8 U.S.C. §§ 1612-1613; *see* MEDICAID MANUAL § 2215; *see also* *Hong Pham v. Starkowski*, 300 Conn. 412, 421 (2011). The five-year prohibition does not apply where the qualified alien is a veteran, an active-duty member of the military, or where the qualified alien has worked, or may be credited with, forty (40) qualifying quarters of coverage. 8 U.S.C. § 1612(b)(2)(B), (C); *see* *Soskin v. Reinertson*, 353 F.3d 1242, 1245 (10th Cir. 2004).

3.

A qualified alien lawfully admitted to the United States for permanent residence who has (1) worked 40 qualifying quarters of coverage, as defined under Title II of the Social Security Act, or (2) can be credited with such qualifying quarters and (3) did not receive any public benefit during such time shall be eligible for any designated Federal program. 8 U.S.C. § 1612(b)(2)(B); *see also* 46 AM. JUR. 2D. *Aliens and Citizens* § 2172. Qualified aliens may receive credit for all of the qualifying quarters of coverage worked by their parents or spouses. 8 U.S.C. §§ 1612(b)(2)(B)(ii)(I), 1645.

² The Medicaid Manual is available to the public at <http://odis.dhs.gov/ChooseCategory.aspx?cid=1037>.

4.

Title II of the Social Security Act defines “quarter of coverage” as follows:

- (i) for calendar years before 1978 . . . a quarter³ in which an individual has been paid \$ 50 or more in wages (except wages for agricultural labor paid after 1954) or for which he has been credited . . . with \$ 100 or more of self-employment income; and
- (ii) for calendar years after 1977 . . . each portion of the total of the wages paid and the self-employment income credited . . . to an individual in a calendar year which equals the amount required for a quarter of coverage in that calendar year

42 U.S.C. § 413(a)(2)(A).

5.

The Commissioner of Social Security publishes the amount of wages and self-employment income which an individual must have in order to be credited with a quarter of coverage in the Federal Register each year. 42 U.S.C. § 413(d)(2). For example, in 2012, the amount an individual was required to earn in one quarter to receive credit for a qualifying quarter of coverage was \$1,130.00. MEDICAID MANUAL § 2215-17. Respondent determines whether an individual earned credit for a qualifying quarter of coverage by dividing the individual’s total annual income by the amount required for a quarter of coverage during that calendar year. *Id.*; 42 U.S.C. § 413(a)(2)(A)(ii). The individual receives credited quarters (up to four) if the result exceeds the amount of earnings required for a quarter of coverage. MEDICAID MANUAL § 2215-17. The individual is not credited for quarters in which he or she received public assistance. *Id.*; *see* 8 U.S.C. § 1612(b)(2)(B)(ii)(II).

6.

It is undisputed in the present case that Mr. T [REDACTED] and all members of his family entered the United States less than five years ago. Further, there is no evidence on record to

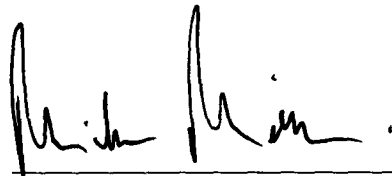
³ Title II of the Social Security Act defines “quarter,” and the term ‘calendar quarter,’ [to] mean a period of three calendar months ending on March 31, June 30, September 30, or December 31.” 42 U.S.C. § 413(a)(1).

suggest that Mr. T [REDACTED] or any member of his family meets a statutorily-prescribed exception. Even if the Court assumes that Mr. T [REDACTED] and his spouse worked qualifying quarters of coverage from the date they entered the United States, they still would not have earned the requisite qualifying quarters to meet the exception for Medicaid eligibility; at most, Mr. and Mrs. T [REDACTED] could have earned 24 credited quarters (twelve quarters each) since they entered the United States on October 18, 2012. Accordingly, Respondent's correctly determined that Mr. T [REDACTED] and his family were ineligible for Medicaid coverage.

IV. Decision

IT IS HEREBY ORDERED that Respondent's denial of Mr. T [REDACTED]'s application for Medicaid coverage is **AFFIRMED**.

SO ORDERED, October 7, 2015.



MICHAEL MALIHI, Judge

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

D [REDACTED] T [REDACTED]	:	
Petitioner,	:	
	:	
v.	:	Docket No.: OSAH-DFCS-FMN-[REDACTED] Malihi
	:	
DHS, FAMILY & CHILDREN SERVICES,	:	Agency Reference No [REDACTED]
Respondent.	:	

NOTICE OF INITIAL DECISION

This is the Initial Decision of the Administrative Law Judge (Judge) in the case. This decision is reviewable by the Referring Agency. If a party disagrees with this decision, the party may file a motion for reconsideration, a motion for rehearing, or a motion to vacate or modify a default order with the OSAH Judge. A party may also seek agency review of this decision.

FILING A MOTION WITH THE JUDGE AT OSAH

The Motion must be filed in writing within ten (10) days of the entry, i.e., the issuance date, of this decision. **The filing of such a motion may or may not toll the time for filing a request for agency review.** See OSAH Rules 616-1-2-.28 and .30 in conjunction with O.C.G.A. § 49-4-153. Motions must include the case docket number, be served simultaneously upon all parties of record, either by personal delivery or first class mail, with proper postage affixed, and be filed with the OSAH clerk at:

Clerk
Office of State Administrative Hearings
Attn.: Kacie Griffin, kgriffin@osah.ga.gov
225 Peachtree Street, NE, South Tower, Suite 400
Atlanta, Georgia 30303-1534

REQUEST FOR AGENCY REVIEW

A request for Agency Review must be filed within thirty (30) days after service of this Initial Decision. O.C.G.A. § 49-4-153(b)(1). A copy of the application for agency review must be simultaneously served upon all parties of record and filed with the OSAH clerk. The application for Agency Review should be filed with:

Department of Community Health
Legal Services Unit, Attn: Appeals Reviewer
2 Peachtree Street, 40th Floor
Atlanta, Georgia 30303

This Initial Decision will become the Final Decision of the agency if neither party makes a timely application for agency review. O.C.G.A. § 49-4-153(b)(1) and (c). When a decision becomes Final, an application for judicial review must be filed within thirty (30) days in the Superior Court of Fulton County or the county of residence of the appealing party. If the appealing party is a corporation, the action may be brought in the Superior Court of Fulton County or the superior court of the county where the party maintains its principal place of doing business in this state. O.C.G.A. § 49-4-153(c).