

III. Discussion

Ms. G made a compelling argument on behalf of her mother on the basis of her mother's need for care and support. She appears a compassionate and loyal daughter doing her best for an aging parent.

However, the assistance programs administered by the Department of Health and Social Services are controlled by law. They are not discretionary. The Department can only provide benefits if a person fits within the eligibility categories set by those who make the laws.⁴ Ms. M's eligibility under those laws is reviewed below.

A. Medicaid

Medicaid is a federal program to provide medical treatment to people of limited means, administered by the state. Apart from certain exceptional circumstances not applicable here,⁵ Alaska's Family Medicaid program is only available to people who are United States citizens, qualified aliens, or North American Indians with lawful immigration status.⁶ Ms. M is neither a U.S. citizen nor a North American Indian. Her eligibility for Medicaid, if any, would be as a "qualified alien." Ms. M is a qualified alien because she has recently been "admitted for permanent residence", which is one of the qualifying categories under 8 U.S.C. § 1641, a federal law governing basic Medicaid eligibility.⁷

However, the United States Congress has set a limitation on the eligibility of qualified aliens. In 8 U.S.C. § 1613(a), it has provided:

Notwithstanding any other provision of law and except as provided in subsections (b), (c), and (d) of this section, an alien who is a qualified alien (as defined in section 1641 of this title) and who enters the United States on or after August 22, 1996, is not eligible for any Federal means-tested public benefit for a period of 5 years beginning on the date of the alien's entry into the United States with a status within the meaning of the term "qualified alien".

This five-year waiting period applies to Ms. M because she entered the United States for her current period of residence after August 22, 1996. It will not expire for Ms. M until 2019, five

⁴ See, e.g., *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010) ("Administrative agencies are bound by their regulations just as the public is bound by them."); *In re K.E.*, OAH No. 13-1064-CMB (Commissioner of Health & Soc. Serv. 2013) ("Both the Division and the administrative law judge must follow the law as it is written.") (<http://aws.state.ak.us/officeofadminhearings/Documents/CMB/CMB131064.pdf>).

⁵ These exceptions can include individuals who claim U.S. citizenship under certain conditions (Ms. M does not claim citizenship), aliens seeking emergency treatment (Ms. M is currently seeking full coverage), and newborns. See 7 AAC 100.050-054, 100.306, 100.700.

⁶ 7 AAC 100.050(a).

⁷ 7 AAC 100.052(b)(1) expressly makes 8 U.S.C. § 1641 the applicable source of a definition for this category.

years after she was given one of the immigration statuses—permanent resident—that made her a qualified alien.

There are some narrow exceptions written into the federal five-year waiting period statute, such as for people granted asylum, certain Southeast Asian groups that assisted the United States in the Vietnam conflict, and for certain Cuban and Haitian immigrants. There is no basis to believe Ms. M could fall in any of those categories.

The five year waiting period does not apply to eligibility for Medicaid for emergency treatment as described in 42 U.S.C. § 1396b(v)(3).⁸ However, Ms. M’s application did not relate to that kind of coverage.

B. Food Stamps

Food Stamps, like Medicaid, is a means-tested federal program administered by the state.⁹ The same federal statute quoted in the Medicaid discussion above renders Food Stamps unavailable to Ms. M until five years after she obtained permanent residence.

C. Adult Public Assistance

Alaska’s law governing payment of Adult Public Assistance also incorporates the federal five-year waiting period. It authorizes payment of financial assistance to qualified aliens meeting the eligibility criteria “[u]nless the person is not eligible under the limited eligibility provisions of 8 U.S.C. 1613.”¹⁰

IV. Conclusion

Because she is subject to the five-year waiting period and it has not yet elapsed, Ms. M is not eligible for any of the assistance programs for which she applied this June. The decision to deny her application is affirmed.

Dated this 3rd day of July, 2014.

Signed

Christopher Kennedy
Administrative Law Judge

⁸ See 8 U.S.C. §§ 1611(b)(1)(A), 1613(c)(2)(A).

⁹ 7 C.F.R. § 271.4(a).

¹⁰ AS 47.25.430(f).

Adoption

The undersigned, by delegation from of the Commissioner of Health and Social Services, adopts this Decision, under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 18th day of July, 2014.

By: Signed _____
Name: Lawrence A. Pederson
Title: Administrative Law Judge

[This document has been modified to conform to the technical standards for publication.]