

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
FROM THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of)
)
K D-N) OAH No. 15-1457-CMB
) Agency No.

ORDER

I. Introduction

Mr. D-N applied to the Division of Public Assistance (division) for food stamps, adult public assistance, and Medicaid. However, because he did not show that he was a qualified alien, the division found that Mr. D-N was not eligible to participate in the programs. Mr. D-N requested a fair hearing.

Because Mr. D-N has not demonstrated that he has the U.S. citizenship or qualified alien status required to participate in these programs, the Division of Public Assistance's decision to deny Mr. D-N's application is upheld.

II. Facts

Mr. D-N applied for food stamps, Adult Public Assistance, and Medicaid benefits on August 20, 2015. With his application, he submitted a copy of his social security card and his employment authorization card. Mr. D-N arrived in the U.S. in 1993, fleeing from the war in El Salvador.¹ Mr. D-N applied for asylum that year.²

The division requested more information about Mr. D-N's immigration status and federal supplemental security income application.³ It denied his application for benefits on September 29, 2015, noting the information about his immigration and SSI status was still outstanding.⁴ The division received a copy of Mr. D-N's request for asylum on October 13, 2015, then denied his application again on October 27, 2015 for failure to provide proof of refugee status or proof that he had applied for supplemental security income (SSI).⁵ On October 28, 2015, Mr. D-N asked for a hearing, stating that he had already provided the information requested.⁶

On November 19, 2015, the division sent revised notices superseding the October 27, 2015 denial notice to Mr. D-N denying his application for the three programs on the grounds that he did not meet the qualified alien requirements for the programs because he had applied for

¹ Letter from D-N dated November 24, 2015.

² Division Exhibit 14.1.

³ Division Exhibits 5, 6, 8.

⁴ Division Exhibit 11.

⁵ Division Exhibits 5 - 17.

⁶ Division Exhibit 18.

asylum in 1993 but not pursued the application, had been granted a work permit but not applied for resident alien status, and had not met the required five year waiting period for resident aliens. The division concluded that he did not meet the qualified alien requirements for the programs according to the Alaska Adult Public Assistance Manual sec. 421.⁷

A telephonic hearing was held on December 7, 2015. Mr. D-N represented himself, with assistance from an interpreter. Jeff Miller represented the division.

Following the hearing at the request of both parties the record was left open until January 18, 2016, for additional information relating to Mr. D-N's alien status. Mr. D-N submitted a letter from his immigration attorney confirming that he applied for asylum, that there has been no decision on that application, and that he had decided to accept the government's offer to administratively close his immigration case. He also submitted a copy of a notice of award of disability benefits from the Social Security Administration dated June 29, 2010. The division submitted a letter responding to the information submitted by Mr. D-N and providing additional information from the Department of Homeland Security, Immigration and Customs Enforcement.

III. Discussion

Because this is an application for new benefits, Mr. D-N has the burden of proving he is eligible by a preponderance of the evidence.⁸

For a person who is not a U.S. citizen to be eligible for Medicaid, adult public assistance, or food stamps, the person must be a qualified alien.⁹ Having a social security number and having paid into the social security system is not sufficient; a person must also be a citizen or a qualified alien in order to qualify for benefits under these programs. The term "qualified alien" is defined in federal law. It includes an alien granted asylum.¹⁰ Mr. D-N applied for asylum, but he has not submitted proof that his application was granted. The code on his employment authorization card, C08, stands for asylum applicant.¹¹ The code for asylee (granted asylum) is A5.¹²

There is no evidence that shows that Mr. D-N falls within any of the other categories of qualified alien specified in 8 U.S.C. 1641(b). His employment authorization card does not have one of the codes that would constitute proof of qualified alien status according to the Adult Public

⁷ Division Exhibit 19, 19.1.

⁸ 7 AAC 49.135.

⁹ 7 AAC 100.052; AS 47.25.430(f)(2); 7 C.F.R. 273.4(a)(6)(i).

¹⁰ 8 U.S.C. 1641(b)(2). *See also* 7 C.F.R. 273.4(a)(5) and (6); 7 AAC 100.052.

¹¹ Division Exhibit 3.1, 4.1.

¹² Division Exhibit 4.

Assistance Manual – A3 for refugee or conditional entrant, or A10 for deportation withheld.¹³ Mr. D-N has not argued that he is eligible for treatment as a qualified alien under 8 U.S.C. 1641(c) (battered aliens).

In Alaska, Medicaid eligibility for an alien depends on whether the person is a qualified alien under 8 U.S.C. 1641 at the time of application, regardless of the date of that person's physical entry into the United States.¹⁴ Some applicants who are qualified aliens are also subject to a five-year bar, depending on when they arrived in the United States and whether an exemption applies. The federal regulations for the food stamp program also require a five-year waiting period in some cases.¹⁵ However, since Mr. D-N has not demonstrated that he is a qualified alien and therefore not eligible for Medicaid or food stamps, it is not necessary to determine whether the five-year bar applies.

In order to receive Adult Public Assistance, a person must meet the eligibility requirements of the SSI program as well as the Adult Public Assistance program.¹⁶ Mr. D-N submitted a copy of a notice of award of disability benefits from the Social Security Administration dated June 29, 2010. However, the division queried the SSI online information system and found that Mr. D-N had submitted another SSI application on October 31, 2014, which was denied on December 9, 2014 based on a finding that Mr. D-N was not a citizen or an eligible alien.¹⁷ Mr. D-N is therefore ineligible for Adult Public Assistance because he is not eligible for SSI.

IV. Conclusion

Because Mr. D-N is an applicant for new benefits and has not demonstrated that he is a citizen or a qualified alien, he is not eligible to participate in the food stamp, Medicaid, or Adult Public Assistance programs. The division's decision to deny Mr. D-N's application for these benefits is affirmed.

DATED: February 5, 2016.

Signed

Kathryn L. Kurtz
Administrative Law Judge

¹³ Alaska Adult Public Assistance Manual, 421-6.C.

¹⁴ 7 AAC 100.052.

¹⁵ 7 C.F.R. 273.4.

¹⁶ 7 AAC 40.030(a).

¹⁷ Division Exhibit 20; Letter from Jeff Miller dated January 14, 2016.

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 9th day of March, 2016.

By: Signed
Name: Jared C. Kosin, J.D., M.B.A.
Title: Executive Director
Agency: Office of Rate Review, DHSS

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