

STATE HEARING DECISION

ODHS 4005 (Rev. 9/94)

County WARREN	District Hearings Section CINCINNATI	Assistance Group Name		Assistance Group Number
Place of Hearing WARREN CDJFS	Initial Hearing Date 01/06/2003	Rescheduled Postponed to 03/11/2003	Rescheduled Postponed to 03/11/2003	Rescheduled Postponed to 01/27/2003

Appellant/Representative	Appellant Representation
	Local Agency Representation Creston Schmidt, Supervisor

Date Notice Mailed 12/06/2002	Date Received by Local Agency	Date Received by ODHS 12/09/2002	Date Appeal Summary Received	Date Scheduling Notice Mailed 02/28/2003
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Appeal Number(s)/Program(s) 1098830/DA, 1098831/MED

Notice to Appellant

This is the official report of your hearing and is to inform you of the decision and order in your case. All papers and materials introduced at the hearing or otherwise filed in the proceeding make up the hearing record. The hearing record will be maintained by the Ohio Department of Job and Family Services. If you would like a copy of the official record, please telephone the hearing supervisor at the CINCINNATI District hearing section at 1-800-686-1571.

If you believe this state hearing decision is wrong, you may request an administrative appeal by writing to: Ohio Department of Job and Family Services, Office of Legal Services, 30 East Broad Street, 31st Floor, Columbus, Ohio 43215-3414 or FAX (614) 728-9574. Your request should include a copy of this hearing decision and an explanation of why you think it is wrong. Your written request must be received by the Office of Legal Services within 15 calendar days from the date this decision is issued. *(If the 15th day falls on a weekend or holiday, this deadline is extended to the next work day.)* During the 15-day administrative appeal period you may request a free copy of the tape recording of the hearing by contacting the district hearings section.

If you want information on free legal services but don't know the number of your local legal aid office, you can call the Ohio State Legal Services Association, toll free, at 1-800-589-5888, for the local number.

ISSUES:

(#1 - 1100708) On 12-6-02, the Warren County Department of Job and Family Services (WCDJFS) issued a notice that denied the appellant's application for Disability Assistance (DA) benefits because of failure to verify she is either a citizen of the United States or has met the 40 quarter eligibility requirement.

The issue is whether the action was correct. The agency's determination cannot be affirmed.

(#2 - 1100709) On 12-6-02, the Warren County Department of Job and Family Services (WCDJFS) issued a notice that denied the appellant's application for Medicaid for the Aged (MA A) benefits because of failure to verify she is either a citizen of the United States or has met the 40 quarter eligibility requirement.

The issue is whether the action was correct. The agency's determination cannot be affirmed.

ELG

Appeal(s) SUSTAINED 1098830, 1098831	Date Issued 03/12/2003	Compliance 1098830, 1098831
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Distribution: Original to appellant, one copy to local agency; one copy to district Hearing section; one copy to district office; two copies to State Hearings. *(Photocopy to appellant's authorized representative, if any, and to ODHS units as appropriate.)*

Appeal Number(s) 1098830, 1098831

PROCEDURAL MATTERS:

Prior notice was mailed on 12-6-02. The Bureau of State Hearings received the state hearing request on 12-17-02. The hearing was originally scheduled for 1-6-03. The appellant and/or her representative requested that the hearing be rescheduled. The hearing was rescheduled for 1-27-03. It was not heard on that date because the appellant's daughter wanted someone from Legal Aid represent them. The hearing was rescheduled and heard on 3-11-03. The appeal summary was received on 2-28-03. The hearing was conducted by telephone.

FINDINGS OF FACT:

1. The appellant, who is 65 years old, was receiving medical assistance in Franklin County, Ohio. She moved to Warren County, Ohio. Her case was transferred from Franklin County to Warren County.
2. On 10-28-02, the appellant applied for Disability Assistance and Medicaid benefits in Warren County.
3. The agency telephoned SAVE on 12-5-02 and was told that the appellant's date of entry into the United States from Pakistan (country of birth) is 11-18-96.
4. On 12-6-02, the agency issued a notice that denied the appellant's application for Disability Assistance and Medicaid benefits because of failure to verify she is either a citizen of the United States or has met the 40 quarter eligibility requirement.
5. The appellant's Legal Aid representative provided several documents that show the appellant was in the United States prior to 8-22-96.

POLICY:

Pursuant to Ohio Administrative Code (OAC) rule 5101:1-2-30 Citizenship: Ohio Works First and Disability Assistance.

(A) An individual must be a citizen of the United States, a qualified alien, or meet requirements as set forth on paragraph (C) of this rule to be eligible for Ohio Works First (OWF), or Disability Assistance (DA). ...

(C)An alien who is lawfully residing in the United States as of August 22, 1996, shall continue to meet the citizenship requirements for OWF, and DA. The alien:

Appeal Number(s) 1098830, 1098831

- 1) Does not have to meet the definition of a qualified alien; or
- 2) Did not have to be receiving assistance prior to August 22, 1996; or
- 3) May have entered to the United States more than five years ago. ...

Pursuant to OAC rule 5101:1-37-03 Medicaid and Covered Families and Children (CFC) Medicaid: citizenship: required written declaration of citizenship/alien status and the use of the systematic alien verification for entitlements (SAVE) program.

(A) The Immigration Reform and Control Act (IRCA) of 1986 requires the verification of immigration status of aliens applying for federally funded entitlements. Medicaid programs, including CFC Medicaid, participate in a systematic verification of alien documentation. The immigration and naturalization service (INS) has developed the SAVE program to ensure that only lawfully admitted aliens receive federally subsidized benefits. ...

(B) An assistance group member who is not a U. S. citizen or national and who claims to be of an eligible alien status must provide documentation from INS of his current alien status. ...

(C) There are two methods of verifying alien registration status. Regardless of the method of verification used, no eligibility determination will be delayed solely because of the alien status verification index (ASVI) database or the INS office has failed to verify alien registration status. ...

ANALYSIS:

Regarding Issue # 1, the agency telephoned SAVE on 12-5-02 and was informed by that office that the appellant's date of entry into the United States from Pakistan was 11-18-96. Based on this information (that the appellant entered the United States after 8-22-96), the agency denied the appellant's application for DA benefits. The appellant's Legal Aid representative provided several documents that indicate the appellant was in the United States prior to 8-22-96: 1) a passport (Exhibit N) that shows the appellant entered the United States on 2-18-96 (on a visitor's visa); 2) an Application to Register Permanent Residence or Adjustment of Status form dated 4-1-96 and 3) Medical Examination of Aliens Seeking Adjustment of Status form dated 5-20-96. These documents indicate that the appellant was in the United States prior to 8-22-96. For this reason, the agency's determination cannot be affirmed.

Regarding Issue # 2, the agency denied the appellant's application for Medicaid benefits because she is an ineligible alien and she didn't meet the 40 quarter eligibility requirement. OAC rule 5101:1-37-03 cited above in part indicates that only lawfully admitted aliens can receive federally subsidized benefits.

Information/documentation was provided to show that the appellant applied for Permanent Resident Status on 4-1-96 and obtained this status in 11-96. The appellant, therefore, appears to be a lawfully admitted alien pursuant to this rule. For this reason, the agency's determination cannot be affirmed.

Appeal Number(s) 1098830, 1098831

HEARING OFFICER'S RECOMMENDATIONS:**Issue # 1 (1100708):**

The appeal should be **SUSTAINED**. The agency's determination cannot be affirmed. The agency should reopen the application, determine eligibility and notify the appellant and her representative of the agency's determination.

Issue # 2 (1100709):

The appeal should be **SUSTAINED**. The agency's determination cannot be affirmed. The agency should reopen the application, determine eligibility and notify the appellant and her representative of the agency's determination.

FINAL ADMINISTRATIVE DECISION AND ORDER:**Issue # 1 (1100708):**

Finding the hearing officer's decision to be supported by the evidence, the recommendations shown above are adopted and this appeal is **SUSTAINED**.

Ohio Administrative Code Rule 5101:6-7-03 requires compliance with this decision within 15 calendar days from the date it is issued, but in no event later than 90 calendar days from the date of the hearing request.

Issue # 2 (1100709):

Finding the hearing officer's decision to be supported by the evidence, the recommendations shown above are adopted and this appeal is **SUSTAINED**.

Ohio Administrative Code Rule 5101:6-7-03 requires compliance with this decision within 15 calendar days from the date it is issued, but in no event later than 90 calendar days from the date of the hearing request.

APPENDIX:**Exhibits:**

Agency's:

Appeal Number(s) 1098830, 1098831

- A. Appeal Summary
- B. Running Record Comments (8 pages)
- C. Alien/Refugee Information screen
- D. Assistance Group Authorization screen
- E. Copy of Drivers License
- F. Copy of Social Security card and Resident Card
- G. Passport (2 pages)
- H. Copy of Fingerprints
- I. Manual Method
- J. Copy of Appendix 62 SAVE document - sent to SAVE by agency (5 pages)
- K. Copy of Appendix 62 SAVE document - returned to agency by SAVE (5 pages)

Appellant's:

- L. Legal Brief (3 pages)
- M. State Hearing Decision (8 pages)
- N. Passport (2 pages)
- O. Letter from appellant's attorney dated 5-30-96
- P. Application to Register Permanent Residence or Adjustment of Status dated 4-1-96 and 5-20-96 (8 pages)
- Q. Medical documents (6 pages)

Date Issued: 03/12/2003