



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: BCS - 207290

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 5, 2023, under Wis. Stat., §49.45(5)(a), to review a decision by Milwaukee Enrollment Services to deny Medical Assistance (MA), a hearing was held on February 8, 2023, by telephone.

The issue for determination is whether petitioner is an eligible immigrant for MA purposes.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By: [REDACTED]  
Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of [REDACTED].
2. Petitioner applied for MA on December 19, 2022. He was granted eligibility under Department's "reasonable compatibility" policy.
3. On December 29, 2022 the agency received documentation from the Department of Homeland Security that petitioner illegally entered the country.
4. By a notice dated December 30, 2022, the agency informed petitioner that MA would be denied because he was not a qualifying alien. MA has remained open, however, under the Department's COVID emergency policy.

## DISCUSSION

Prior to 1996, aliens lawfully admitted to the United States for permanent residence were eligible for MA immediately upon admission to the country. See 42 C.F.R. §435.406(a)(2). In 1996 the United States Congress made a number of changes to welfare law which included the restriction of alien eligibility for welfare programs. Generally, now, United States citizenship is required for a person to be eligible for MA. See Wis. Adm. Code, §DHS 103.03(2). An alien lawfully admitted for permanent residence is ineligible unless he meets one of several exceptions. Those exceptions are set out in §DHS 103.03(2) by their federal statutory citations, but they are detailed in the BadgerCare Plus Handbook, Appendix 4.3. The exceptions include refugees, asylees, Cubans, Haitians, Amerasians, military personnel, and veterans.

At this point petitioner has not been lawfully admitted for permanent residence, so he is ineligible for MA. He testified that he has applied for political asylum. While asylees are eligible, they have to have been granted that status. As petitioner has only applied for asylum, he has not yet been granted the status, and thus has not gained MA eligibility. I conclude, therefore, that the agency correctly sought close petitioner's eligibility, although he will remain eligible until the COVID emergency ends.

## CONCLUSIONS OF LAW

Petitioner is ineligible for MA because he is not a qualifying alien.

**THEREFORE, it is ORDERED**

That the petition for review is hereby dismissed.

## **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5<sup>th</sup> Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## APPEAL TO COURT

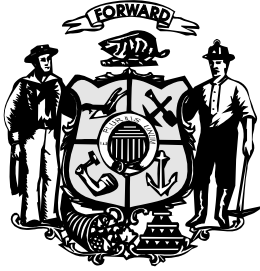
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 10th day of February, 2023



vs \_\_\_\_\_  
Brian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin \DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on February 10, 2023.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability