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**State of New Jersey**  
**DEPARTMENT OF HUMAN SERVICES**  
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Assistant Commissioner

**STATE OF NEW JERSEY**  
**DEPARTMENT OF HUMAN SERVICES**  
**DIVISION OF MEDICAL ASSISTANCE**  
**AND HEALTH SERVICES**

W.S.,

PETITIONER,

v.

MERCER COUNTY BOARD

OF SOCIAL SERVICES,

DIVISION OF MEDICAL ASSISTANCE :

AND HEALTH SERVICES :

RESPONDENTS. :

ADMINISTRATIVE ACTION

ORDER OF RETURN

OAL DKT. NO. HMA 01653-24

As Assistant Commissioner for the Division of Medical Assistance and Health Services (DMAHS), I have reviewed the record in this case, including the Initial Decision and the Office of Administrative Law (OAL) case file. Neither party filed exceptions in this matter. Procedurally, the time period for the Agency Head to render a Final Agency

Decision is August 8, 2024, in accordance with an Order of Extension.

This matter concerns the January 11, 2024 termination of Petitioner's Medicaid benefits on the basis that Petitioner has not been a legal permanent resident (LPR) of the United States of America (US) for the requisite five years. The Administrative Law Judge (ALJ) upheld Petitioner's termination finding that Petitioner did not meet the residency requirement as stipulated in N.J.A.C. 10:71-3.3(d). Specifically, relying on an October 7, 2023 date of residency, the Initial Decision determined that Petitioner would not be eligible for benefits until October 7, 2026. I disagree and accordingly reverse the Initial Decision.

Pursuant to 8 U.S.C. § 1612 and § 1613 and N.J.A.C. 10:71-3.3(d), if a legal permanent resident (LPR) was present in the United States prior to August 22, 1996, or if an LPR entered after that date but maintained a continuous residency for at least five years, she or he is eligible for Medicaid. See Guaman v. Velez, 421 N.J. Super. 239, 249-50, 23 A.3d 451 (App. Div. 2011). A lapse in continuous presence by a Legal Permanent Resident is permitted so long as an individual has already obtained qualified alien status. K.K. v. Division of Medical Assistance and Health Services, 453 N.J. Super 157, (App. Div. 2018).

In the matter of K.K. v. Division of Medical Assistance and Health Services, 453 N.J. Super 157, (App. Div. 2018), the Appellate Division of the Superior Court of New Jersey reversed the denial of New Jersey Medicaid to a LPR. While this case involved an individual who entered the US before August 22, 1996 and obtained LPR status, it also addressed the applicable law for immigrants who entered after that date. Specifically, despite being absent from the country for seven years after reaching age 65, the Appellate Division found that the absence did not divest the individual of eligibility

under the plain wording of the Medicaid eligibility statute. Further, the Appellate Division found that federal regulations supported K.K.'s eligibility, stating that the continuous presence in the US was not required for LPRs to qualify for Medicaid. See J.L. v. Monmouth County Board of Social Services, HMA 8497-2020, Initial Decision (March 2, 2021), Adopted in part. < [https://njlaw.rutgers.edu/collections/oal/final/hma08497-20\\_01](https://njlaw.rutgers.edu/collections/oal/final/hma08497-20_01)> finding that a Petitioner who had LPR status in 2001 and had left the US sometime after 2007 before re-entering in 2019 was entitled to apply for Medicaid based on the prior LPR status.

Here, Petitioner, an eighty-two-year-old born in Poland, first became a LPR of the US on July 14, 2003. (R-4). Petitioner's permanent resident card was due to expire on April 12, 2024. (R-4). Petitioner testified that in November 2019 Petitioner and their spouse went to Poland. Due to circumstances surrounding the COVID-19 pandemic, including the need to obtain a vaccine and the death of Petitioner's spouse in Poland, Petitioner was unable to return to the US until October 7, 2021. (R-3). Petitioner was then provided a new permanent resident card, containing the same US Citizenship and Immigration Services number as the prior card, which states Petitioner has been a US resident since October 7, 2021. (R-5).

In accordance with the above cited law, I find that Petitioner met the citizenship eligibility criteria for Medicaid. Petitioner had been a LPR in the US since July 14, 2003, with a lapse in residency due to extenuating circumstances related to the COVID-19 pandemic. Based on the prior LPR date, Petitioner's absence did not nullify their eligibility, and thus, the termination of benefits was unjustified.

THEREFORE, it is on this 6th day of AUGUST 2024,

ORDERED:

That the Initial Decision is hereby REVERSED.

That this matter is returned to Mercer County to continue processing Petitioner's application.

*Gregory Woods*

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Gregory Woods, Assistant Commissioner  
Division of Medical Assistance and Health Services