

GOVERNMENT BENEFITS FOR NON-CITIZENS QUIZ (AND ANSWERS!)

October 2007

A. Sponsor-Deeming: Max & Ling

Ling moved to the U.S. from China with her minor daughter, Hua (now 6), in 2005. She immigrated via a relative petition. Ling's mother and stepfather sponsored her. Mother and stepfather live in California and together earn \$175,000 per year.

In February 2007 Ling married Max, a widower. Max is a U.S. citizen and has six minor children. He has been on MFIP the past few years. Ling's parents cut off all contact with Ling after her marriage. Max and Ling had a baby boy, Cong, in June 2007.

The County has just notified Max that he and his entire blended family are no longer eligible for MFIP and have not been eligible for MFIP since the 2/07 marriage. The county says Max owes a sizeable debt to the County due to the overpayment. The County says that Max and his 7 kids are eligible for MA, but no one else in the household is eligible for cash or food (with the exception of Hua, Ling's Chinese-born child, who the county says is eligible for Food Stamps!).

The County:

1. Is wrong regarding Max, because he is a U.S. citizen, and sponsor income can't be attributed to him.
2. Is wrong regarding Cong, since he was born in the U.S. after the effective date of the sponsorship. Surely Ling's mom can't be held financially responsible for Ling's after-born children.
3. Is wrong regarding Max's six older children. The County can't deem income from Ling to children to whom she is not biologically related.
4. Is wrong regarding Hua. How could she (the only child who is not a citizen) be the only child eligible for food benefits?
5. Is right, darn it!

ANSWER: 5. THE COUNTY IS RIGHT, DARN IT!

Immigrants coming to the U.S. through the petition of a family member after 12/19/97 are subject to "sponsor-deeming" using the I-864 Affidavit of Support form. Under welfare reform law, 100% of the income and assets of the sponsor and the sponsor's spouse are attributed as fully available income and assets to the immigrant, regardless of their actual availability and regardless of the family size and fixed debts of the sponsor. (8 U.S.C. §§ 1631(a)(1) & (2), 1632(a), 1183a; 8 C.F.R. § 213a.2; Minn. Stat. §§256J.37, Subd. 2, 256J.21, Subd. 1, and 256J.32, Subd. 2; 256D.05, Subd. 8(a); Minn. Stat. § 256B.06, Subd. 5; Minn. Stat. § 256D.03, Subds. 3(m) and (o); Minn. Stat. §256L.04, Subd. 10a). **Deeming applies to almost all benefits, but not to Food Stamps for non-citizen minors** (8 U.S.C. §§ 1612(a)(2)(I) and 1631(d)(3); 7 U.S.C. § 2014(i)(2)(E)); or to emergency medical assistance (EMA) (42 U.S.C. § 1396b(v)(2) and (3); 42 C.F.R. § 440.255(b) & (c); 8 U.S.C. § 1369(d); Minn. Stat. § 256B.06, Subd. 4(g), (h) & (i)).

The website of the U.S. Department of Health and Human Services (HHS) contains a TANF (Temporary Assistance for Needy Families, which funds the MFIP program) Program Instruction (TANF-ACF-PI-2003-03, 4/17/03) on point in Max & Ling's case. Question #14 in the instruction asks if an agency has to deem the income and resources of the sponsor and sponsor's spouse to other members of the sponsored LPR's family. The answer is that since it is the states that define who must be included in the TANF assistance unit, the sponsor's "deemed" income and resources must be evaluated in accordance with state policy to determine the family's eligibility for, and payment amount of, federally-funded cash assistance.

Our state law requires that parents, stepparents, minor children, siblings, and half-siblings all be included in the same MFIP grant. Minn. Stat. § 256J.24, Subd. 2. Therefore, all of Ling's deemed income is considered available to the entire household for MFIP purposes. As a result, the children (even Max's, because they are both the children of Ling's husband and the half-siblings of Ling's son) are ineligible for MFIP. Hua is ineligible as well because she is Ling's daughter and the half-sibling of Cong.

While it would make logical sense that the children should either all qualify for Food Stamps or all be ineligible, logic doesn't necessarily apply here. The 2002 Farm Bill contained a provision exempting immigrant children under 18 from sponsor-deeming. Unfortunately, the law doesn't say anything about the U.S. citizen children of sponsored immigrants. As a result, only Hua appears to be exempted from sponsor-deeming for Food Stamp purposes. 8 U.S.C. § 1631(d)(3); 7 U.S.C. § 2014(i)(2)(E).

For MA, the state deems income only to the sponsored immigrants (Ling and Hua). DHS Health Care Programs Manual § 18.05.05 (<http://hcopub.dhs.state.mn.us/hcpmstd/>).

B. SSI: Ro euth

Ro euth is a 67 year old immigrant from Cambodia. She was granted asylum in **September 2000**.

Ro euth doesn't speak English. She suffered a great deal of trauma in her youth and is currently unable to work. She has been on SSI based on her age since she turned 65.

Ro euth applied for her green card in September of 2001. She finally got her card, and LPR status, **last month** due to the backlog at USCIS since 9/11.

Social Security has notified Ro euth that she is no longer eligible for SSI. She will lose both her federal SSI grant of \$623 and her MSA (state SSI supplement) grant of \$81. Social Security says that Ro euth won't be eligible for SSI again until she becomes a U.S. citizen.

Ro euth is quite distraught. Under federal law, the earliest she can become a citizen is four years after receipt of her green card. Ro euth's rent is \$400 a month, and she won't be able to afford that without SSI. (GA pays only \$203 a month).

Ro euth should:

1. **Appeal** her SSI termination right away.
2. **Move** to Iowa where the laws are better, and reapply for SSI there.
3. **Apply** for GA and find either a roommate or less expensive housing.
4. **Ask** Social Security to **switch her SSI eligibility basis** from age to disability.

ANSWER: 3. ROEUTH SHOULD APPLY FOR GA AND FIND EITHER A ROOMMATE OR LESS EXPENSIVE HOUSING.

Asylees like Ro euth, who got lawful permanent resident status after the effective date of welfare reform (8/22/96), are eligible for SSI (in any state) only for their first 7 years after receiving such status, whether they are elderly or disabled. (*8 U.S.C. §§ 1612(a)(2)(A), 1613(b)(1)*).

The only way for Ro euth to get back onto SSI is to become a U.S. citizen, which she can't do for at least 4 years under current immigration laws.

C. Health Care: Liliana

Liliana is 49. She came to the U.S. from Guatemala in the 1970s. She has no legal status.

Liliana's youngest child just turned 18. He is no longer in school.

Liliana lost her job recently because she broke her leg fairly badly in a car accident. She had a cast put on in the emergency room.

Liliana recently got a bill from the hospital for her ER visit. She almost fell down and broke her other leg when she read the amount of the bill.

Liliana would like to get health coverage so she can pay the ER bill. She would also like to be able to pay for follow-up care. Her doctors have told her that due to the severity of the fracture, she will need physical therapy and will not be able to work for at least six months.

Liliana:

1. Is **eligible for Emergency MA (EMA)** because the absence of ongoing medical attention to her leg could reasonably be expected to result in serious dysfunction of that bodily part.
2. Is **eligible for regular MA** because she will be laid up and unable to work for at half a year.
3. Is **not eligible** for any health care coverage.

ANSWER: 3. LILIANA IS NOT ELIGIBLE FOR ANY HEALTH CARE COVERAGE.

EMA is the only medical benefit available to those without documentation. To qualify for EMA, an individual has to have underlying categorical eligibility for Medical Assistance (MA). *Minn. Stat. § 256B.06, Subd. 4(f), (g), (h)*. In Minnesota, categorical eligibility is available only to those:

- with minor children, or with children who are 18 years old and in high school and expected to graduate before age 19;
- who are pregnant;
- who are under 21;
- who are certified disabled; or
- who are 65 or older.

Minn. Stat. § 256B.055. Minnesota's emergency medical program for those not categorically eligible for MA (Emergency General Assistance Medical Care, also called EGAMC) was eliminated by the state legislature on July 1, 2003. *Minn. Stat. § 256D.03, Subd. 3(p)*.

It is unlikely that Liliana could get certified disabled by the State Medical Review Team (SMRT) because SMRT uses the same criteria Social Security uses to determine disability. Under Social Security's definition, to be considered "disabled" an individual has to have an impairment or combination of impairments so severe it would prevent the person from engaging in any competitive employment for a period of at least 12 months. *20 C.F.R. §§ 404.1505, 416.905; Minn. Stat. § 256B.055*.

E. Reporting and Public Charge: Lori & Aniceto

Lori is a U.S. citizen who is married to Aniceto. Aniceto's student visa has expired. He hopes to adjust to LPR status at some point in the future.

Lori and Aniceto are both unemployed. She does not meet the earnings requirements for Unemployment Insurance (UI) benefits.

The couple has two minor children who were born in the U.S. They need food, medical and cash assistance.

Lori is worried that applying for benefits will:

- a. Cause the County to report Aniceto's lapsed status to Immigration; and
- b. Ruin Aniceto's chances of adjusting his status.

If Lori applies for benefits:

1. Her worries will have been **legitimate**. The County will have to report Aniceto to Immigration, and he could face removal (deportation).
2. She has **nothing to fear** on either account. She is a worry-wart.
3. She and the children will **not be eligible** for any benefits because Aniceto has no legal status.
4. She should apply **only for medical** benefits. Getting MFIP and Food Stamps for herself and the children could be detrimental to Aniceto's efforts to adjust his status.
5. Aniceto will be forced to wear a **scarlet "A"** (for "Alien," although due to embarrassment he will tell everyone it stands for "Aniceto").

ANSWER: 4. LORI SHOULD APPLY ONLY FOR MEDICAL BENEFITS. GETTING MFIP (AND, POSSIBLY, FOOD STAMPS) FOR HERSELF AND/OR THE CHILDREN COULD DETRIMENTALLY AFFECT ANICETO'S EFFORTS TO ADJUST TO LPR STATUS.

Under state law, Lori and the children are eligible for MFIP, MA and Food Stamps.

Reporting: While federal welfare reform laws require agencies receiving TANF funds to make quarterly reports to Immigration with the names, addresses, and other identifying information on anyone "known" to be unlawfully in the U.S., state protocols (*in DHS Bulletin #02-03-06 (November 25, 2002) and DHS Combined Manual § 0011.03.27.03 (April 2004)*) restrict what agency personnel may communicate to Immigration. The DHS Manual says that agencies "know" a non-citizen is unlawfully present "ONLY when the unlawful presence is a finding of fact or conclusion of law that is made as part of a formal determination, subject to administrative review, on a non-citizen's claim for benefits" under MFIP. A finding of unlawful presence must be supported by a determination of Immigration, "such as a Final Order of Deportation." Agencies must "not consider a non-citizen to be 'known' to be unlawfully present...under any other circumstances."

Lori will have to report Aniceto's presence in her household to the County, as well as any income he might have. Once she tells the County he is ineligible for assistance based on immigration status, the inquiry about his status is supposed to stop. The County should not report Aniceto, either to Immigration or to DHS's civil rights division.

Public Charge: Whether the family's receipt of need-based assistance might have public charge implications which could affect Aniceto's ability to adjust his status to lawful permanent resident at a later date is a little thornier. In determining whether a non-citizen is likely to become a public charge, Immigration looks to the totality of the circumstances. A Q & A sheet entitled "Public Charge" from 5/25/99 defines a "public charge" as a non-citizen who has or is likely to become "primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance, or institutionalization for long-term care at government expense."

Non-cash and special-purpose cash benefits not intended for income maintenance are not subject to public charge consideration. These include MA, GAMC, MinnesotaCare, WIC, immunizations, prenatal care, testing for or treatment of communicable diseases, EMA, non-cash emergency disaster relief, nutrition benefits, housing, energy and educational assistance, child and foster care benefits, transportation vouchers, and job training programs.

Whether Food Stamps affect public charge determinations is a little more nebulous. Although they are not cash and are not supposed to be considered, some area immigration attorneys find that the USCIS sometimes considers Food Stamps to be "like" cash and therefore relevant to a public charge analysis.

E. Battered Immigrants: Sasha

Sasha and her minor daughter are here without immigration papers. Sasha recently separated from her U.S. citizen husband because he was physically abusive.

Sasha filed a Violence Against Women Act (VAWA) petition with the goal of being able to adjust her status to LPR. She just got a notice from Immigration that she has made a prima facie case for relief under VAWA.

Sasha and her daughter have no money or food.

Sasha and her daughter:

1. Are **not eligible** for any public assistance because they are undocumented.
2. Are **eligible** for MFIP, MFIP food, and MA.
3. Are eligible **only** for medical benefits.
4. Will not be eligible for any benefits **until** they have received final approval of their VAWA petition.

ANSWER: 2. SASHA AND HER DAUGHTER ARE ELIGIBLE FOR MFIP, MFIP-FOOD, AND MA.

Federal law includes in its definition of "qualified alien" a non-citizen who has been battered or subjected to extreme cruelty in the U.S. by a spouse or parent, or by a member of the spouse or parent's family residing in the same household, if the spouse or parent consented to or acquiesced in the battery or cruelty. The non-citizen must have filed a petition for cancellation of removal or relief under VAWA. 8 U.S.C. §§ 1641(c), 1101(a)(15)(U), 1154(a)(1)(A)(iii) or (iv), and 1229b(b)(2).

Sasha and her daughter qualify for public assistance so long as, in the opinion of the county agency, there is a "substantial connection" between the battery/cruelty and the need for benefits.

To qualify, Sasha must also have been approved for VAWA relief or have a "petition pending which sets forth a prima facie case for" relief under VAWA or other specified federal laws. Her prima facie notice from USCIS more than suffices. (8 U.S.C. §§ 1101(a)(15)(U), 1154(a)(1)(A)(iii) or (iv), 1229b(b)(2), and 1641(c). See also Minn. Stat. § 256J.08, Subd. 73(8) and (9)).

The Minnesota DHS's "Combined Manual" says that non-citizens may be eligible for MFIP, DWP or GA once their VAWA petition is "accepted by USCIS." MDHS Combined Manual, § 0011.03.21 (4/04) (see <http://www.dhs.state.mn.us/predev/cm/master11.htm#0011.03.21>).

Sasha and her daughter are not eligible for federally-funded Food Stamps because they have not had "qualified" status for a five-year period. However, they can get state-funded MFIP food benefits. 8 USC § 1612(b)(2)(L); Minn. Stat. § 256J.08, Subd. 73 (8), (9).

-Laura Melnick
Southern Minnesota Regional Legal Services, Inc. (SMRLS)
166 E. Fourth St., Ste. 200
St. Paul, MN 55101
651-222-5863, x 241
laura.melnick@smrls.org
