

Feb 11, 2016

Office of Appeal Hearings  
Dept. of Children and Families

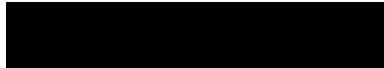
STATE OF FLORIDA  
DEPARTMENT OF CHILDREN AND FAMILIES  
OFFICE OF APPEAL HEARINGS



APPEAL NO. 15F-09549, 09550

PETITIONER,

Vs.



FLORIDA DEPARTMENT  
OF CHILDREN AND FAMILIES  
CIRCUIT: 20 Collier  
UNIT: 88521

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on January 29, 2016 at 9:05 a.m. CST.

**APPEARANCES**

For the Petitioner:  pro se  
Alicia Fuller, friend and translator

For the Respondent: Ed Poutre, Economic Self-Sufficiency Specialist II,  
Department of Children and Families

**STATEMENT OF ISSUE**

The Petitioner is appealing the Respondent's action to deny her application for Food Assistance (15F-09549). The Petitioner carries the burden of proof by a preponderance of the evidence.

There is a companion appeal, 15F-09550, for Medicaid. The Respondent stated that a Medicaid appeal was input in the FLORIDA System, possibly in error. The Petitioner states that she has made no appeal for Medicaid benefits. It was agreed by

all parties that Medicaid eligibility was not at issue. The Petitioner is currently receiving Medicaid benefits as she is also a recipient of Supplemental Security Income (SSI).

### **PRELIMINARY STATEMENT**

Appearing as a witness and as translator/representative for the Petitioner is [REDACTED] [REDACTED] who was sworn in as both a translator and witness. The Petitioner presented two individual packets which were admitted into evidence and marked as Petitioner's Exhibits 1 and 2. The Department presented two individual packets which were admitted in evidence and marked as Respondent's Exhibits 1 and 2.

### **FINDINGS OF FACT**

1. There are multiple notices of case action (NOCA).
2. The Respondent states that the Petitioner was approved for Food Assistance in error and once discovered those benefits were discontinued (NOCA November 13, 2015). The reason given for this closure was "*Ningun miembro del grupo familiar cumple los requisitos de este programa.*" (R65A-1.205) Google translate: "(not) any household member qualifies for this program."
3. The benefits were reinstated, again per Respondent in error (NOCA November 23, 2015). And denied for the final time on November 25, 2015 with the reason (paraphrased) opened in error and now closed, "*Ningun miembro del grupo familiar cumple los requisitos de este programa su caso se abrio por error y ahora ha sido cerrado* (R65A-1.205)." Google translate: "No household member meets the requirements of this program opened his case by mistake and has now been closed."
4. The Petitioner entered the United States on [REDACTED] on a visitor's visa as documented by a print out of her most recent I-94.

5. The Petitioner states that she did not enter the United States as a Parolee, Refugee or Asylum seeker. She provided documentation that she entered the US as a visitor.
6. The Petitioner states that she applied for the Adjustment of Status based on the Cuban Adjustment Act and was granted Permanent Residency but has no documentation stating that she was ever granted Cuban/Haitian Entrant Status prior to receiving Lawful Permanent Residency (LPR).
7. The Petitioner is a non-disabled SSI recipient, eligible because she is 80 years old.
8. When asked if she had ever been granted Cuban/Haitian Entrant Status during her process to become a Lawful Permanent Resident, she stated that she does not know, that she is not sure how she was labelled.
9. The Petitioner stated that other than a Cuban birth certificate, she has provided all the citizenship and immigration paperwork that she has.
10. The Category code on the Petitioner's Permanent Residence Card is CU6.
11. LPRs must be in the U.S. for five years as qualified non-citizens to be eligible for Food Assistance benefits.

#### **CONCLUSIONS OF LAW**

12. The Department of Children and Families, Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to § 409.285, Fla. Stat. This order is the final administrative decision of the Department of Children and Families under § 409.285, Fla. Stat.

13. This proceeding is a *de novo* proceeding pursuant to Fla. Admin. Code R. 65-2.056.

14. Federal regulations at 7 C.F.R. § 273.4 states in relevant part:

*(a) Household members meeting citizenship or alien status requirements.*  
No person is eligible to participate in the a Program unless that person is:

(5) An individual who is both a qualified alien as defined in paragraph (a)(5)(i) of this section and an eligible alien as defined in paragraph (a)(5)(ii) of this section.

(i) A qualified alien is:

(A) An alien who is lawfully admitted for permanent residence under the INA;...

(ii) A qualified alien, as defined in paragraph (a)(5)(i) of this section, must also be at least one of the following to be eligible to receive food stamps:

(A) An alien lawfully admitted for permanent residence under the INA who has 40 qualifying quarters as determined under title II of the Social Security Act, including qualifying quarters of work not covered by Title II of the Social Security Act, based on the sum of: quarters the alien worked; quarters credited from the work of a parent of the alien before the alien became 18 (including quarters worked before the alien was born or adopted); and quarters credited from the work of a spouse of the alien during their marriage if they are still married or the spouse is deceased.

15. The Department's Program Policy Manual CFOP 165-22 at section 1410.0106 states in part:

A lawful permanent resident (LPR) is a noncitizen who lawfully immigrates to the U.S. and has permission to live and work in the U.S. LPRs may be eligible for food stamps based on citizenship if they entered the U.S.:

1. prior to 8/22/96 and have remained continuously present,
2. on or after 8/22/96 under a prior asylee, refugee, Amerasian, deportation withheld or Cuban/Haitian Entrant status, or
3. **on or after 8/22/96 and have lived in the U.S. as a qualified noncitizen for at least five years or if they can be credited with 40 quarters of work.** (Emphasis added)

16. In this case, the petitioner was admitted as a visitor and gained LPR status upon notice dated July 29, 2015. She has only been in the county since April 05, 2014, hence she cannot claim 40 quarters to forgo the 5-year ban.

17. Page 3-3 of the Refugee Program Eligibility Guide for Service Providers, 1/2015 states in part:

**Cuban Adjustment Act (CAA)**

Any Cuban who was admitted or paroled may, after one year of physical presence, apply for adjustment to legal permanent resident under the Cuban Adjustment Act of 1966. Persons previously eligible as Cuban/Haitian entrants who adjust status under the Cuban Adjustment Act maintain their eligibility for refugee services after adjustment. Some Cubans who adjust status under the Cuban Adjustment Act never held status as "Cuban/Haitian Entrants," however, and do not become eligible for refugee services upon adjustments.

**The adjustment code CU6 on the Form I-551 (Permanent Resident Card) is insufficient evidence of eligibility for refugee programs**

because it is also used for a person who never has status as a Cuban/Haitian entrant...(Emphasis added)

The CU6 code may be used as evidence of Cuban nationality. While the date of residence on the Form I-551 may be the date an individual is paroled into the United States, providers may not assume this is the date of entry for eligibility purposes as some individuals arrived in the United States with parole status or applied for parole later (see "Parole" section below). If applicants have surrendered their Form I-94s to ISCIS on adjustment to permanent resident status, providers may be able to establish eligibility from documentation of earlier refugee program eligibility (such as an expired EAD or old passport), or by submission of Form G-639 (Freedom of Information/Privacy Act Request) to USCIS.

18. Petitioner claims no prior status that would exempt her from the 5-year ban, her CU6 code being insufficient evidence of eligibility for refugee programs. Although she is an SSI recipient, her eligibility is based on her age and not disability. Being aged is not a factor that would affect the Petitioner's LPR status.

19. After considering the evidence, testimony and the authorities cited above, the undersigned concludes that the Petitioner is a Lawful Permanent Resident subject to the 5-year ban and not currently eligible to receive Food Assistance benefits.

### **DECISION**

Based on the foregoing Findings of Fact and the Conclusions of Law, the appeal is denied. The Respondent's action to discontinue receipt of Food Assistance benefits is affirmed. The companion Medicaid appeal 15F-09550 is withdrawn.

### **NOTICE OF RIGHT TO APPEAL**

This decision is final and binding on the part of the Department. If the petitioner disagrees with this decision, the petitioner may seek a judicial review. To begin the judicial review, the petitioner must file one copy of a "Notice of Appeal" with the Agency Clerk, Office of Legal Services, Bldg. 2, Rm. 204, 1317 Winewood Blvd., Tallahassee, FL 32399-0700. The petitioner must also file another copy of the "Notice of Appeal" with the appropriate District Court of Appeal. The Notices must be filed within thirty (30) days of the date stamped on the first page of the final order. The petitioner must either pay the court fees required by law or seek an order of indigency to waive those fees. The petitioner is responsible for any financial obligations incurred as the Department has no funds to assist in this review.

DONE and ORDERED this 11 day of February, 2016,  
in Tallahassee, Florida.



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Copies Furnished To: [REDACTED] Petitioner  
Office of Economic Self Sufficiency