STATE OF CALIFORNIA—HEALTH AND WELFARE AGENCY PETE WILSON, *Governor*

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August 23, 1995

TO: All County Welfare Directors
All County Administrative Officers
All County Medi-Cal Program Specialists/Liaisons

Letter No.: 95-47

RESIDENCY QUESTIONS AND ANSWERS

Ref.: July 16, 1993 Question and Answer Letter to Medi-Cal Program Specialists/Liaisons

QUESTION 1:

Can a person who entered the United States with a Border Crossing Card establish California residency?

ANSWER 1:

Border Crossing Cards are issued by the Immigration and Naturalization Service (INS) to aliens who state that they reside in another country. Before the INS issues a Border Crossing Card, the alien must affirm and provide documentation to the INS that he/she intends to enter the United States for a temporary period only and then intends to return to his/her residence in the other country. Title 22, California Code of Regulations (CCR), Section 50320 (California Residence--General) clearly states that California residence is a requirement for Medi-Cal eligibility. Accordingly, given the requirements for receipt of a Border Crossing Card, possession of the card is strong evidence that the holder is not a resident of the State of California and is not eligible for Medi-Cal benefits.

The Department of Health Services (DHS) recognizes that possession of a Border Crossing Card often will establish that the holder is not a resident of California, but to assume that this is always true would be in error. Since a Border Crossing Card can be valid for many years, but only allows for short visits, it is possible for a person to overstay the visit limitation for a number of years and take steps to establish residence in California--all while the Border Crossing Card appears valid. In this (perhaps unique) circumstance, a Medi-Cal applicant may possess a Border Crossing Card which appears to be valid, and, in fact, be a resident of California.

Although, in exceptional cases, an applicant with a Border Crossing Card may establish residence in California, possession of a Border Crossing Card is strong evidence that the holder is not a resident of California. When such strong evidence of nonresidence exists, in order for the county to make a finding that the applicant is a resident of California, the county must have obtained persuasive evidence to overcome the strong evidence of nonresidence that the Border Crossing Card usually represents. Even if such additional evidence is provided, the county still has authority to determine that the applicant is not a resident of California if, after considering all available information, the applicant's claim of California residence is still not credible.

In general, the type of evidence that is helpful in establishing residency is any credible evidence clearly showing that the applicant has taken steps consistent with his or her stated intent to live in California permanently or indefinitely or has entered the state for employment. A claim of California residence must be evaluated in the context of ALL available information. But keep in mind that providing information to support residency does not always establish that the applicant is a resident of California. (For example, providing one of the items specified in CCR §50320.1 as acceptable evidence of residency does not necessarily support a finding that the applicant is a resident of California, especially if other facts conflict.)

Because possession of a Border Crossing Card is strong evidence that the applicant is not a resident of California, it is important to note the facts supporting the county's residency determination in every case involving a Border Crossing Card. When it is determined that an applicant with a Border Crossing Card has established California residency, the county should note in the case file those facts which provide the basis for that determination.

When it is determined that any applicant is not a resident of California, the county should note in the case file any specific information (including possession of a Border Crossing Card) that contradicts the applicant's claim to be a resident of California. If, after considering all facts, the county is not clear whether the applicant is a resident of California, the county should request an investigation of the applicant's claim or seek assistance from DHS Medi-Cal eligibility staff prior to making a final eligibility determination.

QUESTION 2:

What are the residency verification requirements for persons eligible for EDWARDS or RAMOS benefits?

ANSWER 2:

Each of these programs provides "temporary" Medi-Cal benefits to persons discontinued from cash-based Medi-Cal pending a review of eligibility for Medi-Cal Only benefits. When a beneficiary loses cash-based Medi-Cal, it is not necessary to verify California residency prior to granting any temporary Medi-Cal benefits for which he/she is otherwise eligible.

To establish eligibility for continuing Medi-Cal only, most applicants coming directly from EDWARDS or RAMOS benefits should not be required to provide verification of residency. Counties may accept the residency determination of the cash program without requiring verification of residency unless there is evidence in the case that contradicts the residency determination of the cash program.

In all cases, the requirement to be a California resident must be met to establish eligibility for any ongoing Medi-Cal benefits. Therefore, county eligibility workers must carefully review the beneficiary's residency status and consider any evidence which calls into question the residency determination made by the cash-based program prior to granting continuing eligibility.

If there is evidence to the contrary, counties must require that a beneficiary coming directly from EDWARDS or RAMOS benefits verify his/her residency prior to granting eligibility for ongoing Medi-Cal Only benefits. Counties may use the MC 212 (and other separate residency forms as required) along with the evidence provided by the applicant in accordance with CCR §50320.1 to meet the residency declaration and evidence requirements in these situations. As always, counties must carefully consider all of the available evidence prior to making a final determination of residency.

Counties must not deny the ongoing eligibility of an EDWARDS or RAMOS beneficiary for failure to establish California residency unless he/she has had an opportunity to provide the declarations and documentation required for verification of residency pursuant to CCR §50320.1. Because these persons were previously determined to be residents of California under a cash program, it is especially important to note in the case file the contradictory evidence that provides the basis for denying ongoing Medi-Cal eligibility when that action is supported by the available evidence.

QUESTION 3:

Are counties still required to use the MC 212, MC 213, and MC 214 along with the current MC 210?

ANSWER 3:

The MC 210 includes questions which specifically address the residency declaration requirements, so the MC 212 "Medi-Cal Residency Declaration" is no longer required WHEN THE CURRENT MC 210 IS USED.

Other Medi-Cal application forms do not currently include the residency declarations so counties must continue to get a signed MC 212 in accordance with the residency verification requirements whenever an application other than the MC 210 is used and verification of residency is required.

The MC 213 "Statement of Rent Receipt From A Relative" has been replaced by the MC 210-SI "Income In-Kind/Housing Verification" supplemental form. The MC 213 should no longer be used. The MC 214 "Statement For Medi-Cal Applicants Who Do Not Have One of The Specified Residency Verification Documents" is now included in the MC 219 "Important Information For Persons Requesting Medi-Cal" form. The separate MC 214 is needed only if the MC 219 is already on file and a MC 214 is necessary for verification of residency.

QUESTION 4:

What are the residency verification requirements for an unmarried couple living together with a common child if Medi-Cal is requested for both adults?

ANSWER 4:

Because both parents are accountable for the information on the MC 210, only the person completing the application is required to make the required residency declarations that are part of that form. However, both parents must provide one of the specified items as evidence of residency in accordance with 22 CCR Section 50320.1(a)(1). No separate evidence of residency is required for a child because the residency of a child is generally that of his/her parents (22 CCR §50320(c)).

QUESTION 5:

What are the residency verification requirements for persons in a long-term care (LTC) facility?

ANSWER 5:

Persons in a LTC facility who are capable of indicating intent are required to meet all residency verification requirements. However, in order to simplify the evidence requirement for LTC patients, the county may use verification that the patient is in a LTC facility in California--and is expected to be there permanently or indefinitely--as evidence of residency. This information can be obtained directly from the LTC facility and MUST be noted or documented in the case file.

The county should question any LTC application which includes information that contradicts the claim of California residency. This could include information about an out-of-state spouse, property in another state or country, or evidence that the patient was moved to California to receive services that are not available in another state or country. None of these factors necessarily prevent a person from establishing residency in California, but should be questioned prior to making the final determination about whether the applicant is expected to be in the LTC facility permanently or indefinitely.

In situations involving contradictory facts, the county must carefully weigh all of the evidence prior to making a determination of the patient's residency and note the basis for the final determination in the case file. It is especially important to note how contradictory facts are resolved as to their credibility, and/or which conflicting evidence provides the basis for a denial based on failure to establish residency in California.

If a LTC patient moves out of the facility, the move should be treated as a change of address. There is no need to reverify California residency as long as the beneficiary relocates in California. The requirements for persons who are in a medical/LTC facility, but are incapable of indicating intent are discussed below.

QUESTION 6:

What are the residency verification requirements for persons who are incapable of indicating intent?[1]

ANSWER 6:

Occasionally it is necessary to determine Medi-Cal eligibility for a person who is incapable of indicating intent. For example, a person who enters a hospital in a comatose state, and most other applicants for whom the county is required to conduct diligent search under CCR § 50166(a)(1) will be incapable of expressing their intent to remain. As specified in Title 42, Code of Federal Regulations (CFR), §435.403(c), a person can be considered incapable of indicating intent if the county obtains documentation that ANY of the following conditions apply; he or she:

- has an I.Q. of 49 or less or has a mental age of 7 or less;
- is judged legally incompetent;
- is found incapable of indicating intent based on medical documentation obtained from a physician, psychologist, or other person licensed by the State in the field of mental retardation.

The determination of residency in these cases depends, in part, on when the applicant became incapable of indicating intent as described below. In most cases, these applicants will be residents of California, but the county must review the file for any information that has bearing on the applicant's residency, such as placement in California by another state. If an applicant was placed in California by a government agency in another state, and that state is unwilling to provide Medicaid coverage, counties should immediately contact DHS Medi-Cal eligibility staff.

a) For persons in a medical/LTC facility who became incapable of indicating intent at or after age 21 (42 CFR 435.403(i)(3))--Persons in a medical/LTC facility who became incapable of indicating intent at or after age 21 are residents of the state where they are physically present unless another state makes a placement in California. A person placed in a California medical/LTC facility by another state is a resident of the placing state. If it is unknown at what age an adult became incapable of indicating intent, determine residency as if he/she became incapable at or after age 21.

No evidence of residency is required in these cases other than documentation that the prospective beneficiary does in fact reside in a facility in California, unless he/she was placed in California by another state. Unless placed by another state, the required documentation can be as simple as a note in the case file that the county has contacted a facility in California and verified that the applicant is, in fact, residing there. If an applicant was placed in California by a government agency in another state, and that state is unwilling to provide Medicaid coverage, counties should immediately contact DHS Medi-Cal eligibility staff.

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[1] This question and answer relates to institutionalized individuals (referred to as persons in a medical/LTC facility). For purposes of residency, an institutionalized individual is someone in an "institution" or a "medical institution" as defined in Title 42 CFR §435.1009.

(b) For children in a medical/LTC facility who are incapable of indicating intent (42 CFR 435.403(h)(4)) and for adults in a medical/LTC facility who became incapable of indicating intent before age 21 (42 CFR 435.403(i)(2))--For persons in a medical/LTC facility in California who became incapable of indicating intent before age 21, the state of residence is that of his or her parents or legal guardian. If the prospective beneficiary has no parents or guardian, he or she is a resident of the state or country of the person filing the application.

In this situation, the MC 210 is completed on behalf of the prospective beneficiary, but the parent, guardian or person filing the application must provide evidence to establish that he or she (the parent, guardian or person filing the application) is a resident of California. The county must also obtain documentation that the prospective beneficiary does in fact reside in a facility in California. As noted previously, this evidence can be as simple as a note in the case file documenting that the eligibility worker has verified that fact.

As with any residency determination, counties must consider all of the evidence in the case prior to making a determination. This includes reviewing any information about unusual circumstances surrounding the placement of the individual, out-of-state property, or other factors relevant to determining residency.

If, based on all of the available evidence, the county is unable to make a determination of residency in these cases, or if the county is considering finding that a person incapable of indicating intent is not a resident of California, or if an applicant alleges that the patient was placed outside of California by an agent of the state, the county should contact DHS Medi-Cal eligibility staff prior to making a final eligibility determination.

QUESTION 7:

Are Title IV-E children placed in California from another state considered to be residents of California for Medi-Cal purposes?

ANSWER 7:

Federal Medicaid regulations specify that any person who is receiving payments for foster care or adoption assistance under Title IV-E of the Social Security Act is a resident of the state where the child lives (42 CFR 435.403(g)). Therefore, children placed in California who are receiving Title IV-E payments are residents of California for Medi-Cal purposes even if eligibility for such payments was established in another state prior to placement in California.

Title IV-E recipients placed in California apply for Medi-Cal by completing the MC 250 "Application and Statement of Facts For Child Not Living with a Parent or Relative And For Whom a Public Agency Is Assuming Some Financial Responsibility". Title IV-E recipients are exempt from the residency verification requirements because they are under the care of a government agency located in California.

QUESTION 8:

What are the residency verification requirements for a person who entered the state to seek employment?

ANSWER 8:

In general, the residency verification requirements for a person entering the state to work may be satisfied in the same way as for any other applicant because, in most cases, a person entering the state to seek employment will provide evidence of residency which shows an intent to remain in California permanently or indefinitely. When a person cannot provide evidence of residency which shows intent to remain permanently or indefinitely, but claims that he or she entered the state to work or to seek work (whether or not currently employed), the county should request evidence of employment or evidence that the person is seeking employment in accordance with 22 CCR Section 50320.1. As always, the county must review all of the available evidence to determine if the applicant's claim to be a resident of California (including a claim that he/she is pursuing employment) is supported by the facts in the case. The county must also carefully consider whether there is any conflicting information which contradicts that claim. In cases where the credibility of the applicant's stated intent is not clear or when there is conflicting information, counties should request an investigation of the facts in the case, or seek assistance from DHS Medi-Cal eligibility staff prior to making a final eligibility determination.

QUESTION 9:

Does entering a medical facility establish residency?

ANSWER 9:

No. Entering a medical facility does not, by itself, establish California residency. However, there are circumstances under which a person from another state or country is placed in a LTC facility in California on a permanent or indefinite basis. In these cases, once placed, an applicant may establish California residency unless the permanency of the placement is questionable. See the responses to Questions 5 and 6 for a discussion of the evidence of residency requirements for LTC patients. In any case, the county must still review all of the available evidence to determine whether or not the facts support the applicant's claim of California residency.

QUESTION 10:

What are the residency verification requirements for a minor consent applicant seeking Medi-Cal for a child born during the applicant's period of eligibility for Minor Consent Services?

ANSWER 10:

Applicants for Minor Consent Services are exempt from verification of residency at the time that they apply for those services. This exemption is in effect for the duration of the Minor Consent Services, but these applicants, like anyone exempt from verification of residency, must still be residents of California to establish eligibility. Counties must carefully consider all available information when determining the residency of any applicant exempt from verification of residency requirements. The newborn child of a woman receiving minor consent services is not eligible for any Medi-Cal benefits under the minor consent program.

If a woman receiving Minor Consent Services wants Medi-Cal benefits for a newborn, she must complete a new Medi-Cal application. The residency regulations provide that the residency of a child is that of his/her parents as long as the child lives with his/her parents (CCR 50320(c)). Therefore, the county must verify the residency of a woman receiving minor consent services at the time that she applies for Medi-Cal for her newborn.

QUESTION 11

May the county accept in-kind rent receipts as evidence of residency from an applicant who is not providing services in exchange for rent?

ANSWER 11:

The county may accept in-kind rent receipts from an applicant who is not providing services in exchange for rent. In these cases, use the MC 210 S-I to obtain information about the applicant's living situation. Keep in mind that an applicant who provides information to support a claim of residency is not a resident of California when there is sufficient evidence to the contrary which refutes that claim. A finding of California residency can only be made if the county's review of the facts in the case supports the applicant's claim. The finding must be consistent with the evidence provided.

If the county believes that an in-kind rent receipt (or any other evidence of residency) does not support an applicant's claim to be a resident of California, the county must either deny the application for failure to establish California residency, or request an investigation of the case prior to making a final residency determination. Whenever a case is denied or discontinued for failure to meet the California residency requirement, the county must note in the case file the contrary evidence that supports that denial or discontinuance.

QUESTION 12:

If an applicant has a home outside of California or is receiving public assistance from outside California, are there any circumstances under which he/she can establish residency here for Medi-Cal purposes?

ANSWER 12:

The Department recognizes that there are some circumstances under which an applicant who lives in California also has property outside the state or is receiving public assistance from outside the state. The residency of an applicant who indicates on the MC 210 or on the MC 212 that he or she has a principal residence in another state or country and/or receives public assistance from outside California, should be reviewed carefully to determine if the evidence contradicts the applicant's claim of California residency. In its review of residency in these cases, the county must also consider any evidence the applicant can provide indicating that those circumstances do not have a bearing on his/her California residency. The following examples are illustrative, but not exhaustive.

Property outside the state--An applicant with property outside the state may establish residency in California if it can be shown that he/she is living here permanently or indefinitely, or entered the state to seek employment. For example, a person living in California for many years who also owns a vacation home is not made ineligible just because the vacation home is outside the state.

In addition, the county may exempt an out-of-state principal residence from the property reserve provided that the requirements of CCR §50425 are met. The Department has concluded that the current residency regulations do not preclude a Medi-Cal applicant from exempting out-of-state property and establishing residency if all requirements for the exemption of that property and for establishing California residency are met. This is because the property rules and the residency requirements are separate and therefore, must be considered separately.

Thus, information on the MC 210 (or the MC 212 residency declaration when applicable) indicating that the applicant does not own or leases a principal residence outside of California would not necessarily be inconsistent with the finding that an applicant with out-of-state property that is exempt from the property reserve in accordance with CCR §50425 is currently a resident of California (for example, in the case of an applicant making a bona fide effort to sell out-of-state property, or where the property is clearly a former residence and not the current residence).

However, counties are also instructed to review all of the facts in a case (including the basis for the property exemption) prior to making a determination of residency. Therefore, ownership of exempt property outside of California will raise questions about an applicant's claim of California residency. As a practical matter, an exempt out-of-state home is evidence that the applicant is not a resident of California. That evidence is rebutted when the applicant is able to show that, in spite of having out-of-state property that meets the requirements for exemption under the Medi-Cal property rules, residence in California has been established.

Public assistance outside the state--In a question and answer letter to Medi-Cal Program Specialists/Liaisons dated July 16, 1993 (Question 2a), the Department indicated that receipt of any public assistance from outside California (except Unemployment Insurance Benefits) disqualifies a person from Medi-Cal for failure to establish California residency unless he/she can show that such benefits will be discontinued as soon as possible. After further consideration of this requirement, the Department has determined that an applicant may receive public assistance from another state or country if it can be shown that the issuing agency knows that the applicant is a resident of California and if those benefits are sent directly to an address in California in the applicant's name (or in the name of a bona fide caretaker).

If an applicant indicates that he/she is receiving public assistance at an address OUTSIDE California, and is unable to have those benefits mailed to a California address, receipt of those benefits would (like out-of-state property) raise serious questions about the credibility of an applicant's claim of California residency. Receipt of benefits from another state or country should be evaluated, along with all of the facts in the case as described above in the discussion about how to review the residency of a person with exempt out-of-state property.

In addition, any benefits forwarded to a California address from an out-of-state address in the client's name should be treated as if those benefits are received at an address outside California. If postal service limitations require an applicant to receive mail at an out-of-state post office box, benefits received at that address may be treated as if they are received in California unless there is evidence to the contrary.

When it is determined that any applicant is not a resident of California, the county should note, in the case file, any specific information (including information about an out-of-state residence or public assistance from outside the state) that contradicts the applicant's claim to be a resident of California. If, after considering all facts, the county is not clear whether the applicant is a resident of California, the county should request an investigation of the applicant's claim or seek assistance from DHS Medi-Cal eligibility staff prior to making a final eligibility determination.

QUESTION 13:

Are Medi-Cal applicants under the care of a public guardian exempt from the residency verification requirements?

ANSWER 13:

Yes. The Office of the Public Guardian is established by the County Board of Supervisors and therefore, is a public agency. The current residency procedures provide that an applicant under the care of a public agency located in California is exempt from the residency verification requirements. The residency procedures also require counties to include verification in the case record that the applicant is, in fact, under the care of a public guardian representing a California County. This verification can be obtained directly from the Office of the Public Guardian and can be as simple as a note in the case file that the eligibility worker has contacted the Office of the Public Guardian to verify that the applicant is under the care of that office.

QUESTION 14:

Several of the responses in this letter make reference to "evidence to the contrary". Explain what the county should do if there is evidence that seems to contradict an applicant's claim to be a resident of California.

ANSWER 14:

Even prior to the May 1993 implementation of the evidence of residency requirements, the residency regulations made reference to "evidence to the contrary" in CCR §50320(f). Specifically, the residency regulations in place prior to May 1993 provided that an applicant's declaration of residency (which now is considered along with the information provided in accordance with the residency verification requirements) is accepted unless there is evidence to the contrary. The Department's instructions for implementing the evidence of residency requirements have stressed the importance of carefully considering evidence that contradicts an applicant's claim to be a resident of California. This has always been an important aspect of determining an applicant's residency.

In making a determination of an applicant's residency, counties are instructed to "weigh" all of the available information and to find that the applicant is (or is not) a resident of California only if that finding is supported by a "preponderance of the credible evidence". In other words, a county's determination of an applicant's residency must reflect whichever conclusion is more likely to be true than not to be true -- based on all of the available information.

Counties have always been required to find that an applicant is not a resident of California when the available information supports that finding. Conversely, when there is no evidence to the contrary, counties must accept the applicant's claim of California residency when supported by the evidence required in CCR Section 50320.1. The final decision about an applicant's residency for Medi-Cal purposes has always been based on the county's determination of what is supported by the available evidence. The evidence of residency requirements do not change that.

When the county becomes aware of information that contradicts an applicant's claim of California residency, and determines that the applicant is not a resident of California, it is important to note in the case file, those facts that support a finding that the applicant is not a resident of California, and also to note the reasons for that finding. If, after reviewing all of the available evidence, the county is unable to determine whether or not the applicant's claim of California residency is supported, the county should request an investigation of the facts in the case, or seek assistance from DHS Medi-Cal eligibility staff prior to making a final eligibility determination.

QUESTION 15:

Can a person who has received Medicaid benefits in another state during the current month establish Medi-Cal eligibility in California before Medicaid eligibility is terminated in the previous state?

ANSWER 15:

Yes. The states have been advised by the federal government that a person may technically have open Medicaid cases in two states provided that the beneficiary's prior state of residence is taking steps to close the case in that state as soon as administratively possible. Counties should obtain confirmation that the previous state is closing its case, but need not wait for final closure prior to granting eligibility in California. The federal government has also indicated that the new state of residence is responsible for providing Medicaid from the date the beneficiary arrives even if the case in the prior state is still open, provided that the case in the prior state is in the process of being closed. Of course, establishing eligibility in California is contingent on a finding that the applicant is a resident of California.

If you have any questions about any of the information in this letter, please call John Zapata of my staff at (916) 657-0725.

Sincerely,

ORIGINAL SIGNED BY

Frank S. Martucci, Chief
Medi-Cal Eligibility Branch