

DEPARTMENT OF HEALTH SERVICES

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May 24, 1996

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

Letter No.: 96-27

EVIDENCE TO THE CONTRARY, BORDER CROSSING CARDS AND B-1/B-2 VISAS

Ref.: All County Welfare Directors Letter 95-47 (Residency Questions and Answers)

The purpose of this All County Welfare Director's Letter is to provide the counties with clarification about what constitutes "evidence to the contrary" for purposes of determining whether or not a person meets the residency requirement of the Medi-Cal program. This letter will focus on persons who enter the State with a Border Crossing Card or with a B-1/B-2 visa.

WHAT CONSTITUTES "EVIDENCE TO THE CONTRARY?"

Title 22, California Code of Regulations (CCR) Section 50320(f) (as adopted in May 1993) provides that:

"A person's declaration on the MC 210 Statement of Facts (Medi-Cal), or on the SAWS 2 Statement of Facts, together with the evidence required in Section 50320.1 shall be accepted for purposes of establishing residence unless there is evidence to the contrary." [emphasis added]

The Department's instructions for implementing the evidence of residency requirements (beginning in May 1993) have stressed the importance of carefully considering evidence that contradicts an applicant's claim to be a resident of California. **In general, evidence to the contrary is any information available to the county that contradicts an applicant's claim that he or she is a resident of California.** For example, this evidence may include (but is not limited to) information or documents which show the applicant:

- Entered the State for a visit or other temporary purpose.
- At the time of application, has plans to leave the State to return to another state or country (for example, when the applicant has a return airline ticket at the time of application) and the applicant has not previously established and continuously maintained residency in California.

- Has a spouse and/or minor children remaining in another state or country who lived with the applicant immediately prior to his or her arrival in California.
- Entered the State to obtain medical care.
- Was granted a short-term legal entry to obtain medical care.
- Possesses a Border Crossing Card.
- Possesses any visa of a temporary nature (similar to B-1/B-2 visas).
- Operates a business outside of California.
- Maintains a home outside of California.
- Has Motor Vehicles registered in another state or country.
- Has children attending school in another state or country.
- Receives public benefits from another state or country.

REVIEWING EVIDENCE TO THE CONTRARY

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 based on the finding that 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 Title 22, 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.

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 Department of Health Services (DHS) Medi-Cal staff prior to making a final eligibility determination.

BORDER CROSSING CARD HOLDERS

All County Welfare Directors Letter 95-47 provides that:

"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, 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 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.¹ A claim of California residence must be evaluated in the context of ALL available information. But keep in mind that providing in applicant formation 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."

B-1/B-2 VISAS AND STATE RESIDENCY

Persons possessing B-1/B-2 visas are permitted entry into the United States for purposes of visiting this country temporarily for business or pleasure. At the port of entry, the Immigration and Naturalization Service (INS) frequently stamps the I-94 (entry form) with permission for the person to stay for a period of six months or less. Such persons, even if otherwise eligible, will almost always be determined not to be residents of California and so, in all but exceptional cases, will not be entitled to receive any Medi-Cal benefits².

¹Clarification of ACWDL 95-47--Counties are reminded that a person who claims to be a resident of California on the basis of employment in this State must be living in the State to meet the residency requirement. A person who commutes to California for employment, while living in another state or country, is not a resident of California.

²In the rare case in which a person with a valid temporary visa can establish residency for Medi-Cal purposes, there must be overwhelming evidence that he or she has taken steps to establish a residence in California. In most cases where eligibility is granted to visa holders there should be evidence that the prior residence has been abandoned.

B-1/B-2 Visa Example # 1

A Person with a Valid and Current Short-Term Visitor's Visa--Person A enters the United States with a B-1/B-2 visa to visit a family member for approximately six months and then return to his/her residence in a foreign country. During the visit, the person suffers a heart attack and requires emergency care. There is not convincing evidence that Person A has taken steps to establish a residence here. Person A, who might be otherwise eligible, is not a resident of California and is not entitled to receive any Medi-Cal benefits.

B-1/B-2 Visa Example # 2

A Person with an Expired Short-Term Visitor's Visa--Person B enters the United States with a B-1/B-2 visa. Person B has entered the United States on a nonimmigrant visa with the intention of remaining as an unlawful immigrant. Person B's visa has expired. Person B sets up his/her primary residence and obtains employment in California. Person B, who is otherwise eligible, is a resident of California and is entitled to receive restricted Medi-Cal benefits limited to emergency and pregnancy-related services.

The examples presented above are illustrative, not exhaustive. Counties are reminded that a particular type of evidence to the contrary does not necessarily make the applicant ineligible. Before making a residency determination however, counties must review all of the facts pertinent to residency, and note the basis for the residency determination in the case file.

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

Sincerely,

ORIGINAL SIGNED BY

FRANK S. MARTUCCI, CHIEF
Medi-Cal Eligibility Branch