

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Charimise Albery,	:	
Petitioner	:	
	:	
v.	:	No. 62 C.D. 2024
	:	
Department of Human Services,	:	
Respondent	:	Argued: June 3, 2025

BEFORE: HONORABLE CHRISTINE FIZZANO CANNON, Judge
HONORABLE MATTHEW S. WOLF, Judge
HONORABLE BONNIE BRIGANCE LEADBETTER, Senior Judge

OPINION BY JUDGE WOLF

FILED: June 30, 2025

Charimise Albery (Petitioner) petitions this Court for review of a Final Administrative Action Order (Final Order) by the Department of Human Services’ (DHS) Bureau of Hearings and Appeals (BHA), which affirmed an Order by Administrative Law Judge (ALJ) Regina Cooper affirming the denial of Petitioner’s request for Long-Term Care (LTC) Home and Community-Based Services (HCBS).¹ Petitioner, a lawful permanent resident (LPR), argues that ALJ Cooper

¹ The Federal HCBS program was created in 1983 through the addition of Section 1915(c) to the Social Security Act (SSA) (now codified at 42 U.S.C. § 1396n). Certified Record (C.R.) at 44. HCBS, she explained, allows states to furnish an array of services that assist Medicaid beneficiaries to live in the community and, thus, avoid institutionalization. *Id.* at 44-45. Because Section 1915(c) gives the states flexibility to operate outside the normal rules governing use of federal funds, HCBS programs are often referred to as “waiver programs” or “waivers.” *Rehab. & Cmty. Providers Ass’n v. Dep’t of Hum. Servs.*, 283 A.3d 260, 262-63 (Pa. 2022).

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erroneously applied federal and Pennsylvania statutes in determining that Petitioner was ineligible due to her immigration status, and that DHS's denial of access to the health services requested violates the Americans With Disabilities Act of 1990² (ADA) as well as the equal protection guarantees of the United States and Pennsylvania Constitutions.³ Because Section 441.8 of the Human Services Code⁴ entitles Petitioner to the HCBS benefits she seeks, we reverse the Final Order.

I. Background

Petitioner is an 84-year-old Haitian national and Philadelphia resident who acquired LPR status on June 18, 2020. Certified Record (C.R.) at 17. To treat several health conditions including thalamic stroke, arthritis, hypertension, and asthma, Petitioner receives general assistance-related medical assistance (GA-MA) from DHS pursuant to Section 403.2 of the Human Services Code.⁵ *See id.* at 19-

Since the enactment of Section 1915(c), Pennsylvania has expanded the availability of HCBS through State-funded programs. A notable example is the legislation known as Act 150, Act of December 10, 1986, P.L. 1477, No. 150, *as amended*, 62 P.S. §§ 3051-3058, which this Court has described as “a [S]tate-funded program for those who have a physical disability and want to live at home and receive support and services.” *PA Home Care Ass’n v. Dep’t of Hum. Servs.* (Pa. Cmwlth., No. 629 M.D. 2022, filed Oct. 20, 2023), slip op. at 3 n.5.

² 42 U.S.C. §§ 12101-12213.

³ *See* U.S. CONST. amend. XIV; PA. CONST. art. I, § 28.

⁴ Section 441.8 imposes as a condition for receiving HCBS the following eligibility requirements: (1) medical eligibility for the payment of nursing facility care or the equivalent level of care in a medical institution; (2) financial eligibility requirements under federal and state law; and (3) all other eligibility requirements for medical assistance under federal and state law. Act of June 13, 1967, P.L. 31, No. 21, *as amended*, added by the Act of July 7, 2005, P.L. 177, No. 42, imd. effective, 62 P.S. § 441.8.

⁵ Through the GA-MA program, Pennsylvania provides state-funded health insurance to individuals in certain categories who do not qualify for the joint Federal-State medical assistance (MA) program. *Weeks v. Dep’t of Hum. Servs.*, 302 A.3d 678, 684 (Pa. 2023). Through Act 12 of 2019, Act of June 28, 2019, P.L. 43, No. 2019-12, the General Assembly ended the general assistance program, which awarded cash benefits to low-income households, but continued the

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21. Petitioner applied for HCBS benefits sometime before September 16, 2022, but DHS issued a denial on that date, explaining only that Petitioner did not have an emergency medical condition. *Id.* at 9-10.

Petitioner briefly testified through an interpreter that she needed HCBS because she experiences near-constant pain in her limbs and back, making moving around difficult, and also needs help operating a machine that enables her to breathe. *Id.* at 194-95. Petitioner's daughter also testified that her mother was physically unable on her own to complete basic tasks such as combing her hair, opening water bottles, or going to the toilet. *Id.* at 197-98.

Appearing for DHS, Rosanna Feliz, an income maintenance caseworker, stated that Petitioner had only been an LPR since June 2020, and was therefore subject to a five-year bar on federally funded medical benefits.⁶ *Id.* at 167-68. Ms. Feliz acknowledged that Petitioner was found to be nursing facility clinically eligible. *Id.* at 171-72. Due to the five-year bar, Ms. Feliz further explained, Petitioner qualified for state-funded benefits only, for which an emergency medical condition was required. *Id.* ALJ Cooper also heard testimony from Dr. Lawrence Appel, the director of DHS's Office of Long-Term Living, who explained that Petitioner's condition lacked the "acute symptoms" required to qualify for emergency long-term care services. *Id.* at 163.

Following presentation of DHS's evidence, counsel for Petitioner clarified she was not arguing the existence of an emergency medical condition. *Id.* at 177.

affiliated GA-MA program for the medically needy. That provision is now codified at 62 P.S. § 403.2, added by the Act of June 30, 2012, P.L. 668.

⁶ It may be presumed that Ms. Feliz was referring to the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, Pub. L. 104-193, 110 Stat. 2105 (1996). Section 403(a) of PRWORA, now codified at 8 U.S.C. § 1613(a), prohibits States from using federal funds to provide benefits to certain aliens, including LPRs, during their first five years in the United States.

Rather, Petitioner’s counsel argued that she qualified for HCBS benefits through her participation in the GA-MA program. *Id.* at 174. While acknowledging that federal law restricts federally funded public benefits to LPRs who have been present in the United States for at least five years, Petitioner’s counsel maintained that DHS is required by state law to provide HCBS to Petitioner. *Id.* at 204-05. Petitioner’s counsel noted that DHS already provides state funds for medical assistance to individuals under the age of 60 pursuant to Act 150. *Id.* at 205. Thus, Petitioner would have been deemed eligible for in-home care if she had been much younger, which Petitioner’s counsel characterized as an “absurd result.” *Id.*

In an Order dated December 16, 2022, ALJ Cooper denied Petitioner’s administrative appeal. *Id.* at 99. In the accompanying Adjudication, ALJ Cooper found as fact that Petitioner applied for HCBS benefits through the CHC waiver only. *Id.* at 102. ALJ Cooper rejected Petitioner’s argument that (in ALJ Cooper’s characterization) HCBS medical assistance administered through the CHC waiver is a state-funded program. *Id.* at 116. As acknowledged by Petitioner’s counsel during the hearing, federal law does authorize the states “to determine the eligibility *for any state public benefits* of a qualified alien.”⁷ *Id.* at 117 (emphasis in original). As HCBS under the CHC waiver is “markedly a Federal program administrated by Pennsylvania,” the Commonwealth must comply with all relevant federal regulations; thus, the five-year federal restriction on means-tested public benefits applied to HCBS as well. *Id.* Since Petitioner lacked an emergency medical condition that would exempt her from that restriction, ALJ Cooper concluded that DHS properly denied her request for HCBS benefits. *Id.* The BHA subsequently affirmed ALJ Cooper’s decision in its December 28, 2022 Final Order. *Id.* at 98.

⁷ It is undisputed in this case that Petitioner is a “qualified alien” under 8 U.S.C. § 1641(b)(1), which accords that status to all LPRs.

Petitioner filed a request for reconsideration of the Final Order on January 23, 2023. *Id.* at 121. DHS granted the request on January 25, 2023, but ultimately denied relief through a December 26, 2023 order upholding its decisions. *Id.* at 137-39.

In a Petition for Review filed in this Court on January 24, 2024, Petitioner argued, *inter alia*, that HCBS benefits are not restricted to those funded by the federal government and that there are no restrictions under Pennsylvania or federal law on LPRs who have been residing in the country for less than five years. Pet. for Rev. ¶¶ 14-15. Petitioner further maintained that ALJ Cooper legally erred by focusing exclusively on the question of Petitioner’s eligibility under the CHC waiver. *Id.* ¶ 16.

II. Issues

On appeal,⁸ Petitioner presents seven main issues for this Court’s consideration.⁹ First, Petitioner maintains that ALJ Cooper erroneously limited her analysis of her HCBS eligibility by focusing entirely on the CHC waiver, neglecting the fact that other forms of HCBS benefits are available. Second, Petitioner argues that she meets all elements of HCBS eligibility set forth by Pennsylvania law, which does not actually consider immigration status as a requirement. Third, Petitioner argues that ALJ Cooper erred as a matter of law by relying on 55 Pa. Code § 52.3, which only applies to providers rather than applicants, and, moreover, is itself invalid as it unreasonably and unlawfully restricts access to HCBS benefits. Fourth, Petitioner maintains that DHS’s denial violates the ADA because it restricts available LTC services to those available in an institutional nursing facility. Fifth,

⁸ This Court’s standard of review is limited to determining whether the BHA’s adjudication is supported by substantial evidence, whether the decision is in accordance with applicable law, or whether constitutional rights have been violated. *L.H. v. Dep’t of Hum. Servs.*, 197 A.3d 310, 312 n.4 (Pa. Cmwlth. 2018).

⁹ We have reordered some of Petitioner’s appeal arguments for clarity and ease of disposition.

Petitioner argues that DHS’s action further violates the ADA because HCBS benefits would be available if she were under the age of 60. Sixth, Petitioner maintains that DHS’s action runs afoul of the United States Supreme Court’s decision in *Graham v. Richardson*, 403 U.S. 365 (1971), which holds that state laws that draw distinctions between aliens and citizens for purposes of whom can receive public benefits are “inherently suspect and subject to close judicial scrutiny.” *Id.* at 372. Seventh, Petitioner argues that the denial of her access to HCBS benefits on the basis of her age violates the United States and Pennsylvania Constitution’s guarantees of equal protection.

III. Discussion

The Commonwealth’s MA program is authorized by Article IV of the Human Services Code (formerly the Public Welfare Code), Act of June 13, 1967, P.L. 31, *as amended*, 62 P.S. §§ 401-493. Individuals who are “categorically needy” or “medically needy,” two standards of eligibility established by DHS, are both eligible for MA. *See* Sections 441.1 and 442.1 of the Human Services Code, 62 P.S. §§ 441.1, 442.1,¹⁰ and 55 Pa. Code §§ 141.81, 171.81. While Pennsylvania is required to provide assistance to the categorically needy as a condition of its participation in Medicaid, its assistance to the broader medically needy category is voluntary. *Lewis v. Alexander*, 685 F.3d 325, 332 (3d Cir. 2012). The medically needy category includes individuals aged 59 and over who meet the “standards of financial and nonfinancial eligibility” as defined by DHS. 62 P.S. § 442.1(a)(2) & (3)(ii)(C).

¹⁰ Sections 441.1 and 442.1 were added by the Act of July 31, 1968, P.L. 904.

HCBS as a concept traces its origins to the 1981 addition of Section 1915(c) to the Social Security Act,¹¹ which enabled states to provide HCBS for some targeted groups of individuals who would otherwise require institutional care through the waiver of ordinary Medicaid rules. Jacob Abudaram, *Deinstitutionalization, Disease, and the HCBS Crisis*, 122 MICH. L. REV. 419, 432 (2023). The services could include nonmedical services that would prevent institutionalization. *Id.* In 1986, Pennsylvania expanded the provision of HCBS through the passage of Act 150 to include certain physically disabled individuals between the ages of 18 and 59. Unlike HCBS benefits offered through Medicaid waivers, those offered through Act 150 are State-funded. Later, through the passage of Act 42 in 2005,¹² the General Assembly added Section 441.8 to Chapter IV of the Human Services Code,¹³ which provides:

As a condition of eligibility for home- and community-based services, an applicant shall be subject to all medical and financial eligibility requirements for medical assistance including:

- (1) Medical eligibility for the payment of nursing facility care or the equivalent level of care in a medical institution.
- (2) Financial eligibility requirements under Federal and State law, including the provisions of sections 1917 and 1924 of the Social Security Act (49 Stat. 620, 42 U.S.C. §§ 1396p and 1396r-5).
- (3) All other eligibility requirements for medical assistance under Federal and State law.

62 P.S. § 441.8.

¹¹ See Omnibus Reconciliation Act of 1981, Pub. L. No. 97-35, § 2176, 95 Stat. 357 (1981) (codified as amended at 42 U.S.C. § 1396n(c) (1994)).

¹² Act of July 7, 2005, P.L. 177, No. 42, imd. effective.

¹³ The Human Services Code was then known as the Public Welfare Code.

Instantly, Petitioner’s wide-ranging Brief contains a multitude of arguments to support the contention that she is eligible for HCBS services. First, Petitioner argues that ALJ Cooper erred by placing her focus entirely on whether Petitioner was eligible for HCBS under the federally funded CHC waiver. Petitioner asserts that “she has made no request for enrollment in CHC specifically” and has never even “assert[ed] a right to CHC enrollment”; yet, ALJ Cooper framed the issue before her as whether DHS was correct to deny HCBS under the CHC waiver. Petitioner’s Br. at 23-24; *see also* C.R. at 101. Additionally, by “converting [Petitioner’s] request for HCBS to a request for ‘HCBS under the CHC waiver’ and limiting the analysis of her HCBS eligibility” for that waiver, Petitioner reasons, ALJ Cooper employed a “more restrictive eligibility standard” than the one actually set forth in the Human Services Code. *Id.* at 24

We agree with Petitioner. ALJ Cooper’s factual finding that Petitioner “applied for HCBS/MA under the CHC [w]aiver,” C.R. at 102, is devoid of support in the record. At no point in her application for HCBS benefits did Petitioner mention the CHC waiver, and her counsel even disclaimed any argument for eligibility under the CHC waiver. *See id.* at 204. Since ALJ Cooper’s factual conclusion is lacking in foundation, we conclude that Petitioner’s eligibility for HCBS should have been considered within the broader aegis of MA services.

Petitioner next argues that she meets all relevant eligibility requirements imposed by state and federal law for HCBS. Pointing to the plain language of Section 441.8 of the Human Services Code, Petitioner reasons that the legislature “set[] a broad HCBS eligibility standard . . . which does not condition HCBS eligibility on meeting Federal waiver eligibility requirements”; indeed, Petitioner notes that Section 441.8 “does not mention [F]ederal waiver programs at all.” *Id.* at

25-26. Petitioner contrasts Section 441.8 with other nearby provisions, such as Sections 441.7 and 441.5, both added by the Act of July 7, 2005, P.L. 177, 62 P.S. §§ 441.7 & 441.5, which expressly identify federal waiver programs in their requirements for eligibility.¹⁴ Thus, Petitioner argues that the legislature intended to make HCBS available as a part of her GA-MA enrollment, which “is *both* a benefit provided to her by a [S]tate agency, DHS, *and* a benefit that is provided using [S]tate funds.” Petitioner’s Br. at 14 (emphasis in original). Since states are authorized under 8 U.S.C. § 1622(a) “to determine the eligibility for any state public benefits of [a qualified alien],” Petitioner reasons that federal law is no bar to her receipt of HCBS benefits. *Id.*

On this point, too, Petitioner is persuasive. Section 441.8 is situated within Article IV of the Human Services Code, which governs Pennsylvania’s entire MA program; this includes services that receive Medicaid funding and those that are primarily or entirely state-funded. There are numerous instances where the General Assembly has, through clear language, tied specific goods or services to federal participation.¹⁵ We may therefore presume that, had the General Assembly intended to restrict HCBS benefits to beneficiaries of Medicaid and Act 150 only, it could

¹⁴ See 62 P.S. § 441.5(a) (directing DHS to impose a penalty of ineligibility when an applicant or recipient, or spouse of an applicant or recipient, makes certain asset transfers, pursuant to 42 U.S.C. § 1396p(c)); *id.*, § 441.7 (imposing the terms by which the spouse of a Medicaid applicant may transfer resources to his or her spouse while remaining eligible, pursuant to 42 U.S.C. § 1396).

¹⁵ In addition to the examples furnished by Petitioner, another is Section 443.13, added by the Act of October 23, 2023, P.L. 63, 62 P.S. § 443.13 (providing that “sufficient funds shall be included to provide reimbursement” for ambulance mileage, at published Medicaid and Medicare rates, “[s]ubject to federal approval as may be necessary and contingent on federal financial participation”).

have easily added phrasing to that effect.¹⁶ As it is written, Section 441.8’s conditions include (1) medical eligibility for nursing facility care, (2) financial eligibility under relevant Federal or State law, and (3) the satisfaction of other eligibility requirements under federal or state law for the MA program—not Medicaid. 62 P.S. § 441.8(1)-(3). Petitioner is a GA-MA recipient who is medically eligible for nursing facility care, and who is financially and legally eligible under both state and federal law; she thus satisfies all three of Section 441.8’s conditions. Accordingly, we hold that she and similarly situated persons are eligible for HCBS so that they, too, may avoid institutionalization and receive necessary care while remaining in their homes. We observe that this conclusion is not only consistent with Section 441.8’s plain language but with the overarching legislative intent of Article IV, which is “to promote the self-sufficiency of all the people of the Commonwealth.” 62 P.S. § 401(a).

Lastly, Petitioner objects to ALJ Cooper’s reliance on 55 Pa. Code § 52.3, which provides that HCBS includes “[s]ervices offered as part of a federally-approved MA waiver or Act 150 program.” Petitioner argues that the regulation in question “applies only to *providers* of [HCBS]” under 55 Pa. Code § 52.2 (providing that “[t]his chapter sets forth the regulations which apply to providers applying to participate and render MA-funded [HCBS]”). Petitioner’s Br. at 57. Regardless of

¹⁶ We also acknowledge that Section 441.8(b) includes a reference to “[S]ections 1917 and 1924 of the Social Security Act (49 Stat. 620, 42 U.S.C. §§ 1396p and 1396r-5).” 62 P.S. § 441.8(b). While both provisions are contained within Title XIX, their inclusion does not impose Medicaid eligibility *per se* but only explains how DHS is to calculate financial eligibility. 42 U.S.C. § 1396p is, in the words of the United States Supreme Court, “the Medicaid Act’s anti-lien provision, which prohibits States from recovering medical payments from a beneficiary’s property.” *Gallardo By & Through Vassallo v. Marstiller*, 596 U.S. 420, 421 (2022) (cleaned up). Meanwhile, 42 U.S.C. § 1396r governs how the income of a “community” (i.e., non-institutionalized) spouse factors into the financial eligibility of an institutionalized spouse. See *Weatherbee ex rel. Vecchio v. Richman*, 595 F. Supp. 607, 611 (W.D. Pa. 2009).

the regulation's scope, Petitioner argues that 55 Pa. Code § 52.3's definition of HCBS is unduly restrictive and at odds with DHS's enabling legislation. Petitioner thus reasons that 55 Pa. Code § 52.3 fails the test of an agency regulation set forth in *Bucks County Services, Inc. v. Philadelphia Parking Authority*, 195 A.3d 218, 237 (Pa. 2018): specifically, that the regulation must be "(1) within the agency's granted power; (2) issued pursuant to proper procedure; and (3) reasonable."

On this last point, Petitioner is, again, more persuasive. 55 Pa. Code § 52.3's definition of HCBS is without foundation in Section 441.8, which mentions neither federal Medicaid waivers nor Act 150. We conclude that the regulatory definition exceeds DHS's granted powers and is unreasonable and therefore, is invalid.

Having concluded that Section 441.8 of the Human Services Code, 62 P.S. § 441.8, is dispositive in this case, we need not address Petitioner's remaining issues.

IV. Conclusion

For the foregoing reasons, we reverse the BHA's Final Order.

MATTHEW S. WOLF, Judge

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ORDER

AND NOW, this 30th day of June 2025, the Final Administrative Action Order of the Department of Human Services, Bureau of Hearings and Appeals in the above-captioned matter, dated December 26, 2023, is hereby REVERSED. The definition of “HCBS” set forth at 55 Pa. Code § 52.3 is declared to be NULL AND VOID.

MATTHEW S. WOLF, Judge