

MAINE STATE LEGISLATURE

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October 25, 2010

Brenda Harvey Commissioner
DHHS – Marquardt Building
11 State House Station
Augusta, Me 04333-0011

Re: Residency Requirements

Dear Commissioner Harvey:

You have asked about the constitutionality of proposals for a durational residency requirement for Temporary Aid to Needy Families and Medicaid programs administered by the states.

It is well settled law that people receiving assistance from a state may be required to provide proof of residency but that no state may impose a minimum period during which an individual must reside in state before becoming eligible for assistance.

More than forty years ago the United States Supreme Court held that a one-year residency requirement imposed by the District of Columbia and the states of Connecticut and Pennsylvania was unconstitutional under the Fourteenth Amendment. *Shapiro v. Thompson*, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969).

Thirty years later the Court reaffirmed its conclusion, by a vote of 7-2, in *Saenz v. Roe*, 526 U.S. 489, 119 S.Ct. 1518, 143 L.Ed.2d 689 (1999). In *Saenz* the Court ruled that even Congressional action approving of such residency requirements could not remedy the constitutional violation. The Court rejected the various justifications for such a requirement, including budget concerns, the potential for abuse and a desire to discourage people from moving into the jurisdiction. These concerns, the Court concluded, do not outweigh the burden on a citizen's fundamental right to move from one state to another which is protected by the Equal Protection and the Privileges and Immunities provisions of the United States Constitution.

These Supreme Court rulings are now embodied in the federal rule regarding health care assistance, 42 CFR sec.435.403, which states that an agency "may not deny Medicaid eligibility because an individual has not resided in the State for a specified period."

Brenda Harvey, Commissioner

October 25, 2010

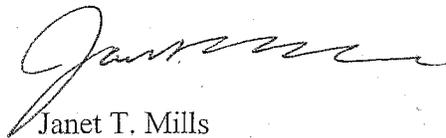
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Of course a state may require proof that a person is a *bona fide* resident, and a state may require a period of residency for other programs that do not provide the basic necessities of life, e.g., university tuition, *Vlandis v. Kline*, 412 U.S. 441, 445, 93 S.Ct. 2230, 37 L.Ed.2d 63 (1973), or hunting licenses, *Baldwin v. Fish and Game Comm'n of Mont.*, 436 U.S. 371, 390-391, 98 S.Ct. 1852, 56 L.Ed.2d 63 (1978). For TANF, Medicaid/MaineCare and any other programs providing basic necessities, however, a state may not discriminate against recent arrivals.

I trust this letter adequately responds to the concerns raised about residency requirements.

Thank you.

Very truly yours,



Janet T. Mills
Attorney General
State of Maine

JTM/nms