

Looking Out For Your Legal Rights®

December 2009

Published by Legal Services of New Jersey

Volume 28, Number 10

When you disagree with a decision Medicare makes about your health care, you have the right to *appeal* Medicare's decision.
Page 1

If you are a low-income taxpayer, there are many ways to get your tax return prepared at no cost to you. *Page 7*

The rule ending HIV as a basis for denying immigration status or barring travel to the United States will take effect on January 4, 2010. How will this affect you if you are a non-citizen and HIV-positive?
Page 11

*Cuáles Son Sus
Derechos Legales*

La versión en
español la encontrará
al reverso.

How to Appeal a Medicare Decision

Which Type of Medicare Do You Have?

MEDICARE PROVIDES coverage for most medical services. However, it divides the types of care that it covers into separate parts. Medicare beneficiaries can choose to enroll for coverage in

- Part A (mostly in-hospital care),
- Part B (mostly outpatient care),
- Part C (managed care by a private company), and/or
- Part D (most drug coverage).*

If you enroll in original Medicare (sometimes called "traditional" Medicare) instead of Part C (managed care), you can pay for private medical insurance, called a Medigap policy, for costs that Medicare does not cover.

When you disagree with a decision Medicare makes about your health care, you have the right to *appeal* Medicare's decision. For example, you can appeal if Medicare refuses to pay for medical care that you

Continued on page 2

* Although a person may voluntarily choose not to enroll in Medicare Part A, B, and/or D when they first become eligible for Medicare, in some circumstances there are penalty fees for delayed enrollment.

Medicare Appeals

continued from page 1

think you should get or continue to receive. Also, you have the right to appeal if Medicare denies your request to change the cost of your prescription drug or refuses to cover the drug your doctor prescribes.

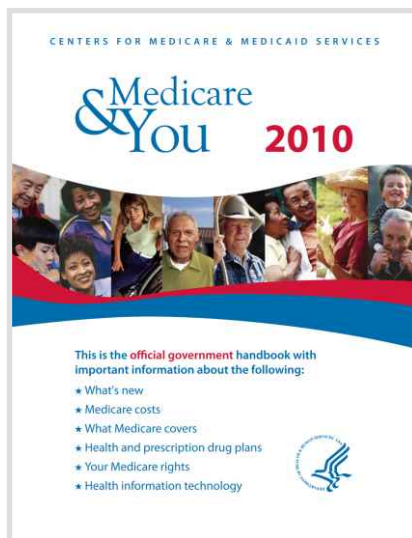
However, the appeal method that you must use depends upon what type of Medicare you have. Before the different appeal methods are explained below, you should be aware of the many rights and protections to which *all* Medicare beneficiaries are entitled, no matter which type of Medicare coverage they have.

The Rights and Protections of Medicare Beneficiaries

Besides the right to appeal certain health care decisions, all Medicare beneficiaries have the right to be respected,

treated with dignity, and protected from discrimination. Medicare must give beneficiaries access to hospitals, doctors and specialists, and emergency care when and where they need it. Medicare beneficiaries also have the right to file complaints and grievances about Medicare providers and private Medicare-approved plans. Medicare provides additional protections for its beneficiaries, which are described in the *Medicare & You* manual. You may find the manual at www.medicare.gov. Under *Learn More*, click on the *Medicare & You 2010* link.

Medicare must also give all beneficiaries a decision about its coverage of health care services. This means that beneficiaries may ask for a coverage decision *before* the care is provided. For example, if your doctor tells you that a certain medical procedure will not be covered by Medicare, you may ask the doctor to submit the



Looking Out For Your Legal Rights®

About Looking Out

Looking Out For Your Legal Rights is published 10 times a year by Legal Services of New Jersey. If you are a Legal Services client, you may pick up a copy at your local Legal Services office. You may also read *Looking Out* on our Web site at www.lsnj.org/selfhelp.htm.

Subscriptions

Subscriptions are \$10 a year. See order form on page 13.

Back Issues

You may view back issues at www.lsnj.org/selfhelp.htm. Printed copies of back issues, when available, are \$3 each.

Change of Address

If you are moving, please send us your new address and a copy of your *Looking Out* mailing label.

Comments

If you have any suggestions or comments about *Looking Out*, we would like to hear from you. Please send all correspondence to:

Editor, *Looking Out*
Legal Services of New Jersey
P.O. Box 1357
Edison, NJ 08818-1357
publications@lsnj.org

This newsletter is for general information only. If you have a legal problem, you should see a lawyer.

A portion of the cost of this publication was supported by funds provided by the IOLTA Fund of the Bar of New Jersey.

© 2009 Legal Services of New Jersey

Looking Out For Your Legal Rights is a federally registered trademark of Legal Services of New Jersey.

Medicare beneficiaries have the right to have someone help them with an appeal. You may ask a family member, a friend, a lawyer, a doctor, or anyone else that you choose to represent you.



claim to Medicare as a “demand bill.” Medicare will notify you whether it will cover the service—sometimes the doctor is mistaken. If you disagree with Medicare’s decision, you can appeal it.

All Medicare beneficiaries also have the right to have someone help them with an appeal. You may ask a family member, a friend, an attorney, a doctor, or anyone else that you choose to represent you for an appeal. You must submit an appointment of representative form (www.cms.hhs.gov/cmsforms/downloads/cms1696.pdf) or a letter with the same information with your appeal. You can find information about free legal assistance with a Medicare appeal at the end of this article.

Original Medicare Appeals— Part A and Part B

Redetermination. If you have received care from a Medicare provider, you will receive a Medicare Summary Notice (MSN) in the next few months. The MSN is similar to commercial insurers’ “Explanation of Benefits” statement. The MSN will show you if Medicare refused to pay for a claim and give Medicare’s reason.

If you do not agree with Medicare’s decision, within 120 days, you must send in either the MSN or a copy (make a copy of everything you send for your records) or a redetermination form ([\[CMS20027.pdf\]\(#\)\) with your reasons for disagreeing with Medicare’s decision. You may include information from your doctor that supports your appeal. Medicare will mail its response to you in about 60 days.](http://www.cms.hhs.gov/cmsforms/downloads/</p></div><div data-bbox=)

Reconsideration. If you do not agree with Medicare’s redetermination of their claim decision, you may file a second level appeal, called a *reconsideration*. You must file this level of appeal within 180 days after receiving the redetermination decision. You will send it to the Qualified Independent Contractor (QIC), a company hired by Medicare which was not involved in the previous decisions. The QIC will notify you of their decision within 60 days.

Administrative Law Judge Hearing. If you want to appeal the QIC’s reconsideration, you must request a hearing with an administrative law judge (ALJ) within 60 days. For this third level of appeal, you must be appealing a claim in the amount of at least \$120 (this minimum amount increases to \$130 in 2010). The hearing will be by phone, videoconference or, rarely, in person. You should get a decision from the ALJ within 90 days.

Medicare Appeals Council (MAC). If you do not agree with the ALJ’s decision, you have 60 days to send a fourth-level appeal to the Medicare Appeals Council. The MAC is part of the U.S. Department of Health and Human Services. You should

receive a decision from the MAC within 90 days.

Federal District Court. The fifth level of appeal is to the federal district court. However, the amount of the claim must be at least \$1,180 (this amount increases to \$1,260 in 2010). The appeal must be filed with the court within 60 days of receiving the MAC decision.

Fast Appeals

If you are receiving Medicare services from a hospital, a skilled nursing facility, a home health agency, an outpatient rehabilitation facility, or a hospice, you have the right to ask for a fast or expedited appeal if you think that your covered services are ending too soon.

At least two days before your health care services will be stopped, these types of Medicare providers must give you a written notice, usually called “Important Message from Medicare” or “Notice of Medicare Provider Non-coverage.” The notice will explain how you can appeal to Medicare’s Quality Improvement Organization (QIO), a private contractor hired by Medicare to decide this type of appeal. You can ask your doc-



You or your prescriber may ask for an exception or a coverage determination from your Part D drug plan if it denies payment for your prescription.

tor for medical information to help your appeal.

However, you must contact the QIO to ask for a fast appeal no later than noon of the day before your Medicare services will end. If you meet this deadline for a fast appeal and the QIO decides your services should end, Medicare will continue to pay only until the next day at noon. You will be responsible for any charges after that time. If the QIO decides your care should continue, Medicare will continue the coverage for as long as it decides the care is medically necessary.

If you did not meet the time deadline for a fast appeal, you still have standard appeal rights and should contact the QIO immediately.

Original Medicare Appeals— Part D (Drug Plan)

You or your prescriber may ask for an exception or a coverage determination from your Part D drug plan if it denies payment for your prescription. This request must usually be in writing, unless your plan will accept it by phone. In most cases, your prescriber must fax the information to your drug plan, stating the medical reasons why no similar drugs covered by your plan can be substituted for the prescribed drug.

The time limits for the drug plan’s decision are much shorter than the limits for Part A and Part B decisions. In addition, if the drug plan decides on its own or your doctor or prescriber tells the drug plan that your life or health is at risk, the drug plan must make a fast or expedited decision.

The drug plan has 72 hours (for a standard request) or 24 hours (for an expedited request) to notify you of its decision. If you disagree with your drug

Medicare Advantage beneficiaries have appeal rights that are similar to Original Medicare beneficiaries' appeal rights. They are also similar to the appeal rights that New Jersey provides for people with non-Medicare managed care commercial policies.



plan's decision, you then have the right to several levels of appeal that are similar to the appeal levels for Part A and B determinations.

Redetermination. You, your representative, doctor, or prescriber must request a redetermination within 60 days of the drug plan's decision. The drug plan must decide within seven calendar days for a standard request and *72 hours for an expedited request*.

Reconsideration. If you disagree with your drug plan's decision, you have 60 days to request the second level of appeal, a reconsideration from Medicare's Independent Review Entity (IRE). The IRE must give you a decision within seven days for a standard appeal and *72 hours for an expedited request*.

Administrative Law Judge. The third level of appeal is a hearing by an administrative law judge (ALJ) via telephone, teleconference or, rarely, in person. You must request the hearing within 60 days of your unfavorable reconsideration decision. The value of the drug(s) that have been denied must not be less than \$120 (\$130 in 2010). You may submit additional medical evidence to the ALJ no later than 10 days after you receive the hearing date notice. You should try to have your prescriber testify at the hearing with you.

Medicare Appeals Council (MAC). You have 60 days to request an appeal to the

Medicare Appeals Council if you disagree with the ALJ's decision. This is the fourth level of the Part D appeal process.

Federal District Court. The fifth level of a Part D appeal is to file a complaint in federal district court. The amount in controversy must be at least \$1,180 (\$1,260 in 2010).

Medicare Advantage Plan Appeals (Managed Care/Part C)

Medicare Advantage Plans are private companies that include inpatient, outpatient, and drug coverage through enrollment in a managed care plan (HMO, PPO, etc.). Medicare Advantage beneficiaries have appeal rights that are similar to Original Medicare beneficiaries' appeal rights. They are also similar to the appeal rights that New Jersey provides for persons with non-Medicare managed care commercial policies.

Reconsideration. If you disagree with your Medicare Advantage Plan's decision, you, your representative, or your doctor may ask for a reconsideration as the first level of appeal. If your plan decides or your doctor tells the plan that your life or health is at risk, the plan must give an expedited decision.

The Medicare Advantage Plan must give you its decision within 30 calendar days for a standard request, 60 calendar days for a payment request, and *72 hours for a fast (expedited) appeal*.

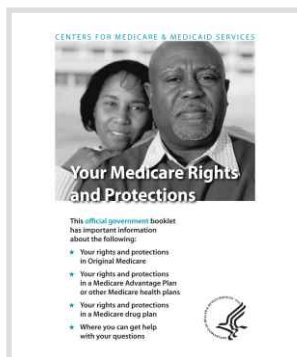
Redetermination. The Independent Review Entity (IRE) will decide the second level of a Medicare Advantage appeal. The IRE's decision will come within 30 calendar days (standard request), 60 calendar days for a payment request, and 72 hours for a fast (*expedited*) appeal.

Administrative Law Judge; Medicare Appeals Council; Federal District Court. These next three levels of appeal for Medicare Advantage beneficiaries are identical to the appeal rights for Medicare Part D (see above). □

By Linda Garibaldi, Senior Attorney Emeritus, Legal Services of New Jersey

Legal Assistance for Medicare Appeals

The information in this article is a brief explanation of your Medicare appeal rights. You can find more details about Medicare appeals in the manual, *Your Medicare Rights and Protections* (www.medicare.gov/Publications/Pubs/pdf/10112.pdf) or by calling 1-800-MEDICARE (1-800-633-4227).



If you need legal help with your Medicare appeal, you may contact your regional Legal Services office (www.lsnj.org/directory.htm) or the Health Care Access Project through Legal Services of New Jersey's statewide, toll-free legal hotline at 1-888-576-5529. The hotline will refer you to other sources of help if you are not eligible for Legal Services.

www.LSNJLAW.org

Visit our Web site for legal information, forms, publications, resource calculators, and much more.

Free Tax Preparation for Low-Income Taxpayers

If you are a low-income taxpayer, there are many ways to get your tax return prepared at no cost to you.

ONCE THE HOLIDAYS are over, tax season officially starts. All 2009 tax returns must be filed on or before April 15, 2010. Here are some tips that will help you save money when you get your tax returns prepared.

Free File

The IRS Free File program makes tax software programs available to eligible taxpayers for free. The Free File software programs will help you complete your income tax return and will then file the return with the IRS for you *at no cost*. The software programs given to eligible taxpayers are the same tax programs that are sold in stores. For 2009, taxpayers who earn \$57,000 or less will be able to find a Free File offer for which they are eligible.

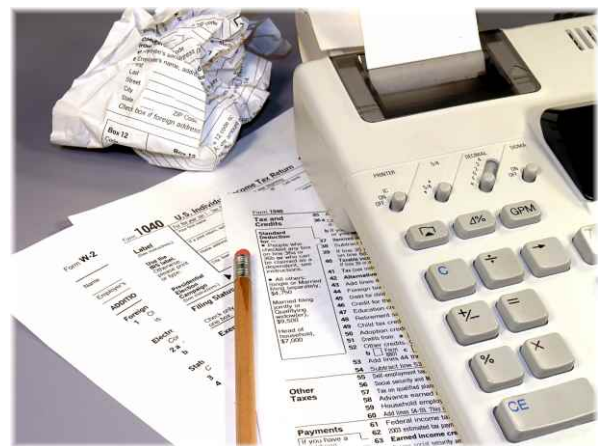
To use Free File (after January 10, 2010), you must use a computer and go to the IRS Web site, www.irs.gov. From the IRS.gov Web site, click on the Free File link. When you have reached the “Free File Home—Your link to Free Online Filing” page, you will find information to help you file your federal return online. Click the “Start Now” button to review the list of tax software companies and select one that best suits your needs. Once you select a company link from the list, you will be notified you are leaving the IRS.gov Web site and you will be taken directly to that company’s site to begin preparation of your federal income tax return. Remember, you must access the company through the IRS.gov Web site in order to use Free File.

As you start using the program, you will be asked a series of questions. Your answers to these questions will allow the program to prepare your return and calculate your taxes and refund. When you are finished answering the questions and your return has been prepared by the program, your return will be automatically filed electronically. Most people receive their refund within 10 days of using the Free File program.

The Free File program will only help you with your federal income taxes. Thus, you should consider one of the options below for preparing your state income tax return.

Volunteer Income Tax Assistance (VITA)

There are hundreds of Volunteer Income Tax Assistance (VITA) sites around the state. The VITA sites are staffed with people who can help prepare your income tax return for free if your income is \$49,000 or lower. There



If you are a low-income taxpayer, there are many ways to get your tax return prepared at no cost to you.

**Marines, airmen, soldiers, sailors, and guardsmen and
their families worldwide receive free tax preparation assistance
at offices within their installations.**



are usually VITA sites at local libraries, churches, senior centers, and other neighborhood locations. AARP always sponsors VITA sites. To locate the site closest to you, call 1-800-TAX-1040 or go to the IRS Web site, www.irs.gov. In the search box, type the words *volunteer income tax assistance* or *vita*. You can find an AARP volunteer site by calling 1-888-227-7669 or going to www.aarp.org/money/taxaide. The sites also have different types of tax returns (1040, 1040EZ, etc.) and other forms you may need to prepare your return. You may also contact the Tax Legal Assistance Program at Legal Services of New Jersey at 1-888-576-5529 to locate a VITA site.

Your Local IRS Office

Your local IRS office will also prepare your tax return for you at no charge, if your income is at or below \$49,000. You may find a list of local IRS offices on www.lsnjlaw.org or on www.irs.gov/localcontacts/article/0,,id=98315,00.html.

Tax Counseling for the Elderly (TCE)

Tax Counseling for the Elderly (TCE) is another program that provides free tax preparation to people age 60 and older. For more information on the TCE program and to find TCE sites, call the IRS toll-free at 1-800-829-1040.

Armed Forces Tax Council (AFTC)

The military also has a strong Volunteer Income Tax Assistance (VITA) Program. The Armed Forces Tax Council (AFTC) consists of the tax program coordinators for the Army, Air Force, Navy, Marine Corps, and Coast Guard. The AFTC oversees the operation of the military tax programs worldwide and serves as the main conduit for outreach by the IRS to military personnel and their families.

Marines, airmen, soldiers, sailors, and guardsmen and their families worldwide receive free tax preparation assistance at offices within their installations. These VITA sites provide free tax advice, tax preparation, and assistance to military members and their families. They are trained and equipped to address military-specific tax issues, such as combat zone tax benefits and the effect of the new Earned Income Tax Credit (EITC) guidelines.

Commanders support the program by detailing service members to prepare returns and by providing space and equipment for tax centers. The IRS supports these efforts by providing tax software and by training service members to prepare taxes at the military sites.

Most service members file their tax returns electronically at their tax centers and, by selecting direct deposit, receive their refunds in as little as one week. This combined effort ensures that

Refund Anticipation Loans

THE IRS PROCESSES income tax returns quickly, especially if you file your return electronically. If you are due a tax refund, you can expect to receive the funds within two weeks of filing your return.

A refund anticipation loan is a loan, made to you by a paid tax preparer, in an amount equal to or less than the refund that you are entitled to receive from the IRS. Refund anticipation loans have very high interest rates. You not only have to pay the paid preparer the fee for the tax return preparation, but also a filing fee, the refund, and the interest charged on borrowing your own money. Instead of keeping your entire refund, you are turning over some of your money to the lender.

Further, the IRS may question you about items on your return and not send you the refund until it is satisfied with your answers. In that case, not only will you not get your refund, but interest will continue to accrue until you pay the lender the amount you borrowed.

Refund anticipation loans are costly and not that much quicker than waiting for the actual refund. Avoid these loans as much as possible. If you want to check the status of your refund, go the IRS Web site, www.irs.gov and follow the *Where's my refund?* link.

Be smart this tax season and do not pay for tax preparation or to borrow your own money! For more tax information, remember to look for the next issue of *Looking Out For Your Legal Rights*. For answers to any tax questions, contact Legal Services of New Jersey's Tax Legal Assistance Project by calling LSNJ-LAW™, LSNJ's statewide, toll-free legal hotline, at 1-888-LSNJ-LAW (1-888-576-5529) or 732-572-9100 if you are calling from outside New Jersey. Hotline hours are Monday through Friday, 8 a.m. to 5:30 p.m. If you are not eligible for assistance from Legal Services, the hotline will refer you to other possible resources.

service members receive free tax assistance from well-trained and equipped military tax preparers.

Bring the following to the VITA/TCE/IRS sites to have your tax returns prepared:

- Proof of identification
- Social Security cards for you, your spouse, and dependents and/or a Social Security number verification letter issued by the Social Security Administration
- Birth dates for you, your spouse, and dependents on the tax return
- Current year's tax package if you received one
- Wage and earning statement(s) Form W-2, W-2G, 1099-R, from all employers
- Interest and dividend statements from banks (Forms 1099)
- A copy of last year's federal and state returns, if available
- Bank routing numbers and account numbers for direct deposit
- Total amount paid to a day care provider and the day care provider's tax identifying number (the provider's Social Security

number or the provider's business Employer Identification Number).

To file taxes electronically on a married filing jointly tax return, both spouses must be present to sign the required forms.

If you plan to prepare your own tax return and need tax forms, most post offices and libraries throughout the state offer IRS tax publications, forms, and instructions. You may also visit your local IRS office or go the IRS Web site and order the forms. It generally takes 10 days for the forms to be delivered to your address. The January-February *Looking Out* will provide you with tax information needed to prepare your own return.

IRS Publication 910 is an IRS comprehensive listing of free tax services. You can get this brochure either by calling the IRS at 1-800-829-1040 or visiting the IRS Web site, www.irs.gov.

A variety of Braille materials may be ordered at no charge by calling the IRS at 1-800-TAX FORM (1-800-829-3676). The Braille print files are in .brf format

and may be sent directly to an embosser for high quality Braille output.

There are so many options for free tax preparation that there is no reason you should ever pay for tax preparation. Further, if an issue arises with your tax return—for example, if the IRS denies you the Earned Income Tax Credit or informs you that someone already claimed one of your children on a different return—the Tax Legal Assistance Project at Legal Services of New Jersey may be able to help you with your tax problem for free. Just call 1-888-576-5529 to ask for help.

Paid Tax Preparers

While most preparers provide honest service to their clients, you should be careful when choosing a paid preparer. Too many paid preparers file false income tax returns for clients by claiming inflated personal or business expenses, false deductions, unallowable credits, or excessive exemptions. In many cases, the taxpayer does not know how the preparer manipulated the figures on the return.

**LEGAL SERVICES OF NEW JERSEY'S
TAX LEGAL ASSISTANCE PROJECT**

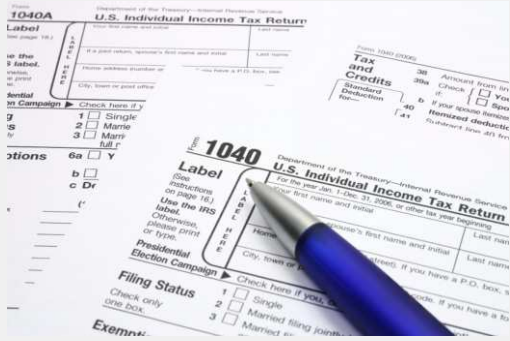
Legal Services of New Jersey's Tax Legal Assistance Project (TLAP) provides free legal assistance to low-income New Jersey taxpayers who need help with tax problems and controversies.

When you get a notice from the IRS, it may be hard to understand or you may be afraid to deal with it on your own. TLAP can help.

TLAP can give you advice, negotiate with the IRS on your behalf, or represent you in Tax Court.

TLAP provides information about important tax issues through seminars, community outreach, publications, and its client Web site, www.lsnjlaw.org.

Contact TLAP by calling 1-888-LSNJ-LAW (1-888-576-5529), Monday through Friday, 8:00 a.m. to 5:30 p.m.



You should know that, even if a paid preparer makes mistakes—unintentionally or intentionally—on a return, you are ultimately liable for any additional tax, interest, or penalties that are due.

Here are some helpful hints to keep in mind when choosing a tax preparer:

- Be cautious of tax preparers who claim that they can obtain larger refunds for you.
- Avoid preparers who base their fee on a percentage of the refund.
- Use a reputable tax professional who signs the tax return and provides a copy for you.
- Consider whether the individual will be around to answer questions about the tax return

months, even years, after the return has been filed.

- Check the person's credentials.
- Find out if the preparer is affiliated with a professional organization that provides its members with continuing education and resources and holds them to a code of ethics.

Reputable preparers will ask to see receipts, birth certificates, and identification documents. They will ask questions to determine whether expenses, deductions, and credits qualify.

By Marcie Harrison, Senior Attorney, Legal Services of New Jersey's Tax Legal Assistance Project

New Rule Ends HIV Status as Bar to Applying for Permanent Residence

ON OCTOBER 30, 2009, President Obama announced that the rule ending HIV as a basis for denying immigration status or barring travel to the United States would take effect as of January 4, 2010. How will this affect you if you are a non-citizen and HIV-positive?

I have been waiting to file an application for lawful permanent residence. Will I be able to apply for a green card now?

HIV will no longer be a bar to applying for permanent residence. However, you will still need to be otherwise eligible to apply for a green card. In other words, you still must qualify for a green card through a family petition, employer sponsor, the Diversity Visa lot-

tery, asylum, or some other means.

Does the new rule mean that I don't have to qualify for an HIV waiver to get a green card?

Since being HIV-positive is no longer a reason to deny someone lawful permanent residence, there is no need to file a waiver.

I have a waiver pending. What should I do?

Now that the regulations have been issued, you should send a letter to USCIS explaining that the HIV ban has been lifted, that a waiver is no longer required in your case, and that they should adjudicate your green card application immediately.

Can I get a refund for the \$545 waiver fee that was already filed?

No. Since immigration law changes all the time, USCIS will not refund fees that were appropriately paid at the time an application (or waiver) was filed.

What if my case was denied because I'm HIV-positive? Can I reopen it?

It may be possible. However, this will require some analysis since you will probably still need to qualify for the benefit that was denied. So, if you won the Diversity Visa lottery in the past but couldn't obtain a legal permanent residence application then because of your HIV status, you will not be able to do so now because those visas are no longer available beyond the year in which they were issued.

If your application was denied in the past because of your HIV status, you should contact the Immigration Representation Project at Legal Services of New Jersey (see page 13) to determine what, if anything, can be done.



HIV will no longer be a bar to applying for permanent residence. However, you will still need to be otherwise eligible to apply for a green card.

If I am otherwise eligible for a green card, should I apply immediately or should I wait until January 4, 2010?

All applications to adjust status will continue to require a general medical examination before a green card is issued. Until January 4, 2010, it is likely that USCIS-certified doctors will continue to test green card applicants for HIV. If you do not want USCIS to know that you are HIV-positive, you should wait until after January 4, 2010, before you apply for a green card.

However, if USCIS already knows your HIV status, or you do not mind disclosing your HIV status to them, there may not be any reason to wait to file. It is possible that informing USCIS that you are HIV-positive will continue to be relevant to your case for reasons discussed below.

Does the rule ending the HIV ban on immigration mean that HIV status is irrelevant to my immigration case?

No. All applicants for lawful permanent residence must demonstrate that they are not “likely to become a public charge.” If you are in relatively good health, being HIV-positive should not be a barrier to getting a green card. However, USCIS can look at all of the circumstances of a person’s life in determining whether that person is likely to become a public charge. If you have been too disabled by your HIV to work, it is possible that your application could be denied if USCIS finds that you will not be able to support yourself.

However, since the new regulations remove HIV testing from the medical examination, it is not likely that your

HIV status will come up if you wait until January 4, 2010, to apply.

I applied for asylum because I am HIV-positive. How will this change in the regulations affect my application?

This change should not affect your application for asylum. To gain asylum, you must prove that you have a well-founded fear of persecution based on being HIV-positive. The fact that the U.S. will soon end the HIV ban is not relevant to whether you would face persecution in your country of origin. For more information about asylum, please

contact the Immigration Representation Project (IRP) at Legal Services of New Jersey (LSNJ). You may reach the IRP by calling LSNJ-LAW™, LSNJ's statewide, toll-free legal hotline, at 1-888-LSNJ-LAW (1-888-576-5529) or 732-572-9100 if you are calling from outside New Jersey. Hotline hours are Monday through Friday, 8 a.m. to 5:30 p.m. If you are not eligible for assistance from Legal Services, the hotline will refer you to other possible resources. □

By Tim Block, Senior Attorney, Legal Services of New Jersey's Immigration Representation Project

**LEGAL SERVICES OF NEW JERSEY'S
IMMIGRATION REPRESENTATION PROJECT**

Legal Services of New Jersey's Immigration Representation Project provides direct representation to low-income immigrants, focusing primarily on the following types of cases:

- Naturalization cases involving complex issues;
- Self-petitioning to secure lawful permanent residence for women who are victims of domestic violence;
- Asylum cases for detained and non-detained clients; and
- Representation in other immigration matters where a client faces the potential loss of public benefits due to his or her immigration status or where there are other urgent circumstances.

You may reach the project by calling LSNJ-LAW™, Legal Services of New Jersey's statewide, toll-free legal hotline, at 1-888-LSNJ-LAW (1-888-576-5529).

Order Form

- Yes, I want to subscribe to *Looking Out For Your Legal Rights*®. Enclosed is a check/money order for \$10.00 for a one-year subscription (10 issues).
- New Subscription Renewal (please attach mailing label)

- Please send me an e-mail subscription.
My email address is: _____

Name _____

Address _____

City, State, ZIP _____

**Make checks payable to
Legal Services of New Jersey**

**Mail coupon and payment to
Legal Services of New Jersey
P.O. Box 1357
Edison, NJ 08818-1357**

12/09

Cuáles Son Sus Derechos Legales

Diciembre 2009

Publicado por Los Servicios Legales de Nueva Jersey

Una regla que termina el uso del VIH como una base para negar un estatus migratorio o prohibir viajes a los Estados Unidos entrará en efecto el 4 de enero de 2010. ¿En qué le afectará esto si usted no es ciudadano y es VIH positivo?

*Looking Out
For Your Legal Rights*
Flip issue over for the
English edition of
*Looking Out for Your
Legal Rights.*

Una nueva regla impide que se niegue la residencia permanente debido a que el solicitante tiene el VIH

EL 30 DE OCTUBRE de 2009, el Presidente Obama anunció que la regla que termina el uso del VIH como una base para negar un estatus migratorio o prohibir viajes a los Estados Unidos entrará en efecto el 4 de enero de 2010. ¿En qué le afectará esto si usted no es ciudadano y es VIH positivo?

He estado esperando para solicitar la residencia permanente. ¿Voy a poder solicitar una tarjeta de residencia ahora?

El VIH ya no se usará como una restricción a la solicitud de residencia permanente. Sin embargo, usted todavía *continúa en la página 2*

El boletín de educación jurídica para los habitantes de Nueva Jersey

El VIH y la residencia permanente continúa de la página 1

tendrá que llenar los requisitos para solicitar una residencia. En otras palabras, usted todavía tiene que tener derecho a recibir una tarjeta de residencia a través de una solicitud familiar, un empleador que le patrocine, la lotería de visas por diversidad, una solicitud de asilo u otros medios.

¿Quiere esta nueva regla decir que para obtener una tarjeta de residencia no necesito que se me conceda una exoneración por tener el virus de inmunodeficiencia humano?

Debido a que el ser VIH positivo ya no es una razón para que se le niegue a ninguna persona la residencia legal, no hay necesidad de presentar una exoneración.

Tengo una solicitud de exoneración pendiente. ¿Qué debo hacer?

Ahora que las regulaciones han sido publicadas, usted debería enviar una carta al servicio de ciudadanía e inmigración de los EEUU conocido por sus siglas en inglés como USCIS explicando que la prohibición con respecto al VIH ha sido levantada, y que en su caso ya no se exige la presentación de una exoneración, y que deberían decidir

inmediatamente su solicitud de residencia.

¿Puede usted obtener el reembolso de los 545 dólares que pagó como honorarios para la solicitud de la exoneración?

No. Debido a que las leyes de migración cambian todo el tiempo, el servicio USCIS no reembolsará los honorarios que se pagaron debidamente en el momento de presentar una solicitud.

¿Qué sucede si me negaron el caso porque soy VIH positivo? ¿Puedo volver a abrir el caso?

Puede ser posible. Sin embargo, esto tal vez se tenga que analizar un poco más ya que probablemente usted todavía tendrá que llenar los requisitos para recibir las protecciones que le fueron negadas. Así que, si en el pasado usted se ganó la lotería de visas por diversidad, pero no pudo solicitar la residencia permanente en ese entonces debido a su estado de VIH, usted ahora no lo podrá hacer porque aquellas visas ya no están disponibles más allá del año en el cual fueron adjudicadas.

Si en el pasado su solicitud fue negada debido a su estado VIH, usted debería ponerse en contacto con el proyecto de los Servicios Legales de Nueva Jersey para la

Cuales Son Sus Derechos Legales

Con respecto a *Looking Out*

Looking Out for Your Legal Rights® es publicada 10 veces al año por los Servicios Legales de Nueva Jersey. Si usted es un cliente de los Servicios Legales, puede obtener una copia en la oficina de Servicios Legales de su localidad. También puede leer *Looking Out* en nuestro sitio Web www.lsnj.org/espanol/selfhelp.htm.

Suscripciones

La suscripción cuesta \$10 dólares por año.

Números atrasados

Puede ver números atrasados en www.lsnj.org/espanol/selfhelp.htm. Los números atrasados impresos, en caso de estar disponibles, cuestan \$3 dólares cada uno.

Cambio de Dirección

Si se muda, envíenos su nueva dirección y una copia de la etiqueta pegada al ultimo ejemplar de *Looking Out*.

Comentarios

Si tiene alguna sugerencia o comentario con respecto a *Looking Out*, nos gustaría oírlo. Envíe toda correspondencia a:

Editor, *Looking Out*
Legal Services of New Jersey
P.O Box 1357
Edison, NJ 08818-1357
publicaciones@lsnj.org

Este boletín de noticias es sólo una información general. Si tiene un problema jurídico, usted debería ver a un abogado.

Una parte del costo de esta publicación se cubrió con la ayuda proporcionada por el fondo IOLTA del colegio de abogados de Nueva Jersey.

© 2009 Legal Services of New Jersey

representación en casos de inmigración para determinar lo que se puede hacer.

¿Si por otra parte lleno los requisitos para obtener una tarjeta de residencia, debería solicitarla inmediatamente o debo esperar hasta el 4 de enero de 2010?

En todas las solicitudes para el ajuste de estatus se continuará exigiendo que se presente un chequeo médico general antes de que se expida una tarjeta de residencia. Es probable que los médicos certificados por el USCIS seguirán examinando hasta el 4 de enero de 2010 a los solicitantes de residencia para determinar si tienen el virus de inmunodeficiencia humano. Si no quiere que el servicio USCIS sepa que usted es VIH positivo, debería esperar hasta pasado el 4 de enero de 2010 para solicitar la residencia.

Sin embargo, si el servicio USCIS ya sabe de su estado VIH, o a usted no le importa revelarles su estado VIH, tal vez no haya ninguna razón de esperar para solicitar. Es posible que el informarle al servicio USCIS que usted es VIH positivo siga siendo pertinente a su caso por motivos mencionados a continuación.

¿La regla que termina la prohibición debido al estado VIH quiere decir que el estado VIH no es pertinente a mi caso de inmigración?


No. Todo solicitante de una residencia legal permanente tiene que demostrar que no es probable “que se convierta en una carga pública”. Si usted relativamente goza de una buena salud, el ser VIH positivo no debería ser una barrera para la adquisición de una tarjeta de residencia. Sin embargo, el servicio USCIS puede considerar todas las circunstancias de la vida de una persona para determinar si es probable que aquella persona se convierta en una carga pública.

Si está demasiado incapacitado como para trabajar debido al VIH, es posible que el servicio USCIS le niegue su solicitud si se determina que usted no podrá mantenerse a sí mismo.

Sin embargo, ya que las nuevas regulaciones sacan las pruebas del VIH del chequeo médico, es probable que si espera hasta el 4 de enero de 2010 para solicitar, su estado del VIH no se mencione.

Solicite el asilo porque soy VIH positivo. ¿Cómo resultará mi solicitud afectada por este cambio en las regulaciones?

Este cambio no debería afectar su solicitud de asilo. Para obtener asilo, usted tiene que demostrar que tiene un miedo bien fundado de ser perseguido por ser VIH positivo. El hecho que los Estados Unidos pronto dejarán de usar el VIH como una prohibición para determinar el estatus migratorio no tiene nada que ver con que usted sea perseguido en su país de origen.

Para obtener más información sobre el asilo, por favor póngase en contacto con el Proyecto de los Servicios Legales de Nueva Jersey (LSNJ) para la representación en casos de inmigración (IRP). Usted puede contactar el proyecto IRP llamando a LSNJ-LAW™, la línea directa gratuita de asistencia jurídica de LSNJ para todo el estado, en el 1-888-LSNJ-LAW (1-888-576-5529) o si llama desde fuera de Nueva Jersey, marque el 732-572-9100. Las horas de funcionamiento de la línea directa gratuita son de lunes a viernes, de las 8 de la mañana a las 5:30 de la tarde. Si usted no cumple con los requisitos para recibir ayuda de los Servicios Legales, el personal de la línea directa le remitirá a otras posibles fuentes de información. 

Traducido por: Al Moreno, M.A., Coordinador de los servicios lingüísticos en los Servicios Legales de Nueva Jersey