

WHO DOES “THE PUBLIC CHARGE TEST” APPLY TO? A Resource for Advocates and Service Providers

The Department of Homeland Security’s (DHS) public charge regulation allows immigration officials to consider a much wider range of government programs in the “public charge” determination. DHS’ public charge test, which applies when a person seeks admission to or lawful permanent residence (a green card) in the U.S., considers whether the person has used or is likely to use one or more of these programs. The rule adds specific factors that will be weighed in predicting whether a person is likely to receive those programs in the future. This includes an income test where earning under 125% of the federal poverty level (\$32,188 for a family of four) would be weighed negatively. Children and seniors, people with a large family, limited English proficiency, or who have serious medical conditions also face barriers to immigrating under this rule. The listed programs are Medicaid (with exceptions for emergency services, and coverage for pregnant women and children under 21), SNAP (Supplemental Nutrition Assistance Program), Section 8 housing vouchers, Project-based Section 8, Public Housing, as well as federal, state or local cash assistance programs (SSI, TANF, General Assistance).

How would immigrant families be harmed by the new regulation?

Although it does not go into effect until October 15, 2019, the DHS regulation already has made immigrant families afraid to seek essential programs. The rule will discourage immigrants from using the programs their tax dollars help support, deterring access to healthy, nutritious food and secure housing. Since about one in four children have at least one immigrant parent, this issue touches millions and is critical for the nation’s future. The rule also will make it much more difficult for low- and moderate-income individuals to immigrate, reunite or remain with their families.

Here are some hypothetical scenarios where the public charge test is applied. In each case, the individuals must show that based on all of their circumstances, they are not likely to become a public charge.

SCENARIO 1: CLARA



Clara was born in the Marshall Islands and came to the United States in 1994 under the Compact of Free Association (COFA). The Compact gives her the right to live and work permanently in the United States as a nonimmigrant. Clara is 25 years old and is studying at a community college to be a medical technician. She has a daughter and recently married a U.S. citizen, and is now pregnant. She is enrolled in Hawaii’s Medicaid program, which is available to lawfully residing pregnant women. Her fiancé wants to sponsor Clara for a green card, but Clara fears that her receipt of health coverage during her pregnancy will cause a problem.

Clara’s public charge test under the rule: receipt of Medicaid by pregnant women (and for 60 days after the pregnancy ends) is not a negative factor. Medicaid received by children under 21 and pregnant women and Medicaid benefits received for emergency services are exceptions from the rule’s treatment of Medicaid as a public benefit. However, Clara’s income, credit score, her education, and other factors would be weighed in this test to determine whether she is likely in the future to use one of the listed benefit programs.

SCENARIO 2: EDDIE



Eddie is a 26-year-old graduate student. He works as a student instructor and research assistant to pay for tuition and other expenses, as he's not eligible for federal loans. Eddie has lived in the U.S. for as long as he can remember but was born in Mexico. He's had DACA since 2012. Eddie married a U.S. citizen (Irma) last year and has a 2-year old daughter. Irma works as a teaching assistant, earning \$30,000 per year. Eddie's daughter receives Medicaid and his wife has ACA Marketplace Coverage. Eddie is not eligible for subsidized health insurance and relies on his school clinic to treat his severe asthma. Last year, Eddie incurred a large medical bill for an emergency room visit during an asthma attack. Eddie has had trouble making regular payments the bill and this caused his credit score to plummet. Eddie's wife petitioned for his green card 6 months ago.

Eddie's public charge test under the DHS rule: The receipt of Medicaid by Eddie's daughter won't be held against him in the public charge test. However, the family's low income and Eddie's health condition and low credit score could be negative factors in the public charge test.

SCENARIO 3: KAREENA



Kareena is from India. Kareena's son petitioned for her and she has been living in the United States for the past 12 years as a green card holder. She is 72 years old and recently retired from her job as a cashier. Kareena receives Medicare and Medicaid. Kareena's sister recently became ill and she wants to travel back to India to support her family for a few months. Kareena is worried that if she leaves, she won't be able to come back to the United States to be with her son and grandchildren.

Kareena's public charge test under the DHS rule: If Kareena is outside of the U.S. for more than 180 days (6 months), she may be subject to a public charge test when she seeks to reenter the United States. The fact that Kareena has a low-income, is not employed and has used Medicaid would be weighed negatively against her. Her age and lack of current employment could also be weighed against her. However, her use of Medicaid would not count against her if she was only enrolled before the effective date of the final rule (October 15, 2019). It would only count as a heavily weighed negative factor if she was enrolled for more than 12 months during the 36 month period after October 15, 2019; however, any use of Medicaid after that date could be considered in the public charge test.

SCENARIO 4: ROBERTO



Roberto is a 68-year-old man from El Salvador with Temporary Protected Status (TPS). He has been living in the United States for more than 30 years, working in a chicken processing factory. Roberto has several chronic medical conditions including sleep apnea, COPD, diabetes, high blood pressure and lower back pain. Roberto had to reduce his work hours to manage his pain and now earns \$14,000 per year, which is barely enough to pay his rent and utilities. Due to his immigration status, Roberto is not eligible for Medicaid or SNAP benefits and relies on assistance from his church and local food pantry to get by. Roberto's daughter recently became a U.S. Citizen and would like to petition for her father's green card.

Roberto's public charge test under the DHS rule: Even though he has never used public benefits, Roberto's low income (below 125% FPL), advanced age, and medical conditions could be held against him under the public charge test.

SCENARIO 5: MARY and MATTHEW



Mary and her 10-year old son Matthew came from Egypt on a tourist visa in 2016. They overstayed their visa and were put in removal proceedings but were granted withholding of removal after they presented evidence that they would be persecuted in their home country because of their religion. Mary has married a U.S. citizen who has petitioned for permanent resident status for Mary and Matthew. Mary is worried about being considered likely to become a public charge because Matthew received Medicaid and SNAP for 6 months before her marriage to a higher-income citizen made him ineligible.

Mary and Matthew's public charge test under the DHS rule: Matthew's use of benefits would not be considered a negative for Mary because only benefits received by the individual are considered. Matthew's participation in Medicaid would not be considered because the use of Medicaid by children under age 21 is exempt. Matthew's use of SNAP after the rule's effective date could be considered as a negative in the totality of circumstances test, but it could be balanced out by other factors, including their current higher income.