

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of)
)
 G O)
_____)

OAH No. 12-0981-CAM
Agency No.

DECISION

I. Introduction

A hearing was held at G A. O's request to challenge the Division of Public Assistance's denial of his August 2012 medical bills. A hearing was held January 3, 2013. The parties participated by telephone.

Mr. O does not dispute that his August 2012 income exceeded the maximum allowable income to be eligible for Chronic and Acute Medical Assistance (CAMA) for August, 2012. However, he asks that under the doctrine of equitable estoppels, that the division pay these bills, which they indicated they would in a September 2012 notice. Mr. O has not established that equitable estoppel is present in his case. Therefore, the division's decision is affirmed.

II. Facts

The relevant facts are not in dispute. Chronic and Acute Medical Assistance (CAMA) is a program to help needy Alaskans who have a terminal illness, cancer requiring chemotherapy, or certain other medical conditions with their medical expenses.¹ Mr. O applied for CAMA because he has a covered medical condition, no third party resource to cover medical treatment of that condition, limited financial resources, and is a United States citizen.

He first applied for CAMA on July 27, 2012 because he would be undergoing chemotherapy in August 2012. This application was denied July 30, 2012 because Mr. O's expected income from unemployment insurance for the next month would exceed the \$300 maximum allowable net income for a household of one. He received the notice of the denial for in early August.² The notice of denial was based on his gross countable income in the amount of

¹ 7 AAC 48.525.

² Exh. 2.13; O testimony.

\$1,126.³ However, the determination should have been based on his net countable income. Mr. O's net countable income in August was \$1,013.94.⁴

Mr. O knew his July application for CAMA coverage had been denied, but he needed chemotherapy so he opted to obtain that treatment with the knowledge that he did not have CAMA coverage for August 2012.⁵

He reapplied for CAMA benefits on August 31, 2012, and this time his application was approved. In mid-September 2012, Mr. O received the division's notice informing him that CAMA coverage was approved for the months of August 2012 through February 2013.⁶ He did not give the notice stating that he had CAMA coverage in August much thought until he was informed by his providers that his August medical bills were not being paid.⁷ Although he understood CAMA was originally denied for August 2012, he thought that the September 2012 notice indicating that coverage commenced in August, would result in assistance with his August, 2012 medical bills.⁸

On December 11, 2012, Mr. O requested a hearing.⁹ Shortly thereafter, the division issued a corrected notice of approval dated December 12, 2012. This corrected notice informed Mr. O that the eligibility period was corrected to reflect that he was approved for CAMA effective September 2012 through February 2013. On an undetermined date during this same period, the division mailed to Mr. O a corrected notice of denial to replace the original notice, informing him that his income was over the allowable limit. The corrected notice contained the correct income figure.

III. Discussion

Prior to commencing the evidentiary hearing, the division's petition to dismiss was addressed. The division argued that Mr. O's request for hearing was not timely. Its original position was that to be considered timely, Mr. O would need to have requested a hearing within "30 days after receipt of the notice of the division action by which they are aggrieved."¹⁰ The division believed the action by which Mr. O was aggrieved was the denial of the July 2012

³ *Id.*
⁴ Exh. 2.14.
⁵ O Testimony.
⁶ Exh. 2.27.
⁷ O Testimony.
⁸ O Testimony.
⁹ Exh. 2.29
¹⁰ 7 AAC 49.040.

application, so to be timely, the challenge would have had to have been filed sometime in early September 2012.¹¹ Mr. O's request for hearing was filed December 11, 2012. Subsequently, the division provided Mr. O with corrected notices. The action aggrieved was the division's failure to honor its September 2012 notice. Mr. O did not become aware of the division's actions until December. When he complained, the division issued corrected notices. Mr. O believes the division should not ignore its own notice approving CAMA effective August 2012. Therefore, the notice of the division action by which Mr. O was aggrieved was not generated until after Mr. O requested a hearing. The division, now having a better understanding of the genesis of Mr. O's challenge, withdrew its petition to dismiss Mr. O's request for a hearing for being untimely, recognizing that the parties would be better served if, in this instance, Mr. O received a hearing on the merits.

Mr. O is arguing that the division should honor its September 2012 notice of approval, stating that he was approved for CAMA coverage commencing August 2012. Mr. O's argument raises a legal doctrine known as equitable estoppel.

To prevail under the doctrine of equitable estoppel, Mr. O must establish the following four elements:

- (1) the governmental body asserts a position by conduct or words;
- (2) the private party acts in reasonable reliance thereon;
- (3) the private party suffers resulting prejudice; and
- (4) the estoppel serves the interest of justice so as to limit public injury.^[12]

This four-element test for estoppel against the government is conjunctive. Use of the word "and" between the third and fourth elements confirms what would otherwise be intuitive in context—that a party invoking estoppel against the government must prove that all four elements are met. Here, Mr. O cannot establish the second and third elements.

When he received treatment in August 2012, Mr. O understood that his household income exceeded the maximum allowable for that month and that he was not eligible for CAMA for that month. Mr. O testified that there was an immediate need to start treatment as soon as possible, and he really could not have waited until September. Mr. O does not argue that his

¹¹ The exact date of receipt was not established.

¹² See, e.g., *Crum v. Stalnacker*, 936 P.2d 1254, 1256 (Alaska 1997) (applying estoppel against the government in a retirement benefits case to correct an inequity resulting from the agency not providing the retiree with the form needed to secure the benefit sought); *accord Wassink v. Hawkins*, 763 P.2d 971, 975 (Alaska 1988) (applying the same four-element test in a case asserting an estoppel defense against government enforcement action).

decision to receive medical treatment in August 2012 was in reliance on the incorrect approval notice mailed in September 2012 because, as he agrees, he could not have acted in reliance on that which did not exist at the time the action took place. Rather, Mr. O argues that the division should be held to the coverage promised in the September 2012 notice of approval. Mr. O's argument and evidence do not support a finding that he obtained treatment in August 2012 in reasonable reliance on the September notice.

For these same reasons he cannot establish he suffered any prejudice in August as a result of the division's correcting its September 2012 notice.

IV. Conclusion

Mr. O's August 2012 household income made him ineligible for August 2012 CAMA benefits. His decision to seek medical treatment was made and exercised before the division issued its September 2012 notice of approval. Accordingly, Mr. O has failed to present evidence sufficient to establish that he obtained medical treatment in August 2012 in reasonable reliance on the September 2012 approval notice, or that he suffered prejudice as a result of the division's decision. Therefore, Mr. O has failed to establish that his August 2012 medical expenses are covered under CAMA.

DATED this 10th of January, 2013.

By: Signed
Rebecca L. Pauli
Administrative Law Judge

Adoption

The undersigned adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 24th day of January, 2013.

By: Signed
Signature
Jeffrey A. Friedman
Name
Administrative Law Judge
Title

[This document has been modified to conform to the technical standards for publication.]