

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

In the Matter of )  
 )  
G D T ) OAH No. 17-0013-CAM  
 ) Agency No.

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**DECISION**

**I. Introduction**

On December 12, 2016, the Division of Public Assistance notified G D T that his Chronic and Acute Medical Assistance (CAMA) case was being closed. Mr. T appealed the closure of his case and the denial of continuing benefits during the pendency of the appeal, and his appeal was referred to the Office of Administrative Hearings (OAH) for a hearing. The hearing was held before the undersigned administrative law judge (ALJ) on April 19, 2017. Mr. T represented himself, attended the hearing in person and testified on his own behalf. Sally Dial represented the Division and appeared telephonically. Based on the evidence presented, the Division met its burden of establishing that its decision to close Mr. T’s CAMA case, and its denial of continuing benefits, were consistent with the statutes and regulations governing the CAMA program, and therefore were not improper.

**II. Facts**

Mr. T applied for CAMA benefits on September 9, 2016, and the Division approved his application on September 20, 2016.<sup>1</sup> In November 2016, Division staff reviewed Mr. T’s case and “pending” his case based on his potential eligibility for Medicaid, which the Division considers to be an “available third party resource” that must be exhausted in order to be eligible for CAMA.<sup>2</sup> The Division sent Mr. T a notice on November 22, 2016 that he needed to pursue a Medicaid application if he wanted to continue receiving his CAMA benefits.<sup>3</sup> After Mr. T failed to apply for Medicaid, the Division closed his CAMA case on December 9, 2016; notice of the closure was sent to him on December 20, 2016, stating that the closure would go into effect on December 31, 2016.<sup>4</sup>

Mr. T requested an administrative hearing to appeal the closure, using a “fair hearing request” form provided by the Division.<sup>5</sup> On the form, Mr. T checked the box next to this

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<sup>1</sup> Division exhibit 2.  
<sup>2</sup> Division exhibit 3.  
<sup>3</sup> Division exhibit 4.  
<sup>4</sup> Division exhibits 5, 6.  
<sup>5</sup> Division exhibit 7.

language: “continue my benefits at the level received before this notice until the hearing decision is made, or my SNAP certification period ends.”<sup>6</sup> The Division, however, ceased providing CAMA benefits to Mr. T while the appeal was pending.<sup>7</sup>

### III. Discussion

#### A. *The CAMA program*

The CAMA program provides limited coverage to help pay medical expenses for needy Alaskans who suffer from certain chronic or acute medical conditions.<sup>8</sup> If an applicant or recipient has third party resources (e.g., health insurance coverage, or is living with a legally responsible relative who is financially able to pay for the person’s medical coverage), the applicant or recipient is not eligible for CAMA benefits.<sup>9</sup>

#### B. *Mr. T’s preliminary arguments*

On the day of the hearing, Mr. T submitted five one-page, typewritten pleadings in which he presented some preliminary arguments pertinent to his appeal.<sup>10</sup> At the end of the hearing, Mr. T was offered the opportunity to submit additional support for these arguments in a post-hearing brief, and the record was kept open to allow him to do that. Mr. T submitted his post-hearing brief on May 5, 2017; the Division opted to not file a responsive brief.

Mr. T’s five preliminary filings are labeled as follows:

1. “Notice of Special Appearance;”
2. “Dispute Jurisdiction of Office of Administrative Hearings” [sic];
3. “Actions Taken By This Office are Violating State of Alaska Constitution on Life, Liberty, Property and Right of Privacy;”
4. “Actions Taken By This Office are Violating State of Constitution United States of America on Life, Liberty, Property and Right of Privacy” [sic]; and
5. “Demand That Nothing Unsigned To Be Accepted” [sic].

Regarding the “Notice of Special Appearance,” Mr. T explained, on the record, that he disputes the ability of OAH and the Division to exercise jurisdiction over him. He stated that he was appearing by way of a “special appearance” and was not consenting to OAH or the Division exercising jurisdiction over him. He clarified that it was his intention to not waive any argument that OAH or the Division lacked personal jurisdiction over him, but at the same time he was not

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<sup>6</sup> *Id.*

<sup>7</sup> T testimony; Dial testimony.

<sup>8</sup> See AS 47.08.150; 7 AAC 48.500; 7 AAC 48.525(b).

<sup>9</sup> 7 AAC 48.535; *Chronic and Acute Medical Assistance Manual* section 930 (2<sup>nd</sup> Ed. 2002).

<sup>10</sup> These five pleadings were scanned and emailed to Ms. Dial prior to the parties discussing them on record.

requesting any particular relief with his notice of special appearance. Mr. T's views on this issue were noted on the record by the administrative law judge (ALJ).

As to Mr. T's second pleading disputing the jurisdiction of OAH, Mr. T explained that he objects to the Division requiring him to apply for Medicaid, a federal program, in order to maintain his eligibility for benefits under the CAMA program, which is a state program. He also explained that the Division terminated his CAMA benefits while this appeal was pending, even though he requested continuing benefits during the appeal process. The ALJ explained that these objections appear to relate to the merits of Mr. T's claims, and asked how they relate to the jurisdiction of OAH or the Division to hear his appeal. The connections between Mr. T's objections and his jurisdictional argument, however, were not made clear. The ALJ further explained to Mr. T that his effort to dispute OAH's jurisdiction runs counter to his ability to have a hearing on the merits of his claims regarding his CAMA benefits. Ultimately, the ALJ ruled that OAH does have jurisdiction over Mr. T's appeal, and that Mr. T would have an opportunity to argue both that his CAMA case was wrongfully closed, and that he should have received continuing benefits while the appeal was pending.

The third pleading, "demand that nothing unsigned to be accepted," relates to Mr. T's complaint that the Division sent him a packet of documents, none of which were signed by anyone employed by the Division. In addition, he complained that in his in-person dealings with the Division, Division staff would not give him their full names. In essence, Mr. T's complaint was that it appeared to him that no one would take responsibility for the Division's actions on his CAMA case. Ms. Dial responded that typically, the Division's adverse action notices are not signed because in the past, Division employees have received threats from claimants who felt aggrieved by the Division's actions; as a result, employees are not required to provide their full names to members of the public. She also pointed out that most of the Division's eligibility workers are authorized to make eligibility determinations. Ultimately, Mr. T presented no legal authority to support his demand that unsigned documents must be rejected, so the demand was denied.

Mr. T's fourth and fifth pleadings comprise his argument that if the Division's decision to close his CAMA case is upheld, it will constitute a violation of his rights under the Alaska and U.S. constitutions. His arguments were noted on the record, with the comment that it appeared that Mr. T had preserved those arguments for purposes of a potential appeal to the superior court.

Mr. T was also informed that the ALJ does not have the authority to declare that a state statute or regulation, on its face, is in violation of the state or U.S. constitution.

Overall, the ALJ ruled that the hearing would proceed on the merits. Mr. T stated on the record that he was aware of caselaw supporting his jurisdictional and constitutional arguments. The ALJ encouraged Mr. T to provide citations to any such cases, and to further flesh out his arguments, in a written brief, which both parties were given the opportunity to submit after the hearing. As noted above, Mr. T timely filed his post-hearing brief; however, the brief did not provide citations to any helpful caselaw, nor did it provide any persuasive material that helped clarify his arguments or otherwise assist the ALJ in drawing conclusions regarding Mr. T's arguments.

*C. Mr. T's arguments on the merits*

**1. The closing of Mr. T's CAMA case**

The Division closed Mr. T's CAMA case because he refused to apply for Medicaid benefits.<sup>11</sup> Apparently Mr. T informed Division staff that he would not apply for Medicaid because he did not wish to provide a social security number with his application.<sup>12</sup> Mr. T argued at the hearing that he is a citizen of Alaska, that the CAMA program is a state-funded program, that the Division in administering the CAMA program cannot require him to apply for a federal program, and therefore, the Division's closure of his CAMA case was improper.<sup>13</sup>

The Alaska statute authorizing the CAMA program is AS 47.08.150; it provides in subsection (a) that the Division "may pay providers of medical care for services ... to needy persons suffering from a chronic or acute medical condition who may apply for assistance under (b) of this section." Subsection (b) states that "[a] needy person suffering from a chronic or an acute medical condition who is eligible for general relief assistance under AS 47.25.120 and **is not eligible for the medical assistance program under AS 47.07** may apply for assistance under this section."<sup>14</sup> AS 47.07 is the chapter of Alaska statutes describing and authorizing the state's participation in the Federal Medicaid program.<sup>15</sup> These statutory provisions clearly

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<sup>11</sup> The Division's notice of closure states: "You are required to apply for any benefit for which the Division believes you may be qualified for. [sic] You have not applied for Medicaid therefore, your CAMA case is closed." Division exhibit 6.

<sup>12</sup> During the hearing, in response to a question from Ms. Dial, Mr. T refused to state on the record whether or not he has a social security number.

<sup>13</sup> T testimony.

<sup>14</sup> AS 47.08.150(b).

<sup>15</sup> See AS 47.07.010 (emphasis added).

indicate the Alaska legislature’s intent that only persons who are ineligible for Medicaid benefits may receive CAMA benefits.

The Division has implemented that directive from the legislature through its regulations. 7 AAC 48.500 provides that the purpose of the CAMA program is to pay for medical services provided “to eligible chronically ill, needy persons suffering from certain chronic or acute medical conditions who are not eligible for Medicaid under AS 47.07.” In addition, 7 AAC 48.525 provides, in pertinent part, that eligibility for CAMA shall be based on financial need, lack of income to meet that financial need, and “lack of prior or personal resources.”<sup>16</sup> 7 AAC 48.535 provides that “prior resources” are to be determined according to 7 AAC 47.160. That regulation, in turn, provides in pertinent part that “prior resources” include “qualification to receive other medical assistance or coverage, including assistance or coverage through ... Medicaid... .”<sup>17</sup>

When viewed together, AS 47.08.150 and the Division’s implementing regulations make it clear that to be eligible for CAMA benefits, a recipient must exhaust other potential resources, including Medicaid benefits. The legislature’s intent to condition CAMA eligibility in this manner is clearly stated in AS 47.08.150.

Mr. T did not present any cogent argument in opposition to this clear meaning of the statutes and regulations governing the CAMA program. He believes that it is improper to condition his eligibility for CAMA benefits on his pursuit of Medicaid eligibility, because the CAMA program is a state program and the Medicaid program is a federal program, and because he would be required to provide a social security number with a Medicaid application. However, he presents no persuasive authority that there is anything inherently improper about the legislature placing such a condition on CAMA eligibility.

Mr. T appears to present a constitutional challenge to AS 47.08.150(b) and the CAMA program, based on the theory that requiring him to apply for Medicaid and provide a social security number violates his right to privacy. To the extent that he seeks a ruling from this tribunal invalidating 47.08.150(b) on constitutional grounds, however, the ALJ has no authority to enter such an order.

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<sup>16</sup> 7 AAC 48.525(a).

<sup>17</sup> 7 AAC 47.160(b)(3).

Based on the above discussion, Mr. T’s challenge to the Division’s closure of his CAMA case fails. The Division’s decision is upheld.

## **2. Mr. T’s claim for continuing CAMA benefits**

When Mr. T requested this appeal hearing, he checked the box on the Division’s form requesting that his CAMA benefits be continued during the pendency of the appeal.<sup>18</sup> He argued, based on the fact that the form allowed him to request continuing benefits, that the Division’s termination of his ongoing CAMA benefits before the appeal had been decided was wrongful.

Ms. Dial acknowledged, on behalf of the Division, that the appeal request form allows an appellant to request continuing benefits. She explained, however, that the form is used by the Division for all of its assistance programs, including programs such as food stamps (the Supplemental Nutritional Assistance program, or “SNAP”), adult public assistance, adult temporary assistance, or a variety of Medicaid programs, under which a recipient can have their benefits continue until a final decision is issued on their appeal. Ms. Dial pointed out that a Division regulation, 7 AAC 49.190, governs this issue. It provides:

[A] recipient of assistance other than General Relief, General Relief Medical, or *Chronic and Acute Medical assistance* that continues to satisfy all eligibility criteria other than those at issue in the hearing request will, upon filing that hearing request, have the assistance reinstated retroactively or continued until the date that the final decision is issued, unless the recipient informs the department that the recipient does not want to receive continuing assistance.[<sup>19</sup>]

This regulation carves out the CAMA program from the Division’s ability to provide continuing benefits to persons who have appealed Division decisions affecting eligibility or benefits. It is unfortunate that the Division’s universal appeal request form fails to inform appellants that continuing benefits are not available under the CAMA program.<sup>20</sup> However, the Division is bound by 7 AAC 49.190, and the fact that its appeal form does not explicitly mention the CAMA carve-out does not alter the terms or effect of the binding regulation.<sup>21</sup>

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<sup>18</sup> See Division exhibit 7.

<sup>19</sup> 7 AAC 49.190 (emphasis added).

<sup>20</sup> The Division should consider modifying its appeal request form to describe the carved-out programs.

<sup>21</sup> Mr. T did not argue that he had relied to his detriment upon an implied promise by the Division of continuing benefits in the appeal form. If he had done so, the argument could be viewed as an “estoppel” argument against the Division’s denial of Mr. T’s continuing benefits. See *Allen v. State, Division of Public Assistance*, 203 P3rd 1155, 1164 (Alaska 2009) (estoppel applies against government agency if (1) agency asserts a position by conduct or words, (2) private party acts in reliance thereon, (3) private party suffers prejudice or injury as a result, and (4) applying estoppel “serves the interest of justice so as to limit public injury”). Because Mr. T did not make this argument, we need not decide whether his case would meet these required elements of estoppel.

#### **IV. Conclusion**

The Division met its burden of establishing that its decision to close Mr. T's CAMA case was consistent with the statutes and regulations governing the CAMA program, and therefore was not improper. Mr. T did not demonstrate that conditioning his CAMA eligibility on his pursuit of Medicaid eligibility was wrongful or improper. In addition, the Division established that continuing CAMA benefits are not allowed under the applicable regulations, and therefore they were not available to Mr. T during the pendency of this appeal.

Based on the foregoing, the Division's actions to close Mr. T's CAMA case, and to terminate his CAMA benefits while this appeal was pending, are upheld.

DATED this 31<sup>st</sup> day of May, 2017.

By: Signed  
Andrew M. Lebo  
Administrative Law Judge

#### **Adoption**

The undersigned, by delegation from the Commissioner of Health and Social Services, adopts this Decision, under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

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 20 day of June, 2017.

By: Signed  
Name: Erin Shine  
Title: Special Assistant to the Commissioner

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