

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

In the Matter of )  
 )  
 W D ) OAH No. 12-0501-DKC  
 ) Agency No.  
\_\_\_\_\_ )

**DECISION**

**I. Introduction**

W D requested a hearing to challenge the Division of Public Assistance’s (DPA’s) conclusion that her child, K, was not eligible for Denali Kid Care. The DPA denied K’s renewal of benefits because the household income exceeds the maximum monthly income for a household of two. Ms. D does not dispute the earnings attributed to her, but believes that any amounts garnished from her paycheck should not be included as earned income because it is an outflow of income over which she has no control and is not available to meet the needs of the family.

A hearing was held July 12, 2012. Ms. D attended in person. Jeff Miller, DPA representative, participated by telephone.

**II. Facts**

There are no genuine issues of material fact in dispute. Rather, Ms. D challenges the application and interpretation of the law to the undisputed facts.

Ms. D’s youngest daughter, K, received Denali Kid Care.<sup>1</sup> Denali Kid Care is a Medicaid program for children, pregnant women and infants whose monthly household income does not exceed 150% of the federal poverty guidelines.<sup>2</sup> For a household of two, this amount is \$2,365.<sup>3</sup> Ms. D’s monthly program net income is \$2,988.<sup>4</sup> This is in excess of the maximum earned income for a household of two.

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<sup>1</sup> Exh. 2.2. The renewal form indicated the renewal was sent for Ms. D’s granddaughter, L. The case number was the number assigned to K’s Denali Kid Care. Because the hearing focused on K’s eligibility and Ms. D’s earned income, it was confirmed that the renewal form was submitted to renew K’s benefits. L and her mother are the subject of an unrelated application. *See* Exh. 3.

<sup>2</sup> In certain circumstances, not present here, the income cap is 175 % of the federal poverty guideline. AS 47.07.020(b)(13); 7 AAC 100.312(a)(2).

<sup>3</sup> 7 AAC 100.310; 7 AAC 100.312; Exh. 11.

<sup>4</sup> Exh. 3.1; Exh. 3.2. Ms. D receives gross earnings in the amount of \$1,539 twice per month and she is entitled to a \$90 deduction from income. 7 AAC 100.184(a).  $(\$1,539 \times 2) = \$3,078$ .  $\$3,078 - \$90 = \$2,988$ .

However, after taxes and court ordered garnishment for unpaid student loans, Ms. D's monthly take home pay is \$1,798.54.

### **III. Discussion**

For purposes of determining eligibility for Family Medicaid, the DPA reviews "earned income."<sup>5</sup> Earned income is gross income earned by an employee. The applicable regulation emphasizes that gross income is that amount before any deductions for taxes and child care.<sup>6</sup> There are limited exemptions for educational loans, work study, and scholarships, but the exemptions are limited to amounts received under those programs, not any earnings that are garnished to pay them back.

Ms. D disagrees with the regulation. She argues that if her "true" net income were used, K would be eligible for Denali Kid Care. She believes that to include garnished wages is incorrect because it is money over which she has no control and because its inclusion has a negative impact on K. Failure to recognize the deduction, Ms. D argues, effectively punishes K for Ms. D's decisions.

While not without appeal, Ms. D's position is not supported by regulation. The regulations unequivocally identify what may and may not be reviewed for purposes of eligibility. The DPA and this tribunal must apply the regulations as written, and as written, the DPA correctly reviewed Ms. D's earned income for purposes of determining K's eligibility to participate in the Denali Kid Care program.

Finally, even if Ms. D prevailed and her earned income was based on her take home pay and all household income required to be reviewed was included, the monthly household income would still exceed the maximum household allowance by \$58.54. Until now, the amounts discussed have not included K's \$715 monthly payment from the Social Security Administration for her father's disability. Under the applicable regulations this amount is included for purposes of calculating household income; it was not included in prior discussions to illustrate that even under the most favorable circumstance the household income exceeds the allowable amount.

The regulations regarding eligibility for Denali Kid Care are exacting and do not permit a deduction for amounts owed to third parties. To grant the relief sought by Ms. D

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<sup>5</sup> 7 AAC 100.158(a).

<sup>6</sup> 7 AAC 100.158(b). *See also* 7 AAC 100.162 (exempting earned income of a dependent child); 7 AAC 100.164 (exempting income from certain educational grants).

(deduction of garnished earnings for purposes of establishing household income) must be accomplished through the regulatory rule making process, not the administrative adjudicative process. Ms. D's challenge fails. The DPA correctly concluded that Ms. D's income was over the program limit. For this reason K is not eligible for Denali Kid Care.<sup>7</sup>

#### **IV. Conclusion**

The Division of Public Assistance correctly concluded that W D's household income is over the maximum amount for a household of two.

DATED this 18<sup>th</sup> day of July, 2012.

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 16<sup>th</sup> day of August, 2012.

By: Signed  
Signature  
Ree Sailors  
Name  
Deputy Commissioner  
Title

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

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<sup>7</sup> \$1,798.54 [take home pay] + \$715 [SSA] = \$2,513.54. \$2,513.54 [monthly earned income] - \$2,365 [maximum household income] - \$90 [regulatory deduction] = \$58.54.