

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

In the Matter of:)
)
S E) OAH No. 12-0892-DKC
) DPA Case No.

DECISION

I. Introduction

S E applied for Denali KidCare benefits under the Medicaid program. The Division of Public Assistance denied the application on the ground that Ms. E's income exceeded applicable program limits.

Ms. E requested a hearing, and the assigned administrative law judge conducted a telephonic hearing on December 13, 2012. Ms. E participated, and Teri Gagne represented the division.

Ms. E received pay from her employer for work performed in the prior month, but under the rules governing the Medicaid program it must be counted as income in the month it was received. The pay placed Ms. E over the income limit. Because her income exceeded the limit, the division's decision is sustained.

II. Facts

S (C) E and her husband, A E, live in No Name. Mr. E is a handyman and maintenance worker who in the fall of 2012 was employed by No Name, Inc.¹ Ms. E is a seasonal worker in the local tourism industry, and in the summer of 2012, she was employed by No Name.² The local tourism industry winds down in September, and Ms. E's last day of work was September 24.³ At that time, Ms. E was pregnant with the couple's first child, due on May 1, 2013.⁴ Anticipating the termination of her employment, on September 19, 2012, Ms. E had submitted an application for Denali KidCare benefits.⁵

In September, Mr. E received gross pay totaling \$2,883 in two paychecks issued September 14 (\$1,651) and 28 (\$1,232),⁶ and Ms. E received gross pay of \$1,758.75 in a

¹ Ex. 2.1; Testimony of S. E.
² Ex. 2.1; Testimony of S. E.
³ Testimony of S. E.
⁴ Ex. 2.6.
⁵ Ex. 2-2.15.
⁶ Ex. 2.10, 2.11-2.12.

paycheck issued September 15 for the pay period August 29-September 12.⁷ The household's gross income in September was \$4,641.75.

Ms. E's final paycheck, reflecting pay earned from September 13-28, was due to be issued on September 29.⁸ As a result of end-of-the-season disruptions, her paycheck was issued a couple of days late, on October 1, with gross pay of \$1,783.69.⁹ In October, Mr. E received gross pay totaling \$2,513 in two paychecks issued October 15 (\$1,281)¹⁰ and 31 (\$1,232).¹¹ The household's gross income in October was \$4,296.69.

During the month of October, Ms. E had pregnancy complications and incurred medical bills totaling \$2,748.¹² On October 23, the division denied her September 19 application on the ground that the household income was in excess of the allowable limit.¹³ Ms. E submitted a new application on November 1, noting her previously-incurred medical bills.¹⁴

On November 5, Ms. E made a \$5,000 payment to pay off an outstanding loan, using in part \$1,000 from her final paycheck that she had designated for that purpose.¹⁵ Later that same day, a fire destroyed the apartment building in which Ms. E and her husband were living.¹⁶ All of their personal belongings, with a value of \$25-35,000, were lost in the blaze, including Mr. E's tools of trade, musical equipment, their clothes, and about \$1,000 in cash.¹⁷ Since then, Mr. E has lost his job and the couple, who remain unemployed, have had no income other than unemployment benefits.¹⁸

Ms. E's November 1 application was approved on November 13 for coverage effective November 1, with no retroactive coverage for September or October.¹⁹ Ms. E appeals, arguing that she is entitled to retroactive coverage for October.²⁰

⁷ Ex. 2.10, 2.14.
⁸ Testimony of S. E.
⁹ Ex. 2.10, 2.14.
¹⁰ Ex. 2.13
¹¹ Ex. 2.25.
¹² Testimony of S. E.
¹³ Ex. 2.15.
¹⁴ Ex. 2.16-2.25.
¹⁵ Testimony of S. E.
¹⁶ Testimony of S. E.
¹⁷ Testimony of S. E.
¹⁸ Ex. 2.26; Testimony of S. E.
¹⁹ Ex. 2.26-2.27.
²⁰ Ex. 2.28.

III. Discussion

A. Applicable Legal Rules

The Medicaid program provides medical insurance coverage for eligible participants.²¹ There are several categories of eligibility.²² Alaska has elected to provide Medicaid coverage through the Denali KidCare program for pregnant mothers in financially-eligible households.²³

In order to be eligible for Medicaid coverage as a pregnant woman under the Denali KidCare program, an applicant's monthly household income must be within of 175% of the federal poverty guideline.²⁴ For a household of three persons (including an unborn child), 175% of the federal poverty guideline for Alaska is \$3,482.²⁵ An applicant's eligibility for retroactive Denali KidCare benefits is subject to the same regulation that applies to eligibility for retroactive Medicaid coverage, 7 AAC 100.072,²⁶ which provides, in subsection (c), that "[e]ligibility must be determined separately for each month in which the applicant seeks coverage." Thus, Ms. E's eligibility for retroactive Medicaid coverage under the Denali KidCare program in October is determined based on her household income in October.

B. Scope of Appeal

The decision that is at issue in this appeal is the division's November 13 denial of retroactive coverage for October.²⁷ That decision states that the reason for the denial is that retroactive coverage for that month had previously been denied.²⁸ The prior denial, embodied in a decision dated October 23, was issued following Ms. E's September application.²⁹ The October 23 decision was based on an October 22 determination that Ms. E was ineligible for coverage in both September and October.³⁰ The October 22 determination and the October 23

²¹ See generally, 42 U.S.C. §§1396-1396p (Title XIX, Social Security Act); AS 47.07.

²² AS 47.07.020.

²³ AS 47.07.020(b)(9), (14); 7 AAC 100.002(c)(7), (9); 7 AAC 100.300-304.

²⁴ AS 47.07.020(b)(14); 7 AAC 100.302(a)(2).

²⁵ http://dhss.alaska.gov/dhcs/Pages/denalikidcare/income_guide_dkc.aspx (accessed January 17, 2012). See

Ex. 12.

²⁶ 7 AAC 100.072 has not been specifically adopted for purposes of Family Medicaid. See 7 AAC 100.100. However, the division has not asserted that retroactive coverage was not available to Ms. E, and providing retroactive coverage is consistent with 7 AAC 100.072. 7 AAC 100.072(a) provides that an applicant may request retroactive coverage at the time of the eligibility interview, and an interview is required for Denali KidCare coverage under 7 AAC 100.002(c)(7). See 7 AAC 100.014(a)(2). Moreover, because retroactive coverage is expressly denied for postpartum Denali KidCare, it is reasonable to infer that retroactive coverage is available for other categories of Denali KidCare. See 7 AAC 100.072(e).

²⁷ Ex. 2.26-2.28.

²⁸ Ex. 2.27.

²⁹ Ex. 2.15.

³⁰ See Ex. 2.10 ("Denied over income for 09/12 and looked into second month [October], and second month was also denied for over income.").

decision may have been retroactive with respect to September, but they were clearly not retroactive as to October.³¹ In fact, at the time of the October 23 decision, Ms. E's actual household income for the month of October was less than the income limit.³²

Because the November 13 decision to deny retroactive coverage for October rests on the October 23 decision, and the October 23 decision was not based on Ms. E's actual household income in October, the November 13 decision with respect to retroactive coverage for October is in error. Ms. E's eligibility for retroactive coverage for October must be determined based on her actual income in that month. Neither the October 23 decision nor the November 13 decision did so.

C. Eligibility

Ms. E does not dispute that she and her husband received the paychecks that the division attributed to them, and she does not dispute that in September she was ineligible. She argues, however, that because the paycheck that was issued on October 1 was issued later than it should have been and it was for work that she performed in September, it should not be included in calculating her October income for purposes of eligibility for Denali KidCare during that month.³³ At the hearing she also argued that the portion of that paycheck which she had previously decided to apply to her outstanding loan should not be considered as available to her in October.

The month in which income is attributed to an applicant is governed by 7 AAC 100.152:³⁴

The department will determine, on a monthly basis, eligibility for Family Medicaid benefits and when income is considered available to the applicant or recipient. The department will consider all income that is received or may be reasonably anticipated to be received in a month to actually be available to the applicant or recipient in that month.

As provided in 7 AAC 100.152, the division attributes income to an applicant in the month in which it is received or reasonably anticipated to be received. Thus, the division

³¹ The decision states that the application was denied based on "gross earned income for you and A total: \$5,662.12." Ex. 2.15. It is unclear from the record what month that amount of income was attributed to, or how that the amount was derived. Ex. 2.10 does not show how the amount was calculated.

³² Ms. E's actual household income through October 23 was \$3,064.69, consisting of her October 1 paycheck (\$1,783.69) and Mr. E's October 15 paycheck (\$1,281).

³³ See Ex. 2.32.

³⁴ See 7 AAC 100.100 ("Except as otherwise provided in [7 AAC 100], 7 AAC 100.100-7 AAC 100.199 apply to all eligibility categories under 7 AAC 100.002(a) or (c)."). As previously noted, Denali KidCare coverage for a pregnant woman is an eligibility category under 7 AAC 100(c)(7) and (9). See note 22, *supra*.

prospectively attributes income to the month in which it is anticipated to be received.³⁵

However, the division does not have discretion to retroactively attribute income to a month other than the month in which it was actually received.³⁶

Because Ms. E actually received her final paycheck in October, rather than when it was due in September, the division must, in retrospect, attribute it to her as income in October rather than in September. Moreover, that Ms. E had planned on using that income for a pre-existing debt does not mean that it was not available to her for purposes of determining her eligibility for Denali KidCare. Income is included in determining eligibility if it was “available to meet the financial needs of an individual...in the household in the month for which the department is determining need.”³⁷ That Ms. E saved her October 1 paycheck for use in November does not mean that it was not available to her in October for financial needs she had then.

Ms. E’s point that only income which is “available” may be considered as income raises another issue, however. Mr. E’s final paystub is dated October 31. That a paystub is issued on a particular date does not necessarily mean that the employee received a paycheck on that date. For example, if a paycheck is mailed to an employee on the date the paystub is issued, the paycheck would not be received (or available for use) until it is delivered. In this particular case, however, Mr. E’s paystub shows that his net pay from his final paycheck was directly deposited to his bank account.³⁸ Absent any showing by Ms. E that the deposited funds were not available for use in October, it appears that Mr. E’s final paycheck was received, and the net proceeds were available, during the month of October. Accordingly, it must be included in calculating Ms. E’s household income for October. Including Mr. E’s final paycheck in the household income for October places Ms. E over the income limit for October.³⁹ Despite the dire circumstances that Ms. E faces as a result of unforeseen medical expenses and a disastrous fire, she is ineligible for retroactive Denali KidCare coverage for that month.

³⁵ The methodology used to make such a determination was described in In Re V.D.M., at 4, OAH No. 12-0612-MDE (Commissioner of Health and Social Services 2012). That decision is available online, at <http://aws.state.ak.us/officeofadminhearings/Documents/MDE/MDE120612.pdf>.

³⁶ “Administrative agencies are bound by their regulations just as the public is bound by them.” Burke v. Houston NANA, L.L.C., 222 P.3d 851, 868-869 (Alaska 2010).

³⁷ 7 AAC 100.150(a)(2).

³⁸ See Ex 2.25 (paystub noting net pay deposited to bank account, date stamped by division on November 1).

³⁹ The income limit was \$3,482. See note 25, *supra*. Through October 23, the household income was \$3,064.69. See note 32 *supra*. With an additional \$1,232 from Mr. E’s October 31 paycheck, the household income was \$4,296.69.

IV. Conclusion

Ms. E was ineligible for retroactive Denali KidCare coverage for the month of October, 2012. Accordingly, the division's decision is sustained.

DATED January 22, 2013.

By: Signed
Andrew M. Hemenway
Administrative Law Judge

Adoption

The undersigned by delegation from the Commissioner of Health and Social Services, 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 AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 13th day of February, 2013.

By: Signed
Signature
Andrew M. Hemenway
Name
Administrative Law Judge
Title

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