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

In the Matter of)	
)	
D S)	OAH No. 13-0093-DKC
)	Agency No

DECISION

I. Introduction

D S applied for Medicaid Denali KidCare benefits (Denali KidCare). The Division of Public Assistance (Division) denied her application. Ms. S requested a hearing.

Ms. S's hearing was held on February 19, 2013. She participated by telephone.² Terri Gagne, Public Assistance Analyst with the Division, represented the Division.

Because Ms. S is not a resident of the State of Alaska, she is not eligible for Denali KidCare benefits. As a result, the Division's decision denying her application is AFFIRMED.

II. **Facts**

Ms. S is a Mexican national, who has never lived in Alaska. She is not a United States citizen. She has a U.S. visitor's visa, which is valid for a few more months.³ Ms. S intends to extend her visit, but as of the date of hearing has taken no steps to obtain an extension.⁴

Ms. S arrived in Anchorage in the fall of 2012 to visit her sister and her sister's family. She was pregnant and delivered her daughter, Y, on 00/00/12 in Alaska. Ms. S does not intend to remain in Alaska, and when her visa ultimately expires she will return to Mexico with her daughter.5

Ms. S applied for Denali KidCare benefits on December 10, 2012.⁶ The Division denied her application for Denali KidCare benefits because she was not an Alaska resident.⁷ The Division also determined that she was not eligible for Medicaid benefits under the emergency medical treatment for aliens coverage category because she was not an Alaska resident.⁸

Ex. 5.

Ms. S was provided an interpreter.

Ms. S's testimony.

Id.

Id. Ex. 1.

Ex. 5.

Ex. 1; Ex. 2.

III. Discussion

One of the eligibility requirements for any type of Medicaid coverage, including both Denali KidCare and emergency alien Medicaid coverage, is that the applicant must be a resident of the State of Alaska. [A] resident of the state is an individual who is physically present in the state and living in the state voluntarily with the intent to remain in the state permanently or for an indefinite period of time." [10]

Ms. S argued that she is not seeking coverage for herself but for her daughter who is eligible, because her daughter is a United States Citizen. The Medicaid regulations specifically provide that Medicaid eligibility for newborns is limited to children born of women "who [were] eligible for and receiving Medicaid in the month of delivery." Therefore, Y's eligibility to Denali KidCare is contingent upon Ms. S's eligibility. For Ms. S to be eligible, she must be an Alaska resident, meaning that she must be physically in Alaska with the intent to remain permanently or for an indefinite period of time.

Because she is physically present in Alaska under a visitor's visa, Ms. S was required to demonstrate that she would only remain in the United States for a specific period of time, and that Ms. S has ties that will ensure she returns to her residence outside of the United States at the end of the visit. Also, Ms. S's immigrant status requires she have no intent of abandoning her residency in a foreign country.

Ms. S was in Alaska for the purpose of visiting her family for a limited period of time, and intends to return to Mexico when her visa expires. Even if she were to extend her tourist visa, the extension would be for a definite period of time. Ms. S attempted to circumvent this requirement by arguing that she did not know when she would return to Mexico; therefore, she was physically in Alaska for an indefinite period of time. Because Ms. S must exit the United States on or before the date her visa expires, and the expiration date is known (even if extended the extension will expire on a date certain), her argument fails. Ms. S was not an Alaska resident, and consequently not eligible to receive any form of Medicaid benefits from the State of Alaska. Accordingly, Y was not eligible to receive Medicaid benefits.

⁹ 7 AAC 100.050(a) and 7 AAC 100.060 (a).

¹⁰ 7 AAC 100.060(b).

¹¹ 7 AAC 100.306(a).

¹² 22 C.F.R. § 41.32.

¹³ 8 U.S.C. 1101(a)(15)(B).

S Testimony.

IV. Conclusion

The Division's decision to deny Ms. S's application for Medicaid benefits for her daughter Y is AFFIRMED.

DATED this 22nd day of February, 2013.

Signed
Rebecca L. Pauli
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 8th day of March, 2013.

By: <u>Signed</u>

Name: Rebecca L. Pauli

Title: Administrative Law Judge

Decision

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