

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

In the Matter of)
)
 L L) OAH No. 16-1384-DKC
) Agency No.
_____)

DECISION

I. Introduction

L L applied for Medicaid benefits for herself and her three children. The Division of Public Assistance denied the application, on the grounds that the household's income exceeded the program limit. The evidence shows that Y W, Ms. L's husband, is a member of the household for purposes of the Medicaid program, and that the household's total income exceeds the program limit.

The division's denial of Ms. L's application is upheld.

II. Facts

L L has three children. She is married to Y W. Mr. W is the stepfather of Ms. L's children, not the biological father. Ms. L and Mr. W are separated. They are not divorced. They have separate bank accounts, and they file separate tax returns. Ms. L claims her three children as dependents on her return.

However, Ms. L and Mr. W still share a jointly-owned house. Mr. W travels frequently for work. When Mr. W is traveling, Ms. L stays in the house with her children. Both Mr. W and Ms. L use the house, but not at the same time. Mr. W pays the mortgage on the house and the electric bill.¹ Mr. W also makes sure there is food in the house for the children.² If both Mr. W and Ms. L are in town at the same time, Ms. L will stay in a separate camper that is located on the same property as the house, or with Ms. L's parents.³

When the division processed Ms. L's application for Medicaid, it included Mr. W in the household.⁴ Mr. L works for No Name.⁵ The division received verification of Mr. L's employment and wages from No Name and the Alaska Department of Labor.⁶ Ms. L was laid off from her job in April, 2016, and is currently unemployed.⁷ The division found that the household's total monthly income was \$6,377, including Mr. W's wages and the

¹ Exhibit 5.1.
² Testimony of L.
³ Exhibit 6; Testimony of L.
⁴ Exhibit 1.2.
⁵ Exhibit 2.7.
⁶ Exhibit 2.1, 3.1.
⁷ Exhibit 2.7.

unemployment benefits Ms. L listed on her application. Based on this, the division found that Ms. L, Mr. W, and Ms. L's three children were all ineligible for Medicaid. Ms. L appealed.⁸

A telephonic hearing was held on December 15, 2016. Ms. L represented herself. Fair Hearing Representative Sally Dial represented the Division of Public Assistance.

III. Discussion

Because the Modified Adjusted Gross Income (MAGI) Medicaid program has different income limits for parents than for individuals under the age of 19, the eligibility of Ms. L and that of her three children are analyzed separately below.

A. MAGI Medicaid eligibility of Ms. L

Ms. L questions whether Mr. W should be included in the household, since the two are separated, and Mr. W is the children's stepfather, not the biological father. Whether Mr. W should be counted as part of Ms. L's household depends on whether Ms. L and Mr. W are "living together." The regulation specifies that:

In the case of a married couple living together, each spouse will be included in the household of the other spouse, regardless of whether they expect to file a joint tax return under section 6013 of the Code or whether one spouse expects to be claimed as a tax dependent by the other spouse.⁹

The fact that Ms. L and Mr. W file separate tax returns does not determine whether they are in the same MAGI Medicaid household.

Ms. L argues that she and Mr. W are separated. She testified that she and Mr. W do not occupy the house at the same time. However, they do share ownership of the house. Both live in the house at times, and when Ms. L is not in the house, she sometimes lives in a camper on the same property. Ms. L's children live in the house. Mr. W is making the mortgage payments on the house. Although the couple has separate bank accounts and files separate tax returns, Mr. W is providing economic support to Ms. L and her children by paying the mortgage and electric bills, and keeping food in the house. Ms. L indicated that although they are separated, she and Mr. W are not ready to divorce, primarily due to financial considerations.¹⁰

⁸ Exhibit 4 - 4.2.

⁹ 42 C.F.R. 435.603(f)(4).

¹⁰ Ms. L testified "it's mostly a monetary issue."

It is those “financial considerations” that are at the crux of this case. Although Ms. L considers herself separated from Mr. W, Mr. W still plays an important financial role in Ms. L’s household.¹¹ Regardless whether Ms. L and Mr. W see themselves as a couple or as two separate individuals, their lives, particularly their financial lives, remain intertwined. They share a house, and they share the burden of raising Ms. L’s three teenage children. Whether or not Mr. W has any legal obligation to support Ms. L’s children, the fact that he is paying the mortgage on the house that the children live in is a significant economic contribution. The two still “share the same address.”¹² For these reasons, given the specific facts of this case, the division’s decision to treat Ms. L and Mr. W as living together and include Mr. W in Ms. L’s Medicaid household was reasonable.

For a parent in a five-person household, the household income limit under the MAGI Medicaid program is \$3,972.¹³ The division disregards an additional \$149 in income, making the effective income limit applicable to Ms. L \$4,121. The total household income of \$6,356 exceeds this limit. Therefore, the division correctly found Ms. L ineligible for MAGI Medicaid because her household income exceeds the program limit.

B. MAGI Medicaid eligibility of Ms. L’s children

Under the MAGI Medicaid regulations, household composition depends in part on federal income tax filing status. Ms. L claims her children as tax dependents. Mr. W does not claim the children as tax dependents. Ms. L and Mr. W file separate tax returns.¹⁴

The MAGI Medicaid regulations provide that an individual who expects to be claimed by another as a tax dependent is a member of the household of the taxpayer claiming the individual as a tax dependent.¹⁵ If this were the only applicable rule, it would support Ms. L’s theory that the children are in her household and Mr. W is not in her

¹¹ A search revealed no cases interpreting 42 C.F.R. 435.603(f)(4). However, the courts have considered an older provision of the Medicaid program regulations providing that “the income and resources of a spouse can be presumed available to a recipient when the spouse is ‘living with him in the same household.’” *Franssen v. Juras*, 406 F.Supp. 1375, 1378 (D. Oregon 1975), *quoting* former 42 U.S.C. 1382c(f)(1) relating to the supplemental security income program. The court wrote “The factual basis for this presumption is plain enough: two persons living in one household enjoy substantial economies by sharing one roof, one hearth, and one mortgage or rental payment.” *Id.* See also *Herweg v. Ray*, 455 U.S. 265, 270 (1982). While this case was interpreting a regulation implementing a different program, the same reasoning applies in this case.

¹² Exhibit 5.1.

¹³ MAGI Medicaid Income Standards, State of Alaska Department of Health and Social Services Division of Public Assistance MAGI Medicaid Eligibility Manual, Addendum 1, effective April 1, 2016.

¹⁴ Exhibit 5.1.

¹⁵ 42 C.F.R. 435.603(f)(2).

household. There is, however, an additional rule that applies specifically to individuals under the age of 19.

For individuals under the age of 19 “who expect to be claimed by one parent as a tax dependent and are living with both parents but whose parents do not expect to file a joint tax return” a different rule applies; the household consists of “the individual’s natural, adopted and step parents and natural, adoptive and step siblings.”¹⁶ Ms. L’s three children are all under age 19.¹⁷ The regulation expressly requires inclusion of a stepparent who is living with a child in the child’s household. So, for each of Ms. L’s three children, the household consists of Ms. L, Mr. W, and the child’s siblings. This is true regardless whether Ms. L and Mr. W are living together, because the children are living with both their mother and their step-father in the jointly owned house, even if Ms. L and Mr. W are not in the house at the same time.¹⁸ Because each child’s household includes Mr. W, each child’s household income must include Mr. W’s income.

The household income limit for an individual under 19 without insurance under the MAGI Medicaid program is \$6,016.¹⁹ In addition, the program will disregard an amount of income equal to five percent of the federal poverty level, or \$149 for a household of five people, for a total of \$6,165. Counting Mr. W’s monthly income of \$5,939, plus a monthly portion of five permanent fund dividends equal to \$417, but not including unemployment insurance benefits, total household income is \$6,356.²⁰ This is over the program income limit by \$191. Therefore, each child’s household is over the income limit for the Medicaid program, so the division correctly denied coverage for each of Ms. L’s three children.

¹⁶ 42 C.F.R. 435.603(f)(3)(ii) and (iii). Note that this federal regulation governing the MAGI Medicaid program treats inclusion of a stepparent in a household differently than the state regulations governing the Family Medicaid program, which generally do not include a stepparent in a child’s Medicaid household. *See* 7 AAC 100.114(e). However, according to the Department of Health and Social Service’s MAGI Medicaid Eligibility Manual, sec. 800A, following the enactment of the federal Affordable Care Act, Alaska’s Family Medicaid program has been replaced by the MAGI Medicaid program.

¹⁷ Exhibit 2.4 - 2.6.

¹⁸ *Compare* 42 C.F.R. 435.603(f)(2) and (3) (“living with”) with (f)(4) (“living together”).

¹⁹ MAGI Medicaid Income Standards, State of Alaska Department of Health and Social Services Division of Public Assistance MAGI Medicaid Eligibility Manual, Addendum 1, effective April 1, 2016.

²⁰ The division’s denial notice put total household income at \$6,377, including \$438 in unemployment insurance benefits, but not including any permanent fund dividend (PFD) income. Exhibit 4 - 4.2. When Ms. L filed her appeal in this case, she notified the division that she was not actually receiving unemployment insurance benefits. Exhibits 4 and 5. In its position statement, the division recalculated the household’s total income, including 2016 PFDs as well as Mr. W’s income, but not including unemployment insurance benefits. At the hearing, Ms. L did not object to the inclusion of PFDs, or dispute that the members of the household received 2016 PFDs.

IV. Conclusion

Under the MAGI Medicaid regulations Mr. W is a member of Ms. L’s household as well as the household of each of Ms. L’s three children. Consequently, Mr. W’s income must be included in calculating the household income. This brings the total household income to \$6,356, which exceeds the MAGI Medicaid program’s income limits for Ms. L as well as her three children. The division’s denial of Ms. L’s application is upheld.

Dated: January 15, 2017.

Signed _____
Kathryn L. Kurtz
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, 2017.

By: *Signed* _____
Signature
Douglas Jones _____
Name
Medicaid Program Integrity Manager
Title

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