

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

IN THE MATTER OF:)
)
 F K. O) OAH No. 12-0512-MDE
) Agency No.
_____)

DECISION

I. Introduction

F K. O completed and submitted an application for Family Medicaid benefits on April 4, 2012. On May 10, 2012, the Department of Health and Social Services, Division of Public Assistance (division) notified him that the application had been denied. He requested a Fair Hearing on May 15, 2012.

Mr. O's hearing was held on July 6, 2012. He appeared by telephone. Terri Gagne, Public Assistance Analyst, represented the division by telephone. The hearing was recorded.

Based on the record as a whole and after due deliberation, the division's decision denying Mr. O's April 4, 2012 application for Family Medicaid benefits is **AFFIRMED**.

II. Facts

Mr. O and Ms. N live in Anchorage with their five children, one son and four daughters.¹ The children range from 15 down to 3 years of age.

Mr. O works full-time for No Name of Alaska, and is paid every two weeks. His paystub dated May 10, 2012, was for the pay period April 22, 2012 through May 5, 2012.² He was paid \$13 per hour for 18 hours of respite work and \$16 per hour for 54 hours of personal care attendant work, for a total of \$1,098.³ His year-to-date pay as of that check was \$11,846.80.⁴ The division used the four paystubs he provided to average his gross monthly pay at \$2,491.85.⁵

Ms. N is also employed. She works on-call for the No Name Hotel, where she earns \$12.02 per hour for part-time work. Ms. N is also paid every two weeks. Her paystub dated May 11, 2012 shows she had year-to-date income of \$4,142.80.⁶ The division used her three paystubs to average her

¹ Ex. 2.

² Ex. 7.5.

³ *Id.*

⁴ *Id.*

⁵ Ex. 7.4. $\$1,220 + \$1,098 + \$1,098 + \$1,220 = \$4,636 \div 4 = \$1,159 \times 2.15 = \$2,491.85.$

⁶ Ex. 7.1.

monthly pay at \$982.03.⁷ The division determined that the total gross income of Mr. O's and Ms. N's household equals \$3,473.88 per month.⁸

Mr. O has medical problems that he claims require that he have surgery. Since neither he nor his wife has medical insurance at their places of employment, he insists that their household needs Family Medicaid benefits. Mr. O's and Ms. N's household has been receiving Transitional Medicaid (TMED) benefits.⁹ The benefits were scheduled to end in April 2012, but that constituted only 10 months of benefits. The division extended Mr. O's TMED benefits through June 2012 after determining the household was entitled to an additional two months of benefits to equal twelve months of eligibility.¹⁰

Mr. O submitted an application for Family Medicaid benefits on April 4, 2012. The application contained no information regarding his or his wife's employment situation.¹¹ The division conducted a telephone interview with Mr. O on May 9, 2012. During this interview he revealed that both he and his wife were working. He subsequently provided pay verification for both of them.¹² The division determined from Mr. O's income information that his household had gross income of \$3,523.39, and net income of \$3,343.39, which exceeded the Family Medicaid program's income allowances for a family of seven.¹³

On May 10, 2012, the division notified Mr. O by mail that his application for Family Medicaid benefits had been denied.¹⁴ On May 15, 2012, Mr. O requested a fair hearing, stating he believed the agency had miscalculated his household's income.¹⁵

On June 12, 2012, the division reviewed Mr. O's eligibility for Family Medicaid benefits after receiving additional pay information from him. The division determined the household still exceeded the income eligibility requirements and informed Mr. O that its original denial would stand.¹⁶ He requested that his hearing go forward.

⁷ *Id.* $\$468.78 + \$372.62 + \$528.88 = \$1,370.28 \div 3 = \$456.76 \times 2.15 = \$982.03.$

⁸ Ex. 7.8. $\$2,491.85 + \$982.03 = \$3,473.88.$

⁹ Ex. 6.

¹⁰ *Id.*

¹¹ Ex. 2-2.5.

¹² Ex. 3-3.7.

¹³ *Id.*

¹⁴ Ex. 4.1.

¹⁵ Ex. 5.

¹⁶ Ex. 7.

III. Discussion

The issue in this case is whether the division correctly denied Mr. O's application for Family Medicaid benefits. Mr. O¹⁷ has the burden of proving by a preponderance of the evidence¹⁸ that his application should have been approved.

Medicaid was established in 1965 to provide medical assistance to certain needy individuals and families.¹⁹ It is a cooperative federal-state program that is jointly financed with federal and state funds.²⁰ In Alaska, the Department of Health and Social Services (DHSS) administers the Medicaid Program in accordance with applicable federal and state laws and regulations.

The Medicaid program has a large number of eligibility groups because it covers needy individuals in a variety of circumstances.²¹ One of the Medicaid program's eligibility groups provides medical coverage for financially eligible households that include minor children.²² This type of Medicaid coverage is known as Family Medicaid.²³

Mr. O asserts that he has medical problems that require surgery and thus, that he needs Family Medicaid benefits. He claims that the division's mathematical calculations regarding his household's monthly income were incorrect, or, that the division applied an incorrect net income standard in making its Family Medicaid income eligibility determination.

The division asserts that it was correct to deny Mr. O's application for Family Medicaid benefits based on the assertion that his household's monthly income exceeded the Family Medicaid program's applicable maximum monthly net income limit.

There are no disputed factual issues in this case. Accordingly, the correctness of the division's decision can be determined simply by applying the applicable financial eligibility regulations to the undisputed facts. The division denied Mr. O's application for Family Medicaid benefits based on its determination that his household's income exceeded the Family Medicaid program's applicable net

¹⁷ 2 AAC 64.290(e).

¹⁸ Preponderance of the evidence is defined as: "Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. *Black's Law Dictionary* 1064 (5th Ed. 1979).

¹⁹ 42 USC § 1396 *et. seq.*

²⁰ *Wilder v. Virginia Hospital Association*, 496 U.S. 498, 501, 110 S.Ct. 2510, 110 L.Ed.2d 455 (1990).

²¹ See 7 AAC 100.002.

²² See 7 AAC 100.002(a)(1)(B); 7 AAC 100.100.

²³ *Id.*

income limit.²⁴ To determine whether this decision was correct, Mr. O's household's income must be analyzed according to the applicable regulations.

The procedure for determining financial eligibility for Family Medicaid has two steps. First, the applicant must meet the gross income test.²⁵ If the applicant meets the gross income test, he or she must then satisfy the net income test.²⁶ Thus, an applicant is only eligible for Family Medicaid if he or she satisfies *both* the gross income test and the net income test.²⁷ Finally, if the applicant fails the gross income test, the applicant is denied at that point without determining whether the applicant satisfies the net income test.²⁸

The income counted by the division in determining Mr. O's household's financial eligibility for Family Medicaid benefits, consisted of (a) Mr. O's gross income of \$2,491.85 per month; and (b) his wife, T N's, gross income of \$982.03 per month. Based on these figures, the division correctly calculated that Mr. O's total gross monthly household income at \$3,473.88.

During the 2012 calendar year, the Family Medicaid gross income limit for a family of seven is \$3,622.²⁹ Mr. O's household's monthly gross income of \$3,473.88 is less than \$3,622, so his household therefore *passes* the gross income test. However, the division must next consider whether Mr. O's monthly household income exceeds the program net monthly income limit.

Mr. O and Ms. N are both employed. Accordingly, each of them is entitled to a \$90 work expense deduction in order to determine their net monthly income.³⁰ As a result, Mr. O's net household's monthly income is $\$3,473.88 - \$180 = \$3,293.88$.³¹ During the 2012 calendar year, the Family Medicaid *net income limit* for a seven-person household is \$2,192.³² Mr. O's household's monthly net income of \$3,293.88 exceeds the Family Medicaid net monthly income limit for a household of seven by approximately \$1,101.88.³³

Mr. O's primary complaint regarding the division's financial eligibility determination is that he has serious medical problems and requires surgery. It is not disputed that Mr. O has a significant need

²⁴ The notice sent to Mr. O referred only to the net monthly income limit. The gross monthly limit was not mentioned. However, in reviewing the division's determination, it will be necessary to review the applicable gross monthly limit, which is the first step in determining eligibility before considering net monthly income limit.

²⁵ See 7 AAC 100.102(c) and 7 AAC 100.180.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ See 7 AAC 100.190(a)(1).

³⁰ See 7 AAC 100.184(1). $\$90 \times 2 = \180 total.

³¹ See Ex. 7.8.

³² Ex. 25.

³³ $\$3,293.88 - \$2,192 = \$1,101.88$.

for medical services. It is also not disputed that his household's financial resources are limited. However, the division is not at liberty to ignore its own policies or regulations.³⁴ Likewise, the administrative law judge does not have the authority to create an exception to a valid policy or regulation.³⁵

IV. Conclusion

The division's financial eligibility calculations in this case were mathematically correct, and the division applied the correct income standards. Mr. O's monthly countable household income exceeds the Family Medicaid program's monthly net income limit for a household of seven persons.

V. Decision

The division's decision denying Mr. O's application for Family Medicaid benefits is AFFIRMED.

DATED this 18th day of July, 2012.

Signed

Kay L. Howard
Administrative Law Judge

³⁴ "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).

³⁵ State of Alaska Fair Hearing regulation 7 AAC 49.170 provides in relevant part that "the role of the hearing authority (i.e. this Office) is limited to the ascertainment of whether the laws, regulations, and policies have been properly applied in the case and whether the computation of the benefit amount, if in dispute, is in accordance with them."

Adoption

The undersigned, by delegation from of 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 27th day of July, 2012.

By: Signed
Name: Kay L. Howard
Title: Administrative Law Judge

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