

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

In the Matter of)	
)	OAH No. 12-0520-MDE
T X)	Agency No.
_____)	

DECISION

I. Introduction

In May of 2012, T X applied for Long Term Care Medicaid benefits.¹ The Division of Public Assistance (division) determined that Mr. X's assets were too great, and denied his application.² Mr. X's guardian requested a hearing on that decision.³

A hearing was held on August 9, 2012. Mr. X's son, V X, participated by telephone as Mr. X's guardian. The division was represented by Jeff Miller, who also appeared by telephone. The record was left open at the conclusion of the hearing to allow the division time to submit additional legal authority. Those documents have now been received. Based on the evidence in the record, the division's determination is upheld.

II. Facts

The facts in this case are not in dispute. At the time of his application, Mr. X owned stock in Mueller Industries valued at \$3,517.02.⁴ He also had an interest in two Credit Union 1 accounts. The first was in his name, and on May 1, 2012 had an opening balance of \$153.12.⁵ On that same date, he received a deposit of \$788.89, resulting in a total balance of \$942.01. Also on May 1, \$700 was transferred out of this account and into the other Credit Union 1 account. The second Credit Union 1 account is the T X Irrevocable Income Trust. Prior to the \$700 transfer, this account had a balance of \$513.94.⁶ Mr. X also had an account with Alaska USA Federal Credit Union. The balance in that account was \$0.00 on May 1, but V X had recently withdrawn \$1,145.63, and was holding a check in that amount for Mr. X while trying to find out what he should do with that money.⁷

¹ Exhibit 2.
² Removed per Ree Sailors, Deputy Commissioner, DHSS.
³ Exhibit 5.1.
⁴ Exhibit 3.1.
⁵ Exhibit H-5. This consisted of \$5.01 in a savings account and \$148.11 in checking.
⁶ Exhibit 3.3.
⁷ Exhibit 3.2; Testimony of V X.

V X had been appointed by the court as Mr. X's guardian and conservator in March of 2012.⁸ Unfortunately, the original paperwork misspelled the last name of both of the Xs. Because of the misspellings, V X was unable to obtain the certificate for the Mueller Industries stock, and without the stock certificate, he was unable to sell that stock.⁹ Amended letters of guardianship and conservatorship have now been signed by the court, and Mueller Industries has said that, as of the date of the hearing, the stock certificate was expected to be sent to V X in seven to ten days.¹⁰ Once received, he will sell that stock, and probably use it to pay some of Mr. X's debts.¹¹

There was also a problem with the paperwork used to create the T X Irrevocable Income Trust.¹² This trust was established to receive Mr. X's social security benefits and other income so that he would qualify for Medicaid services. It was originally drafted by Alaska Legal Services for T X to sign as the trust's settler. By the time it was ready to be signed, V X had been appointed as guardian and Mr. X was no longer competent to sign this document on his own behalf, and he did not sign the trust document. The trust has now been redrafted with V X, acting as guardian, signing as the settler. A properly signed and notarized trust document has been sent to the No Name court for registration.¹³

III. Discussion

Mr. X's application was denied because the division determined he had excess financial resources. An individual is not eligible for Long Term Care Medicaid if he has more than \$2,000 in non-excludable resources.¹⁴ Resources include any real or personal property that can be converted to cash to be used for the individual's support.¹⁵ Mr. X asserted that the Mueller Industries stock should not be counted as a resource because it could not be converted to cash and used for his support.

Normally, stock in publically traded corporations can be sold fairly easily. In this case, however, once a guardian and conservator was appointed to act on his behalf, Mr. X

⁸ Exhibit E; Testimony of V X.

⁹ Testimony of V X.

¹⁰ Testimony of V X.

¹¹ *Id.*

¹² The facts discussed in this paragraph were established by the testimony of V X and by the testimony of D T, who is the Social Services Manager for No Name Health Corporation, and has been helping the Xs meet the eligibility requirements. Exhibit F is the original trust document.

¹³ Testimony of V X.

¹⁴ 7 AAC 40.270(a)(1); 7 AAC 100.400(a)(14).

¹⁵ 7 AAC 40.260; 7 AAC 100.400(a)(13).

was not legally able to sell this stock himself. Only his guardian, V X, could do that. Unfortunately, because of the misspelling in the appointment paperwork, V X was also prevented from selling this stock.¹⁶ Until the spelling was corrected, this stock could not be converted to cash. Accordingly, it was not an available resource at the time of his application, and should not have been counted.¹⁷

Although the stock should not be counted, the money in Mr. X's bank accounts is counted. His total resources are counted as of the first day of the calendar month.¹⁸ If his resources exceed the allowable limit at any time during that day, Mr. X would not be eligible for assistance.¹⁹

On May 1, 2012, Mr. X had \$1,145.63 from his Alaska USA account and \$942.01 in his Credit Union 1 account.²⁰ This totals \$2,087.64, which is more than the \$2,000 resource limit set out in 7 AAC 40.270. Accordingly, the division correctly determined that he was not eligible for assistance.²¹

IV. Conclusion

Alaska law strictly limits the total available resources a person may have and still qualify for Medicaid benefits. Mr. X's available resources exceed that amount. Accordingly, the division's determination is upheld.

Dated this 16th day of August, 2012.

Signed

Jeffrey A. Friedman
Administrative Law Judge

¹⁶ Testimony of V X.

¹⁷ Based on V X's testimony, this stock became a resource that could be converted to cash sometime after August 9, 2012.

¹⁸ 7 AAC 40.270(b).

¹⁹ *Id.* The division's manual states that resources are measured "as of the first moment of the month." Exhibit 7. This would suggest looking at the applicant's opening bank balance on that day, and excluding any deposit received by the applicant after 12:01 a.m. on the first day of the month. In Mr. X's case, that would exclude the \$788.89 deposit he received on May 1, 2012. To the extent the manual is inconsistent with the regulation, the regulation is controlling, and the \$788.89 is included as a resource.

²⁰ Not including any amount in the trust account.

²¹ Because this amount exceeds \$2,000, it is not necessary to decide whether the money in the trust account should be counted as an available resource.

Non-Adoption Options

B. The undersigned, by delegation from the Commissioner of Health and Social Services and in accordance with AS 44.64.060(e)(3), revises the enforcement action, determination of best interest, order, award, remedy, sanction, penalty, or other disposition of the case as follows and adopts the proposed decision as revised:

Remove footnote 2

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 5th day of September, 2012.

By: Signed
Name: Ree Sailors
Title: Deputy Commissioner, DHSS

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