

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

IN THE MATTER OF:)

L N. D)

OAH No. 12-0532-MDE

Agency No. 05443788

DECISION

I. Introduction

On or about May 14, 2012, the Department of Health and Social Services, Division of Public Assistance (division) notified Ms. D that her participation in the Family Medicaid program was being changed to Transitional Medicaid from June 2012 through September 2012, a period of time that completed her one-year eligibility for Transitional Medicaid. Ms. D requested a hearing on June 18, 2012, asserting because it was the division's error that her husband had not been added to her Medicaid case until April 2012, he should be eligible for an additional period of time for Transitional Medicaid totaling one complete year of eligibility.

The hearing was held on August 22, 2012, with Ms. D appearing by telephone and Jeff Miller appearing telephonically for the division.

Having reviewed the record, and after careful consideration, the division's decision giving Ms. D's household, and her husband, four additional months of Transitional Medicaid is **AFFIRMED**.

II. Facts

L D and her two children began receiving Family Medicaid benefits in July 2010.¹ In September 2011, Ms. D's household's gross income increased to \$2,971.73.² This exceeded the Family Medicaid program's limit of \$2,708 for a household of three, so on September 22, 2011, the division transferred Ms. D's case to Transitional Medicaid for a one-year period from October 2011 through September 2012.³

¹ Exh. 23.2.

² Exh. 2. Ms. D's gross income was reported to be \$1,680 per month and her husband, M D, had gross income of \$1,281.73, for a total of \$2,961.73. *See* Exh. 2. This figure is actually \$10 less than the total reached by the division, but the difference is insignificant here because it does not change the result.

³ Exh. 2.

On September 20, 2011, Ms. D's husband adopted her two children.⁴ Ms. D notified the division of the adoptions on October 31, 2011 and requested that the division add Mr. D to the family's Medicaid case.⁵ The division denied Ms. D's request for the reason that her husband was not her children's biological father.⁶

The division's decision not to add Mr. D was incorrect, and on March 30, 2012, the division informed Ms. D that it had made an error in her case because she had, in fact, proved that her husband had adopted the children, and as their legal father, became eligible for Medicaid benefits as of November 2011.⁷ The notice informed Ms. D that Mr. D would receive Medicaid benefits beginning in November 2011.⁸ There is no evidence that Ms. D responded to this notice.

Ms. D's job ended in April 2012.⁹ On April 9, 2012, the division determined that the household was once again eligible for Family Medicaid and transferred them back to that program, effective May 2012.¹⁰

During May 2012, Ms. D obtained another job with a monthly income of \$2,332.32.¹¹ Her husband's gross income was \$2,629.67, for total gross household income of \$4,961.99.¹² On May 14, 2012, the division reviewed Ms. D's case. Based on their increased income, the division determined the household no longer qualified for Family Medicaid benefits and placed them on Transitional Medicaid effective June 2012.¹³ The notice added that the household, including Mr. D, would be receiving the remaining four months of their Transitional Medicaid eligibility, from June 2012 through September 2012.¹⁴

On June 18, 2012, Ms. D contacted the division and verbally requested a hearing.¹⁵ The reason Ms. D gave for the appeal was that her husband was not added to her case from the

⁴ Exhs. 3.3-3.6.

⁵ Exhs. 3.1-3.2.

⁶ See Fair Hearing Position Statement at pg. 2. There is no documentation of the division's denial in the record, and no indication whether or how Ms. D was informed of the denial.

⁷ Exh. 1.

⁸ Exh. 5. The division later added October 2011 to his benefit period.

⁹ Exh. 6.

¹⁰ Exh. 7.

¹¹ Exh. 8.

¹² Exh. A. This document, entitled "Transitional Medicaid Begins," was an unnumbered exhibit attached to the referral form sent to the Office of Administrative Hearings on June 19, 2012. It was not included in the division's hearing exhibits, so it has been marked for the record as Exhibit A.

¹³ Exh. A.

¹⁴ Exh. A.

¹⁵ Exh. 2.

beginning, so he was not getting a full 12 months of eligibility for Transitional Medicaid.¹⁶ The appeal was referred to the OAH on June 19, 2012. On June 29, 2012, the division filed a Petition to Deny [Ms. D's] Fair Hearing Request for being untimely, which was denied.

III. Discussion

The essence of Ms. D's appeal is that, because of the division's error, her husband was not added to her Medicaid case when he should have been in October 2011, but in April 2012, several months late. She argues that if he is terminated from Transitional Medicaid with the rest of the family as of September 2012, he will have been denied several months of benefits that he was, in fact, entitled to receive. She stated at the hearing that even though the division issued retroactive benefits for him for the months of October 2011 through April 2012, he knew back then that he did not have medical coverage, so he did not go to the doctor, and as a result, any benefits issued to him for that period of time were meaningless.¹⁷ Ms. D wants her husband to receive one full year of Transitional Medicaid benefits, from April 2012, when he was finally added to her case, until April 2013.

The division regrets the error it made in Ms. D's case by not granting Mr. D Transitional Medicaid benefits as of October 2011, when he first became eligible. In spite of its error, the division asserts Mr. D is eligible for benefits only through September 2012, just like the rest of Ms. D's household. The division argues that it is *households*, not *individuals*, who are entitled to Transitional Medicaid, and that Mr. D cannot receive benefits individually past the date the household's benefits terminate.

There are no disputed factual issues in this case. There is no question that Mr. D is the legal father of Ms. D's children and, that as a member of the household, he is entitled to the same Family or Transitional Medicaid benefits as the rest of the family. There is also no dispute about the household's eligibility for the individual programs during each discrete time frame from October 2011 through September 2012. The correctness of the division's decision to end Mr. D's eligibility for Transitional Medicaid benefits as of September 2012 can be determined simply by applying the applicable eligibility regulations of the program to the undisputed facts.

¹⁶ *Id.*

¹⁷ Ms. D did not appeal the division's substantive determinations regarding the family's eligibility for either the Family Medicaid or Transitional Medicaid programs, so those decisions are not at issue in this appeal and will not be considered.

Medicaid was established in 1965 to provide medical assistance to certain needy individuals and families.¹⁸ It is a cooperative federal-state program that is jointly financed with federal and state funds.¹⁹ In Alaska, the Department of Health and Social Services (DHSS) administers the Medicaid Program in accordance with applicable federal and state law.

The Medicaid program has a large number of eligibility groups because it covers needy individuals in a variety of circumstances.²⁰ One of these programs is Transitional Medicaid. It provides medical coverage for otherwise eligible households that have lost Family Medicaid coverage because the total household income has risen above the program's limit.²¹

The maximum period of time a household may be eligible for Transitional Medicaid is 12 months.²² If, during a Transitional Medicaid eligibility period, a household again becomes eligible for Family Medicaid, and elects to return to Family Medicaid, the Transitional Medicaid eligibility period continues to run.²³ If the household's income increases and it must once again return to Transitional Medicaid, the remaining portion of the original eligibility period will apply.²⁴ The household will not be eligible for a new year-long period of Transitional Medicaid unless the household was eligible for and received Family Medicaid in at least three of the preceding six months.²⁵

In this case, Ms. D and her children began receiving Family Medicaid in July 2010. When she obtained employment in the fall of 2011, her increased income caused the household to lose its Family Medicaid eligibility. As a result, the family was placed on Transitional Medicaid for one year from October 2011 through September 2012. Ms. D's job soon after, so in May 2012 her household again qualified for and went back on Family Medicaid. However, her unemployment was short lived because Ms. D obtained other employment the very next month, in May 2012. Her higher income caused the family to lose its Family Medicaid and again to be placed back on Transitional Medicaid for the remainder of their one-year eligibility period, through September 2012. Because they were back on Family Medicaid only one month,

¹⁸ 42 USC § 1396 *et. seq.*

¹⁹ *Wilder v. Virginia Hospital Association*, 496 U.S. 498, 501, 110 S.Ct. 2510, 110 L.Ed.2d 455 (1990).

²⁰ *See* 7 AAC 100.002.

²¹ *See* 7 AAC 100.200(a)-(b); 7 AAC 100.204(a)(1).

²² 7 AAC 100.200(a); 7 AAC 100.204(b).

²³ 7 AAC 100.208(b).

²⁴ *Id.*

²⁵ 7 AAC 100.200(a)(1).

7 AAC 100.200(a)(1) requires that her household complete the one year of eligibility that ended in September 2012. The household was not eligible for a new full year of Transitional Medicaid.

Ms. D's year of eligibility for Transitional Medicaid also applied to Mr. D. According to 7 AAC 100.202(a)(1), eligibility for the program is determined for households, not individuals.

The regulation specifically states that a Transitional Medicaid household includes:

all individuals who are living together and whose income and financial needs were included in determining Family Medicaid eligibility for the month Family Medicaid was terminated^[26]

This means that Mr. D's eligibility for Transitional Medicaid is the same as that of his wife and children. The household is a unit, and as a member of the household, he cannot receive individual benefits under the Transitional Medicaid program for time periods other than those for which his household is eligible. His eligibility is for the same period, even though it was the division's error that delayed his receipt of benefits under that program. The division cannot ignore its own policies or regulations or interpret them differently for him in this case.²⁷

IV. Conclusion

The division correctly determined that as a member of Ms. D's household, Mr. D was eligible for four final months of Transitional Medicaid from June 2012 through September 2012. The division's initial error in not adding him to Ms. D's Medicaid case does not entitle him to additional benefits separate from the household's eligibility period.

V. Decision

The division's May 14, 2012 decision changing Ms. D's Family Medicaid to Transitional Medicaid for the period from June 2012 through September 2012, and which includes Mr. D for this same time period, is AFFIRMED.

DATED this 5th day of October, 2012.

Signed

Kay L. Howard
Administrative Law Judge

²⁶ 7 AAC 100.202(a)(1).

²⁷ "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).

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 16th day of October, 2012.

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

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