

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

In the Matter of )  
 )  
V D. M ) OAH No. 12-0612-MDE  
 ) Former OHA Case No.  
\_\_\_\_\_ ) DPA Case No.

**DECISION**

**I. Introduction**

V D. M applied for Family Medicaid benefits for herself.<sup>1</sup> The Division of Public Assistance (DPA or Division) determined that her household’s monthly net income exceeded the Family Medicaid net income limit for a household of three persons and denied her application. Ms. M appealed and requested a hearing. Based on the evidence in the record, the Division’s eligibility determination is affirmed.

**II. Facts**

Ms. M's household is composed of herself and her two minor children.<sup>2</sup> Her children receive Medicaid benefits through the Denali KidCare Program.<sup>3</sup> As of November 2011 Ms. M's monthly household income consisted of \$1,161.00 in Social Security survivor benefits for one child,<sup>4</sup> and child support payments in the amount of \$540.00 per month for her other child.<sup>5</sup>

Ms. M applied for Family Medicaid benefits on November 29, 2011.<sup>6</sup> She was only seeking retroactive<sup>7</sup> Medicaid coverage to assist with payment for a surgery that she had undergone earlier that month (*i.e.*, in November 2011).<sup>8</sup> On December 10, 2012 the Division processed Ms. M's request and concluded that her household income exceeded the applicable Family Medicaid net income limit.<sup>9</sup> On December 12, 2011 the Division mailed a notice to Ms. M stating that it had denied her application for Family Medicaid because her

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<sup>1</sup> Her two children were already covered under the Denali Kid Care program (Exhibit 2).  
<sup>2</sup> Exhibit 1.1.  
<sup>3</sup> Exhibits 1 and 2.  
<sup>4</sup> Exhibits 1.3, 3.1, and testimony of Ms. M.  
<sup>5</sup> Exhibits 1.3, 3.2.  
<sup>6</sup> Exhibits 1 and 2; testimony of Ms. M.  
<sup>7</sup> At the time of application or interview, an applicant may request Medicaid coverage for a maximum of three months immediately preceding the month of application if the applicant has unpaid medical expenses for dates of service any time during that three-month period. *See* 7 AAC 100.072(a).  
<sup>8</sup> Exhibit 7.  
<sup>9</sup> Exhibit 3.

household's countable income of \$1,651.00 exceeded the \$1,464.00 Family Medicaid net income limit for a household of three.<sup>10</sup>

On December 14, 2011 Ms. M requested a hearing with regard to the Division's denial of her application.<sup>11</sup> Ms. M's hearing was held on February 8, 2012. Ms. M participated in the hearing by telephone and represented herself. Public Assistance Analyst Terri Gagne attended the hearing in person, represented the Division, and testified on its behalf. At hearing Ms. M testified that she is the sole surviving parent of two small children, is unemployed, has no earned income, and cannot afford to pay for medical treatment without assistance from Medicaid. She further testified that her income was less in December 2011 and January 2012 than it had been in November 2011 because the amount of child support she actually received decreased.<sup>12</sup> This testimony was not disputed by the Division.

### **III. Discussion**

The issue in this case is whether Ms. M was eligible for retroactive Family Medicaid benefits for the month of November 2011. In making this type of determination in a Medicaid case, the hearing authority considers all evidence available at the time of the hearing that bears on the circumstances that existed at the time of the decision under review. Stated differently, the administrative law judge and the final decisionmaker must consider new evidence that tends to establish eligibility at the time of the original denial, regardless of whether the original caseworker had access to the evidence.<sup>13</sup>

#### *A. The Two-Step Process for Determining Income Eligibility*

The procedure for determining income eligibility under the Family Medicaid Program has two steps. First, the applicant must meet the gross income test.<sup>14</sup> If the applicant meets the

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<sup>10</sup> Exhibits 4 and 16.2.

<sup>11</sup> Exhibits 6.0, 6.1.

<sup>12</sup> Ms. M requested that the amount of her December 2011 income be considered, and her testimony on this point was admitted into evidence. However, income that Ms. M might have received (or been projected to receive) in December 2011 is simply not relevant to determining her countable income for November 2011. *See* discussion below at pp. 2 and 4.

<sup>13</sup> *See Parker v. New Hampshire Department of Health and Human Services*, 969 A.2d 322, 329-30 (N.H. 2009); *Carter v. New Mexico Human Services Department*, 211 P.3d 219, 222-23 (N.M. App. 2009) (citing several prior cases); *Maryland Department of Health and Mental Hygiene v. Brown*, 935 A.2d 1128, 1144-46 (Md. App. 2007); *Albert S. v. Department of Health and Mental Hygiene*, 891 A.2d 402 (Md. App. 2006); *see also* 42 C.F.R. § 431.242(c), (e); *cf. Murphy v. Curtis*, 930 N.E.2d 1228, 1235-36 (Ind. App. 2010) (noting limits on scope of *de novo* inquiry).

<sup>14</sup> 7 AAC 100.102(c) and 7 AAC 100.180.

gross income test, he or she must then satisfy the net income test.<sup>15</sup> Thus, an applicant is only eligible for Family Medicaid if he or she satisfies *both* the gross income test and the net income test. 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.<sup>16</sup>

Based on Ms. M's Social Security survivor benefits in the gross amount of \$1,161.00 per month, and her child support income in the gross amount of \$540.00 per month, the Division correctly calculated that her total gross monthly household income, for the month of November 2011, was \$1,701.00.<sup>17</sup> This amount was less than the Family Medicaid gross income limit of \$2,708.00<sup>18</sup> for a household of three persons. Accordingly, the Division proceeded to the net income test.

The Family Medicaid net income limit or "need" standard is adjusted annually for inflation.<sup>19</sup> For 2011 the net income limit for a household of three was \$1,464.00.<sup>20</sup> The only deduction or exclusion from income applicable to Ms. M's case was a \$50.00 unearned income deduction applicable to Ms. M's child support payments.<sup>21</sup> Accordingly, Ms. M's monthly net income for November 2011 was \$1,651.00.<sup>22</sup> This exceeded the net income limit for a household of three (\$1,464.00) by \$187.00. Because Ms. M's net income for November 2011 exceeded the Family Medicaid Program's applicable net income limit, the Division's determination that Ms. M was not eligible for Family Medicaid during November 2011 is correct.

*B. Prospective Estimation of Income*

One of Ms. M's complaints regarding the Division's eligibility determination is that it doesn't seem fair to her that the Division denied her application due to excess income in November 2011 given that her income fell substantially in December 2011.<sup>23</sup>

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<sup>15</sup>

*Id.*

<sup>16</sup>

*Id.*

<sup>17</sup>

DPA Hearing Representative's testimony.

<sup>18</sup>

7 AAC 100.190; Alaska Family Medicaid Manual, Addendum 2.

<sup>19</sup>

7 AAC 100.190; Alaska Family Medicaid Manual, Addendum 2.

<sup>20</sup>

*Id.* For 2012 the net income limit for a household of three was increased to \$1,516.00.

<sup>21</sup>

7 AAC 100.166(b).

<sup>22</sup>

Ms. M's gross income of \$1,701.00, minus the \$50.00 unearned income deduction, equals \$1,651.00.

<sup>23</sup>

Ms. M did not receive her child support payment for December 2011 until January 2012 (Ex. 3.2). Thus, Ms. M's actual income for December 2011 was \$540.00 less than her income for November 2011. Accordingly, had Ms. M been seeking benefits for December 2011 instead of November 2011, she would have qualified.

Eligibility for Family Medicaid is initially determined by examining the income actually received, or expected to be received, in a particular, discrete month.<sup>24</sup> When determining household income at the very end of the month under consideration, or when determining eligibility for retroactive coverage (as in this case), the Department can make its determination retrospectively using historical data (*i.e.* the income actually received during the month in question).

Somewhat more difficult is the very common situation in which an individual applies for benefits, at the beginning of a month, for that month. It is obviously impossible to know with absolute certainty, at the beginning of a month, what income will actually be received by the applicant during the remainder of that month. In this situation, the regulations instruct the Division to make its best estimate of the applicant's future income.<sup>25</sup> In estimating an applicant's future income, the Division looks at three things. First, the Division examines the income which the applicant actually received in the previous month, and the income actually received in the current month, up to the date of the eligibility determination.<sup>26</sup> Second, the Division considers what the applicant's income is most likely to be for the entire month, based on the actual income from the prior month and the month-to-date.<sup>27</sup> Finally, the Division considers the applicant's estimate of what is likely to change during the month for which eligibility is being determined.<sup>28</sup>

In this case, the determination is for the month of November 2011, the month in which Ms. M's application was received. Because Ms. M's application was received on November 29th, and the Division's determination was made, retrospectively, on December 10th, it is possible to use Ms. M's actual income for November 2011 in making its eligibility determination. Income that might have been projected (or actually received) in December 2011 is simply not relevant to determining the countable income for November 2011.

*C. Lack of Discretion to Waive Financial Eligibility Criteria*

Ms. M's final complaint regarding the Division's financial eligibility determination is that it does not seem fair given her recent medical problems. It was not disputed that Ms. M has a significant need for medical services or that her financial resources are limited. However, the

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<sup>24</sup> 7 AAC 100.152.

<sup>25</sup> 7 AAC 100.150; 7 AAC 100.154; 7 AAC 100.168.

<sup>26</sup> 7 AAC 100.150; 7 AAC 100.152; 7 AAC 100.154; 7 AAC 100.168. If the applicant's income has fluctuated, the Division may average the income received during previous months in order to make a fair determination of the applicant's usual or typical income level. 7 AAC 100.168(c).

<sup>27</sup> 7 AAC 100.154; 7 AAC 100.168.

<sup>28</sup> 7 AAC 100.154.

Department does not have the authority to expand program eligibility beyond the limits specified in the Department's regulations.<sup>29</sup>

#### **IV. Conclusion**

Ms. M's countable / net income for November 2011 exceeded the Family Medicaid Program's applicable net income level for the period in question. Accordingly, Ms. M was not eligible for Family Medicaid benefits, and the Division's decision denying those benefits is therefore affirmed.

Dated this 7<sup>th</sup> day of September, 2012.

*Signed* \_\_\_\_\_  
Jay Durych  
Administrative Law Judge

### **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 18<sup>th</sup> day of September, 2012.

By: *Signed* \_\_\_\_\_  
Name: Jay D. Durych  
Title: Administrative Law Judge

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

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<sup>29</sup> "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).