

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

In the Matter of)	
)	OAH No. 12-0745-MDE
C E)	Agency No.
_____)	

DECISION

I. Introduction

C E applied for Medicaid benefits. The Division of Public Assistance (division) denied her application because it determined that her income was greater than the income limit for eligibility. Ms. E, through her representative, requested a hearing to contest that decision.

A hearing was held on November 5, 2012. The division was represented by Mr. Jeff Miller. Ms. E was represented by her daughter, T D. Based on the evidence in the record, Ms. E had more resources than is permitted for eligibility. Accordingly, the division's determination that she was ineligible is upheld, though for a different reason than originally provided.

II. Facts

Ms. E applied for the Medicaid Home and Community-Based Services waiver program on July 12, 2012.¹ Her only income is \$1,594.90 per month in Social Security benefits,² and \$1,194.79 per month in pension benefits.³

Ms. E created an irrevocable trust, commonly called a Miller Trust, which was established to receive some or all of her income.⁴ The trust's assets are held in a bank account at Alaska USA Federal Credit Union.⁵

On Ms. E's behalf, Ms. D worked with two different eligibility technicians.⁶ She attempted to make appointments to see these workers in person, but they were not available so she communicated with them by telephone. She had trouble reaching the first technician by telephone and after leaving several messages she had her attorney contact the division.

¹ Exhibit 2. The application was dated July 9, 2012 and was received by the division on the 12th.

² Exhibit 3.1.

³ Exhibit 7.

⁴ Exhibit 5.1

⁵ Exhibit 5.13.

⁶ Factual findings related to Ms. D's communications with the division are based on her testimony.

At that point, she learned that a new technician would handle her case, and he did return her telephone calls.

Ms. D was asked to send some of her documents several times as the second technician did not have copies of what she had previously faxed to the division. Ultimately, her file was complete, and she asked if there was anything else she needed to do. Ms. D was told that she needed to fund the trust with \$1,472. She was told that she did not need to do anything further for her mother to qualify for Medicaid benefits.⁷ She wrote a check for that amount and deposited it in the trust.

On October 4, 2012, the division issued its denial letter.⁸ This letter stated that Ms. E was not eligible because her income exceeded the applicable income limit. The letter stated that more money should have been deposited into the trust: “It should have been funded [with at least] \$1,472.79 which is the difference between your gross income and the income limit.”⁹

III. Discussion

Medicaid eligibility is based on several different factors.¹⁰ In this case, the division denied Ms. E because she did not meet the income eligibility factor.¹¹ The income eligibility amount was initially set in 7 AAC 40.310, with annual increases based on increases in social security benefit amounts.¹² For 2012, the maximum monthly income for an individual living independently is \$1,297.¹³

A person with income greater than \$1,297 per month may still be eligible if the excess income is placed in a Miller Trust.¹⁴ There is no dispute in this case that Ms. E’s Miller Trust was properly established and qualifies as an acceptable income trust. The only question is whether enough of Ms. E’s income was transferred to this trust.

Ms. D thought that, other than the first transfer to fund the trust, she would not have to place any further income in trust until after the division approved her mother for

⁷ The eligibility technician was not called as a witness, so Ms. D’s testimony on this issue is uncontradicted.

⁸ Exhibit 11.1.

⁹ Exhibit 11.1 (original in all capital letters).

¹⁰ 7 AAC 40.090.

¹¹ See 7 AAC 40.090(8).

¹² 7 AAC 40.310(c).

¹³ Exhibit 16. This is the income limit for Adult Public Assistance, and not the limit for the Choice Medicaid Waiver program. Ms. E’s attorney contacted the division and explained that Ms. E was only applying for APA related Medicaid. Exhibit 8. The division apparently treated her Choice Waiver application as an APA application.

¹⁴ 7 AAC 100.604(a)(1).

Medicaid.¹⁵ She testified that she specifically asked what she needed to do to qualify, and was only told to make one payment of \$1,472. She was not aware that this amount should have been transferred each month while the application was pending.

The legal doctrine of equitable estoppel prevents a party from taking a position contrary to a position previously asserted. It applies against the government and in favor of a private party when four elements are met:

1. The government has asserted a position by conduct or words;
2. The private party acts in reasonable reliance on that assertion;
3. The private party is prejudiced;
4. The estoppel serves the interest of justice so as to limit public injury.¹⁶

In a case determined by the former hearing unit of the Department of Health and Social Services, the division was precluded from denying an application when the claimant acted in reasonable reliance on statements made by the division's eligibility technician.¹⁷ In that case, the hearing officer found that the claimant's children had met with an eligibility technician and asked for advice from the division about qualifying for Medicaid coverage.¹⁸ The division did not tell them that the \$200 already deposited into the Miller Trust was insufficient, and the hearing officer concluded that this was

an implicit assurance by the Division Eligibility Technician that the \$200 deposited into the Miller Trust bank account was sufficient to qualify the Claimant for September 2011 Medicaid coverage.^{19]}

The hearing officer also found that it was reasonable to rely on this implicit assurance, that the claimant was prejudiced by this reliance, and that estoppel served the interest of justice so as to limit public injury.²⁰ The hearing officer stated:

This is because the public as a whole is served by having government staff who can recognize a situation and correctly respond to public inquiries regarding governmental benefit programs, in such cases as the present one, where the citizen, in effect, says "here's the trust, here's the deposit, I need to qualify for

¹⁵ Testimony of Ms. D.

¹⁶ *Pfeifer v. State, Dept of Health & Social Services*, 260 P.3d 1072, 1082 (Alaska 2011).

¹⁷ OHA Case No. 11-FH-496 (DHSS 2012)

(<http://aws.state.ak.us/officeofadminhearings/Documents/HSS/11-FH-496.pdf>).

¹⁸ OHA Case No. 11-FH-496, page 6.

¹⁹ *Id.*

²⁰ *Id.*

Medicaid for this month” and the Division does not inform the citizen of what other steps she needs to perform in order to qualify for Medicaid as requested.^[21]

Ms. D had a similar experience. She provided the division with a copy of the trust, and she asked what else she needed to do for her mother to qualify. She was told that the only remaining action was to deposit \$1,472 into the Miller Trust, which she did. As with the 11-FH-496 case, the agency took the position that a deposit of \$1,472 into the trust would be sufficient for Ms. E to meet the income eligibility requirement. It was also reasonable for Ms. D to rely on the eligibility technician’s assurances. It is reasonable to assume that the people hired to administer this program would understand the program’s requirements, or seek further advice before responding to an eligibility question.

Ms. D testified that if she had been told to deposit more money into the account, she would have done so. Thus, *if Ms. E was otherwise eligible for the program*, she was prejudiced by the technician’s assurances. Finally, as with the prior case, it serves the interests of justice so as to limit public injury when members of the public can rely on division staff to correctly inform them of what they must do to qualify for a program’s benefits, or at least not to give inaccurate information.

It is also worth noting that, except for a 79 cent discrepancy, Ms. E and Ms. D had done what the denial letter told them they should have done. The denial letter states

Please note that your total monthly gross income was counted because your income trust was funded with only \$50.00. It should have been funded at less [sic] \$1472.79 which is the difference between your gross income and the income limit.^[22]

According to Ms. D’s testimony, she did fund the Miller Trust with \$1,472. The record does not disclose why the division determined that only \$50 had been deposited.

One distinction between the present case and the 11-FH-496 case is that in the prior hearing, the issue revolved around eligibility for only one month. Here, Ms. E is concerned about being eligible for multiple months beginning with July of 2012, when she first applied. Ms. D testified that she did not believe she needed to provide additional funding for the trust until after her mother’s application was approved. None of the notices to Ms. E specifically state that income must be deposited every month while the application was pending, and according to Ms. D’s uncontradicted testimony, the eligibility technician did

²¹ *Id.*

²² Exhibit 11.1 (text converted from all capital letters to improve readability).

not inform her of this requirement. Ms. D asked what she needed to do to ensure her mother's eligibility, and she was only told to deposit \$1,472 into the trust. She was not told to make that deposit every month while the application was pending.²³

The present case is also distinguishable from *Allen v State, Dep't of Health and Social Services*.²⁴ In *Allen*, the appellant challenged the ability of the Department of Health and Social Services to recoup overpayments of Food Stamp allotments due to agency error. One argument raised was that the Department was equitably estopped from recouping these payments. The court noted that, if applied, this equitable estoppel would bar recoupment in most cases of overpayment due to agency error.²⁵ Federal law, however, specifically intends that the state agency recoup overpayments, including those due to agency error.²⁶ The application of Alaska's law on estoppel was, therefore, preempted by federal law.²⁷

Here, there is no similar indication of federal intent to require applicants to bear the risk of agency error. Thus, Alaska law on equitable estoppel is not preempted. In sum, in the context of this particular application, the division is estopped to deny that the single deposit of \$1,472 was sufficient to fund the Miller Trust adequately.

While, as discussed above, the division can be bound by its assertions, there is a different basis for determining that Ms. E is ineligible. After the division issued its denial notice, it received a copy of Ms. E's Matanuska Valley Federal Credit Union statement. This shows that she had over \$8,000 in resources during the month of September.²⁸ An individual with more than \$2,000 in countable resources is not eligible to receive Medicaid benefits.²⁹ The division's position statement, which was sent to Ms. E before the hearing,

²³ The division's position statement also relies on provisions in the trust document as notifying Ms. D and Ms. E of the requirement to make monthly deposits to the trust. This document limits the type of asset that can be deposited into the trust, and limits payments out of the trust, but contains no requirement that any portion of Ms. E's income ever be assigned to the trust, much less a requirement that monthly deposits be made to keep her income below the eligibility threshold. That may be the purpose of this trust, but Article III specifically states that the right to receive income is not transferred to the trust. A lay person reading this document would not necessarily understand that payments needed to be made to this trust while the Medicaid application was pending in order to have that application approved.

²⁴ 203 P.3d 1155 (Alaska 2009).

²⁵ *Allen*, 203 P.3d at 1164.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Exhibit 14.

²⁹ 7 AAC 40.270(a)(1).

notes that “Ms. E’s Mat-Su Valley bank account has more than the program[‘s] resource limit of \$2,000.”³⁰

The division is not equitably estopped from relying on this basis for finding that Ms. E is ineligible, because there is no indication in the record that the division could have known about the amount of money in this account prior to issuing the denial letter. It would not serve the interest of justice to hold the division accountable for failing to inform an applicant of the need to divest herself of resources when the division was not aware that those resources existed.³¹

IV. Conclusion

Ms. E had more than \$2,000 in resources and was, therefore, not eligible for Medicaid benefits. Accordingly, the division’s denial of her application is upheld. If she applies again, she will need to meet both the income and the resource eligibility requirements. Since she is now aware that she must fund the Miller Trust with sufficient income each month to avoid having excess income, she may no longer rely on the division’s *prior* statement regarding what she must do to be eligible.

Dated this 9th day of November, 2012.

Signed

Jeffrey A. Friedman
Administrative Law Judge

³⁰ Position Statement, page 2.

³¹ A person who is already receiving those benefits must, before those benefits are terminated, receive an adequate explanation of the reason for the proposed termination. *Allen*, 203 P.3d at 1167. Here, Ms. E was applying for benefits that she was not currently receiving. Her benefits were not being terminated. Although the reason for denial has changed, she was informed of that reason prior to the hearing.

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 3rd day of December, 2012.

By: Signed

Name: Ree Sailors

Title: Deputy Commissioner, DHSS

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