

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

In the Matter of )  
 )  
V T )  
\_\_\_\_\_ )

OAH No. 13-0899-MDE  
Agency No.

**DECISION**

**I. Introduction**

This is V T's appeal from the denial of her application for Medicaid for the month of July 2013. No other months are at issue.

By regulation, the Department of Health and Social Services has a multiplier that it uses to convert anticipated biweekly earnings to a monthly amount in order to generate a figure that is compared to the Medicaid eligibility thresholds. This case presents the question of whether that multiplier must be used to extrapolate income across a whole month, even when it is known beyond the shadow of a doubt that the job will end in the middle of the month and income will cease to accrue. In other words, the question is whether, by creating a multiplier to convert biweekly figures to monthly figures, the department has locked itself into violating the fundamental principle of state Medicaid law that eligibility turns on the department's "best estimate of income, resources, and other circumstances that are anticipated to exist for the household during the month for which eligibility is being determined."<sup>1</sup> This decision concludes that it has not. By using a common-sense interpretation of its multiplier regulation, the department can remain faithful to the full range of its legal requirements.

The multiplier should not have been used in connection with Ms. T's July earnings. When real earnings are used rather than a fictional earnings amount generated by inappropriate use of the multiplier, Ms. T is eligible for coverage. The denial of benefits for July must therefore be reversed.

**II. Facts**

The material facts of this case are not disputed. Ms. T's employment for the months of June and July, 2013 consisted of a fixed, contractual 20-day work assignment to be a No Name during the No Name School District's summer session. Each work day was five hours. Eight of the days to be worked were in June. The other twelve were in July. They were July 1, 2, 3, 8, 9,

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<sup>1</sup> 7 AAC 100.154.

10, 11, 15, 16, 17, 18, and 19. From the outset, the job was set to terminate at 1:00 p.m. on July 19, after a total of 100 hours of work, 60 of which would be in July.<sup>2</sup>

The pay rate for July is \$18.93 per hour.<sup>3</sup> Accordingly, during July Ms. T will *accrue* gross employment earnings of \$1135.80. On a cash-receipt basis, her employment income will be slightly higher due to a lag in payment of her June hours: the gross *cash* amount received (before any taxes or other deductions) will be \$1389.35.<sup>4</sup>

The parties agree that Ms. T also has child support income of \$831.46 per month. Accordingly, her total income for July, when calculated on an accrual basis, will be \$1967.26. Her total income for July, when calculated on a cash basis, will be \$2220.81.

The Division *imputed* employment income of \$1493.54 to Ms. T for July.<sup>5</sup> When added to the child support, this yielded gross income of \$2325.00, and net income, after deductions, of \$1731.64. These figures do not correspond to Ms. T's actual or expected income for the month, and the Division does not claim that they do. Instead, these figures are the mechanical product of an extrapolation formula discussed in Part III.

When the Division compared its figures to the income thresholds applicable to Ms. T, it found that Ms. T's net income exceeded the threshold by about \$18. It denied Ms. T's Medicaid application with respect to July. Ms. T appealed, receiving a Fair Hearing on July 18, 2013.

### **III. Discussion**

Prospective eligibility for Medicaid turns, in part, on a household's expected income—both the gross amount and the net amount after subtracting certain defined deductions. The department has, by regulation 7 AAC 100.154, committed to applying this standard by using its “best estimate of income . . . anticipated to exist for the household during the month for which eligibility is being determined.”

The only issue in this case is the proper reading of another department regulation, 7 AAC 100.168, which establishes methodologies for implementing this “best estimate” standard. The relevant portions of that regulation read as follows:

- (a) For the purpose of determining the eligibility of a household for Family Medicaid benefits under 7 AAC 100.154, the department will make a best estimate of the prospective income for a household by using the actual income

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<sup>2</sup> Ex. 2.16, 2.18; testimony of Ms. T.

<sup>3</sup> Testimony of Ms. T. This pay rate is also reflected in the Division's calculations, such as Ex. 2.13, and is found on the salary schedule at Ex. 2.20.

<sup>4</sup> Testimony of Ms. T (recording at 18:00).

<sup>5</sup> Ex. 2.27; *see also* Division's Fair Hearing Position Statement.

received or anticipated to be received in the month for which the determination is being made.

\* \* \*

(d) If income from a source is received on a weekly or biweekly basis, the department will estimate the anticipated monthly income by multiplying weekly amounts by 4.3 and biweekly amounts by 2.15.

In this case, the Division did a fairly elaborate calculation (the details of which are unimportant<sup>6</sup>) to generate a “biweekly” pay rate, and then multiplied that rate by 2.15 to generate estimated income for July. In other words, the Division used subsection (d) of the quoted regulation.

It was a mistake to use subsection (d) in this situation. Subsection (d) only applies when the anticipated income is to be received on a “weekly” or “biweekly” basis. The Division classified Ms. T as being paid “biweekly.” In this context, however, biweekly means “happening every two weeks.”<sup>7</sup> Ms. T was not going to be paid “every two weeks” for employment spanning the period at issue. Instead, her job was going to end halfway through the month.

More fundamentally, subsection (a) of section 168 commits the department to use “the actual income . . . anticipated to be received in the month for which the determination is being made.” In Ms. T’s situation, the “actual income” is known. The purpose of subsection (d) is to smooth out a continuous stream of paychecks for a continuing job, which, because of irregularities in the calendar, may fall unevenly between months.<sup>8</sup> Applying this kind of smoothing mechanism to a job that is not ongoing is unnecessary and inappropriate.

The Division has calculated, and Ms. T concedes, that for a person in her situation the maximum gross income for eligibility is \$3169 per month and the maximum net income, after certain deductions, is \$1713 per month.<sup>9</sup> In Ms. T’s case, the actual gross income for July will be, at most, \$2220.81. This is below the gross income threshold. With respect to the net income threshold, the Division agrees that Ms. T is entitled to an earned income deduction of \$150 plus 33% of the remaining earned income after the \$150 is subtracted. In Ms. T’s case, this deduction is \$558.99.<sup>10</sup> The resulting net income is \$1661.82, which is below the net income threshold.

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<sup>6</sup> The calculation, which involved taking a paycheck for June earnings and a paycheck for July earnings and averaging the amounts, can be seen on Ex. 2.13.

<sup>7</sup> Webster’s II New Riverside University Dictionary (1988) at 177.

<sup>8</sup> See, e.g., OHA Case No. 10-FH-329 at 2 nn. 2-3 (Alaska Dep’t of Health & Soc. Serv. 2011) (<http://aws.state.ak.us/officeofadminhearings/Documents/HSS/10-FH-329.pdf>); OHA Case No. 11-FH-159 at 3 (Alaska Dep’t of Health & Soc. Serv. 2011) (<http://aws.state.ak.us/officeofadminhearings/Documents/HSS/11-FH-159.pdf>).

<sup>9</sup> Ex. 2.27; see also Division’s Fair Hearing Position Statement.

<sup>10</sup>  $150 + [(1389.35 - 150) \times .33]$ .

#### **IV. Conclusion**

The Division's June 11, 2013 denial of V T's application for Medicaid benefits for July is reversed. Ms. T is eligible for Medicaid benefits in July of 2013.

Dated this 26<sup>th</sup> day of July, 2013.

*Signed* \_\_\_\_\_  
Christopher Kennedy  
Administrative Law Judge

#### **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 set forth below, and adopts the proposed decision as revised:

The record does not clearly reflect how the delayed June payment is considered in the calculation. Therefore case is remanded to the Division for recalculation of eligibility.

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 24<sup>th</sup> day of September, 2013.

By: *Signed* \_\_\_\_\_  
Ree Sailors, Deputy Commissioner  
Department of Health and Social Services

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