

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

In the Matter of:)
)
 S and X G) OAH No. 14-0062-MDE

) Agency Nos.

DECISION

I. Introduction

The issue in this case is whether the value of S and X G's countable resources exceeds the maximum resource limit for Medicaid Special Long Term Care under the Medicaid Home and Community-Based Waiver Services (waiver services) program. The Division of Public Assistance (DPA or Division) denied S's and X's separate Medicaid applications on the grounds that the funds contained in four bank accounts, and the value of the home in which they no longer live, cumulatively exceed the waiver services program's maximum resource limit. The Gs contest the Division's decision on the bases that (1) the funds in the bank accounts, which exceed the resource limit, are the property of the G's daughter rather than the Gs, and (2) the Gs' house is for sale and its value should therefore not be counted.

This decision concludes that, unlike some other programs, Medicaid does not exclude the value of property which is for sale from its financial eligibility determinations. The value of the Gs' equity in their home, by itself, exceeds the Medicaid program's maximum resource limit.¹ Accordingly, the Division was correct to deny S's and X's applications for Special Long Term Care Medicaid under the waiver services program on the basis that the value of their assets exceeded the applicable resource limit. The Division's decision is therefore affirmed.

II. Facts

S G is 88 years old; his wife X is 90 years old.² The Gs are long time Alaskans, Mr. G having been born in Alaska "when it was a territory."³

At some time prior to October 2013 the Gs became unable to care for themselves and were admitted to No Name House, a long-term assisted living facility.⁴ Their daughter, U G, arranged for their admission and applied for Medicaid coverage on their behalf.⁵

¹ Because the value of the G' home exceeds the applicable Medicaid maximum resource limit, it is not necessary to address the issue of whether some or all of the money in the four bank accounts at issue should also be counted.

² Ex. 1.0

³ Ex. 2.13.

⁴ Undisputed hearing testimony.

On October 23, 2013 U submitted applications for Medicaid waiver services to the Division for each of her parents.⁶ X's application indicated that she and her husband owned a home, which was currently for sale, in which the couple had approximately \$199,000.00 in equity.⁷ X's application also indicated that she owned or had an interest in three bank accounts having a cumulative balance of approximately \$22,600.00.⁸ S's application contained essentially the same information, except that S's application as indicated that he owned or had an interest in three bank accounts having a cumulative balance of approximately \$23,200.00.⁹

U submitted copies of S's and X's recent bank statements in conjunction with her parents' Medicaid applications.¹⁰ The statements indicate that the S & X G Living Trust owns four bank accounts with Wells Fargo Bank having a total / cumulative balance of \$52,642.92 as of July 31, 2013,¹¹ \$44,145.30 as of August 31, 2013,¹² and \$45,056.34 as of September 30, 2013.¹³ Additional statements indicate that S and X have a joint checking account with Wells Fargo Bank with a balance of \$284.29 during the months of July - September 2013.¹⁴ Finally, other statements indicate that S and U have a joint savings account with Wells Fargo Bank with a balance of \$13,339.82 as of July 31, 2013, \$10,635.93 as of August 31, 2013, and \$10,206.77 as of September 30, 2013.¹⁵

On December 6, 2013 U represented her parents in a telephonic eligibility interview with a DPA eligibility technician (ET).¹⁶ The ET concluded, based on the information provided, that the value of S's and X's countable resources exceeds the Medicaid program's applicable resource

⁵ Exs. 2.0, 2.12. U G holds durable powers of attorney (POAs) from each of her parents (Ex. 2.8 - 2.11; Ex. 2.20 - 2.23).

⁶ A copy of X's application is included in the record as Exs. 2.0 - 2.7; a copy of S's application is included in the record as Exs. 2.12 - 2.18.

⁷ Exs. 2.2, 2.4. A printout from the No Name tax assessor's website dated January 16, 2014 (Ex. 3.20) indicates that the tax value of the property, titled in the name of the S & X G Living Trust, was \$281,300 as of that date. The tax value of residential real property in south central Alaska is typically 10% - 15% higher than the fair market value of the property. Applying that general rule in this case would result in a fair market value in the range of \$239,105 - \$253,170. A mortgage statement from Wells Fargo Bank dated January 31, 2012 indicates that the property is subject to a mortgage on which a balance of \$67,135.87 was owed as of that date. Accordingly, the preponderance of the evidence indicates that S and Wilma's equity in the real property at issue is in the range of \$171,969 - \$186,034. As discussed below, this equity causes the G to exceed the Medicaid program's applicable maximum resource limit at this time.

⁸ Ex. 2.2.

⁹ Ex. 2.14, 2.16.

¹⁰ Exs. 3.2 - 3.19.

¹¹ Exs. 3.2, 3.3, 3.14, 3.17.

¹² Exs. 3.4, 3.5, 3.15, 3.18.

¹³ Exs. 3.6, 3.7, 3.16, 3.19.

¹⁴ Exs. 3.8 - 3.10.

¹⁵ Exs. 3.11 - 3.13.

¹⁶ Exs. 3.0, 3.1.

limit.¹⁷ On December 10, 2013 the Division mailed a notice to X denying her Medicaid application on the basis that she owned countable resources, consisting of the bank accounts and home in No Name, with a total value of \$244,054.34, and that this value exceeded the applicable maximum resource limit of \$2,000.00.¹⁸ On the same date the Division mailed a separate, almost identical notice to S denying his Medicaid application for the same reason.¹⁹

U requested a hearing on behalf of her parents on January 7, 2014.²⁰ In requesting the hearing, U asserted that the Division's determination was incorrect on the grounds that (1) one of the bank accounts counted by the Division belonged to her rather than to her parents; (2) the Division did not give consideration to outstanding payments made but not cleared from the bank accounts; and (3) her parents' house has been for sale for 20 months without success, and its value should therefore not be counted as a resource.²¹

S and X Gs' hearing was held on February 21, 2014. U G attended the hearing, represented her parents at the hearing by virtue of her power of attorney, and testified on her parents' behalf. Public Assistance Analyst Terri Gagne participated in the hearing by phone, represented the Division, and testified on its behalf. At hearing, the Division asserted the rationale set forth in its denial notices, while U asserted the defenses set forth in her hearing request. The record closed at the end of the hearing.

III. Discussion

A. Overview of Relevant Medicaid Eligibility and Waiver Services Categories

Medicaid is an “entitlement program” created by the federal government, but administered by the state, to provide payment for medical services for low-income citizens.²² People qualify for Medicaid by meeting federal income and asset standards and by fitting into a specified eligibility category.²³ In order to participate in Medicaid, federal law requires states to cover certain population groups (mandatory eligibility groups) and gives states the flexibility to cover other population groups (optional eligibility groups).²⁴

¹⁷ Exs. 3.0, 3.1.

¹⁸ Exs. 4.0, 4.1, 5.2.

¹⁹ Exs. 4.2, 4.3, 5.4.

²⁰ Exs 5.0, 5.1, 5.3.

²¹ Exs. 5.0, 5.1, 5.3, 5.5.

²² See State of Alaska Division of Health Care Services website at http://dhss.alaska.gov/dhcs/Pages/medicaid_medicare/default.aspx (date accessed May 13, 2014).

²³ *Id.*

²⁴ See the official Medicaid website at <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Eligibility/Eligibility.html> (date accessed May 13, 2014).

One of the Medicaid eligibility categories available in Alaska is "Special Long Term Care" (SLTC) Medicaid.²⁵ SLTC is a species of Adult Public Assistance (APA) - related Medicaid.²⁶ APA-related Medicaid uses many (but not all) of the APA financial eligibility criteria (discussed below) for making APA-related Medicaid financial eligibility determinations.²⁷ APA-related Medicaid (in general), and SLTC Medicaid (in particular), are the categories under which S and X seek to qualify in this case.

Alaskans age 65 and over who qualify for APA-related Medicaid, and who require a level of long term care provided by a nursing facility, may qualify for additional Medicaid services under the Alaskans Living Independently (ALI) waiver.²⁸ The program is called a "waiver" program because certain statutory Medicaid requirements are waived by the Secretary of Health and Human Services.²⁹ Congress created the Home and Community-Based Waiver Services program to allow states to offer long-term care, not otherwise available through Medicaid, to serve recipients in their own homes and communities instead of in nursing facilities.³⁰ S and X seek Medicaid coverage of their assisted living facility (ALF) costs under the ALI waiver in this case.

B. Resource Eligibility Standards Applicable to APA-related SLTC Medicaid

APA-related Medicaid uses many of the Adult Public Assistance Program's financial eligibility criteria for making Medicaid financial eligibility determinations.³¹ Among the Adult Public Assistance regulations used to make financial eligibility determinations for APA-related Medicaid are those concerning resources, resource limits, and excludable resources.³²

Under 7 AAC 40.270, the APA-related Medicaid countable resource limit is \$2,000.00 for an individual, and \$3,000.00 for an individual living with a spouse, regardless of whether the spouse

²⁵ See the Alaska Department of Health and Social Services' "Aged, Disabled and Long Term Care Medicaid Eligibility Manual" at Section 500(A), accessed online at <http://dpaweb.hss.state.ak.us/manuals/adltc/adltc.Htm> (date accessed May 13, 2014).

²⁶ *Id.*

²⁷ See 7 AAC 100.400.

²⁸ See the Alaska Department of Health and Social Services' "Aged, Disabled and Long Term Care Medicaid Eligibility Manual" at Section 560(B), accessed online at <http://dpaweb.hss.state.ak.us/manuals/adltc/adltc.Htm> (date accessed May 13, 2014).

²⁹ See 42 USC 1396n(c).

³⁰ See 42 USC 1396n(c)(1); 42 CFR §§ 435.217; 42 CFR §§441.300 - 310. Federal Medicaid regulation 42 CFR 440.180, titled "Home or Community-Based Services," provides in relevant part:

(a) Description and requirements for services. "Home or community-based services" means services, not otherwise furnished under the State's Medicaid plan, that are furnished under a waiver granted under the provisions of Part 441, subpart G of this chapter

³¹ 7 AAC 100.400.

³² 7 AAC 40.260, 7 AAC 40.270, 7 AAC 40.280.

is otherwise eligible for assistance.³³ This standard applies to persons seeking payment of ALF costs under the ALI waiver.³⁴

Under 7 AAC 40.270(b), the value of an applicant's countable resources is determined as of the first day of the month in which the application is received.³⁵ For purposes of APA-related Medicaid, "resources" are defined broadly by Alaska Medicaid regulation 7 AAC 40.260(a) as "any real or personal property that an applicant . . . owns and can convert to cash to be used for his or her support and maintenance."³⁶ The federal Medicaid regulation on which Alaska's regulation is based, 20 CFR § 416.1201, provides a bit more guidance and states in relevant part that "[i]f the individual has the right, authority or power to liquidate the property or his or her share of the property, it is considered a resource." Under APA-related Medicaid, the income and resources of an applicant's spouse who is living with him or her are considered the income and resources of the applicant.³⁷

There are a number of types of resources which are exempt (not countable) for purposes of determining the value of an individual's resources.³⁸ However, bank accounts are generally not exempt and are therefore countable for purposes of the Medicaid resource limit.³⁹

Where more than one person is listed as the owner of a bank account, the funds in the account are presumed to belong to both owners, and are prorated equally to each owner for purposes of making resource eligibility determinations.⁴⁰ To rebut the presumption of account ownership, an APA-related Medicaid applicant must (1) provide a written statement that explains why some or all of the funds in the account do not belong to him or her; (2) specify what portion of the funds are not his or hers; (3) provide a corroborating statement from the other account owner(s); and (4) change

³³ See also the Alaska Department of Health and Social Services' Adult Public Assistance Manual at Section 430-2 (stating that to be eligible for assistance, countable resources may not exceed \$2000 for an individual, or \$3000 for a couple, as long as at least one member is eligible for assistance), accessed online at <http://dpaweb.hss.state.ak.us/manuals/apa/apa.htm> (date accessed May 13, 2014).

³⁴ See the Alaska Department of Health and Social Services' "Aged, Disabled and Long Term Care Medicaid Eligibility Manual" at Addendum 2, accessed online at <http://dpaweb.hss.state.ak.us/manuals/adltc/adltc.Htm> (date accessed May 13, 2014).

³⁵ See also the Alaska Department of Health and Social Services' Adult Public Assistance Manual at Section 430-3, accessed online at <http://dpaweb.hss.state.ak.us/manuals/apa/apa.htm> (date accessed May 13, 2014).

³⁶ See also the Alaska Department of Health and Social Services' Adult Public Assistance Manual at Sections 430 - 431, accessed online at <http://dpaweb.hss.state.ak.us/manuals/apa/apa.htm> (date accessed May 13, 2014).

³⁷ See 7 AAC 40.240(a); see also

³⁸ 7 AAC 40.280; see also the Alaska Department of Health and Social Services' Adult Public Assistance Manual at Section 432, accessed online at <http://dpaweb.hss.state.ak.us/manuals/apa/apa.htm> (date accessed May 13, 2014).

³⁹ 7 AAC 40.280 ; see also the Alaska Department of Health and Social Services' Adult Public Assistance Manual at Section 432, accessed at <http://dpaweb.hss.state.ak.us/manuals/apa/apa.htm> (date accessed May 13, 2014).

⁴⁰ See the Alaska Department of Health and Social Services' Adult Public Assistance Manual at Section 431-2(A), accessed online at <http://dpaweb.hss.state.ak.us/manuals/apa/apa.htm> (date accessed May 13, 2014).

the account designation to either remove his or her name from the account, or show restricted access to the account.⁴¹

Pursuant to 7 AAC 40.280(a)(1), the value of a house owned by an applicant for APA-related Medicaid is exempt (i.e. is not a countable resource), but only if the home is being "used as his principal place of residence." A home may be excluded as a resource while the individual *is not living in it only if* (1) the individual continues to consider it as his or her principal place of residence and intends to resume living in it; or (2) the spouse or a dependent relative of the individual continues to live there while the individual is institutionalized.⁴² The Gs did not assert that either of these exceptions applies in this case.

In her hearing request and at hearing, U asserted that the value of her parents' former home should not be counted as a resource because it is for sale. It is true that the Adult Public Assistance program allows the value of real property to be excluded from resource eligibility determinations if the owner is making reasonable efforts to sell the property.⁴³ However, this exclusion only applies for purposes of eligibility for APA cash assistance, *and does not apply in Medicaid-only determinations* where (as here) the applicant seeks Medicaid coverage but not monthly APA cash payments.⁴⁴

In summary, the Gs disclosed in their applications that they own a residence, in which they are not living, in which they have \$199,000.00 in equity. The G's equity in their former residence exceeds the applicable Medicaid resource limit of \$3,000.00 (for an individual living with a spouse) by \$196,000.00. Accordingly, even without counting any money in their bank accounts, the Gs are not currently financially eligible for SLTC Medicaid.

IV. Conclusion

⁴¹ *Id.* In this case, U seeks to rebut the presumption and prove that a significant portion of the money in the banks accounts at issue belongs to her. However, as discussed below, even if all the money in the bank accounts were found to belong to U rather than her parents, S and X would still be over-resource based on the value of their real property.

⁴² See also the Alaska Department of Health and Social Services' Adult Public Assistance Manual at Section 432-1(A)(3), accessed online at <http://dpaweb.hss.state.ak.us/manuals/apa/apa.htm> (date accessed May 13, 2014).

⁴³ See the Alaska Department of Health and Social Services' Adult Public Assistance Manual at Sections 432-1(D) and 433-2(G-H), accessed at <http://dpaweb.hss.state.ak.us/manuals/apa/apa.htm> (date accessed May 13, 2014).

⁴⁴ See the Alaska Department of Health and Social Services' "Aged, Disabled and Long Term Care Medicaid Eligibility Manual" at Section 524(D), accessed online at <http://dpaweb.hss.state.ak.us/manuals/adltc/adltc.htm> (date accessed May 13, 2014).

The value of the Gs' equity in their home, by itself, exceeds the waiver services program's maximum resource limit. Accordingly, the Division was correct to deny S's and X's applications for SLTC Medicaid under the waiver services program on the basis that the value of their assets exceeds the applicable resource limit. The Division's decision is therefore affirmed.

Dated this 14th day of May, 2014.

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 3rd day of June, 2014.

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

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