

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

In the Matter of: )  
 )  
 B C ) OAH No. 14-0637-MDE  
 ) Agency No.

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**DECISION**

**I. Introduction**

The issue in this case is whether B C is eligible for Medicaid. In order to decide this, it is necessary to determine whether Mr. C falls within any of the Medicaid program's eligibility categories. The Division of Public Assistance (DPA or Division) denied Mr. C's Medicaid application on the grounds that he does not satisfy the eligibility criteria of any Medicaid eligibility category available in Alaska. This decision concludes, based on an independent review of the record, that while Mr. C may satisfy the eligibility criteria of an optional Medicaid eligibility category which is available in some states, he does not satisfy the criteria of any Medicaid eligibility category currently available in Alaska. Accordingly, the Division was correct when, on April 1, 2014, it denied Mr. C's Medicaid application dated March 28, 2014. The Division's decision denying Mr. C's Medicaid application is therefore affirmed.

**II. Facts**

Mr. C is 59 years old.<sup>1</sup> He works as a taxicab driver for a local cab company.<sup>2</sup> Mr. C works 40 hours per week and earns about \$300.00 per week, or \$1,290.00 per month.<sup>3</sup>

Mr. C's right leg has been amputated above the knee.<sup>4</sup> He wears a prosthetic limb, but it is still extremely difficult for him to drive a taxi for 40 hours per week to support himself.<sup>5</sup>

On March 28, 2014 Mr. C submitted an application for Medicaid services to the Division.<sup>6</sup> On March 31, 2014 a DPA eligibility technician (ET) reviewed Mr. C's application and determined that he was not eligible for any category of Alaska Medicaid.<sup>7</sup> On April 1, 2014 the Division issued a notice advising Mr. C of its determination and denying his Medicaid application.<sup>8</sup> Mr. C

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<sup>1</sup> Ex. 1.  
<sup>2</sup> Ex. 2.5; Ex. 3.0; B C hearing testimony.  
<sup>3</sup> Ex. 3.0.  
<sup>4</sup> Ex. 5.1; B C hearing testimony.  
<sup>5</sup> Ex. 2.1; B C hearing testimony.  
<sup>6</sup> Exs. 2.0 - 2.11.  
<sup>7</sup> Ex. 3.0.  
<sup>8</sup> Ex. 4.

requested a hearing to contest the Division's determination on April 23, 2014.<sup>9</sup> In his hearing request, Mr. C noted that he has a permanent physical impairment, and that his income is below the poverty level.<sup>10</sup>

Mr. C's hearing was held on June 10, 2014. Mr. C participated in the hearing by phone, represented himself, and testified on his own 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 notice, while Mr. C credibly testified as to the facts set forth in his hearing request. The record closed at the end of the hearing.

### III. Discussion

#### A. Overview of Medicaid Eligibility Categories

Medicaid is an “entitlement program” created by the federal government, but administered by the states, to provide payment for medical services for low-income citizens.<sup>11</sup> However, although having limited assets and income is one of the primary requirements for Medicaid eligibility, poverty alone does not qualify people to receive Medicaid benefits unless they also fall within an established Medicaid eligibility category.<sup>12</sup>

In 2010, the Patient Protection and Affordable Care Act (ACA)<sup>13</sup> expanded Medicaid eligibility starting in 2014.<sup>14</sup> Under the ACA, people with income up to 133% of the poverty line qualify for coverage, including adults (like Mr. C) without dependent children. However, the United States Supreme Court ruled that the federal government must make participation in the expanded Medicaid program *voluntary*,<sup>15</sup> and several state governments have declared that they will not participate. Alaska is one of the 24 states that have currently opted *not* to expand their Medicaid coverage under the Affordable Care Act.<sup>16</sup> It is estimated that, by choosing not to expand Medicaid

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<sup>9</sup> Exs 5.0, 5.1.

<sup>10</sup> Ex. 5.1.

<sup>11</sup> See Title XIX of the Social Security Act, codified at 42 USC Section 1396 - 1396p; see also State of Alaska Division of Health Care Services website at [http://dhss.alaska.gov/dhcs/Pages/medicaid\\_medicare/default.aspx](http://dhss.alaska.gov/dhcs/Pages/medicaid_medicare/default.aspx) (date accessed July 18, 2014).

<sup>12</sup> See <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Eligibility/Eligibility.html> (date accessed July 18, 2014) (source for the remainder of this paragraph unless otherwise stated).

<sup>13</sup> This legislation is also commonly known as "Obama Care."

<sup>14</sup> The Affordable Care Act was signed into law by President Barack Obama on March 23, 2010 as Public Law 111–148. The full text of the ACA is located at 124 Stat. 119 through 124 Stat. 1025. It is difficult to state a United States Code citation to the ACA because the Act's 10 titles stretch over 900 pages and contain hundreds of provisions. The constitutionality of the ACA was upheld by the United States Supreme Court in *National Federation of Independent Business, et al. v. Sebelius*, 132 S.Ct. 2566, 183 L.Ed.2d 450 (June 2012).

<sup>15</sup> *National Federation of Independent Business, et al. v. Sebelius*, 132 S.Ct. 2566, 183 L.Ed.2d 450 (June 2012).

<sup>16</sup> See <http://www.whitehouse.gov/share/medicaid-map>; <http://obamacarefacts.com/obamacares-medicaid-expansion.php> (date accessed July 18, 2014). On Feb. 28, 2013, Governor Sean Parnell stated that, based on what he

coverage under the ACA, Alaska will lose 229 million dollars in federal Medicaid funds<sup>17</sup> and leave 26,000 Alaskans without the Medicaid coverage they would otherwise have under the ACA.<sup>18</sup>

People qualify for Medicaid by meeting federal income and asset standards and by fitting into a specified eligibility category.<sup>19</sup> As noted above, 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).<sup>20</sup>

Research indicates that, other than the coverage recently authorized by the Affordable Care Act, the federal government has created a total of 65 different categories of Medicaid, including both mandatory eligibility groups and optional eligibility groups.<sup>21</sup>

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knew about the federal budget, he would not support Medicaid expansion and would not ask the state Legislature for funding or authorization to boost the program's eligibility limits. *See* <http://www.advisory.com/daily-briefing/resources/primers/medicaidmap> (date accessed July 18, 2014). In March 2013 State Representative B Josephson introduced HCR 8, a resolution to compel the governor to take action on the expansion, but the resolution did not gain traction among Alaska lawmakers. *Id.*

<sup>17</sup> *See* <http://www.commonwealthfund.org/publications/press-releases/2013/dec/states-rejecting-medicaid-expansion-costing-taxpayers> (date accessed July 18, 2014).

<sup>18</sup> *See* <http://www.whitehouse.gov/share/medicaid-map> (date accessed July 18, 2014); *see also* <http://kff.org/health-reform/issue-brief/the-coverage-gap-uninsured-poor-adults-in-states-that-do-not-expand-medicaid/> (date accessed July 18, 2014).

<sup>19</sup> *Id.*

<sup>20</sup> *See* the official Medicaid website at <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Eligibility/Eligibility.html> (date accessed July 18, 2014).

<sup>21</sup> These eligibility categories, and the federal acts and/or regulations creating them, are as follows:

1. Low Income Families (Social Security Act Section 1931).
2. Transitional Medical Assistance (Social Security Act Sections 408(a)(11)(A) 1931(c)(2) 1925 1902(a)(52)).
3. Extended Medicaid due to Child or Spousal Support Collections (Social Security Act Sections 408(a)(11)(B); 42 CFR 435.115 1931(c)(1)).
4. Children with Title IV-E Adoption Assistance, Foster Care or Guardianship Care (Social Security Act Section 1902(a)(10)(A)(i)(I), 473(b)(3), 42 CFR 435.145).
5. Qualified Pregnant Women and Children (Social Security Act Sections 1902(a)(10)(A)(i)(III) and 1905(n); 42 CFR 435.116).
6. Mandatory Poverty Level Related Pregnant Women (Social Security Act Section 1902(a)(10)(A)(i)(IV); 1902(l)(1)(A)).
7. Mandatory Poverty Level Related Infants (Social Security Act Section 1902(a)(10)(A)(i)(IV), 1902(l)(1)(B)).
8. Mandatory Poverty Level Related Children Aged 1-5 (Social Security Act Section 1902(a)(10)(A)(i)(VI), 1902(l)(1)(C)).
9. Mandatory Poverty Level Related Children Aged 6-18 (Social Security Act Section 1902(a)(10)(A)(i)(VII); 1902(l)(1)(D)).
10. Deemed Newborns (Social Security Act Section 1902(e)(4); 42 CFR 435.117).
11. Individuals Receiving SSI (Social Security Act Section 1902(a)(10)(A)(i)(II)(aa); 42 CFR 435.120)).
12. Aged, Blind and Disabled Individuals in 209(b) States (Social Security Act Section 1902(f); 42 CFR 435.121).
13. Individuals Receiving Mandatory State Supplements (42 CFR 435.130).
14. Individuals Who Are Essential Spouses (42 CFR 435.131 1905(a)).
15. Institutionalized Individuals Continuously Eligible Since 1973 (42 CFR 435.132).
16. Blind or Disabled Individuals Eligible in 1973 (42 CFR 435.133).

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17. Individuals Who Lost Eligibility for SSI/SSP Due to an Increase in OASDI Benefits in 1972 (42 CFR 435.134).
  18. Individuals Who Would be Eligible for SSI/SSP but for OASDI COLA increases since April, 1977 (Section 503 of P.L. 94-566; 42 CFR 435.135).
  19. Disabled Widows and Widowers Ineligible for SSI due to Increase in OASDI (Social Security Act Section 1634(b); 42 CFR 435.137).
  20. Disabled Widows and Widowers Ineligible for SSI due to Early Receipt of Social Security (Social Security Act Section 1634(d); 42 CFR 435.138).
  21. Working Disabled (Social Security Act Section 1619(b); 1902(a)(10)(A)(i)(II)1; 1939(a)(5)(E); 1905(q); 1619(b)).
  22. Disabled Adult Children (Social Security Act Section 1634(c)).
  23. Qualified Medicare Beneficiaries (Social Security Act Section 1902(a)(10)(E)(i); 1905(p)).
  24. Qualified Disabled and Working Individuals (Social Security Act Section 1902(a)(10)(E)(ii); 1905(s); 1905(p)(3)(A)(i)).
  25. Specified Low Income Medicare Beneficiaries (Social Security Act Section 1902(a)(10)(E)(iii); 1905(p)(3)(A)(ii)).
  26. Qualifying Individuals (Social Security Act Section 1902(a)(10)(E)(iv); 1905(p)(3)(A)(ii)).
  27. Children with Non-IV-E Adoption Assistance (Social Security Act Section 1902(a)(10)(A)(ii)(VIII); 42 CFR 435.227).
  28. Independent Foster Care Adolescents (Social Security Act Section 1902(a)(10)(A)(ii)(XVII); 1905(w)).
  29. Optional Targeted Low Income Children (M-CHIP) (Social Security Act Section 1902(a)(10)(A)(ii)(XIV); 1905(u)(2)(B); 42 CFR 435.229; 42 CFR 435.4).
  30. Children under 21 Not Receiving Cash (Social Security Act Section 1902(a)(10)(A)(ii)(I) – (IV); 1905(a)(i); 42 CFR 435.222).
  31. Families Who Would Qualify for Cash if Requirements Were More Broad (Social Security Act Section 1902(a)(10)(A)(ii)(III); 1905(a); 42 CFR 435.223).
  32. Individuals Eligible for Cash except for Child Care Subsidy (Social Security Act Section 1902(a)(10)(A)(ii)(II); 42 CFR 435.220).
  33. Optional Poverty Level Related Pregnant Women and Infants (Social Security Act Section 1902(a)(10)(A)(ii)(IX); 1902(l)(2)).
  34. Presumptively Eligible Pregnant Women (Social Security Act Section 1902(a)(47); 1920).
  35. Presumptively Eligible Children (Social Security Act Section 1902(a)(47); 1920A; 42 CFR 1100-1102).
  36. Individuals Electing COBRA Continuation Coverage (Social Security Act Section 1902(a)(10)(F); 1902(u)(1)).
  37. Individuals Eligible for but not Receiving Cash (Social Security Act Section 1902(v)(1); 1902(a)(10)(A)(ii)(IV); 42 CFR 435.211).
  38. Individuals Eligible for Cash except for Institutionalization (Social Security Act Section 1902(a)(10)(A)(ii)(I); 1905(a); 1905(a)(2); 42 CFR 435.210).
  39. Individuals in HMOs Guaranteed Eligibility (Social Security Act Section 1902(e)(2); 42 CFR 435.212).
  40. Individuals Receiving Home and Community Based Services under Institutional Rules (Social Security Act Section 1902(a)(10)(A)(ii)(VI); 1902(e)(2); 42 CFR 435.217).
  41. Individuals Participating in a PACE Program under Institutional Rules (Social Security Act Section 1934).
  42. Individuals Receiving Hospice Care (Social Security Act Section 1902(a)(10)(A)(ii)(VII); 1905(o)).
  43. Optional State Supplement Recipients - 1634 States, and SSI Criteria States with 1616 Agreements (Social Security Act Section 1902(a)(10)(A)(ii)(IV); 42 CFR 435.232).
  44. Optional State Supplement Recipients - 209(b) States, and SSI Criteria States without 1616 Agreements (Social Security Act Section 1902(a)(10)(A)(ii)(XI); 42 CFR 435.234).
  45. Qualified Disabled Children under 19 (Social Security Act Section 1902(e)(3)).
  46. Institutionalized Individuals Eligible under a Special Income Level (Social Security Act Section 1902(a)(10)(A)(ii)(V); 1905(a); 42 CFR 435.236).
  47. Poverty Level Aged or Disabled (Social Security Act Section 1902(a)(10)(A)(ii)(X); 1902(m)(1)).
  48. Individuals with Tuberculosis (Social Security Act Section 1902(a)(10)(A)(ii)(XII); 1902(z)).

Alaska Statute A.S. 47.07.010 is the statute that authorizes the Alaska Department of Health and Social Services (DHSS) to participate in the federal Medicaid program. A.S. 47.07.020(a) confirms that Alaska has adopted all *mandatory* Medicaid eligibility categories. A.S. 47.07.020(b) sets forth 15 *optional* Medicaid eligibility categories available in Alaska. Pursuant to A.S. 47.07.020(d), additional optional Medicaid eligibility categories may not be added unless they are first approved by the Alaska legislature. All told, Alaska appears to have 47 Medicaid eligibility categories, including 32 mandatory eligibility categories and 15 optional eligibility categories.<sup>22</sup>

**B. Mr. C Does not meet the Criteria of any Alaska Medicaid Eligibility Category**

The Division examined six commonly applicable Medicaid eligibility categories to see if Mr. C satisfied their eligibility criteria, but found that he did not.<sup>23</sup> DPA also examined whether Mr. C is eligible for a non-Medicaid, state-funded medical assistance program known as Chronic and Acute Medical Assistance (CAMA),<sup>24</sup> but again found that he is not.

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49. Certain Women Needing Treatment for Breast or Cervical Cancer (Social Security Act Section 1902(a)(10)(A)(ii)(XVIII); 1902(aa)).
  50. Presumptively Eligible Women with Breast or Cervical Cancer (Social Security Act Section 1902(aa); 1920B).
  51. Work Incentives Eligibility Group (Social Security Act Section 1902(a)(10)(A)(ii)(XIII)).
  52. Ticket to Work Basic Group (Social Security Act Section 1902(a)(10)(A)(ii)(XV)).
  53. Ticket to Work Medical Improvements Group (Social Security Act Section 1902(a)(10)(A)(ii)(XVI)).
  54. Family Opportunity Act Children with Disabilities (Social Security Act Section 1902(a)(10)(A)(ii)(XIX); 1902(cc)).
  55. Individuals Eligible for Family Planning Services (Social Security Act Section 1902(a)(10)(A)(ii)(XXI)).
  56. Individuals Eligible for Home and Community-Based Services (Social Security Act Section 1902(a)(10)(A)(ii)(XXII); 1915(i)).
  57. Individuals Eligible for Home and Community-Based Services - Special Income Level (Social Security Act Section 1902(a)(10)(A)(ii)(XXII); 1915(i)).
  58. Individuals at or below 133% FPL Age 19 through 64 (Social Security Act Section 1902(a)(10)(A)(i)(VIII)).
  59. Medically Needy Pregnant Women and Medically Needy Children under 18 (Social Security Act Section 1902(a)(10)(C)(ii)(I); 42 CFR 435.301(b)(1)(ii)).
  60. Medically Needy Children Age 18 through 20 (Social Security Act Section 1902(a)(10)(C); 42 CFR 435.308).
  61. Medically Needy Parents and Other Caretaker Relatives (Social Security Act Section 1902(a)(10)(C); 42 CFR 435.310).
  62. Medically Needy Aged (Social Security Act Section 1902(a)(10)(C); 42 CFR 435.320; 42 CFR 435.330).
  63. Medically Needy Blind and Medically Needy Disabled (Social Security Act Section 1902(a)(10)(C); 42 CFR 435.322; 42 CFR 435.324; 42 CFR 435.330).
  64. Medically Needy Individuals in HMOs Guaranteed Eligibility (42 CFR 435.326).
  65. Medically Needy Blind or Disabled Individuals Eligible in 1973 (42 CFR 435.340).

<sup>22</sup> See 7 AAC 100.002 ("Medicaid Eligibility Categories Recognized in the State").

<sup>23</sup> Terri Gagne hearing testimony; see also DPA's *Fair Hearing Position Statement* at page 2.

<sup>24</sup> A.S. 47.08.150 is the state statute creating the CAMA program; the DHSS regulations setting forth the CAMA program's eligibility criteria are located in the Alaska Administrative Code at 7 AAC 48.500 - 7 AAC 48.590.

The undersigned independently reviewed the Medicaid eligibility categories discussed in Section III(A) above. That review indicates that the only Medicaid category for which Mr. C may be eligible is the new Affordable Care Act category for low-income adults, without children, under age 65. Unfortunately, as discussed above, that Medicaid eligibility category is an optional category not currently available in the state of Alaska.

#### **IV. Conclusion**

It is clear that Mr. C has a significant need for the type of expanded Medicaid eligibility authorized by the Affordable Care Act. Unfortunately, the Medicaid eligibility category within which Mr. C appears to fit is an optional category which is not currently available in Alaska. Accordingly, the Division was correct to determine that Mr. C is not eligible for Alaska Medicaid. The Division's decision is therefore affirmed.

Dated this 23rd day of July, 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 1<sup>st</sup> day of August, 2014.

By: *Signed* \_\_\_\_\_  
Name: Jay D. Durych  
Title: Administrative Law Judge, DOA/OAH

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