

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

In the Matter of)
)
 S O)
_____)

OAH No. 14-1196-MDE
Division No.

DECISION

I. Introduction

S O applied for Medicaid Home and Community-based Waiver (Medicaid Waiver) benefits in January 2014. The Department of Health and Social Services, Division of Public Assistance (Division) found that he was not eligible for Medicaid benefits during either January or February, but was eligible for them beginning in March. Mr. O requested a hearing.

Mr. O's hearing was held on August 6, 2014. Mr. O was represented by D N. Public Assistance Analyst Terri Gagne represented the Division.

This case went to hearing over the Division's timeliness objection. Mr. O's hearing request, although made more than 30 days after the Division sent him notice of its eligibility determination, was allowed because that notice was sent to the wrong address.

The facts demonstrate that Mr. O's income exceeded the Medicaid program's income limit during January and February 2014, and that he was not financially eligible for the Medicaid program until March 2014. The Division's treatment of his January 2014 application, denying it for January and February, and approving it effective March 1, is therefore upheld.

II. Facts

Mr. O is a disabled adult. D N, his sister, is his legal guardian. Mr. O was admitted to the hospital on January 13, 2014. After Mr. O was admitted to the hospital, Ms. N was told on several occasions by the hospital financial department that Mr. O's hospital bills would be paid by emergency medical insurance.¹ Mr. O's Medicaid Waiver application was filed on January 15, 2014.² The application lists a street address in No Name 1 for Mr. O's residence. It, however, lists a different address with no identified city for the mailing address.³ The mailing

¹ Ms. N's testimony.

²² The application is dated January 13, 2014. It is date stamped as having been received by the Division on January 15, 2014. Exs. 2.0 – 2.7.

³ Ex. 2.0.

address should be in No Name 2.⁴ The Division sent its notices to Ms. N in No Name 1. This included the notice, dated April 16, 2014, which informed Ms. N that her brother's January 15, 2014 Medicaid application was denied.⁵ Ms. N filed another Medicaid application for her brother on April 15, 2014, which was also denied. The Division sent that denial notice on May 13, 2014, also to a No Name 1 address.⁶ The Division was aware there was an incorrect address because it had at least one piece of returned mail.⁷ At the time the Division issued its denial notices, April 16 and May 13, it had documents in its possession which showed the appropriate mailing address was in No Name 2.⁸ The Division ultimately approved Mr. O for Medicaid Waiver benefits effective March 1, 2014, and disapproved them for January and February 2014. Ms. N requested a hearing on July 14, 2014, stating that the notices were sent to a No Name 1 address when she lived in No Name 2, that the Division had returned mail, and that it did not contact her to check on her address.⁹

Mr. O's monthly income is \$2,618.73. It consists of \$1,475 in Social Security Disability Insurance (SSDI) payments, \$500 in Workers' Compensation payments, and a \$643.73 pension payment.¹⁰

The Division interviewed Ms. N and Mr. O's Medicaid care coordinator regarding Mr. O's Medicaid Waiver application on February 4, 2014. During that interview, the Division eligibility technician was informed of Mr. O's income, and informed Ms. N and the care coordinator that Mr. O did not financially qualify for Medicaid during January. The care coordinator said that a Medicaid Qualifying Income Trust (Trust) was being set up and that she hoped to have it finished by mid-February.¹¹

Ms. N testified that the Division eligibility technician told her that her brother exceeded the monthly income limit by \$200. She further testified that the person who prepared the Trust would not tell her the amount that was necessary to fund the Trust, but that she would receive paperwork from the Division informing her of the amount. She then spoke to her brother's care

⁴ Ms. N's testimony.

⁵ Exs. 4, 9.0, 13.0.

⁶ Ex. 15.0.

⁷ Ex. 3.1.

⁸ Exs. 10.1, 10.3, 10.14.

⁹ Ex. 16.

¹⁰ Exs. 3.2, 10.3.

¹¹ Ex. 3.0.

coordinator, who told her to fund the trust with the amount that the Division’s eligibility technician had spoken to her about.

Mr. O’s Trust was prepared; it was registered with the court on February 24, 2014.¹² The Trust was funded with a \$200 check from Mr. O’s funds on February 24, 2014.¹³ Ms. N testified that she deposited this amount because this was the amount she was told, by the Division eligibility technician, that her brother was over income. The terms of the Trust, which was signed by Ms. N on Mr. O’s behalf, refer in several places to the fact that there is an income limit of \$2,163.¹⁴ Mr. O’s monthly income beginning in March 2014 was reduced to less than the \$2,163 income limit by depositing \$1,475 into the Trust on March 3, 2014, and by similarly depositing \$1,143.93 on April 1, 2014, and \$1,143.73 on May 7, 2017.¹⁵

III. Discussion

A. Timeliness

An applicant for Medicaid benefits is required to request a hearing within 30 days of the date notice is sent advising him or her that those benefits have been denied.¹⁶ It is undisputed that the hearing request was made in mid-July 2014, which was more than 30 days after the Division’s last denial notice in mid-May 2014. However, because the denial notice was not sent to Ms. N’s correct address, when the Division could have easily ascertained the correct address, the 30 day time limit was never triggered. The hearing request was therefore timely.

B. Financial Eligibility

The Alaska Medicaid program contains a variety of coverage categories. *See* 7 AAC 100.002. Each of these categories has differing eligibility requirements. These include financial requirements which limit how much monthly income a Medicaid applicant may have, and how much in resources (cash, other personal property, and real property) an applicant may own. Because Mr. O is applying for benefits, he has the burden of proof, by a preponderance of the evidence, to demonstrate that he is financially eligible for those benefits.¹⁷

¹² Ex. 10.14.

¹³ Exs. 5.1, 10.1.

¹⁴ Ex. 10.18 (“Any income of the Personal Needs Allowance (but under the \$2,163 income limit”); Ex. 10.20 (“Disbursements from the Trust in any given month . . . cannot, when combined with the Beneficiary’s other countable income for that month, exceed the ‘Long Term Care Eligibility Standard’ of the State of Alaska, or \$2,163”).

¹⁵ Ex. A.

¹⁶ 7 AAC 49.030(a).

¹⁷ 7 AAC 49.135.

A Medicaid Waiver applicant/recipient may have more than \$2,163 in countable monthly income.¹⁸ Mr. O's monthly income is \$2,618.73. A person's monthly countable income, however, can be reduced by diverting some or all of it to a properly set up and funded Medicaid Qualifying Income Trust.¹⁹ If Mr. O reduced his monthly income to \$2,163 or less by depositing adequate funds to such a Trust each calendar month, then his monthly income would not disqualify him from Medicaid Waiver eligibility. It is undisputed that Mr. O's Trust was properly set up. It is undisputed that the Trust was not set up (signed, registered, and funded) until February 24, 2014.

Mr. O argued that he should have his Medicaid Waiver benefits approved beginning in January 2014. His only argument on this point consisted of Ms. N's testimony that the hospital financial office told her that he would be eligible for emergency Medicaid. This was the hospital's statement, not the statement of a Division employee. Accordingly, the Division cannot be held to it. Further, his income was undisputedly \$2,618.73 in January 2014. There were no funds diverted to the Trust, which would have reduced his income to the income limit of \$2,163 in January 2014, because the Trust was not set up until February 24, 2014. As a result, Mr. O's income exceeded the income limit in January 2014, making him ineligible for Medicaid during that month.

Mr. O's income for February also exceeded the \$2,163 income limit. He reduced his income by \$200 by depositing that amount into the Trust on February 24, 2014. However, that made his income \$2,416.73,²⁰ which still exceeded the income limit. Ms. N argued that she was told by the Division that her brother was over income by \$200, so that was the amount she deposited in the Trust. However, a review of the Trust itself shows there were several references in it to the applicable income limit of \$2,163. Ms. N signed the Trust on Mr. O's behalf; she was on notice that Mr. O's monthly income could not exceed \$2,163. She was therefore aware that she needed to reduce his monthly income to \$2,163 for him to qualify for Medicaid Waiver benefits, and did not do so in February 2014. As a result, Mr. O did not meet his burden of proof. He did not financially qualify for Medicaid Waiver benefits in February 2014.

¹⁸ 7 AAC 100.502(a)(4); AS 47.07.020(b)(6); *Aged, Disabled and Long Term Care Medicaid Eligibility Manual* Addendum 1 (<http://dpaweb.hss.state.ak.us/manuals/adltc/adltc.htm>).

¹⁹ 7 AAC 100.600(a).

²⁰ \$2,618.73 minus \$200 equals \$2,418.73.

IV. Conclusion

The Division's approval of Mr. O's Medicaid Waiver benefits effective March 1, 2014, which denied him those benefits for January and February 2014, is affirmed.

DATED this 19th day of September, 2014.

Signed _____

Lawrence A. Pederson
Administrative Law Judge

Adoption

The undersigned, by delegation from 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 October, 2014.

By: *Signed* _____

Name: Lawrence A. Pederson

Title/Agency: Admin. Law Judge, DOA/OAH

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