

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

In the Matter of )  
 )  
 K S )  
 \_\_\_\_\_ )

OAH No. 14-1603-MDE  
Agency No.

**DECISION**

**I. Introduction**

In July 20014 K S applied for Medicaid Waiver benefits and requested retroactive benefits for the months of April through June 2014.<sup>1</sup> On September 5, 2014,<sup>2</sup> The Division of Public Assistance approved Mr. S’s Medicaid application, but denied retroactive benefits for April and May. L G, Mr. S’s niece and power or attorney for health care decisions, appealed the denial.<sup>3</sup>

A telephonic hearing was held on October 15, 2014. Ms. G presented Mr. S’s case and Z N, No Name Senior Citizens staff, also testified on his behalf. Jeff Miller, Public Assistance analyst, appeared on the Division’s behalf.

The Division’s denial was based on its determination that Mr. S was over the \$2,000 resource limit for April and May. The Division’s denial is upheld because Mr. S was over-resourced under the Medicaid regulations and because neither the Division nor the Office of Administrative Hearings has authority to override those regulations.

**II. Facts**

The relevant facts in the case are not in dispute. Mr. S is 83 years old and resides in Senior Housing supported by the No Name Senior Center.<sup>4</sup> Ms. G is his power of attorney for health care decisions. D C, a niece in Germany, is Mr. S’s power of attorney for financial matters.

An individual without rights to No Name Senior Center funds misappropriated its financial information and was writing checks throughout the country in early 2014.<sup>5</sup> As a

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<sup>1</sup> Division position statement.  
<sup>2</sup> Ex. 6. The Division sent a revised denial on September 17, 2014. Ex. 7.  
<sup>3</sup> Ex. 8 – 8.1  
<sup>4</sup> Ex. 3.  
<sup>5</sup> N testimony.

result, the Senior Center had to close its accounts and reopen new accounts.<sup>6</sup> Ms. C was not aware of these issues.<sup>7</sup> In January 2014, Ms. C attempted to transfer funds, as she usually does, from Mr. S's account to the No Name Senior Center.<sup>8</sup> The funds would not transfer and an error message displayed. She contacted the bank and was told there was a fraud issue with the Senior Center and the funds were either blocked or the accounts had closed.<sup>9</sup> Ms. C continued to attempt the transfer without success.<sup>10</sup> As a result, Mr. S's bank accounts accumulated funds that were owed to No Name Senior Center for his housing.<sup>11</sup> Eventually, Ms. G was given access to Mr. S's accounts and transferred the overdue funds to No Name Senior Center.<sup>12</sup> Automatic payment is now set up on the accounts.<sup>13</sup>

The Division discovered that Mr. S's accounts contained more than the maximum \$2,000 resource limit and ended his Medicaid coverage.<sup>14</sup> On July 22, 2014, Mr. S reapplied for Medicaid and requested retroactive coverage for the months of April through June.<sup>15</sup> Mr. S's bank account balance on April 1, 2014, was \$4,027.85.<sup>16</sup> It was \$5,045.12 on May 1, 2014.<sup>17</sup>

The Division approved Mr. S's benefits, but did not approve retro-active coverage for April and May 2014 because Mr. S's resources exceeded the \$2,000 resource limit.<sup>18</sup>

### **III. Discussion**

There is one issue in this case: whether the Division was correct when it denied Mr. S retroactive Medicaid benefits for April and May 2014 because it determined he held resources worth more than \$2,000. Because this was a new application, Mr. S has the burden of proof, by a preponderance of the evidence, to show the Division's decision was incorrect.<sup>19</sup>

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<sup>6</sup> N testimony.

<sup>7</sup> Ex. A, letter from Ms. C (August 13, 2014).

<sup>8</sup> Ex. A.

<sup>9</sup> Ex. A.

<sup>10</sup> Ex. A.

<sup>11</sup> Ex. A; G testimony.

<sup>12</sup> Ex. A; G testimony. Mr. S's care coordinator misplaced his Alaska USA statement showing the funds transfer to No Name Senior Center. The statement was then forwarded to the Division late. *See* Ex. 8.2 #6. This delay does not change the outcome because Mr. S's account exceeded the \$2,000 resource limit on the first of the month.

<sup>13</sup> Ex. A; Ex. 8.a; G testimony.

<sup>14</sup> Ex. 8.2.

<sup>15</sup> Ex. 8; G testimony.

<sup>16</sup> Ex. 4; Ex. 7.

<sup>17</sup> Ex. 4.1; Ex. 7.

<sup>18</sup> Ex. 3; Ex. 6 – 8; Miller testimony.

<sup>19</sup> 7 AAC 49.135.

Medicaid has a financial resource requirement that an applicant may not own more than \$2,000 in countable resources.<sup>20</sup> Funds in a bank account are considered a resource.<sup>21</sup> The Medicaid program determines eligibility for retroactive Medicaid coverage “separately for each retroactive month in which the applicant seeks coverage.”<sup>22</sup> The value of countable resources is determined on the first day of each month.<sup>23</sup>

“Administrative agencies are bound by their regulations just as the public is bound by them.”<sup>24</sup> Regulation limits the scope of the administrative law judge’s review to whether the laws and policies have been properly applied in the case.<sup>25</sup> Neither the administrative law judge nor the Division can relax regulatory requirements unless it is authorized by law.

The facts show Mr. S had funds worth in excess of \$2,000 in his bank accounts on April 1, 2014, and May 1, 2014. The funds were countable resources. As a result, Mr. S exceeded the Medicaid resource limit for April and May. This means Mr. S was not eligible for Medicaid coverage in those months because he owned countable resources worth over \$2,000 on the first day of each of those months.

Mr. S presented credible evidence that his bank accounts exceeded the \$2,000 resource limit due to reasons beyond his control. Specifically, the No Name Senior Center fraud issue resulted in the inability of Ms. C to transfer funds. Unfortunately, the funds in Mr. S’s bank account were countable resources, and the fact that the funds were unable to be transferred to No Name Senior Center, due to no fault on Mr. S’s part, does not make them exempt from being counted as resources.<sup>26</sup> The funds were countable resources even though the record clearly shows that they were transferred to the No Name Senior Center when Ms. G was able to make the transfer.

Mr. S therefore did not meet his burden of proof by a preponderance of the evidence to demonstrate that he was financially eligible for Medicaid benefits for the months of April and

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<sup>20</sup> 7 AAC 40.270. Medicaid uses the Adult Public Assistance financial guidelines. See 7 AAC 100.502(a)(2) and 7 AAC 100.400(a).

<sup>21</sup> 7 AAC 40.260.

<sup>22</sup> 7 AAC 100.072(c).

<sup>23</sup> 7 AAC 40.270; Alaska Family Medicaid Manual Section 5150-6B.

<sup>24</sup> *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010).

<sup>25</sup> 7 AAC 49.170.

<sup>26</sup> The regulation regarding countable resources does not contain a hardship exception or ability to waive the resource limits. This office does not have the discretion to relax the Medicaid program’s eligibility requirements. “Administrative agencies are bound by their regulations just as the public is bound by them.” *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010). Also see State of Alaska Fair Hearing regulation 7 AAC 49.170.

May 2014. Consequently, the Division was correct when it denied Mr. S retroactive Medicaid for those months.

#### **IV. Conclusion**

Because Mr. S was over-resourced according to Medicaid's strict guidelines, the Division's decision to deny retroactive Medicaid benefits for April and May 2014 was correct and is affirmed.

Dated: November 12, 2014

*Signed* \_\_\_\_\_  
Bride Seifert  
Administrative Law Judge

### **Adoption**

Under a delegation from the Commissioner of Health and Social Services, I adopt this Decision as the final administrative determination in this matter, under the authority of AS 44.64.060(e)(1).

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 16<sup>th</sup> day of December, 2014.

By: *Signed* \_\_\_\_\_  
Name: Christopher M. Kennedy  
Title: Administrative Law Judge

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