

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

In the Matter of	)	
	)	
N F	)	OAH No. 15-0561-MDE
<hr style="width:40%; margin-left:0"/>	)	Agency No.

**DECISION**

**I. Introduction**

The Division of Public Assistance denied N F’s application for Medicaid Benefits for April 2015 because Ms. F was “over-resource,” that is, she had too much money or other “countable resources” to be eligible for Medicaid under Division regulations. Ms. F’s daughter, who holds power of attorney for Ms. F, appeals, arguing that the Division improperly counted certain monthly income as “resources” for purposes of its resources determination. This decision concludes that the funds at issue are “resources” under the applicable regulations. Accordingly, the Division’s decision denying Ms. F Medicaid benefits for April 2015 is affirmed.

**II. Facts**

N F is an 83-year old widow living in Anchorage, Alaska.<sup>1</sup> Ms. F’s daughter, L F-G, holds power of attorney for Ms. F’s affairs.<sup>2</sup> Ms. F was hospitalized in February 2015.<sup>3</sup> On March 3, 2015, she was transferred to a nursing home.<sup>4</sup>

On March 3, 2015, Ms. F-G submitted an application for Adult Public Assistance/Special Long Term Care Medicaid on Ms. F’s behalf.<sup>5</sup> The March 2015 application was denied because Ms. F was determined to be \$201 over the income threshold for the program.<sup>6</sup> However, the Division advised Ms. F-G that Ms. F might be able resolve the income eligibility issue by creating a Qualifying Income Trust, also known as a “Miller Trust,” on behalf of Ms. F.<sup>7</sup> On April 21, 2015, Ms. F-G registered a Miller Trust on Ms. F’s behalf.<sup>8</sup>

On April 27, 2015, Ms. F-G submitted a “Fair Hearing request” that included a request that the Division “reopen the application for the month of April and determine eligibility now

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<sup>1</sup> Ex. 2.1-2.2.  
<sup>2</sup> Ex. 6.9-6.11.  
<sup>3</sup> Testimony of L F-G.  
<sup>4</sup> Ex. 5.4; Ex. 9. As of the date of the hearing, Ms. F was still residing in the nursing home. F-G testimony.  
<sup>5</sup> Ex. 2.11, 5.  
<sup>6</sup> Ex. 2-2.18; Ex. 3-3.5; Ex. 11. Ms. F’s monthly income consists of social security payments and disbursements from two public employee retirement accounts. Ex.8-8.3, 8.9, 16.1-16.2.  
<sup>7</sup> Ex. 12.  
<sup>8</sup> Ex. 13.

that the Miller Trust is funded.”<sup>9</sup> Ms. F-G also submitted bank records relating to Ms. F’s monthly income and, specifically, the timing of monthly retirement account funds expended for bills shortly after their receipt.<sup>10</sup>

Ms. F receives monthly income from three sources, each of which deposits a sum into her bank account once each month. She receives a monthly Social Security Administration deposit, a monthly deposit from the State of Alaska Division of Retirement and Benefits, and a monthly deposit from the State of Colorado Public Employee Retirement Account.<sup>11</sup> On the bank records she submitted to the Division with her Fair Hearing request, Ms. F-G made notations showing that Ms. F receives funds from the Alaska retirement account near the end of each month, and indicating that those funds are “intended” to pay bills due the following month.<sup>12</sup>

Ms. F received her Alaska retirement account deposit on March 25, 2015. Next to the March 25 entry on the bank records, Ms. F-G included the hand-written notation: “This deposit ‘intended’ for 4/15 bills.”<sup>13</sup> Similarly, Ms. F receives funds from the Colorado retirement account on the last day of each month, but, according to Ms. F-G, those funds are “intended for” bills in the middle of the following month.<sup>14</sup> Ms. F received the Colorado retirement account deposits on March 31, 2015. Next to the March 31 entry on the bank records, Ms. F-G included the hand-written notation: “This deposit ‘intended’ for 4/15 bills.”<sup>15</sup>

On May 13, 2015, the Division “re-reviewed” Ms. F’s Medicaid application in light of the now-approved Miller Trust and the other information submitted. The Division denied the application as to April 2015 on the basis that Ms. F’s bank account balance, as of April 1, 2015, exceeded the allowable resource limit for the Long Term Care Medicaid program.<sup>16</sup> In making this determination, the Division treated the funds deposited on March 25 and March 31 as “resources,” not “income,” because they were deposited the previous month.<sup>17</sup> It is this characterization of the late March bank deposits that is at issue in this appeal.

A hearing was held on June 12, 2015. Ms. F-G participated telephonically, as did Michelle Cranford for the Division. The Division’s Fair Hearing Position Statement identified the issues in dispute as concerning both the March 2015 and April 2015 eligibility denials.

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<sup>9</sup> Ex. 19.

<sup>10</sup> Ex. 16.1-16.2; Ex. 19.

<sup>11</sup> See Ex. 16.1-16.2.

<sup>12</sup> Ex. 16.1; F-G testimony.

<sup>13</sup> Ex. 16.2 (emphasis in original).

<sup>14</sup> Ex. 16.2; F-G testimony.

<sup>15</sup> Ex. 16.2 (emphasis in original).

<sup>16</sup> Agency position statement, ¶ 16; Ex. 19-19.1.

<sup>17</sup> Ex. 19, 20.1; Cranford testimony.

However, Ms. F-G indicated at the outset of the hearing that she was not contesting the denial of benefits for March 2015, and was only contesting the determination that her mother was “over resource” for April 2015. Both parties agreed that the only issue in dispute is the narrow question of whether the funds at issue must be characterized as “resources” despite having been deposited only days earlier. After the hearing, the matter was taken under advisement.

### III. Discussion

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.<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>

Ms. F applied for “Special Long Term Care” (SLTC) Medicaid.<sup>20</sup> The regulations governing this program address financial eligibility, including how income and resources are defined, and setting resource limits on eligibility.<sup>21</sup> The “resource limit” for Medicaid eligibility is \$2,000.00 for an individual.<sup>22</sup> “Resources” are broadly defined 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.”<sup>23</sup> The value of an applicant's “countable resources” is determined as of the first day of the month in which the application is received.<sup>24</sup>

The regulation at issue in this appeal concerns the point at which an asset ceases to be considered “income,” and is thereafter treated as a “resource.” Under 7 AAC 40.300(a)(c), property or money received is considered “income in the month of receipt,” but then becomes “a resource in any calendar month after the month of receipt.” The sole issue in this appeal is whether certain funds regularly received by Ms. F should be counted as “resources” or as “income.” Specifically, the Alaska retirement account funds come around the 25<sup>th</sup> of each month, and the Colorado retirement account funds come on the very last day of the month. Because the applicable regulation treats money received as “income” only “in the month of

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<sup>18</sup> See 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 June 17, 2015).

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

<sup>20</sup> See 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 June 17, 2015).

<sup>21</sup> 7 AAC 40.260, 7 AAC 40.270, 7 AAC 40.280, 7 AAC 40.300.

<sup>22</sup> 7 AAC 40.270.

<sup>23</sup> 7 AAC 40.260(a).

<sup>24</sup> 7 AAC 40.270(b).

receipt,” and those funds become “a resource in any calendar month after the month of receipt,” the Division treated these funds, deposited in late March, as “resources” for the month of April.<sup>25</sup>

At the hearing, Ms. F-G explained her position that her mother’s monthly income from her retirement accounts should not be counted as a “resource” due to the mere happenstance of its arrival date. Ms. F-G argued that the retirement funds received in late March should be instead considered “income” for April because they were “intended” to pay bills in April, and indeed were expended within a week or two to pay bills. Ms. F-G argued that, under the circumstances, deposits received from her mother’s retirement accounts in late March should not have been characterized as “resources” for April eligibility purposes. Ms. Cranford, on behalf of the Division, explained that, to her knowledge, the regulations simply prohibit the exception that Ms. F-G is trying to create.

Ms. F-G asserts that rigid adherence to the “same month” rule in 7 AAC 40.300(a)(c) elevates form over substance. As she points out, the funds are received monthly and intended for almost immediate use to pay Ms. F’s bills.<sup>26</sup> Thus, the money is used by Ms. F to meet her “need for food, clothing and shelter” – the very same use that 7 AAC 40.300(a)(1) describes in its definition of “income.”<sup>27</sup> Had the same funds arrived on April 1, instead of March 31, there would be no question that they should be counted as “income,” and Ms. F would not be disqualified on the basis of her bank account being “over resource.”<sup>28</sup> However, and strictly because of the inopportune timing, funds received on the very last day of March become “countable resources” the very next day.

Ms. F-G argued that the situation is analogous to one described in the Adult Public Assistance Manual – specifically, Exception 2, listed under Manual Section APA 440.2.<sup>29</sup> Exception 2 permits leniency on the resource/income distinction when a periodic payment “is received in a month other than the month of normal receipt” – for example, when a check normally delivered on the first of the month is delivered one day earlier because of a holiday.<sup>30</sup> Ms. F-G acknowledged that her mother’s situation was not directly applicable to the exception or to the descriptive example in the handbook. However, she argued that the situations are

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<sup>25</sup> Cranford testimony.

<sup>26</sup> F-G testimony; Ex. 16-1-16.2.

<sup>27</sup> See 7 AAC 40.300(a)(1).

<sup>28</sup> This is not to say that Ms. F would qualify, or would not otherwise be found to be over resource, but for this issue. The May 14, 2015 denial notice expressly noted that certain resources were not considered in the Division’s eligibility calculation due to their values being unknown. Ex. 20.1.

<sup>29</sup> See Ex. 48-49.

<sup>30</sup> See Ex. 48-49.

analogous, and that, insofar as Exception 2 contemplates less than strict adherence to the “same month” rule, it makes sense to apply a similar exception here.

The Division noted that Exception 2 expressly emphasizes the unusual circumstance of a payment being “occasionally” received on the month other than its “month of normal receipt.”<sup>31</sup> Here, on the other hand, the income in question is always received on the last day of the month, in the case of the Colorado funds, or near the end of the month, in the case of the Alaska funds.<sup>32</sup>

The Division is correct that Exception 2 does not apply to the facts of this case. The salient characteristic of Exception 2 is a payment that comes in a different month than usual.<sup>33</sup> Here, on the other hand, the payment always comes on the last day of each month.<sup>34</sup> Exception 2 prevents a recipient from losing her benefits when a glitch alters the usual course and timing of her income. That exception is inapplicable here, where the course and timing of Ms. F’s income are unchanged. Moreover, to the extent Ms. F-G seeks to use Exception 2 as a springboard for more general leniency in the application of the “same month” rule, the APA handbook forbids such an interpretation, limiting such leniency to “the specific exceptions listed.”<sup>35</sup>

The applicable regulations unambiguously preclude the Division from treating funds Ms. F received in March as “income” for the month of April. Ms. F-G’s attempt to create a new exception to the “same month” rule would fundamentally alter the regulations. But the Division is required to follow the applicable regulations as written,<sup>36</sup> which, in turn, requires counting the unexpended March 2015 “income” as “resources” in April 2015.

#### **IV. Conclusion**

The Division’s May 14, 2015 denial of N F’s application for Medicaid benefits for the month of April 2015 is AFFIRMED.

Dated this 18<sup>th</sup> day of June, 2015.

*Signed* \_\_\_\_\_  
Cheryl Mandala  
Administrative Law Judge

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<sup>31</sup> Testimony of Ms. Cranford; Ex. 48.

<sup>32</sup> See Ex. 3.4-3.5; 16.1-16.2.

<sup>33</sup> See Ex. 48.

<sup>34</sup> See Ex. 3.4-3.5; 16.1-16.2.

<sup>35</sup> Ex. 48.

<sup>36</sup> *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010) (“Administrative agencies are bound by their regulations just as the public is bound by them”); 7 AAC 49.170 (limits of the hearing authority).

## 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 2<sup>nd</sup> day of July, 2015.

By: Signed  
Signature  
Cheryl Mandala  
Name  
Administrative Law Judge  
Title

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