

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

In the Matter of)

K Q, SR.)

) OAH No. 15-0588-MDE
) Agency No.

DECISION

I. Introduction

This case is an appeal by the Office of Public Advocacy (OPA) regarding the determination that K Q, Sr. was ineligible for Medicaid benefits in April and May of 2015 because his resources exceeded the limits to qualify. Assistant Attorney General Alex Hildebrand represented the Division of Public Assistance (Division), which denied these benefits. Attorney and Assistant Public Advocate Elizabeth Russo represented OPA, which is the full guardian for Mr. Q.

The Division's action is upheld because, based on the undisputed facts, Mr. Q's countable resources exceeded the eligibility limits. Based on the applicable law, Mr. Q's excess resources were disqualifying despite the undisputed facts that these excess resources were needs-based benefits paid by the Division, by direct-deposit, into the Public Guardian's bank account, near the end of the month, and were intended to pay expenses for the following month.

Because at this time there is no legal after-the-fact remedy to prevent future similarly situated needy individuals from suffering the unfortunate consequences of the events that led to Mr. Q's disqualification, it is hoped that the parties will work together to try to avoid having other Medicaid clients being over-resource due to Senior Benefits that are paid near the end of the month.

II. Facts

The facts in this case are not in dispute. OPA filed an application for Mr. Q for Long-Term-Care Medicaid, which was dated April 8, 2015.¹ The Division determined that Mr. Q was not eligible for Medicaid in April and May of 2015.² The Division correctly determined that Mr. Q's countable resources exceeded the eligibility limits on the first day of both of those months. An individual's resources must be less than the resource limit at some point on the first

1 Exhibit 2.

2 Exhibits 5 & 6.

day of the calendar month in order to qualify for Medicaid.³ Mr. Q's OPA checking account exceeded the resource limit of \$2,000.00 on both April 1, 2015 and May 1, 2015.⁴

OPA is the full guardian for Mr. Q, and manages his bank account. Mr. Q had \$2,049.07 in his bank account on April 1, 2015, and \$2,018.95 in his bank account on May 1, 2015.⁵ On March 27, 2015 and April 29, 2015, Mr. Q received his Senior Benefit of \$125 by direct deposit from the Division. Without these deposits to Mr. Q's bank account, he would not have been over the resource limits. The Senior Benefit is a needs-based benefit program that provides monthly payments to Alaskan residents who are at least 65 years old.⁶ These monthly benefits are paid by direct deposit early, that is, a few days before the beginning of the month.⁷

III. Discussion

OPA argues that the Division incorrectly determined Mr. Q was disqualified because Mr. Q's excess resources were needs-based Senior Benefits, paid by the Division, by direct-deposit, into the Public Guardian's bank account, near the end of the month, and were intended to pay expenses for the following month. OPA is understandably frustrated that its efforts to help Mr. Q by managing his finances so that he would qualify for Medicaid benefits failed due to the timing of the Division's payments.

Based on the facts in this record, however, Mr. Q was not eligible for Medicaid for the months of April and May of 2015 because his countable resources exceeded the limit established in regulation.⁸ The Medicaid available resource eligibility limit for Mr. Q was \$2,000.00.⁹ The balance of Mr. Q's bank account is an available resource. There is no exception for parts of an account balance that can be sourced as needs-based benefits intended for use in the month after an early deposit.¹⁰ Unless his available resources were no more than \$2,000.00 at some time on April 1, 2015 or May 1, 2015, Mr. Q was disqualified from Medicaid eligibility for those months.¹¹ Mr. Q had \$2,049.07 in his bank account on April 1, 2015, and \$2,018.95 in his bank account on May 1, 2015.¹²

3 7 AAC 40.270(b).
4 Exhibits 5.2, 5.3, & B; Testimony of C T.
5 Exhibits 5.2, 5.3, & B.
6 AS 47.45.302.
7 Exhibit A.
8 7 AAC 40.270 & Recording of Hearing.
9 7 AAC 40.270(a)(1).
10 7 AAC 40.260.
11 7 AAC 40.270; 7 AAC 100.400.
12 Exhibits 5.2, 5.3, & B.

The direct deposits, Mr. Q's Senior Benefits of \$125, each were properly counted as resources. Income such as the Senior Benefit is counted as a resource if the applicant still has it in any calendar month after the month he received it.¹³ Mr. Q's Senior Benefits were still in his account on the first of the month following the month that he received them in April and May of 2015, and were therefore properly included as a resource.

OPA argues that Senior Benefits should not be counted as resources if they are used in the month after they are received, because the Division intends for them to be used in the month following the deposit. This argument is not persuasive. Mr. Q's benefits were countable resources under the controlling regulations on the relevant dates.¹⁴

While the result was unfortunate, the Division's denial of Mr. Q's application was correct because that action was required by the eligibility regulations.¹⁵ To be eligible for assistance, Mr. Q cannot have countable resources in excess of \$2,000.¹⁶ There is no dispute that these were greater than \$2,000.¹⁷

IV. Conclusion

Mr. Q was not eligible for Medicaid during the months of April and May of 2015. Therefore, the Division's denial of his application is affirmed.

DATED this 24th day of December, 2015.

By: Signed
Mark T. Handley
Administrative Law Judge

13 7 AAC 40.300(c).

14 7 AAC 40.300(c) “. . . Unless otherwise specified, any property, money, or service within (a) of this section is income in the month of receipt but is a resource in any calendar month after the month of receipt.”

15 *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010).

16 7 AAC 40.270.

17 *See OAH No. 15-0561-MDE.*

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 27th day of January, 2016.

By: Signed
Name: Jared C. Kosin, J.D., M.B.A.
Title: Executive Director
Agency: Office of Rate Review, DHSS

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