

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

In the Matter of: )  
 )  
 E H ) OAH No. 15-0802-MDE  
 ) DPA Case No.

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**DECISION**

**I. Introduction**

The issue in this case is whether the value of E H's countable resources exceeded the maximum resource limit for Medicaid Special Long Term Care, under the Medicaid Home and Community-Based Waiver Services (waiver services) program, during the months of August 2014 through October 2014. The Division of Public Assistance (DPA or Division) denied Ms. H's application for retroactive Medicaid coverage for the three months in question on the grounds that the funds contained in Ms. H's bank account exceeded the waiver services program's maximum resource limit as of the first day of each of those three months.

This decision concludes that, pursuant to regulation, resource eligibility for Medicaid must be determined as of the first day of the month. There are no applicable exceptions, and no provisions for averaging resource levels over a period of time. On August 1, September 1, and October 1, 2014 Ms. H's bank account balance was in excess of the applicable \$2,000.00 resource limit. Ms. H, therefore, was not financially eligible for Medicaid during the period August 2014 through October 2014. Accordingly, the Division was correct to deny Ms. H's request for retroactive Medicaid coverage for those months on the basis that the value of Ms. H's assets exceeded the applicable \$2,000.00 resource limit. The Division's denial of her requested retroactive Medicaid coverage is therefore affirmed.

**II. Facts**

In July 2014 Ms. H was 93 years old and living at the No Name assisted living facility.<sup>1</sup> She had Medicaid coverage in July 2014, but her coverage lapsed on July 31, 2014 because she did not timely file a Medicaid renewal application (eligibility review form).<sup>2</sup>

On November 18, 2014 Ms. H's daughter and power-of-attorney holder, T D, submitted an eligibility review form to the Division on behalf of her mother.<sup>3</sup> On December 9, 2014 Ms. D

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<sup>1</sup> Exhs. 1, 2.0, 3.0. Ms. H passed away on June 18, 2015 (T D's hearing testimony). However, Ms. H's death does not make this case moot, because if it is determined that Medicaid is not liable for the assisted living home charges for the months at issue, Ms. H's estate may be liable for those charges.

<sup>2</sup> Exh. 3.0.

participated in an eligibility interview with a DPA eligibility technician (ET).<sup>4</sup> The ET informed Ms. D that, because her mother's Medicaid eligibility had lapsed on July 31, 2014, and over four months had transpired, it would be necessary for her eligibility review form to be processed as a new application. Ms. D indicated that she understood, and requested retroactive Medicaid coverage for the months of August, September, and October 2014.<sup>5</sup>

On April 9, 2015 the Division notified Ms. D that her mother's November 18, 2014 Medicaid waiver services application had been approved effective November 2014.<sup>6</sup> On April 16, 2015 the Division received a letter from Ms. D requesting retroactive Medicaid coverage, on behalf of her mother, for the months of August through October 2014.<sup>7</sup> On April 30, 2015 the Division mailed a notice to Ms. D requesting copies of her mother's bank statements for August, September, and October 2014 to allow the Division to determine her mother's financial eligibility.<sup>8</sup>

On May 7, 2015 Ms. D provided the requested bank statements to the Division.<sup>9</sup> The bank statements show that a Wells Fargo account, in the names of Ms. H, Ms. D, and N T, had a balance of \$5,372.29 as of August 1, 2014,<sup>10</sup> a balance of \$3,208.46 as of September 1, 2014,<sup>11</sup> and a balance of \$5,196.70 as of October 1, 2014.<sup>12</sup>

On May 15, 2015 the Division notified Ms. D that her request for retroactive Medicaid had been denied on the basis that Ms. H's countable resources exceeded the Medicaid program's applicable \$2,000.00 resource limit during the months of August through October, 2014.<sup>13</sup> On June 5, 2015 Ms. D requested a hearing on behalf of her mother, asserting that Ms. H's income (rather than resources) did not exceed the applicable income limit during the three months in question.<sup>14</sup> Ms. H passed away on June 18, 2015.<sup>15</sup> On June 24, 2015 the Division issued an amended denial notice, correcting certain erroneous figures stated in the original denial notice.<sup>16</sup>

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<sup>3</sup> Exhs. 2.0 - 2.7.

<sup>4</sup> All factual findings in the remainder of this paragraph are based on Exh. 3.0 unless otherwise stated.

<sup>5</sup> Exh. 3.0.

<sup>6</sup> Exh. 3.2.

<sup>7</sup> Exh. 4.

<sup>8</sup> Exh. 5.

<sup>9</sup> Exhs. 6.0 - 6.7.

<sup>10</sup> Exh. 6.2.

<sup>11</sup> Exh. 6.4.

<sup>12</sup> Exh. 6.5.

<sup>13</sup> Exhs. 8, 9.2.

<sup>14</sup> Exhs. 9.1 - 9.3.

<sup>15</sup> T D's hearing testimony.

<sup>16</sup> Exh. 11.

Ms. H's hearing was held on July 14, 2015. Ms. D participated in the hearing by phone, represented her mother by virtue of a power of attorney, and testified on her mother's behalf. Public Assistance Analyst Michelle Cranford participated in the hearing by phone, represented the Division, and testified on its behalf. The record closed at the end of the hearing.

During the hearing, the Division defended the rationale set forth in its denial notices. Ms. D did not dispute the figures stated in the monthly bank statements, or the Division's calculations. Rather, Ms. D explained that, because the assisted living facility's monthly charges were greater than the amount of her mother's monthly Social Security income, she was forced to let the monthly payments accrue until the amount in the bank account was sufficient to pay the ALF's charges. For this reason, the funds in the bank account sometimes exceeded the \$2,000.00 Medicaid resource limit as of the first day of the month.<sup>17</sup> Ms. D argued that looking at Ms. H's resources from a more comprehensive or macroscopic perspective (over a period of six months, for example), Ms. H's average resource level would have been below the Medicaid eligibility threshold.<sup>18</sup> Ms. D urged that this perspective be considered in deciding her mother's eligibility for the retroactive Medicaid benefits.

### **III. Discussion**

#### ***A. Overview of Relevant Medicaid Eligibility Categories***

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>19</sup> People qualify for Medicaid by meeting federal income and asset standards and by fitting into a specified eligibility category.<sup>20</sup> 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>21</sup>

One of the Medicaid eligibility categories available in Alaska is "Special Long Term Care" (SLTC) Medicaid.<sup>22</sup> SLTC is a species of Adult Public Assistance (APA)-related Medicaid.<sup>23</sup>

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<sup>17</sup> T D's hearing testimony.

<sup>18</sup> T D's hearing testimony.

<sup>19</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 August 31, 2015).

<sup>20</sup> *Id.*

<sup>21</sup> See the official Medicaid website at <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Eligibility/Eligibility.html> (date accessed August 31, 2015).

<sup>22</sup> See the 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 August 31, 2015).

APA-related Medicaid uses many (but not all) of the APA financial eligibility criteria (discussed below) for making APA-related Medicaid financial eligibility determinations.<sup>24</sup> APA-related Medicaid (in general), and SLTC Medicaid (in particular), are the categories at issue in this case.

Alaskans age 65 and over who qualify for APA-related Medicaid, and who require a level of long term care provided by a nursing facility, may qualify for additional Medicaid services under the Alaskans Living Independently (ALI) waiver.<sup>25</sup> The program is called a “waiver” program because certain statutory Medicaid requirements are waived by the Secretary of Health and Human Services.<sup>26</sup> Congress created the Home and Community-Based Waiver Services program to allow states to offer long-term care, not otherwise available through Medicaid, to serve recipients in their own homes and communities instead of in nursing facilities.<sup>27</sup> Medicaid coverage for Ms. H's assisted living facility (ALF) costs is sought through the ALI waiver in this case.

**B. Retroactive Medicaid Coverage**

Medicaid coverage is available retroactively in certain circumstances. Alaska Medicaid regulation 7 AAC 100.072 (“Retroactive Medicaid Eligibility”) states in relevant part as follows:

- (a) At the time of application or interview, an applicant may request Medicaid coverage for a maximum of three months immediately preceding the month of application if the applicant has unpaid medical expenses for dates of service any time during that three-month period.
- (b) The department will inform the applicant about potential retroactive coverage under this section as part of the application and interview process.
- (c) Eligibility must be determined separately for each retroactive month in which the applicant seeks coverage. The applicant need not be eligible for Medicaid in the month of application to be found eligible in any of the retroactive months. An application for retroactive Medicaid may be filed on behalf of an individual who is deceased at the time of application.
- (d) The department will use the income and resource methodology of the eligibility category for which the applicant is applying to determine the following: (1) actual income received in the month . . . (3) actual resources that were available in that month.

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<sup>23</sup> *Id.*

<sup>24</sup> *See* 7 AAC 100.400.

<sup>25</sup> *See* the Alaska Department of Health and Social Services' "Aged, Disabled and Long Term Care Medicaid Eligibility Manual" at Section 560(B), accessed online at <http://dpaweb.hss.state.ak.us/manuals/adltc/adltc.Htm> (date accessed August 31, 2015).

<sup>26</sup> *See* 42 USC 1396n(c).

<sup>27</sup> *See* 42 USC 1396n(c)(1); 42 CFR §§ 435.217; 42 CFR §§441.300 - 310. Federal Medicaid regulation 42 CFR 440.180, titled “Home or Community-Based Services,” provides in relevant part:

- (a) Description and requirements for services. “Home or community-based services” means services, not otherwise furnished under the State's Medicaid plan, that are furnished under a waiver granted under the provisions of Part 441, subpart G of this chapter . . .

See also the DPA's *Aged, Disabled and Long Term Care Medicaid Eligibility Manual*, Section 516.

**C. Resource Eligibility Standards Applicable to APA-related SLTC Medicaid**

APA-related Medicaid uses many of the Adult Public Assistance Program's financial eligibility criteria for making Medicaid financial eligibility determinations.<sup>28</sup> Among the Adult Public Assistance regulations used to make financial eligibility determinations for APA-related Medicaid are those concerning resources, resource limits, and excludable resources.<sup>29</sup>

For purposes of APA-related Medicaid, "resources" are defined broadly by Alaska Medicaid regulation 7 AAC 40.260(a) 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>30</sup> The federal Medicaid regulation on which Alaska's regulation is based, 20 CFR § 416.1201, provides a bit more guidance and states in relevant part that "[i]f the individual has the right, authority or power to liquidate the property or his or her share of the property, it is considered a resource." There are a number of types of resources which are exempt (i.e., *not* countable) for purposes of determining the value of an individual's resources.<sup>31</sup> However, bank accounts are generally not exempt, and are therefore countable, for purposes of the Medicaid resource limit.<sup>32</sup>

Under 7 AAC 40.270, the APA-related Medicaid countable resource limit is \$2,000.00 for an individual, and \$3,000.00 for an individual living with a spouse, regardless of whether the spouse is otherwise eligible for assistance.<sup>33</sup> This standard applies to persons seeking payment of ALF costs under the ALI waiver.<sup>34</sup> Under 7 AAC 40.270(b), 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>35</sup>

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<sup>28</sup> 7 AAC 100.400.

<sup>32</sup> 7 AAC 40.260, 7 AAC 40.270, 7 AAC 40.280.

<sup>30</sup> See also the Alaska Department of Health and Social Services' Adult Public Assistance Manual at Sections 430 - 431, accessed online at <http://dpaweb.hss.state.ak.us/manuals/apa/apa.htm> (date accessed August 31, 2015).

<sup>31</sup> 7 AAC 40.280; see also the Alaska Department of Health and Social Services' Adult Public Assistance Manual at Section 432, accessed online at <http://dpaweb.hss.state.ak.us/manuals/apa/apa.htm> (date accessed August 31, 2015).

<sup>32</sup> 7 AAC 40.280 ; see also the Alaska Department of Health and Social Services' Adult Public Assistance Manual at Section 432, accessed at <http://dpaweb.hss.state.ak.us/manuals/apa/apa.htm> (date accessed August 31, 2015).

<sup>33</sup> See also the Alaska Department of Health and Social Services' Adult Public Assistance Manual at Section 430-2 (stating that to be eligible for assistance, countable resources may not exceed \$2000 for an individual, or \$3000 for a couple, as long as at least one member is eligible for assistance), accessed online at <http://dpaweb.hss.state.ak.us/manuals/apa/apa.htm> (date accessed August 31, 2015).

<sup>34</sup> See the Alaska Department of Health and Social Services' "Aged, Disabled and Long Term Care Medicaid Eligibility Manual" at Addendum 2, accessed online at <http://dpaweb.hss.state.ak.us/manuals/adltc/adltc.htm> (date accessed August 31, 2015).

<sup>35</sup> See also the Alaska Department of Health and Social Services' Adult Public Assistance Manual at Section 430-3, accessed online at <http://dpaweb.hss.state.ak.us/manuals/apa/apa.htm> (date accessed August 31, 2015). When (as here) an application seeks retroactive coverage, the application is treated as having been received during each of the months for which retroactive coverage is sought.

***D. Was Ms. H "Over-Resource" During the Three Months at Issue?***

Under Medicaid law, the focus is on an applicant's actual and practical ability to utilize an asset; the test is whether the resource is available as a matter of fact rather than legal fiction.<sup>36</sup> In this case, it is undisputed that the balance of funds in Ms. H's bank account exceeded the applicable \$2,000.00 resource limit on August 1, September 1, and October 1, 2014. Accordingly, under 7 AAC 40.270, Ms. H was financially ineligible for Medicaid, based on excess resources, during the months of August through October 2014. There is no regulation providing an exception to the resource limit that would be applicable in this case. Likewise, there is no regulation that would allow the Division to average Ms. H's resources over a period of several months.

***E. Though the Result in This Case may Seem Unfair, the Division Does not Have the Authority to Disregard the Applicable Regulations***

The Division did not dispute that Ms. H had a great need for Medicaid benefits, and the record supports that finding. However, the Division is required to follow Medicaid income and resource eligibility regulations as currently written.<sup>37</sup> Likewise, the Office of Administrative Hearings does not have the authority to create exceptions to those regulations.<sup>38</sup> To provide retroactive Medicaid coverage for Ms. H for the months in question would require changes in law at both the state and federal level. Those changes, unfortunately, cannot be made through the hearing process.

**IV. Conclusion**

Resource eligibility for Medicaid is determined on the first day of the month.<sup>39</sup> On August 1, September 1, and October 1, 2014 Ms. H's bank account balance was in excess of the applicable \$2,000.00 resource limit. Ms. H, therefore, was not financially eligible for Medicaid during the period August 2014 through October 2014. Accordingly, the Division was correct to deny Ms. H's request for retroactive Medicaid coverage for those months, based on financial ineligibility. The Division's determination is therefore affirmed.

Dated this 9<sup>th</sup> day of September, 2015.

Signed  
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Andrew M. Lebo  
Administrative Law Judge

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<sup>36</sup> See *Post v. Cass County Social Services*, 556 N.W.2d 661 (N.D. 1996), citing *Schrader v. Idaho Dept. of Health and Welfare*, 768 F.2d 1107, 1112 (9th Cir.1985).

<sup>37</sup> "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).

<sup>38</sup> See 7 AAC 49.170 (limits of the hearing authority).

<sup>39</sup> 7 AAC 40.270(b).

## 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 9<sup>th</sup> day of October, 2015.

By: *Signed* \_\_\_\_\_  
Name: Andrew M. Lebo \_\_\_\_\_  
Title: Administrative Law Judge \_\_\_\_\_

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