

**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. 15-1388-MDE
Division No.

DECISION

I. Introduction

N F applied for Medicaid on March 11, 2015. The Department of Health and Social Services, Division of Public Assistance (Division) notified her on August 19, 2015, that her application was denied. The grounds for the denial were that her Medicaid Special Needs Trust (“Trust”) was not setup properly, which meant that she had too many assets to qualify for Medicaid benefits. Ms. F disagreed with the denial of her application and requested a hearing.¹ After she made her hearing request, Ms. F corrected the deficiencies in the Trust and reapplied for Medicaid on October 16, 2015. That application was approved effective October 1, 2015.

Ms. F’s hearing was held on November 19, 2015. Ms. F was represented by K Q, who is her brother-in-law and court-appointed guardian. Public Assistance Analyst Sally Dial represented the Division. The record was held open for post-hearing briefing, which was completed on December 3, 2015.

The uncontested facts demonstrate that the Division did not timely process Ms. F’s March 11, 2015 Medicaid application. The application was complete as of May 9, 2015. Pursuant to its own regulations, the Division is required to process applications within thirty days. The Division’s delay resulted in a late denial of her application on August 19, 2015. Its collateral result was that Ms. F did not cure the deficiencies in her Trust and reapply until October 2015, which resulted in her approval for benefits effective October 1, 2015. However, as a purely legal matter, the delay in processing the March application does not allow an approval for her benefits prior to her successful October application. The Division’s denial of Ms. F’s March 11, 2015 application and its approval of her subsequent application effective October 1, 2015 are **AFFIRMED**.

¹ Ms. F originally requested a hearing on September 3, 2015. The Division did not refer this case to the Office of Administrative Hearings for hearing until October 26, 2015, 53 days later. The Division has ten days after the hearing request to either refer the case to the Office of Administrative Hearings for hearing, or to notify the requesting party that he or she is not entitled to a hearing. *See* 7 AAC 49.080.

II. Facts²

Ms. F applied for Medicaid on March 11, 2015.³ She has a Trust which was created in 2007.⁴ The Division put Ms. F's application on hold and asked for additional information. Ms. F supplied the requested information on April 16, 2015. The Division then asked for additional information which was timely supplied on May 9, 2015.⁵ The Division processed the application and notified her, on August 19, 2015, that the application was denied because her Trust had not been created properly. The defective Trust meant that all of her funds in her Trust bank accounts were countable as assets, which made her financially ineligible for Medicaid benefits.⁶

Ms. F corrected the deficiencies in her Trust and submitted a new application on October 16, 2015. That application was approved effective October 1, 2015.⁷

III. Discussion

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. These same regulations contain the procedures for how applications are made and how the Division is required to process them.

The applicable Medicaid regulation states:

7 AAC 100.018. Application processing, timeframes, and notices.

(a) No later than 30 days after an application is received . . . a district office of the division handling public assistance matters . . . shall mail a notice to the applicant

(1) indicating that the applicant is either eligible or ineligible for benefits;

(2) requesting additional information or documentation if necessary to determine eligibility;

* * *

² The facts are found by a preponderance of the evidence.

³ Exs. 2.1 – 2.8.

⁴ Exs. 2.9 – 2.24.

⁵ Ms. Dial's testimony.

⁶ *See* Denial Notice attached to the Division's October 26, 2015 referral notice.

⁷ Ex. 1; Ms. Dial's testimony; Mr. Q's testimony.

(c) The department will not delay a finding of eligibility, deny eligibility, or terminate benefits on the basis that it was unable to comply with the time limits established by this section.

The Division asked for additional information from Ms. F in order to process her March 11, 2015 application. She complied with its information requests by May 9. Under the terms of the applicable regulation, the Division should have notified her of its denial within 30 days, which would have been June 8. However, the Division's denial notice was issued on August 19, 72 days late. Ms. F did not argue that the denial of her March 11 application was incorrect. Instead, she argued that the Division's failure to comply with its regulatory obligation to approve or deny an application within 30 days, justified approval of the March 11 application. She further points out that if her application had been timely denied, she would have been able to correct the deficiencies in her Trust, refile her application, and be approved sooner. Ms. F was able to correct her Trust deficiencies and refile her application on October 16, approximately two months after the August 22 denial, which resulted in her refiled application being approved effective the beginning of October, the refiling month. Ms. F further argues, that at a minimum, she should be provided retroactive Medicaid for the months preceding the October application – this would provide her with Medicaid beginning in July.

The Alaska Medicaid statutes and regulations do not authorize automatic approval of Medicaid benefits when the Division has delayed in processing an application. While Alaska Fair Hearing regulations allow an applicant a hearing to challenge the delay in processing an application, it does not allow approval of an ineligible applicant based upon delay.⁸

There is no Alaska case law on point providing for automatic approval of a Medicaid application based solely upon delay. There is one federal case from the 7th Circuit, *Smith v. Miller*, which provides that when a person who is already receiving Medicaid benefits requests approval for specialized medical services, delay in processing those requests beyond the specific time limits would result in automatic approval of those requests.⁹ However, the *Smith* decision carefully stated that it applied only to persons who had already been approved for Medicaid benefits; it was based in part on the fact that a medical provider had to determine medical necessity and request the service for the recipient. It was further based upon a federal Medical

⁸ “An opportunity for a hearing must be granted to a recipient whose (1) request for financial, food, or medical assistance is denied or is not acted upon with reasonable promptness.” 7 AAC 49.020.

⁹ *Smith v. Miller*, 665 F.2d 172 (7th Circuit 1981).

Assistance Manual provision which provided that “the system should provide that requests [for prior authorization] which have not been acted on within a specified time are automatically approved.” The decision specifically stated that it did not apply to persons who were applying for Medicaid benefits.¹⁰ There is a subsequent federal District Court decision from Tennessee where the District Court found that the Tennessee Department of Human Services was in contempt for its failure to comply with a consent order requiring timely processing of Medicaid applications, and ordered that applicants, whose applications were not timely processed, should be awarded interim Medicaid benefits, unless good cause existed for the delay.¹¹ That holding, however, was remanded on appeal.¹² It should be noted that the Tennessee case was based upon a failure to comply with an early court order, whereas there has been no previous administrative order in this case.

Consequently, because this case involves an initial application for Medicaid benefits, Ms. F is not legally entitled to an earlier approval of her Medicaid benefits even though the Division’s delay in processing her first application and notifying her of its denial resulted in her not obtaining Medicaid benefits until October 1, 2015. Similarly, the Division’s delay does not entitle her to retroactive Medicaid for the three months preceding her October application.¹³

IV. Conclusion

The Division’s approval of Ms. F’s Medicaid application effective October 1, 2015 is upheld.

DATED this 4th day of December, 2015.

Signed _____
Lawrence A. Pederson
Administrative Law Judge

¹⁰ *Smith* at 176.

¹¹ *Brown v. Luna*, 735 F. Supp. 762 (M. D. Tennessee, 1990).

¹² The Circuit Court’s unpublished decision remanded the matter to the District Court for reexamination of its contempt order because it used a sixty-day deadline rather than a ninety-day deadline and to “determine what sanctions or modifications are required to bring defendants into compliance with the ninety-day deadline.” *Brown v. Luna*, 936 F.2d 572 (6th Cir. 1991); 1991 WL 119410.

¹³ To the extent that Ms. F raised an argument, in her post-hearing briefing, that she should get benefits retroactive to her October application, because she fell within the Medicaid resource limits before October, that is not an issue for this case. It would have to have been raised as an appeal from the approval of the October application. This case only deals with the March application. No separate appeal, based upon the October application, has been referred to the Office of Administrative Hearings.

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 23rd day of December, 2015.

By: *Signed* _____
Name: Deborah L. Erickson
Title: Project Coordinator
Agency: Office of the Commissioner, DHSS

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