

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

In the Matter of:)
)
 L P) OAH No. 16-0282-MDE
) DPA Case No.
_____)

DECISION

I. Introduction

The issue in this case is whether L P is entitled to payment, by Alaska's Medicaid program, of certain medical expenses she incurred during February 2014. In late February 2016 Ms. P discovered that the medical expenses at issue had not been paid by Alaska Medicaid.¹ When Ms. P contacted the Division of Public Assistance (Division) to inquire why the medical expenses had not been paid, she was told that she had not been covered by Medicaid at the time the charges were incurred.² When Ms. P requested a hearing to contest the Division's failure to pay for the February 2014 medical expenses, the Division asserted that Ms. P's claim could not be paid because Ms. P had not requested a hearing until March 2016, approximately two years after the medical expenses were incurred.³

This decision concludes that Ms. P was not covered by Medicaid at the time the medical expenses at issue were incurred, and is therefore not entitled to payment of those medical expenses by Alaska's Medicaid program. Accordingly, the Division's de-facto decision not to pay the February 2014 medical expenses is affirmed. Because this decision resolves the case by reaching its merits (*i.e.* whether Ms. P was covered by Medicaid during the period in question), the Division's argument, that Ms. P's hearing request was untimely, is moot and therefore need not be addressed.

II. Facts

Ms. P is 42 years old; her household consists of herself and her six minor children.⁴ Mr. P works for an Alaska Native health care organization.⁵ Her income consists of earned income from her employment, child support payments, a small monthly benefit payment from the Veterans Administration (VA), and Alaska's annual Permanent Fund Dividend (PFD).⁶

¹ Exhibits 2, 4.

² Exhibits 2, 4.

³ Exhibits 3, 3.1.

⁴ Exhibits A4, B2, B3. Ms. P previously had a seventh child residing in her home, but he appears to have reached the age of majority and moved out of Ms. P's home sometime during 2013 (Ex. A5).

⁵ Exhibit B2.

⁶ Exhibit B2.

On March 12, 2008 Ms. P applied for Family Medicaid, which at that time was the Alaska Medicaid category covering low-income families (parents as well as children).⁷ On April 23, 2008 the Division mailed a notice to Ms. P,⁸ which stated that her application had been denied because her monthly income exceeded (by less than \$100.00) the Family Medicaid program's income limit for her household's size.⁹

Although Ms. P *herself* was found ineligible for Family Medicaid in 2008, *her children* were found to be eligible for Denali KidCare,¹⁰ which at that time was the name for a Medicaid eligibility category covering children and pregnant women whose household income was low, but still too high to qualify for Family Medicaid.¹¹ Although the Division's records on this issue were not made part of the hearing record, Ms. P testified that her children have been continuously covered by Denali KidCare since 2008 or before.

On June 18, 2013 Ms. P submitted an Eligibility Review Form to renew her children's Denali KidCare benefits.¹² The application was approved, and on June 19, 2013 the Division mailed Ms. P a notice advising her of this; the notice listed Ms. P's six children as "covered by Denali KidCare," but *did not* state that Ms. P *herself* was covered by Denali KidCare (or any other Medicaid eligibility category).¹³

In November 2013 Ms. P submitted another benefit renewal application.¹⁴ On November 15, 2013 the Division issued a renewal notice, which stated in relevant part "Your Denali KidCare coverage is renewed," and "[t]he following individuals in the household are covered by Denali KidCare: all children in the household."¹⁵

⁷ Exhibit 1. If the income of the parent(s) or caretaker relative exceeded the maximum income limit for the Family Medicaid program, the family would not be eligible for Family Medicaid (Sally Dial hearing testimony). However, the children might still be eligible for the Denali KidCare program, which had higher income limits than the Family Medicaid program (Sally Dial hearing testimony). The "downside" of the Denali KidCare program was that it only covered the children in the household; it did not cover the parents / caretaker relatives (Sally Dial hearing testimony; *see also* Section 5100-1, Alaska Family Medicaid Manual. That was the situation in this case.

⁸ At that time, Ms. P's last name was J.

⁹ Ex. 1.

¹⁰ Ex. 2; L P's hearing testimony.

¹¹ Sally Dial's hearing testimony; Section 5340, Alaska Family Medicaid Manual. The Denali KidCare program encompassed the federal Medicaid eligibility categories of pregnant woman (PR), newborn (BA), healthy child (HC), and six-up (SU). *See* Section 5300, Alaska Family Medicaid Manual. Application intake and processing for Denali KidCare occurred in a separate Denali KidCare office rather than in the DPA field offices in which other applications for public assistance were accepted. *Id.*

¹² Exhibits A2 – A3.

¹³ Exhibit A4.

¹⁴ Exhibit A7. The renewal application form itself does not appear to be in the record.

¹⁵ Exhibit A7.

On February 22, 2014 Ms. P incurred charges from No Name Medicine totaling \$924.00, and charges from No Name Associates totaling \$293.00.¹⁶ Ms. P believed that she was covered by the Denali KidCare program at the time she incurred the charges.¹⁷

In May 2014 Ms. P submitted another eligibility review form.¹⁸ The Division approved Ms. P's renewal application on May 23, 2014; by this time, however, the Denali KidCare program had been discontinued, and Ms. P's children were instead approved for "Modified Adjusted Gross Income" (MAGI) Medicaid.¹⁹ On May 27, 2014 the Division mailed a notice to Ms. P, which stated in relevant part as follows:²⁰

Your application for Medicaid benefits received on May 1, 2014 has been approved Benefits start June 1, 2014. The following people are eligible for Medicaid: [Ms. P's six minor children are listed, but Ms. P is not listed]. You will get a Medicaid recipient identification card in the mail for each person listed above.

Ms. P's children continued to be covered by MAGI Medicaid from June 2014 through the present time.²¹ At some time during the last week of February 2016, Ms. P checked her credit report and discovered that the medical expenses which she had incurred two years earlier (on February 22, 2014) were being reported as unpaid and delinquent.²² On March 1, 2016 Ms. P submitted a letter to the Division requesting Medicaid payment of her February 2014 medical expenses.²³ Ms. P's letter states in relevant part as follows:

I . . . am requesting a fair hearing because when I pulled my credit report last week I noticed unpaid hospital bills on it. When I called and inquired about why the bills were not paid I was told that I was not covered by Denali KidCare during that time. My children have always been covered and my household qualified for Denali KidCare but for some reason unknown to Denali KidCare I had been taken off in 2008 and was not put back on until 2015. I have hospital bills totaling almost \$1,500.00 but I was never sent a letter stating that I was no longer covered and to my knowledge I thought I had been covered since 2006. Each renewal application I added myself and my children to the application but for some reason I was not renewed nor was I denied or sent documentation that stated I was not going to be renewed or that I was denied Since I was never notified that I was not covered by Denali KidCare and currently have outstanding hospital bills that were not paid

¹⁶ Exhibit 4; L P's hearing testimony.

¹⁷ Exhibit 4; L P's hearing testimony.

¹⁸ Exhibits B3 - B5.

¹⁹ Exhibits A8, A9.

²⁰ Exhibit A10.

²¹ Undisputed hearing testimony.

²² Exhibits 2, 4; L P's hearing testimony.

²³ All factual findings in this paragraph are based on Exhibit 2 unless otherwise stated. A paragraph break in the original document was omitted to make the quoted material more concise.

because of it, I would like [the Division] to pay for the outstanding bills because I was never sent notice that I was denied or not renewed.

On March 8, 2016 the Division mailed a notice to Ms. P informing her that it would not be referring her hearing request to the Office of Administrative Hearings (OAH) because it had not been filed on time.²⁴ On March 16, 2016 Ms. P filed a response to the Division's notice, appealing the Division's finding that her hearing request was untimely.²⁵ Ms. P's response reiterated the information contained in her prior letter, and also asserted that her hearing request was timely filed because it was filed within thirty days of her discovery that her February 2014 medical bills had not been paid by Alaska Medicaid.²⁶ On March 21, 2016 the Division issued a supplemental notice stating that it was referring the timeliness issue to OAH.²⁷

Ms. P's hearing was held on May 10, 2016. Ms. P participated in the hearing by phone, represented herself, and testified on her own behalf. Sally Dial participated in the hearing by phone, represented the Division, and testified on its behalf. Following the hearing, the record was left open for post-hearing filings through May 23, 2016, at which time the record closed.

III. Discussion

A. Over-view of Medicaid and its Relevant Eligibility Categories

Medicaid is an entitlement program created by the federal government, but administered by the states, to provide payment for medical services for low-income citizens.²⁸ Although having limited assets and income is one of the primary requirements for Medicaid eligibility, those factors alone do not qualify people to receive Medicaid benefits unless they also fall within an established Medicaid eligibility category.²⁹

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

²⁴ Exhibit 3.

²⁵ Exhibit 4.

²⁶ Exhibit 4. Ms. P's argument does have some support from the common-law discovery rule. The discovery rule tolls the running of an applicable statute of limitations or other filing period; the period does not begin to run "until the claimant discovers, or reasonably should have discovered, the existence of all elements essential to the cause of action" (claim). *See Gefre v. Davis Wright Tremaine, LLP*, 306 P.3d 1264, 1274 - 1275 (Alaska 2013). The Alaska Office of Administrative Hearings does not appear to have decided the issue of whether the discovery rule can be applied to extend the 30-day period for filing a hearing request specified in the Division's regulations. However, in this case, the discovery rule issue can be avoided, without prejudicing either party, by addressing the case on its merits.

²⁷ Exhibit 3.1.

²⁸ *See* State of Alaska Division of Health Care Services website at http://dhss.alaska.gov/dhcs/Pages/medicaid_medicare/default.aspx (accessed June 3, 2016).

²⁹ *See* <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Eligibility/Eligibility.html> (accessed June 3, 2016).

groups (optional eligibility groups).³⁰ Research indicates that, in addition to the coverage recently authorized by the Affordable Care Act, the federal government has created 65 different categories of Medicaid, including both mandatory eligibility groups and optional eligibility groups.

Before July 1, 1997, individuals and families who were eligible for and / or who received Aid to Families with Dependent Children (AFDC) were automatically eligible for Medicaid.³¹ However, in 1996 federal legislation was enacted which eliminated the AFDC program, but required that Medicaid continue to be available to those who previously qualified for AFDC. In Alaska, the category of Medicaid resulting from the 1996 legislation was called Family Medicaid.

Beginning in 1999, the Medicaid coverage based on federal poverty levels was expanded to cover more children and pregnant women.³² This new eligibility was combined with the then-existing poverty level eligibility categories for children and pregnant women, and became known as Denali KidCare. Importantly, although *parents* could qualify for Family Medicaid along with their children, Denali KidCare provided coverage *only for children* and women who were pregnant or had recently given birth.³³

B. Was Ms. P Covered by Medicaid During February 2014?

In order to be entitled to payment of her February 2014 medical expenses by Alaska Medicaid, Ms. P has the burden of proving, by a preponderance of the evidence, that she was covered by Medicaid at that time.³⁴ The evidence indicates that Ms. P truly *believed* that she was covered by Denali KidCare during February 2014. However, the Division's renewal notice dated June 19, 2013 listed Ms. P's six children as "covered by Denali KidCare," but *did not state that Ms. P herself* was covered by Denali KidCare. Similarly, the Division's renewal notice dated November 15, 2013, issued only about three months before Ms. P incurred the medical expenses at issue, stated that Ms. P's children were covered by Denali KidCare, but *did not* indicate in any way that Ms. P *herself* was covered.

I understand Ms. P's confusion concerning the different categories of Medicaid, and concerning who is covered under each category. If it is any consolation, those who are confused by

³⁰ See the official Medicaid website at <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Eligibility/Eligibility.html> (accessed June 3, 2016).

³¹ All references in this paragraph are based on Section 5001 of the Division's Family Medicaid Eligibility Manual, accessed online on June 8, 2016 at <http://dpaweb.hss.state.ak.us/manuals/fam-med/fmem.htm>.

³² All references in this paragraph are based on Section 5001 of the Division's Family Medicaid Eligibility Manual, accessed online on June 8, 2016 at <http://dpaweb.hss.state.ak.us/manuals/fam-med/fmem.htm>.

³³ See Section 5013 of the Division's Family Medicaid Eligibility Manual, accessed online on June 8, 2016 at <http://dpaweb.hss.state.ak.us/manuals/fam-med/fmem.htm>.

³⁴ See 7 AAC 49.135; 2 AAC 64.290(e).

Medicaid are in good company. Judge Henry J. Friendly, who has been called "one of the greatest federal judges in the history of the federal bench,"³⁵ once called Medicaid "a statute of unparalleled complexity."³⁶ Given that this renowned federal judge believed Medicaid to be extremely complicated, it is not surprising that Medicaid applicants and recipients have a difficult time understanding it. However, a close reading of the notices in the hearing record shows that the Division never represented to Ms. P that *she herself* was covered by Denali KidCare. Likewise, the list of family members on the first page of the Eligibility Review Form relied on by Ms. P (Exhibit B-3) is not a list of those persons seeking coverage; it is simply a list of everyone living in the household.

In summary, the preponderance of the evidence indicates that Ms. P was not covered by Medicare at the time she incurred the medical expenses at issue in February 2014. Further, the Division did not misrepresent, either in its forms or in its notices, that Ms. P had coverage under the Denali KidCare Program or any other Medicaid eligibility category. Accordingly, the Division is not liable for the medical expenses incurred by Ms. P in February 2014.³⁷

IV. Conclusion

Ms. P was not covered by Medicaid at the time the medical expenses at issue were incurred, and is therefore not entitled to payment of those medical expenses by Alaska's Medicaid program. Accordingly, the Division's de-facto decision not to pay Ms. P's February 2014 medical expenses is affirmed.

Dated this 13th day of June, 2016.

Signed _____
Jay Durych
Administrative Law Judge

³⁵ Judge Wilfred Feinberg, Chief Judge of the United States Circuit Court of Appeals for the Second Circuit, on the occasion of Judge Friendly's death in 1986.

³⁶ *DeJesus v. Perales*, 770 F.2d 316, 321 (2d Cir. 1985).

³⁷ The Division is required to follow its Medicaid regulations as currently written. "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). Likewise, the Office of Administrative Hearings does not have the authority to create exceptions to the Division's regulations. *See* 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 6th day of July, 2016.

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.]