

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

In the Matter of)	
)	
B B)	OAH No. 16-0678-MDE
_____)	Agency No.

DECISION

I. Introduction

The Division of Public Assistance (Division) determined that B B’s countable resources exceeded the threshold for Medicaid eligibility on December 1, 2015. It therefore terminated her Medicaid benefits. Ms. B’s public guardian appealed and argued that the Division incorrectly included Ms. B’s November 27, 2015 Senior Benefit direct deposit when it calculated her countable resources as of December 1, 2015.

Even though the Senior Benefit payment at issue was intended for use in December 2015, it counted as “income” to Ms. B on November 27, 2015, when it posted to her bank account. Those funds then became countable “resources” as of December 1, 2015. For this reason, Ms. B exceeded the resource limit for Medicaid eligibility on that date. Therefore, the Division’s decision terminating her Medicaid coverage is affirmed.

II. Facts

The facts of this case are not in dispute. B B is 101 years old.¹ As of April 2015, Ms. B was a qualified recipient of Medicaid benefits.²

The Office of Public Advocacy (OPA) serves as Ms. B’s full guardian. OPA Public Guardian Steven Young managed Ms. B’s case during the fall of 2015.³ In that role, Mr. Young oversaw Ms. B’s finances to ensure that she maintained her financial eligibility for Medicaid benefits. To do this, he regularly reviewed internally-generated reports that summarized each OPA client’s bank balance, called “spend-down reports.” Based on the information in the spend-down report, Mr. Young would transfer funds out of a client’s bank account if it approached Medicaid’s \$2,000 countable resource limit toward the end of each month.⁴ The timing of this

¹ Exhibit 2.1.

² Exhibit 9.1; Exhibit 2; OPA post-hearing brief, p. 6.

³ Exhibit 1.1; Exhibit 2; testimony of Steven Young.

⁴ He frequently would transfer those funds to a Medicaid Qualified Trust, where the funds would not count as a resource for Medicaid eligibility purposes. Testimony of Steven Young.

endeavor is significant, because Medicaid eligibility is determined as of the first day of the month.⁵

Ms. B receives a monthly needs-based Senior Benefit of \$175 per month, paid by the State of Alaska. A state contractor, J.P. Morgan Direct, administers and distributes Senior Benefits payments.⁶ Each payment correlates to a designated benefit month. For beneficiaries who receive their funds via direct deposit, J.P. Morgan issues direct deposit payments in the last several days of the month *preceding* the benefit month. For this reason, Ms. B's October 2015 Senior Benefit was direct-deposited into her bank account on September 29, 2015.⁷ Her November 2015 Senior Benefit posted to her account on October 29, 2015, and her December 2015 benefit posted on November 27, 2015.⁸ The parties agree that the benefits deposited at the end of each month were intended for use in the following month.

The timing of these direct deposits can complicate OPA's efforts to keep its clients under Medicaid's resource limit. This is because it typically takes one business day for the direct deposits to appear on a client's bank ledger, due to the bank's internal processing needs.⁹ In addition, OPA downloads the information made available by the bank and transfers it to its own internal database, called Estate Management Services or EMS.¹⁰ The public guardians then rely on the EMS data to generate spend-down reports and to manage their clients' accounts. As a result, the information they receive is only as current as the most recent EMS update. In addition, the spend-down reports only identify each client's account balance. They do not inform the guardians whether specific transactions have posted.

Because of her Senior Benefit deposits, Ms. B's bank account balance was just over the eligibility limit on the first day of several different months in late 2015. Her balance totaled \$2,122 on October 1, 2015, \$2,081.08 on November 1, 2015, and \$2,089.13 on December 1, 2015.¹¹

On November 30, 2015, Mr. Young reviewed a spend-down report that he printed at 6:39 a.m. that day.¹² It showed Ms. B's bank account balance at \$1,914.13. Believing that her balance would remain under the \$2,000 resource limit on December 1st, Mr. Young did not transfer

⁵ 7 AAC 40.270(b).

⁶ Testimony of Jeff Miller.

⁷ Exhibit 5.2.

⁸ *Id.*

⁹ Testimony of Troy Bowler.

¹⁰ *Id.*

¹¹ Exhibit 5.2

¹² Exhibit B.

additional funds out of the account.¹³ Unbeknownst to Mr. Young, the 6:39 a.m. spend-down report that he reviewed did not reflect Ms. B's monthly Senior Benefit deposit. Ms. B's bank ledger shows that her December Senior Benefit posted to her account on November 27th, and it raised her account balance to \$2,089.13 on that date.¹⁴

On November 5, 2015, OPA submitted Ms. B's renewal application for a type of Medicaid assistance called Aged, Disabled and Long-Term Care Medicaid, a subcategory of Alaska's Adult Public Assistance program.¹⁵ In processing the application, the Division became aware that Ms. B's December 1, 2015 bank balance exceeded the resource threshold by \$89.13.¹⁶ On May 5, 2016, it notified her that she was over the resource limit, and her Medicaid benefits would terminate on May 31, 2016.¹⁷

Through OPA, Ms. B requested a hearing, which took place on July 25, 2016. Assistant Public Advocate Elizabeth Russo appeared telephonically and represented OPA. Public Guardians Troy Bowler and Steven Young testified on Ms. B's behalf. Fair Hearings representative Jeff Miller appeared telephonically and represented the Division, and he also testified on the Division's behalf. All submitted documents were admitted into the record. The parties submitted closing briefs following the hearing, and the record was then closed.

III. Discussion

The Medicaid program is created under federal law, but it is administered by the state. State law sets out specific resource limits for Medicaid eligibility.¹⁸ To be eligible, an individual applicant's countable (non-excludable) resources may not exceed \$2,000 at any time on the first

¹³ Testimony of Steven Young. Mr. Young also testified that, for purposes of Medicaid eligibility, he believed the Division treated Senior Benefit funds the same way it treats Social Security payments. That is, the benefits would count as "income" in the month of intended use, rather than the month of actual deposit. *See* DHSS Adult Public Assistance Manual § 440-2, Exception 1. The relevant provision in the Division's manual, however, uses language that is specific to Social Security benefits and does not give the Division discretion to count other needs-based benefits in the same manner as Social Security payments. *See* DHSS Adult Public Assistance Manual § 440-2 ("[i]ncome is determined on a monthly basis and, except for ... the specified exceptions listed below, is counted in the month it is received").

¹⁴ Exhibit 5.2. It is unclear why the account balance in that spend-down report did not reflect a deposit that had posted three days earlier.

¹⁵ *See* 7 AAC Ch. 40; Exhibit 2; Division post-hearing brief, p. 1.

¹⁶ Exhibit 7; Exhibit 5-5.2.

¹⁷ Exhibit 7.

¹⁸ 7 AAC 100.400(a). These limits apply to Aged, Disabled and Long-term care benefits under the Medicaid Waiver program. *See* 7 AAC 100.002(d)(8); 7 AAC 100.500(3); 7 AAC 100.502(a).

day of a calendar month.¹⁹ If the applicant’s countable resources exceed that limit on the first day of the month, he or she is “over-resource” and therefore not eligible in that month.²⁰

The issue in this case is whether Ms. B’s November 27, 2015 Senior Benefit deposit was a countable “resource” on the first day of December 2015. OPA argues that, because the funds were intended for use in December, they were non-countable in November. It asserts that they were “income” on December 1, rather than a “resource” that is subject to the resource limit.²¹ Under OPA’s reasoning, Ms. B’s bank balance did not exceed the \$2,000 resource limit on December 1, 2015, and she retained her Medicaid eligibility.

The definitions of “income” and “resources” alone do not resolve this question, since the funds deposited to Ms. B’s bank account could satisfy both definitions. “Income” includes “money received by an applicant . . . which can be used . . . to meet the applicant’s need for food, clothing, and shelter.”²² “Resources” means “any real or personal property that an applicant . . . owns and can convert to cash to be used for his or her support and maintenance.” The determination whether the direct deposit at issue in this case was “income” or a “resource” on December 1, 2015 turns on the time at which she received it.

This question is clearly and unambiguously answered by applicable regulations. Under 7 AAC 40.300(c), property or money that an applicant receives is considered “income” in the month of receipt, but it is a “resource” in any calendar month after the month it is received.²³ Therefore, Ms. B’s November 27, 2015 direct deposit was “income” in November, the month she received it. However, it became a “resource” on December 1, 2015. This is true regardless whether the funds were intended for use in December, or whether they were a needs-based benefit.

This issue has been addressed in other administrative decisions which came to the same conclusion.²⁴ In *In re K.Q.*, the recipient’s Senior Benefit payment was direct-deposited late in

¹⁹ 7 AAC 40.270(a), (b). Under Division policy, an applicant’s resources are measured as of the first moment of the first day of the month. DHSS Adult Public Assistance Manual § 430-3, Exhibit 17.1.

²⁰ 7 AAC 40.270; *see also* DHSS Adult Public Assistance Manual § 430-3, Exhibit 17.1.

²¹ 7 AAC 40.260(a).

²² 7 AAC 40.300(a)(1).

²³ The regulation provides: “Unless otherwise specified, any property, money, or service [that satisfies the definition of “income”] is income in the month of receipt but is a resource in any calendar month after the month of receipt.” 7 AAC 40.300(c).

²⁴ *See In re K.Q.*, OAH No. 15-0588-MDE (Comm’r of Health & Human Svcs., 1/27/16) (direct-deposited Senior Benefits count as “resources” on the first day of the month following actual deposit, even if that is the month of intended use); *In re N.F.*, OAH No. 15-0561-MDE (Comm’r of Health & Human Svcs., 7/2/15) (late-month deposits count as “income” in the month of actual deposit, even if they are intended for use in the following month). Both decisions can be found in the record at Exhibit 6.

one month, and it put the applicant over the Medicaid resource limit on the first of the next month. Even though the parties agreed that the funds were intended to be used during the later month, the rule in 7 AAC 40.300(c) governed the outcome. The decision held: “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.”²⁵ In addition, the decision noted that there is no exception for the portion of the account balance attributable to a needs-based benefit like the Senior Benefit.²⁶ The issue of late-month direct deposits was also addressed in the *In re N.F.* decision, which similarly concluded that the Division must treat funds received in one month as “income” in that month. In the following month, it must consider them as “resources” that are subject to the resource limit.²⁷

The Division’s policy manual also clarifies that “income” is “counted in the month it is received.”²⁸ Both the Division and the Social Security Administration generally count “income” at the earliest point in time: either when it is received, when credited to an individual’s account, or when set aside for his or her use.²⁹ Applying this rule, Ms. B “received” her direct deposit in November 2015, and it was “income” at that time.

OPA argues that Ms. B’s deposit satisfies an exception that allows certain regular, periodic payments to be considered as “income” in “the normal month of receipt,” if the payments are actually received outside the “normal month.”³⁰ This argument, however, is not persuasive, because Ms. B’s Senior Benefit payments regularly and predictably post in the last several days of each month. Therefore, that is the “normal” month of their receipt. There was nothing unusual about the timing of the direct deposit at issue in this case.

OPA also argues that, although Ms. B’s Senior Benefit payment was credited to her account on November 27, 2015, it was not available for her use until December 1. Therefore, it should not be considered “income” until that time. However, Ms. B’s bank ledger shows that the deposit posted on November 27th, and the evidence indicates that it was available for her use in November. OPA’s EMS database did not reflect this deposit as of 6:39 a.m. on November 30th,

²⁵ *In re K.Q.*, OAH No. 15-0588-MDE, p. 3.

²⁶ *Id.*, p. 2. This differs from the required treatment of Social Security payments. *See* DHSS Adult Public Assistance Manual § 440-2, Exception 1 (Social Security payments always count as income in the month of intended use).

²⁷ *In re N.F.*, OAH 15-0561-MDE, p. 5.

²⁸ Alaska DHSS Adult Public Assistance Manual § 440-2.

²⁹ *Id.* This rule mirrors the one used by the Social Security Administration. *See* Social Security Program Operations Manual System (POMS) SI 00810.030(A).

³⁰ *See* POMS SI 00810.030(B), (C). *See also* Alaska DHSS Adult Public Assistance Manual § 440-2, Exception 2 (regular payments from sources other than Social Security are considered income in the normal month of receipt).

but that does not mean that Ms. B had not received the funds, or that they were unavailable for use prior to December 1. Mr. Bowler agreed that, even considering the bank's need for time to process bulk electronic transfers, the bank would have made those funds available for Ms. B's use by November 30th at the latest.³¹

OPA lastly argues that the Division impermissibly holds direct deposit recipients of Senior Benefits to a more stringent resource limit than paper check recipients. This is because paper checks are not received until after the first of each month. However, Senior Benefits beneficiaries are free to choose whether they receive benefit payments by check or by direct deposit. There are advantages and disadvantages to each option, and the recipient (or their guardian) must determine which one best suits his or her needs. The Division may count those benefits as "income" in different months because recipients, in fact, receive and have access to the funds in different months.

IV. Conclusion

Under Alaska law, the Division must count the direct deposit of Ms. B's Senior Benefit as "income" in the month it posted to her bank account, even if those funds were intended for use in the following month. Any unexpended funds that remained in the account on the first day of the next month became "resources" subject to Medicaid's resource limit for program eligibility. Ms. B's December 2015 Senior Benefit payment posted to her account on November 27, 2015, and it counted as "income" at that time. Because of that deposit, Ms. B exceeded the \$2,000 resource limit on December 1, 2015.

The Division correctly determined that Ms. B was over the Medicaid resource limit on December 1, 2015. As a result, it properly terminated her Medicaid benefits. Its decision is affirmed.

DATED: September 27th, 2016.

Signed _____

Andrew M. Lebo
Administrative Law Judge

³¹ Testimony of Troy Bowler. Further, had an updated EMS spend-down report been printed later in the day on November 30, it seems likely that it too would have reflected Ms. B's November 27th deposit.

Adoption

The undersigned 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 21st day of October, 2016.

By: Signed
Name: Douglas Jones
Title: Medicaid Program Integrity Manager

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