

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

In the Matter of)	
)	
F U)	OAH No. 16-1215-MDE
_____)	Agency No.

DECISION

I. Introduction

In September 2016, F U applied for retroactive Medicaid benefits for the months of July and August 2016.¹ The Division of Public Assistance (Division) denied the request, because Mr. U’s bank account balance exceeded the \$2,000 resource limit on the first day of each month. Mr. U appealed.

The Division’s decision is upheld. Under applicable Medicaid regulations, Mr. U was over-resource on the first day of July 2016 and the first day of August 2016. The Division has no authority to override the governing regulations, even if Mr. U was over-resource due to an understandable or explainable error.

II. Facts

The relevant facts in the case are not in dispute. Mr. U resides in an assisted living home in No Name.² He is disabled, and he receives monthly Supplemental Security Income (SSI) benefits.³

In 2014, Social Security Administration records erroneously indicated that Mr. U had died. As a result, he did not receive his monthly SSI benefits during that year.⁴ While the error was being corrected, Mr. U continued to qualify for and receive Medicaid benefits.⁵ The SSI error was not fully corrected until February 2015, when the Social Security Administration paid Mr. U his retroactive SSI benefits in a lump sum payment.⁶

¹ Division position statement.

² Exhibit 3.

³ *Id.*

⁴ Exhibit 7.4; Exhibit 26.

⁵ Exhibit 26 – 26.6.

⁶ Exhibit 7.4; Exhibit 31; Exhibit 27.3. Retroactive SSI benefits include any SSI benefits issued after the calendar month for which they were paid. *See* Exhibit 33.1 (Social Security Program Operations Manual SI 01130.600 A.1).

Q T is Mr. U's sister and full co-guardian.⁷ On May 19, 2015, Ms. T submitted Mr. U's Medicaid recertification application.⁸ On the application, she indicated that his 2015 year-to-date SSI payments totaled \$24,425.40.⁹ She added an asterisk with her name and telephone number, and she asked to be called if there were questions about Mr. U's income or resources.¹⁰ In the section regarding the applicant's cash resources, Ms. T provided Mr. U's bank account balance, \$16,112.49.¹¹

When the Division processed the application on June 8, 2015, it noted Mr. U's \$16,112.49 bank account balance, and it pended the application. On June 9, 2015, it sent Ms. T a letter, requesting bank statements that would show Mr. U's June 1, 2015, account balance.¹² The Division also asked for verification of any retroactive SSI benefits Mr. U might have received in the past 24 months.¹³ Ms. T never received this letter, so she did not provide the requested information.¹⁴

The Division strongly suspected that Mr. U's account balance exceeded \$2,000 on June 1, 2015, because of a retroactive SSI payment. A June 8, 2015, case note says as much: "Indication of review that this is retro SS benefits."¹⁵ More likely than not, for this reason, the Division did not terminate Mr. U's Medicaid benefits in 2015, even though Ms. T did not provide the requested documentation. The Division continued to issue those benefits each month through the term of the 2015 recertification application. Because she encountered no problems with his 2015 Medicaid application, Ms. T assumed that the unspent retroactive SSI benefits would not be a problem in future years.¹⁶

On May 31, 2016, Ms. T submitted Mr. U's next Medicaid recertification application.¹⁷ In the application section about cash resources, she listed Mr. U's bank account balance, \$9,381.08.¹⁸ On June 9, 2016, the Division denied Mr. U's application as

⁷ Exhibit 4 – 4.9.

⁸ Exhibit 27.1 – 27.6.

⁹ Exhibit 27.2 – 27.3.

¹⁰ Exhibit 27.2 – 27.3.

¹¹ Exhibit 27.2.

¹² Exhibit 28. According to the Division, an agency representative also called Ms. T, but the call went to voice mail. *See* Division submission dated 11/17/16.

¹³ Exhibit 28.

¹⁴ T post-hearing letter.

¹⁵ Exhibit 27.

¹⁶ Exhibit 7.3 – 7.5; T testimony.

¹⁷ Exhibit 29 – 29.5.

¹⁸ Exhibit 29.1.

over the program resource limit.¹⁹ Ms. T received the denial letter on June 13, 2016.²⁰ Believing it to be a mistake, she wrote the Division a letter, explaining that Mr. U was only over-resource because of a retroactive SSI payment.²¹

On August 4, 2016, Mr. U's assisted living home notified Ms. T that Mr. U's Medicaid benefits terminated as of July 1, 2016.²² Ms. T telephoned the Division the same day, and she became aware that retroactive SSI payments are excluded as countable resources for only nine months from the date the funds were received.²³ She then spent down Mr. U's bank balance. On September 30, 2016, she submitted a new application for benefits, including retroactive Medicaid benefits for the months of July and August 2016.²⁴

The parties agree that Mr. U's bank account balances on July 1, 2016, and August 1, 2016, exceeded \$2,000. On July 1, 2016, his account balance was \$9,024.73.²⁵ On August 1, 2016, it was \$8,837.22.²⁶ By September 1, 2016, his bank balance had fallen to \$814.66.²⁷ The Division approved Mr. U's September application for Medicaid.²⁸ However, it denied retroactive coverage for July and August 2016, because his resources exceeded the \$2,000 resource limit on the first day of each month.²⁹ Through Ms. T, Mr. U appealed.³⁰

The hearing took place on November 9, 2016. Ms. T appeared telephonically, represented Mr. U, and testified on his behalf. Public Assistance Analyst Jeff Miller also appeared by telephone and represented the Division. The record remained open after the hearing, so the parties could provide additional information about their communications in 2015 and 2016. The record closed on December 1, 2016. All submitted documents were admitted.

¹⁹ Exhibit 30.

²⁰ Exhibit 7.5.

²¹ Exhibit 7.4. Ms. T later received Mr. U's Medicaid card in the mail. Since the card indicated that it was effective June 1, 2016, through May 31, 2017, Ms. T assumed that the problem had been resolved. Exhibit 7.6; T submission dated 11/22/16.

²² Exhibit 7.5.

²³ Exhibit 31.

²⁴ Exhibit 2 – 2.9; Exhibit 31; T submission dated 11/22/16.

²⁵ Exhibit 5.1 – 5.2; Exhibit 8.

²⁶ Exhibit 5.3 – 5.4; Exhibit 8.

²⁷ Exhibit 8.

²⁸ See Exhibit 10.

²⁹ Exhibit 6 – 6.5; Exhibit 7.1.

³⁰ Exhibit 7.2 – 7.5.

III. Discussion

The issue in this case is whether the Division correctly denied Mr. U's application for retroactive Medicaid benefits for July and August 2016, because he held resources worth more than \$2,000 on the first day of each month. Because this was a new application, Mr. U has the burden of proof to show, by a preponderance of the evidence, that the Division's decision was incorrect.³¹

The Medicaid program determines eligibility for retroactive Medicaid coverage separately for each month in which the applicant seeks retroactive coverage.³² To be eligible, individual applicants may not have more than \$2,000 in non-excludable resources, also known as countable resources.³³ The value of countable resources is determined on the first day of each month.³⁴

In general, cash funds in a bank account are considered a resource.³⁵ However, the Medicaid program specifically excludes some resources, which are then considered non-countable for eligibility purposes.³⁶ One of these exclusions is set by Social Security Administration policy. It excludes from countable resources the unspent portion of any retroactive SSI benefits received after March 2, 2004, "for the 9 calendar months following the month in which the individual receives the benefits."³⁷ The Division's Adult Public Assistance Manual similarly states:

Any amounts retained from retroactive Social Security . . . and SSI benefits are excluded from resource consideration for nine consecutive calendar months following the month of receipt.³⁸

Mr. U received his lump-sum payment of retroactive SSI benefits in February 2015. Three months later, when he submitted his 2015 recertification application, his unspent funds were not countable resources subject to the \$2,000 limit. Although the Division did not receive

³¹ 7 AAC 49.135.

³² 7 AAC 100.072(c).

³³ 7 AAC 40.270. Medicaid uses the Adult Public Assistance financial guidelines. See 7 AAC 100.502(a)(2), 7 AAC 100.400(a).

³⁴ 7 AAC 40.270(b); Alaska Family Medicaid Manual Section 5150-6B.

³⁵ 7 AAC 40.260.

³⁶ See 7 AAC 40.280; Adult Public Assistance Manual 432-4A; Social Security Program Operations Manual SI 01130.600.

³⁷ Exhibit 33.1 (Social Security Program Operations Manual SI 01130.600 B.1).

³⁸ Exhibit 33 (Adult Public Assistance Manual 432-4A).

the formal documentation it requested in June 2015, this explains why the Division did not terminate Mr. U's Medicaid benefits at that time.

Ms. T was not aware that the exception for retroactive SSI payments lasted only nine months.³⁹ Therefore, she did not realize she would need to spend down the retroactive SSI benefits, so that he could remain eligible for Medicaid. As a result, on July 1st and August 1st, 2016, Mr. U's bank account balances remained above \$2,000.

Ms. T credibly testified that, had she been aware of the nine-month exclusion, she would have spent down Mr. U's funds. She claimed that the Division should have informed her of the rule, and because it did not do so, it bore some of the responsibility for Mr. U's ineligibility. While Ms. T's unhappiness with her brother's situation is understandable, the evidence does not support a finding that the Division is responsible for her misunderstanding of the law.

It is highly unfortunate that Ms. T did not receive the Division's June 2015 letter requesting additional information. That request might have led to a more detailed exchange of information between the parties, including a discussion about the time limit for excluding retroactive SSI payments. However, there is no evidence suggesting that Ms. T did not receive the letter due to Division error. Similarly, there is no evidence that the Division missed opportunities to clarify the rule during telephone conversations in 2015 or early 2016, because it does not appear that any conversations took place before Ms. T's August 4, 2016, call to the Division.

By July 2016, more than nine months had passed since Mr. U received his lump-sum retroactive SSI payment. Therefore, any unspent retroactive SSI funds in his bank account were countable resources subject to the \$2,000 resource limit for Medicaid eligibility.⁴⁰ There is no dispute that Mr. U's bank balance totaled \$9,024.73 on the first day of July and \$8,837.22 on the first of August 2016. Because his countable resources on July 1, 2016, and August 1, 2016, exceeded the eligibility limit, the Division properly denied his application for retroactive benefits.

³⁹ Exhibit 7.3 – 7.5; T testimony.

⁴⁰ As Ms. T noted in her post-hearing submission, the nine-month exclusion would have ended well before July 2016. Mr. U's Medicaid eligibility prior to July 1, 2016, is not at issue in this case; therefore, it is not addressed.

Medicaid regulations bind the Division and the undersigned, just as they bind the public.⁴¹ They do not allow the Division to relax the program's eligibility requirements, and they do not include a hardship exception. Therefore, the outcome of this case does not change even if the unspent funds remained in Mr. U's account due to explainable error. Similarly, it cannot change based on an assessment of resulting financial hardship to Mr. U.

IV. Conclusion

Mr. U did not meet his burden to show that he was financially eligible for Medicaid benefits for the months of July and August 2016. On the first day of each month, Mr. U's countable financial resources exceeded the program eligibility limit. Consequently, the Division correctly denied his application for retroactive Medicaid covering those months. Its decision is affirmed.

Dated: December 2, 2016

By: Signed
Kathryn Swiderski
Administrative Law Judge

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 16th day of December, 2016.

By: Signed
Name: Kathryn Swiderski
Title: Administrative Law Judge

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

⁴¹ *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010); 7 AAC 49.170.