

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

In the Matter of )  
 )  
 B C )  
\_\_\_\_\_ )

OAH No. 16-1278-MDE  
Agency No.

**DECISION**

**I. Introduction**

B D C was a Medicaid Expansion applicant for Denali Care coverage. His status as an individual admitted under the Compact of Free Association between the Government of the United States and the Government of the Federated States of Micronesia (COFA) made him an unusual applicant. After diligently researching the matter, the Division of Public Assistance (DPA) denied his application on September 27, 2016.

Mr. C appealed, receiving a hearing on the matter on December 5, 2016. He represented himself, offering testimony from himself and his adoptive mother, Col. D L C. Sally Dial, Public Assistance Analyst, argued the case for DPA. The record was held open to December 20 to permit additional submissions.

Based upon the undisputed evidence, it is not possible for Mr. C to qualify for Medicaid coverage under his present residency status. DPA's decision to deny coverage is affirmed.

**II. Facts**

Mr. C was born in September of 1988 in Pohnpei State, Federated States of Micronesia (FSM).<sup>1</sup> He was adopted shortly after birth by Col. C, with the adoption made final in Hawaii in 1989.<sup>2</sup> Col. C was posted to Okinawa the following year. The family applied for U.S. citizenship for B, but it was not possible to complete the citizenship process because it was thought that he needed to be on U.S. soil for two years.<sup>3</sup> Later, the family moved to the U.S. mainland, but citizenship did not seem to be a priority because FSM citizens were able to live in the U.S. with few limitations.<sup>4</sup>

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<sup>1</sup> Birth Certificate (submitted 12/9/16).

<sup>2</sup> Adoption Decree (Hawaii Family Court) (submitted 12/9/16).

<sup>3</sup> Testimony of Col. C.

<sup>4</sup> *Id.*

B C seems to have been raised American in every way, having lived in the U.S. or on overseas U.S. bases for more than 27 years.<sup>5</sup> He has never before received public benefits of any kind, but certain health issues led him to apply for expansion Medicaid in September of 2016.<sup>6</sup>

Mr. C is a citizen of the Federated States of Micronesia and holds a passport from that country.<sup>7</sup> He does not have permanent residency status; FSM citizens can live and work in the U.S. without that status.

Mr. C has never formally been granted U.S. citizenship. However, it was suggested at hearing that he might have acquired citizenship automatically by operation of the Child Citizenship Act of 2000. In researching that issue, I came to the conclusion that this could have occurred in Mr. C's case, but only if he had had a visa when he first came into the United States in 1988. I therefore issued the following order:

According to a U.S. Department of Homeland Security fact sheet, "any FSM . . . citizen who is coming to the United States based on an adoption outside the United States, or for the purpose of adoption in the United States, is ineligible for visa-free admission as a nonimmigrant under the Compacts." If this was true when Mr. C first came to the U.S. as an infant, it would seem that—unlike most FSM citizens—he must have had a visa for entry. And if that visa was one of several eligible types, the Child Citizenship Act may later have made him a citizen automatically.

Mr. C is requested to submit a copy of any visa under which he was admitted to the U.S. . . . .

Mr. C submitted nothing in response. I therefore find that he has not demonstrated U.S. citizenship for purposes of this Medicaid proceeding.

On September 27, 2016 DPA formally notified Mr. C that his application was denied.<sup>8</sup> The reason for denial was that Mr. C did not meet alien status requirements.<sup>9</sup> Mr. C contended in his hearing request that his special status as an FSM citizen qualified him for Medicaid.<sup>10</sup>

### **III. Discussion**

As a new applicant for benefits, Mr. C has the burden to prove his eligibility.<sup>11</sup>

Apart from certain exceptional circumstances, Alaska's Medicaid program is only available to people who are United States citizens, qualified aliens, or North American Indians

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<sup>5</sup> Testimony of Mr. C.

<sup>6</sup> Testimony of Col. C and Mr. C; Ex. 2.1.

<sup>7</sup> Ex. 2.4.

<sup>8</sup> Ex. 3.

<sup>9</sup> *Id.*

<sup>10</sup> Ex. 4.

<sup>11</sup> 7 AAC 49.135.

with lawful immigration status.<sup>12</sup> Mr. C is not a North American Indian. The questions are whether he fits in one of the exceptional circumstances, whether he is a citizen, and whether he is a “qualified alien.”

*Exceptional circumstances:* There are exceptions for aliens seeking emergency treatment (Mr. C is seeking full coverage, however) and for newborns.<sup>13</sup> The only exception that could apply to Mr. C is for individuals who can *claim* U.S. citizenship based on certain listed birth circumstances, even if their U.S. citizenship has not been otherwise determined.<sup>14</sup> This can include individuals born on American Samoa, Swain’s Island, and the Northern Marianas—but not the other Western Pacific islands that now make up the Federated States of Micronesia.<sup>15</sup> There is also an exception for individuals who can show an adoption certificate with a United States place of birth.<sup>16</sup> Mr. C’s adoption certificate, however, does not show this.

*Citizenship:* For children who were under 18 on February 27, 2001 and who met certain requirements, the Child Citizenship Act of 2000<sup>17</sup> conferred automatic citizenship. For this to have occurred, Mr. C would have had to have been admitted with an immigrant visa, not through visa-free admission. Because Mr. C has not provided a visa under which he was admitted, he has not demonstrated U.S. citizenship in this proceeding.

*Qualified Alien Status:* Although his alien status in the United States is entirely legal, Mr. C does not fit the definition of “qualified alien” under Alaska law. Alaska recognizes three kinds of “qualified aliens” for purposes of Medicaid eligibility.<sup>18</sup> Two of the categories relate to people of Iraqi or Afghan origin, or to victims of human trafficking, and have no relevance to Mr. C. The third category is qualified aliens “as defined in 8 U.S.C. 1641”<sup>19</sup>, a federal law governing basic Medicaid eligibility.

That federal statute in turn provides a number of eligible categories, such as aliens admitted for permanent residence and aliens granted asylum. However, although there have been efforts to amend the federal law to include them, individuals admitted under the COFA are

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<sup>12</sup> 7 AAC 100.050(a).

<sup>13</sup> See 7 AAC 100.306, 100.700.

<sup>14</sup> See 7 AAC 100.050-054.

<sup>15</sup> 7 AAC 100.054(b)(1), (5).

<sup>16</sup> 7 AAC 100.054(b)(7).

<sup>17</sup> 8 U.S.C. §§ 1431-33.

<sup>18</sup> 7 AAC 100.0052.

<sup>19</sup> 7 AAC 100.052(b)(1).

not included in this federal eligibility provision. This omission was confirmed by the United States Court of Appeals for the Ninth Circuit in an opinion issued in 2014.<sup>20</sup>

#### **IV. Conclusion**

B C is not eligible for Denali Care Medicaid at this time. The Division's decision to deny coverage is affirmed.

DATED this 3<sup>rd</sup> day of January, 2017.

Signed  
Christopher Kennedy  
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 18<sup>th</sup> day of January, 2017.

By: Signed  
Name: Christopher Kennedy  
Title: Deputy Chief ALJ

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

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<sup>20</sup> *Korab v. Fink*, 748 F.3d 875 (9<sup>th</sup> Cir. 2014). The main holding of *Korab* related to Hawaii law, but the decision also confirmed the omission of COFA aliens from federal eligibility.