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

In the Matter of	)	
	)	
E M	)	OAH No. 17-0066-MDE
	)	Agency No.

DECISION

I. Introduction

E M was denied Medicaid for one month because she had too much money in the bank to be eligible for Medicaid. She appealed the denial, arguing that she had written a check to the Internal Revenue Service before the first of the month, which effectively decreased the money available to her to below the threshold for Medicaid eligibility. A hearing was held. Because the Division of Public Assistance is required to count all money in the bank, even if some of that money has already been obligated by check, the division's denial is affirmed.

II. Facts

E M is an elderly resident of City A. She suffers from dementia. Until November 2016, she was being cared for by a home care agency. In November, however, her daughter, T M, who is E's power of attorney, transferred E to a more comprehensive care facility, Facility B. Because of the significant expense involved in paying for Facility B, on November 4, 2016, T applied for Medicaid for E.[1] T was aware that she would need to make some legal changes regarding E's property and income, including the establishment of an irrevocable trust. She sought legal advice, and was advised to wait until after her Medicaid interview to take the legal steps.

During this time, T was paying E's bills and depositing income in E's account. On November 17, 2016, T wrote and mailed a check from E's account for $6,475.00 to the IRS. The check did not clear until December 13, 2016.[2]

The Medicaid interview occurred on December 9th. Following the interview, T made all the necessary legal arrangements to qualify E for Medicaid. When the Division of Public Assistance evaluated E's application, it determined that E was not eligible for Medicaid for either November or December 2016. It based this decision on the size of E's bank balances on the first of each month. It concluded that E had more than $2,000 in the bank on those days. Because she

[1] Division Exhibit 2-2.7
[2] T. M testimony; M Exhibit.

exceeded the resource limit, E did not qualify for Medicaid in those months.[3] (She did, however, apparently qualify going forward.)

T appealed the denial. A telephonic fair hearing was held on March 6, 2017. At the hearing, T clarified that she was not appealing the denial for November—she understood that her mother was not eligible that month. She was, however, appealing the denial for December. The arguments raised by the parties in the fair hearing are discussed below.

III. Discussion

In this appeal, the Ms make only one argument.[4] In the Ms' view, once T wrote the IRS check on November 17, the money obligated by that check was no longer available to E. T has submitted detailed documentation of the amount of money in each of E's accounts, the deposits made, and checks written. She has also showed that, as a matter of simple arithmetic, taking into account a refund check from the home care agency, and the check obligated to the IRS, the money available to E on her books on December 1 was $1,670.[5] As T explained, this amount is "$330.00 dollars under the $2000.00 maximum allowed in bank accounts."[6] The division does not dispute the accuracy of T's accounting.

T's argument raises two possible avenues for finding E eligible. First, T is essentially arguing that accounting for Medicaid should be on an accrual basis, rather than on a cash basis. Under the cash basis of accounting, what matters is the cash that you have on hand, without regard to whether other expenses or income are legally owed. This would mean that as long as E still had the cash on hand—which would be true up until the day that the IRS cashed the check—the cash would be counted as a resource. Under accrual accounting, however, "expenses do not have to be paid" and "income [does not] have to be received" to be taken into account.[7] If the expense or income is accrued, it is counted when it becomes due or payable, which gives a more accurate snapshot of a person's actual assets.

This argument, however, has two problems. One problem is that the regulation that governs this hearing defines "resources" to mean property that is convertible to cash. This includes "[a]ny *cash* or other property *received*."[8] This regulation essentially mandates the use of

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3 Division Exhibit 7.

4 In the original appeal, the Ms included a second argument—that the Division's delay in scheduling the interview caused the failure to qualify for Medicaid in December. At the fair hearing, however, the Ms withdrew this argument.

5 M exhibit at #7.

6 *Id.*

7 Black's Law Dict. at 20 (6^{th} ed. 1990).

8 7 AAC 40.260 (emphasis added).

cash accounting because it says "cash received." It does not allow the applicant to report based on debts or income accrued—the debt must be paid and the income received in order to be counted.

The second problem with using the accrual methodology is that even if the accrual accounting methodology were permitted, a person must choose one accounting method, and then use only that method. That way, *all* income and *all* debts are reported consistently—whether on a cash basis or an accrual basis. T admitted that she does not keep E's books on an accrual methodology. Therefore, she could not use the accrual methodology here. In sum, because the accounting is on a cash basis, debts owed but not yet paid, even if the check is written, cannot be taken into consideration. What matters is the cash in the account.

The second possible issue raised by the Ms is whether a debt to the IRS might qualify as a countable deduction or exclusion. If it were true that a debt to the IRS qualified as an exception, E might be able to deduct the debt from her resources, even though the debt had not yet been paid as of December 1st.

The allowable exclusions from resources, however, are set by regulation.[9] The regulations do not provide that a debt to the IRS could be excluded from resources before it is actually paid. Without a regulation or statute that allows this debt to be taken into consideration, the correct method for determining a person's resources is to count up the value of all cash, including bank accounts and personal property that can be converted to cash.[10] Because the division followed this methodology, its decision is affirmed.

IV. Conclusion

The Division's decision that E M was not eligible for Medicaid benefits on December 1, 2016, because she was over the resource limit is affirmed.

DATED this 22nd of March, 2017.

By: *Signed*
Stephen C. Slotnick
Administrative Law Judge

[9] 7 AAC 40.280.
[10] 7 AAC 40.260.

Adoption

Under a delegation from the Commissioner of Health and Social Services and under the authority of AS 44.64.060(e)(1), I adopt this decision 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 11th day of April, 2017.

By: *Signed*
Name: Stephen C. Slotnick
Title: Administrative Law Judge

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