

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

In the Matter of)
)
 S C) OAH No. 17-0273-MDE
) Agency No.

DECISION

I. Introduction

Z N, S C's guardian, applied for Medicaid for Mr. C. The Division of Public Assistance determined that Mr. C's resources exceeded the program's resource limit and denied his application. Ms. N requested a fair hearing.

Mr. C's resources exceeded the program limit on January 1, 2017 and February 1, 2017. Therefore, the division's denial of Mr. C's January 31, 2017 application for Medicaid coverage is upheld.

II. Facts

S C is a 75 year old veteran. He lives in the No Name Assisted Living Home. He receives monthly social security benefits of \$916 and veterans benefits of \$838.

Z N is Mr. C's guardian. She applied for Medicaid long term care coverage under the waiver program for Mr. C in January 2017. In December 2016, Mr. C was found to meet the choice waiver program's level of care criteria.¹ However, in February 2017, the division denied his application for benefits under the long term care program. The division cited the \$2,000 resource limit for the program, and noted that Mr. C's bank account had a balance of \$2,305.92 on January 1, 2017, and \$3,019.16 on February 1, 2017.² Ms. N requested a hearing.

A telephonic hearing was held on April 19, 2017. Ms. N represented Mr. C, with assistance and testimony from Mr. C's care coordinator, Y J. Sally Dial, a Public Assistance Analyst with the division, represented the division.

III. Discussion

The division determines Medicaid eligibility for individuals over 65 in part according to the eligibility regulations for the Adult Public Assistance (APA) program.³

¹ Exhibit 2.2 - 2.10.

² Exhibit 3 and 3.1.

³ Exhibit 5 (7 AAC 100.400); 7 AAC 100.002(b), (d), and (e).

The APA resource limit for an individual applicant is \$2,000.⁴ The division calculates the value of a person's resources on the first moment of the first day of the month to determine eligibility for that month.⁵

The division concluded that Mr. C was ineligible because his bank balance exceeded the \$2,000 limit on both January 1, 2017 and February 1, 2017. The division based this on bank statements.⁶ Ms. N did not dispute these balances.

Ms. N argued that the account balance exceeded \$2,000 on the first of the month in January and February because she had written checks to No Name Assisted Living Home in the previous month, and No Name Assisted Living Home had waited to cash those checks until after the first of the month rather than cashing them immediately.⁷ The notes from the eligibility worker's interview with Ms. N indicate that a check for \$2,500 to No Name Assisted Living Home was written on January 25, 2017, but not cashed until February 6, 2017.⁸ The division does not dispute that the check was written in one month and cashed in the next. From Ms. N's perspective, because she had no control over when No Name Assisted Living cashed the check, so Mr. C should not be penalized.

Furthermore, Ms. N argues that she did not have clear notice of the regulation regarding the date of resource valuation. When the division interviewed Ms. N about the application in mid-February, the eligibility technician suggested paying bills with cashier's checks rather than personal checks, so that the funds would be taken out of the account immediately.⁹ The division denied the application the next day.¹⁰ Ms. N argued that it was not fair to deny the application, because she would have used cashier's checks to pay No Name Assisted Living had she known the importance of ensuring that those checks cleared before the first of the month.

Ms. N is relatively new to the role of guardian, and her determined advocacy of Mr. C's best interests indicates that it is a role to which she is well suited. The regulations governing the long term care assistance program are quite complex, particularly since the regulations about the valuation date for the resource limit are incorporated by reference, and

⁴ Exhibit 6 (7 AAC 40.270).

⁵ Exhibit 6 (7 AAC 40.270(b)); Exhibit 10 (Adult Public Assistance Manual 430-3).

⁶ Exhibit 2.9 and 2.10.

⁷ Testimony of N. *See also* Exhibit 2.

⁸ Exhibit 2. *See also* Exhibit 2.10.

⁹ Exhibit 2.

¹⁰ Exhibit 3.1.

the text is located in the Alaska Public Assistance program provisions. The valuation date provision is not obvious, and neither is the cashier's check workaround.

However, fair or not, the division reached the only result permitted under the applicable regulations. It has no leeway to disregard the regulations even just for the two months in question in this case. There is no exception that applies to this situation.¹¹ Although the result is harsh, it is consistent with previous decisions.¹² This is not an instance where the division has discretion to deviate from the regulations.

IV. Conclusion

Accordingly, the division's decision to deny Mr. C's application dated January 31, 2017 is upheld.

Dated: April 28, 2017.

Signed
Kathryn L. Kurtz
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 15th day of May, 2017.

By: Signed
Name: Kathryn L. Kurtz
Title: Administrative Law Judge

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

¹¹ See 7 AAC 40.260, 7 AAC 40.270 (Exhibit 6).

¹² See, for example, *In re K.Q. Sr.*, OAH No. 15-0588-MDE (appeal pending), accessible at <http://aws.state.ak.us/officeofadminhearings/Documents/MDE/MDE150588%20appeal%20pending.pdf>; *In re B.B.*, OAH No. 16-0678-MDE (appeal pending) <http://aws.state.ak.us/officeofadminhearings/Documents/MDE/MDE160678%20appeal%20pending.pdf>.