

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

In the Matter of)
)
M J) OAH No. 17-0755-MDE
) Agency No.

DECISION

I. Introduction

M J applied for Medicaid benefits. The Department of Health and Social Services, Division of Public Assistance (division) determined that her household's monthly income exceeded the Medicaid income limit for a household of two persons and denied her application. Ms. J appealed and requested a hearing. Based on the evidence in the record, the division's eligibility determination is affirmed.

II. Factual and Procedural History

Ms. J resides with her husband, K.¹ They own a No Name service business, No Name LLC.² In 2016, their annual household income included wages Mr. and Ms. J received from the business in the amount of \$20,000;³ S-Corporation income of \$34,834;⁴ and permanent fund dividends of \$1,022, each.⁵ They claimed a Farm loss of \$3,648.⁶ Accordingly, their total pre-tax, gross household earnings in 2016 were \$53,230, or \$4,435.83 per month.⁷

Ms. J applied for Medicaid benefits on June 20, 2017.⁸ She was seeking retroactive Medicaid benefits for May 2017.⁹ On June 22, 2017, the division mailed a notice to Ms. J stating that it had denied her application because her household's countable income exceeded the Medicaid income limit for a household of the Js' size.¹⁰ Based on the Js' 2016 S-Corporation tax return, a hand-written list of business expenses for April and May 2017, and pay stubs for April and May 2017, the division determined that the Js' monthly self-employment income was \$3,648.12.¹¹ The Division also

¹ Division Exhibit 2.3-2.4.

² Division Exhibits 2.7, 2.8, 2.16-2.19, 2.26-2.27, 2.29.

³ Division Exhibits 2.7; 2.16-2.19, 2.25.

⁴ Division Exhibits 2.25, 2.26-2.27, 2.29. According to the Js' 2016 tax return for the S-Corporation 1120S, the Js' S-Corporation ordinary business income was \$36,113 (Gross profit of \$80,636 – total deductions \$44,523). Division Exhibit 2.20.

⁵ Division Exhibit 2.25.

⁶ Division Exhibit 2.25.

⁷ Division Exhibit 2.25.

⁸ Division Exhibits 1, 2.

⁹ Division Exhibit 2.3.

¹⁰ Division Exhibits 3-3.1.

¹¹ Division Exhibits 3-3.1.

determined that the Js' PFD amount, when averaged out to a monthly payment was \$85.17 each.¹² Based on these numbers, the division concluded that the Js' total countable income was \$3,818.46.¹³

On June 29, 2017, Ms. J requested a hearing to appeal the division's denial of her application.¹⁴ Ms. J's telephonic hearing was held on August 9, 2017. Ms. J and her husband K represented themselves. Public Assistance Analyst Sally Dial presented the division's position. Because the Js had not yet received the division's position statement, a supplemental hearing was scheduled for August 11, 2017.

At the hearing, Ms. J testified that although the business had reduced the price for one of its customers in April 2016, the Js' business income and expenses have not changed significantly since 2016.¹⁵ She testified that the business' gross income was \$6,520 in April 2017 and \$6,660 in May 2017.¹⁶ According to Ms. J, the business' expenses vary from month to month.¹⁷ She claimed business expenses—including the Js' wages and self-employment taxes—of \$6,141.61 in April¹⁸ and \$3,229.41 in May.¹⁹ In addition, she testified that the business typically spends about \$800 per year for new vacuum cleaners.²⁰ Although Ms. J expressed concern about being prepared for other unexpected business expenses, such as the cost of replacing or repairing stripper machines or vehicles, she acknowledged that the business has not actually incurred such additional expenses.²¹ The Js take monthly wages from the business in the amounts of \$416.67 for her and \$1,250 for him.²² Based on these numbers, the Js' average monthly income is \$3,674.83.²³

¹² The 2016 PFD of \$1,022.00, divided by 12 months, equals \$85.17 per month.

¹³ Division Exhibit 3.

¹⁴ Division Exhibit 4.

¹⁵ In April 2016, they reduced the price for one of their customers from \$5,410 to \$4,995 per month. M J Testimony, August 9, 2017; M J Testimony, August 11, 2017.

¹⁶ M J Testimony, August 9, 2017.

¹⁷ M J Testimony, August 9, 2017.

¹⁸ M J Testimony, August 9, 2017. These expenses included a vehicle loan payment and a new laptop computer, which are ineligible deductions under Medicaid. *See Family Medicaid Eligibility Manual* §§ 5164-2 B, 5164-1 I.

¹⁹ M J Testimony, August 9, 2017. She estimated average monthly business costs at \$3,600-\$3,700. M J Testimony, August 9, 2017; M J Testimony, August 11, 2017.

²⁰ M J Testimony, August 9, 2017. Those expenses are reflected in the 2016 S-Corporation tax return. M J Testimony, August 9, 2017.

²¹ M J Testimony, August 9, 2017; M J Testimony, August 11, 2017. In addition, the purchase price of durable goods are not allowable costs of doing business. *Family Medicaid Eligibility Manual* § 5164-2 B. And replacement parts, such as cords and switches, were included in the maintenance and repair costs she claimed. M J Testimony, August 9, 2017.

²² M J Testimony, August 9, 2017.

²³ Average business income for April and May 2017: $(\$6,520 + \$6,660) / 2 = \$6,590$. Average business expenses: $(\$800 / 12) + (\$6,141.61 + \$3,229.41) / 2 = \$4,752.18$. $\$6,590$ (average business income) - $\$4,752.18$ (average business expenses) + $\$416.67$ (Ms. J's wages) + $\$1,250$ (Mr. J's wages) + $\$170.34$ (PFDs) = $\$3,674.83$

IV. Discussion

The issue in this case is whether the division correctly denied Ms. J's application of Medicaid benefits. Because this is an initial eligibility determination, Ms. J has the burden of proving by a preponderance of the evidence that her application should have been approved.²⁴

Medicaid is a program created by the federal government, but administered by the state, to provide payment for medical services for low-income citizens.²⁵ On September 1, 2015, Alaska expanded Medicaid eligibility to include the "expansion group." The expansion group includes adults aged 19 through 64 who make 133% or less of the federal poverty limit and are not eligible for another type of Medicaid or Medicare.²⁶ Ms. J and her husband fall under the Medicaid expansion category.

The income limit for the expansion group for a household of two is \$2,249.²⁷ There is a general income disregard, of 5% of the Federal poverty limit.²⁸ This means that the department added a MAGI income disregard of \$85, for a total monthly income limit of \$2,334.²⁹ Accordingly, if the Js' monthly gross household income is more than \$2,334, they are not eligible for Medicaid.

Ms. J claims that the division calculated her gross self-employment income and expenses improperly. In particular, Ms. J argues that because their business is incorporated as an LLC, much of the business' net profit is kept in a separate business account to cover unexpected business expenses.³⁰ She claims that she does not have discretion to spend that money however she wants.³¹ However, No Name LLC is an S-corporation,³² and an individual's countable income from an S-corporation is determined by subtracting the total allowable costs of doing business from the total business receipts, and dividing the amount by each shareholder's pro rata

²⁴ 7 AAC 49.135. Preponderance of the evidence is defined as: "Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." *Black's Law Dictionary* 1064 (5th Ed. 1979).

²⁵ See State of Alaska Division of Health Care Services website at http://dhss.alaska.gov/hhcs/Pages/medicaid_medicare/default.aspx (last visited August 9, 2017).

²⁶ *Family Medicaid Eligibility Manual* §§ 5000-1 & 5706; see also 42 C.F.R. § 435.603.

²⁷ Division Exhibits 7, 7.1 (*Family Medicaid Manual Addendum 1, MAGI Income Standards Effective April 1, 2017*). "MAGI" stands for "Modified Adjusted Gross Income." See 42 CFR 435.603.

²⁸ 7 CFR §§ 435.603(d)(1), (d)(4), and (g)(2).

²⁹ Division Exhibit 7; see also 42 CFR 435.603(d)(1); *Alaska Family Medicaid Eligibility Manual* § 5715-4(c).

³⁰ M J Testimony, August 9, 2017.

³¹ M J Testimony, August 9, 2017; M J, August 11, 2017.

³² Division Exhibits 2.20-2.27.

share.³³ Here, the Js each share 50% of the business.³⁴ Accordingly, the Js' countable household income is the total amount of money the S-corporation produces minus allowable business expenses. For expansion group Medicaid, the division is required to use actual costs of doing business, and not all business expenses are considered "allowable."³⁵

Based on Ms. J's testimony, the S-corporation receives an average of \$6,590 per month, and its average monthly expenses are \$4,752.18.³⁶ It should be noted that many of the business expenses Ms. J identified, such as car payments, a new laptop, and taxes, are not allowable expenses for purposes of determining Medicaid eligibility.³⁷ Even so, Ms. J's claimed self-employment income of \$3,504.49³⁸ plus PFDs is above the income limit (plus the five percent disregard) of \$2,334 for the Medicaid expansion group for a household of two.

The division was correct in finding that Ms. J's income exceeded the program limit. Although the Js' responsible business management is commendable, the division has no discretion under state and federal law to vary the income limit in individual cases.

V. Conclusion

Ms. J's monthly household income exceeds the income limit for a two-person household for the Medicaid expansion group. The division's June 22, 2017 decision that Ms. J is not eligible for Medicaid is affirmed.

Dated: August 28, 2017

Signed _____

Jessica L. Srader
Administrative Law Judge

³³ Division Exhibit 8.5; *Alaska MAGI Medicaid Eligibility Manual* § 821-3 B.

³⁴ Division Exhibit 2.26-2.27.

³⁵ *Alaska Family Medicaid Eligibility Manual* §§ 5164-1 I, 5164-2. For example, the purchase price of durable goods, payments on the principal of loans to purchase durable goods, electric equipment, and federal, state, and local taxes are not allowable business expenses for determining Medicaid eligibility. *Alaska Family Medicaid Eligibility Manual* § 5164-1 I.

³⁶ *Alaska Family Medicaid Eligibility Manual* §§ 5164-1 I, 5164-2.

³⁷ *Alaska Family Medicaid Eligibility Manual* § 5164-1 I.

³⁸ $\$6,590 - \$4,752.18 + \$416.67 + \$1,250 = \$3,504.49$. It should also be noted that even if the division were to rely on the business' end-of-tax-year-balance on Form 1120S (Division Exhibit 2.24) to calculate the Js' household income as Ms. J seemed to advocate, the Js' monthly household income of \$2,685.26 would still exceed the Medicaid income limit. $(\$10,179/12) + \$1,250 + \$416.67 + \$170.34 = \$2,685.26$.

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 13th day of September, 2017.

By: *Signed* _____

Name: Jessica L. Srader

Title: Administrative Law Judge

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