

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

In the Matter of	)	
	)	
S J	)	OAH No. 18-0051-MDE
_____	)	Agency No.

**DECISION**

**I. Introduction**

S J is a Medicaid recipient whose affairs are managed by his daughter, Q C, who is his legal guardian and conservator. She applied for Medicaid recertification on his behalf on September 8, 2017. The Division of Public Assistance (Division) denied the application because Mr. J’s resources exceeded the allowable resource limit for Medicaid. A hearing was requested to challenge the denial, and it was held on February 1 and March 6, 2018. Ms. C represented Mr. J’s interests and testified on his behalf. The owner and operator of Mr. J’s assisted living home, John Smith, also testified on his behalf. Sally Dial represented the Division and testified on its behalf.

A review of the evidence demonstrates that Mr. J’s bank account balance, which is a countable resource for Medicaid eligibility purposes, exceeded the Medicaid program’s \$2,000 resource limit on the first day of September, October and November 2017. As a result, Mr. J was not eligible for Medicaid for those months. The Division’s denial of his application is therefore **AFFIRMED**.

**II. Facts<sup>1</sup>**

S J is a 67 year old man whose affairs were previously managed by a guardian at the Office of Public Advocacy (OPA).<sup>2</sup> Ms. C took over from OPA as Mr. J’s legal guardian and conservator in April 2017.<sup>3</sup> She applied for recertification of his Medicaid eligibility on September 8, 2017.<sup>4</sup> The Division requested additional information from Ms. C, and then issued a denial notice on December 5, 2017, based on “failure to provide requested information.”<sup>5</sup> After the requested information was provided, the Division reviewed the application again,

---

<sup>1</sup> These factual findings are established by a preponderance of the evidence, and are based upon the hearing testimony of Ms. C, Mr. Smith, and Ms. Dial, and exhibits as noted.

<sup>2</sup> C testimony.

<sup>3</sup> C testimony; *see* Exh. 2.9 (Jan. 17, 2017 court-ordered “letters of guardianship and conservatorship” appointing Ms. C).

<sup>4</sup> Exhs. 2.1 – 2.8.

<sup>5</sup> Exh. 5.

determined that Mr. J was ineligible because his bank account balances exceeded the Medicaid program's resource limit of \$2,000, and on December 15, 2017 sent him a notice denying his eligibility.<sup>6</sup>

Mr. J had a personal checking account and a burial savings account.<sup>7</sup> The Division determined that the total balance of these accounts was over \$2,000 on September 1, October 1 and November 1, 2017.<sup>8</sup> Ms. C testified that she was not aware that there was an issue with Mr. J's bank accounts and the Medicaid resource limit until after the application was denied. While she was familiar with the fact that the Medicaid program had a \$2,000 limit, she thought that the limit applied only to Mr. J's checking account and not the burial account as well.<sup>9</sup> Ms. C testified that she was given inadequate guidance by OPA when she took over as Mr. J's guardian and conservator in April 2017. She also questioned whether the Division makes adequate information available to the public, so that Medicaid recipients can maintain their eligibility.<sup>10</sup>

On behalf of the Division, Ms. Dial explained that the Medicaid resource limit is a black and white issue – either a person is under the limit, or they are over.<sup>11</sup> She also pointed out that the Division's website contains publicly accessible information regarding the resource limit rules and how a person can stay in compliance with them.<sup>12</sup>

### **III. Discussion**

The Alaska Medicaid program contains a variety of coverage categories. *See* 7 AAC 100.002. Each of these categories has differing eligibility requirements. These include financial requirements which limit how much monthly income a Medicaid applicant may have, and how much in resources (cash, other personal property, and real property) an applicant may own. Because Mr. J was seeking a recertification of his benefits, the Division has the burden of proof, by a preponderance of the evidence, to demonstrate that he was not financially eligible for those benefits.<sup>13</sup>

---

<sup>6</sup> Exh. 7.

<sup>7</sup> *Id.*; C testimony.

<sup>8</sup> *Id.*

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

<sup>10</sup> *Id.*

<sup>11</sup> Dial testimony.

<sup>12</sup> *Id.*

<sup>13</sup> 7 AAC 49.135.

A single Medicaid applicant/recipient may not have more than \$2,000 in countable resources.<sup>14</sup> Resources are valued on the first day of each month.<sup>15</sup> Bank accounts are countable resources.<sup>16</sup> This means that if a person's bank account balance exceeds \$2,000 on the first day of the month, the applicant is ineligible during that month.

At the hearing Ms. C did not dispute the Division's calculations regarding Mr. J's bank account balances and the applicable exclusions.<sup>17</sup> Therefore, it is undisputed that his resources exceeded the \$2,000 limit by \$630.78, \$1,931.45, and \$386.98 on September 1, October 1, and November 1 2017, respectively.

Ms. C essentially argued that Mr. J should have been deemed eligible for Medicaid, despite the fact that he did not fall within the resource limits, because she was inadequately informed of the resource limit rules, such that she misunderstood and believed the \$2,000 limit only had to do with Mr. J's personal checking account. This is an equitable estoppel argument. To successfully assert this argument, Ms. C must begin by showing that the Division made a representation to her, either actually, implicitly, or by omission, that the resource limit applied only to Mr. J's personal checking account.<sup>18</sup> However, Ms. C's testimony indicated that her complaint was really with OPA, rather than the Division, for allegedly not giving her adequate guidance as to the resource limits and how to go about keeping Mr. J's resources at the proper level. Any alleged actions or omissions by OPA are outside the scope of this hearing, and cannot form the basis for an argument that the Division somehow made a misrepresentation pertinent to Mr. J's eligibility. Based upon Ms. C's testimony, she failed to establish that a Division representative either misinformed her or failed to inform her about the \$2,000 resource limitation. Accordingly, equitable estoppel has not been established.

---

<sup>14</sup> 7 AAC 100.400(a)(13)-(15) (incorporating Adult Public Assistance resource regulations 7 AAC 40.260 – 280).

<sup>15</sup> 7 AAC 40.270(b).

<sup>16</sup> See 7 AAC 40.260 for definition of a resource. See 7 AAC 40.280 for a list of excluded, *i.e.* non-countable resources.

<sup>17</sup> Ms. Dial explained that \$1500 is excluded from a person's burial account balance before adding the account to the person's total resources. See exhs. 15-15.1 (Adult Public Assistance Manual, sec. 432-2D).

<sup>18</sup> The elements required to successfully assert equitable estoppel against the government are:

1. The assertion of a governmental position by either conduct or words;
2. An act done in reasonable reliance upon the governmental position;
3. Resulting prejudice; and
4. "[E]stoppel serves the interest of justice so as to limit public injury." *Wassink v. Hawkins*, 763 P.3d 971, 975 (Alaska 1988).

Ms. C and Mr. Smith also argued that a sense of fundamental fairness dictates that Mr. J should be deemed eligible for Medicaid. Essentially, they argued that because Ms. C had just recently taken over as Mr. J's guardian, and as a result she was unfamiliar with how to maintain his account balances at the appropriate level, it was unfair for the Division to find Mr. J ineligible due to excess resources. The Division's regulations, however, do not allow the Division or the undersigned administrative law judge to exercise any discretion to relax the resource limits for Medicaid eligibility. The test for eligibility is whether "an applicant has non-excludable resources that do not exceed the applicable resource limit at any time on the first date of a calendar month."<sup>19</sup> This test, as Ms. Dial testified, is a bright-line rule – either a person is under the limit, or they are over the limit. The regulation does not allow the Division to relax the resource limit or make exceptions to take into account a person's special needs or circumstances.

Mr. J undeniably had bank account balances on September 1, October 1 and November 1, 2017, that made him ineligible for Medicaid benefits. Ms. C did not establish any legal or factual basis for an exception to the Medicaid program's financial requirements. The Division, therefore, met its burden of establishing, by a preponderance of the evidence, that he was not financially eligible for Medicaid benefits for those months.

#### **IV. Conclusion**

The Division's denial of Mr. J's Medicaid application for September, October and November 2017 is AFFIRMED.

Dated this 17<sup>th</sup> day of April, 2018

*Signed* \_\_\_\_\_  
Andrew M. Lebo  
Administrative Law Judge

---

<sup>19</sup> 7 AAC 40.270(b).

## 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 1<sup>st</sup> day of May, 2018.

By: *Signed* \_\_\_\_\_

Name: Andrew M. Lebo

Title: Administrative Law Judge

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]