IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

[redacted] [redacted]

Appellant,

v.

STATE OF ALASKA, DEPARTMENT OF HEALTH AND SOCIAL SERVICES, DIVISION of SENIOR and DISABILITIES SERVICES,

Appellee.

Case No. 3AN-06-[redacted]CI

ORDER
Motion Sequence #6

HAVING considered the briefs on the appeal from the decision of the Division of Senior and Disability Services ("Division"), the court finds that the decision fails to rise to the level of reasonableness required by agency law and Alaska's equal protection requirements. The court thus **REVERSES** and **REMANDS** the Division's decision for the reasons set forth herein.

I. Factual and Procedural Summary

[redacted] [redacted] is a severely disabled individual who is cared for by his mother, [redacted] Appellant's Brief at 1. She works for Mr. [redacted] full-time as a PCA ("Personal Care Assistance") attendant, fulfilling 40 of Mr. [redacted] 56.77 allotted weekly

hours of PCA services. Appellee's Brief at 4. She is compensated through Medicaid. Id. In April 2005, as part of his yearly reassessment of PCA requirements, Mr. [redacted] submitted a request to receive 520 hours and 14 days of respite care in the next year to allow his mother to travel, which the State denied because she is his "paid primary caregiver" and not his "primary unpaid caregiver." Id.

Via the Division's fair hearing process Mr. [redacted] appealed this decision, arguing that the curtailment was a violation of Mr. [redacted] constitutional rights to due process and equal protection. See Appellant's Brief at 3. The hearing officer found that the Division's interpretation of the statute was reasonable because "if a person is a paid care provider, even if the person also renders care on a gratuitous basis, that person remains a paid care provider for the purposes of this regulation." Appellee's Brief at 7. This decision was upheld by the Division's director.

II. Appeal Standard

Since the court's decision rests on interpretation of the law, in reviewing the agency's interpretation of its own regulation the court uses a reasonable basis test standard and will defer to the agency's interpretation unless it is "plainly erroneous and inconsistent with the regulation." Lauth v. State

of Alaska, DHSS 12 P. 3d 181, 184 (Alaska 2000). The independent judgment standard requires the court to adopt the rule that is most persuasive in light of precedent, reason, and policy. Guin v. Ha, 591 P.2d 1281, 1284 (Alaska 1979).

III. Analysis

Since finding an alternative primary paid caregiver for Mr. [redacted] would not deprive him of his right to live with his family, *see, e.g.*, Moore v. City of East Cleveland, 431 U.S. 494 (1977), the court does not find that the Division's decision affects any of Mr. [redacted] fundamental rights. Thus, at the lowest level of Alaska's equal protection analysis, the court is required to examine the statute to ensure that the state has a legitimate purpose and that there is a substantial nexus between the state's means and ends. State v. Planned Parenthood, 25 P.3d 30, 42 (Alaska 2001). The Division's decision treats Mr. [redacted] differently because his primary unpaid caregiver is also is primary paid caregiver. In order for a classification to survive judicial scrutiny, the classification must be reasonable, not arbitrary, and must rest upon some difference having a fair and substantial relationship to the object of the legislation, so that all persons similarly circumstanced shall be treated alike. State v. Erickson, 574 P.2d 1, 12 (Alaska 1978).

The State has the authority to determine recipients of Medicaid funds and benefits. *See* Section 1915(c) of the Social Security Act; *see also* 7 AAC 43.1049. The State asserts that the regulation was intended to provide respite services only to those caregivers who do not receive any type of reimbursement from Medicaid, and to those who provide these services gratuitously. Appellee's Brief at 9. The State draws a distinction between individuals who are already paid for providing care services and individuals who provide services gratuitously who need assistance or a break from providing these services. Id. The Division made a determination that neither recipient nor their caregivers should be paid twice by the Medicaid program. Id. This statute was also implemented to prevent abuse and fraud of the Medicaid waiver system. Id.

The fit here is loose at best. The State admits that Mrs. [redacted] "provides more uncompensated care for him than compensated care," while simultaneously maintaining that Mr. [redacted] does not have a primary unpaid caregiver in the home. Appellee's Brief at 6, 9. The Division is willing to draw a line between compensated and uncompensated individuals; however, Mrs. [redacted] is not getting paid in a manner convenient for this qualification (i.e. overtime exempt, or annually) because Mrs. [redacted] is paid hourly. If Mr. [redacted] receives respite services,

neither Mr. nor Mrs. [redacted] will be compensated twice because Mrs. [redacted] does not receive vacation benefits or compensation for the time she is not working, when respite hours could be awarded. Appellee's Brief at 8.

The prevention of dual classification for Mrs. [redacted] and the subsequent limitation on respite awarded, must bear a fair and substantial relation to Mr. [redacted] interests. The Division's stated objectives are, as applied, a poor fit in this situation because Mrs. [redacted] spends more of her time being an unpaid primary caregiver than not (see supra at 4), alleviating the State's fear of fraud and overcompensation.

Forcing Mrs. [redacted] to spend more time away from Mr. [redacted] at another job or through the employment of another PCA assistant to lower her hours in order to obtain respite hours fails to pass muster under the lowest level of scrutiny, the rational basis test. Since Mr. [redacted] is receiving 56 hours of PCA services a week, Mrs. [redacted] hypothetically need only assign 13 of her 40 hours over to another to cease being Mr. [redacted] "primary paid caregiver" and to receive respite hours.

Mrs. [redacted] is asking for essentially 10 hours a week and 2 full weeks off from her full-time job of caring for her son, which takes (as the State admits) well over the 40 hours a week she is getting paid. As her son's primary paid caregiver and

primary unpaid caregiver, the administrative code should be read in a way which is reasonable. Withholding respite care services to Mr. [redacted] because Mrs. [redacted] is also his primary unpaid caregiver when the Division would willingly grant her respite hours if she took a different job is unreasonable, considering the fact that Mr. [redacted] guardians feel that his mother is the caregiver best suited for his needs. The State is willing to spend the money on the [redacted] so that Mrs. [redacted] may have more time, *see* Appellants Brief at 6, but it should not do so in a way that makes unpaid and paid care mutually exclusive activities. The Division's reasoning fails under both the equal protection and agency appeal rational basis standards of review. The State's decision is **REVERSED** and **REMANDED**.

IT IS SO ORDERED.

DATED at Anchorage, Alaska this 16th day of July 2007.

[redacted]

PETER A. MICHALSKI
Superior Court Judge

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