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**STATE OF ALASKA
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF PUBLIC ASSISTANCE
ADMINISTRATIVE DISQUALIFICATION HEARING**

In the Matter of)
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) OHA Case No. 08-FH-49
) Division Case No. [REDACTED]

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (hereinafter "Claimant") was a recipient of the Breast and Cervical Health Check Program under Medicaid. (Ex. 1). After receiving Claimant's review application, the Division of Public Assistance (hereinafter "Division") determined she had never been properly enrolled in the program, nor should she have been. The next day, on January 9, 2008, the Division sent Claimant notice her Medicaid coverage was closed. (Ex. 2.0 -2.4) On January 15, 2008, the Claimant requested a fair hearing. (Ex. 3). Pursuant to the Claimant's request, a hearing was held on February 27, 2008. The Applicant attended the hearing telephonically and represented herself. [REDACTED], Public Assistance Analyst with the Division, attended in person to represent the Division. [REDACTED], Public Assistance Analyst II, testified for the Division.

STATEMENT OF THE ISSUES

The Claimant has been receiving services through the Breast and Cervical Health Check program and wishes to continue receiving such services. The Division argues Claimant is not eligible for the Breast and Cervical Health Check program because she was no initially screened by a proper health care provider, and therefore, was not properly enrolled in the program.

The issue to be determined is:

Was the Division correct to deny Claimant's Breast and Cervical Health Check (hereinafter "BCHC") review application when the agency discovered she was never enrolled in the BCHC program?

FINDINGS OF FACT

1. In [REDACTED], Claimant gave birth to her child at the Southcentral Foundation/Alaska Native Medical Center (hereinafter "SC/ANMC"). She is not a Native American, but was receiving services from that facility because her unborn child qualified for care through his father's heritage. During her stay at SC/ANCM she was screened and diagnosed with breast cancer. (Ex. 2.0 – 2.4).
2. After her screening and diagnosis, Claimant began receiving services through the BCHC program.
3. On January 8, 2008, during a Division review of the case, the Division determined Claimant was never properly enrolled in the program, and should never have received any services through the BCHC program. The person that approved Claimant's receipt of services is no longer with the Division. On January 9, 2008, the Division sent Claimant notice her Medicaid case was closed. (Ex. 2.0 - 2.4)
4. Certain designated health care providers participate in the BCHC program. The Division submitted an email which states in part regarding the Claimant: "While she was screened, diagnosed and treated at Southcentral Foundation/ANMC, she was not screened through SCF's NBCCEDP." (Ex. 2.1).

PRINCIPALS OF LAW

1. The party wishing to change the status quo has the burden of proof. Since the Division wishes to terminate services, it has the burden of proof. The burden of proof is by a preponderance of the evidence.¹
2. To be eligible for the BCHC program, a woman must "at the time of application, have been screened through the department's Breast and Cervical Health Check program." 7 AAC 100.710.
3. The Alaska Family Medicaid Manual sec. 5500A states the following:

The Division of Public Health (DPH) operates and determines eligibility for the Breast and Cervical health Check (BCHC) program to screen individuals in accordance with the national CDC criteria. This program uses 25 different health care providers in 15 communities throughout the state. There are also three tribal grantees that provide screening services:

Southcentral Foundation;

Southeast Alaska Regional Health Corporation; and

Arctic Slope Regional Health Corporation.

¹¹ Amerada Hess Pipeline v. Alaska Public Utilities Comm'n, 711 P.2d 1170, 1179 n. 14 (Alaska 1986). Preponderance of the evidence is evidence which as a whole shows the fact sought to be proved is more probable than not.

4. “[A]n agency's interpretation of its own regulation [is reviewed] under the reasonable basis standard, deferring to the interpretation unless it is ‘plainly erroneous and inconsistent with the regulation.’” *Lauth v. State of Alaska*, DHSS 12 P.3d 181, 184 (Alaska 2000) (quoting *Board of Trade, Inc. v. State, Dep't of Labor, Wage & Hour Admin.*, 968 P.2d 86, 89 (Alaska 1998))

ANALYSIS

State regulation states to be eligible for the BCHC program, a woman must “at the time of application, have been screened through the department’s Breast and Cervical Health Check program.” Pursuant to state policy, Alaska Family Medicaid Manual (hereinafter “Division’s Manual”), section 5500A, the screening for the BCHC program can be conducted by one of twenty-five designated health care providers or three “tribal grantees.” (The policy above does not require all providers that participate in the program to be “grantees.” It does list the “three tribal grantees.”) The Division’s manual specifically lists Southcentral Foundation as a “tribal grantee” that screens for the BCHC program.

The Alaska Native Medical Center is part of the Southcentral Foundation. Therefore, any individual reviewing the Division’s Manual would understand that ANMC, being a part of Southcentral Foundation, would be an authorized screener for the BCHC program. The plain meaning of the Division Manual dictates such an understanding. To argue that a person, in order to qualify, must be screened in a particular way by Southcentral Foundation or in a specific office within Southcentral Foundation is plainly erroneous and not consistent with the Division’s policy as set forth in its Manual.

Therefore, the Claimant was screened for breast cancer by a designated provider pursuant to the Division’s policy as set forth in its Manual. Thus, the Claimant’s screening made her eligible for the BCHC program.

DECISION

Based upon a preponderance of the evidence, this Hearing Authority finds the following:

The Division was not correct to terminate Claimant’s treatment through the BCHC program.

This decision is supported by the above mentioned citations as well as AS 47.27.015(c); 7 AAC 45.970(e); 7 AAC 49 et seq.

APPEAL RIGHTS

If the Applicant is dissatisfied with this decision for any reason, the Applicant has the right to appeal by requesting a review by the Director. To do this, send a written request directly to:

Director, Division of Public Assistance
Department of Health and Social Services

PO Box 110640
Juneau, AK 99811-0640

If the Applicant appeals, the Applicant must send the request within 15 days from the date the Applicant receives this letter. Filing an appeal with the Director could result in the reversal of the Hearing Authority's decision.


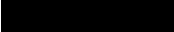
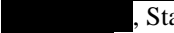
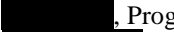

Dated: April 10, 2007.

Patricia Huna-Jines
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 3rd day of April, 2008, true and correct copies of the foregoing were sent to:

Recipient – Certified Mail, Return Receipt Requested.

, Director
, Program and Policy Development
, Staff Development & Training
, Program Integrity
, Fair Hearing Representative

Case File
Hearing File

Al Levitre, Law Office Assistant I