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**STATE OF ALASKA
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
OFFICE OF HEARINGS AND APPEALS**

In the Matter of)		
)		
██████████,)	OHA Case No.	08-FH-0163
)		
Claimant.)	Division Case No.	██████████
_____)		

FAIR HEARING DECISION

STATEMENT OF THE CASE

██████████ (Claimant) applied for Adult Public Assistance and Medicaid¹ on September 26, 2007. (Ex. 1) As of October 1, 2007, the Claimant had the following resources: a brokerage account and two bank accounts. (Ex. pps. 2.4-2.6) The Division of Public Assistance (DPA) approved Claimant for Adult Public Assistance, Food Stamps and Medicaid. (Ex. 2.0) Four months later, on February 25, 2008, Claimant was notified he would not receive Retroactive Medicaid coverage for the month of October 2007 because his resources exceeded the allowable limit. (Ex. p. 2.2)² The Claimant requested a fair hearing. (Ex. 3)

¹ In this Decision, the terms “Medicaid” and “Retroactive Medicaid” are used to define coverage for the month of October 2007. Evidence submitted by the Division, Social Security Administration and the Claimant use the terms “Medicaid” and “Retroactive Medicaid” interchangeably. Federal and state regulations define “Retroactive Medicaid” as:

The period for computation of a Medically Needy Individual for purposes of Retroactive Medicaid is the three months prior to the month of application. 42 CFR 435.831

At the time of application or interview, an applicant may request Medicaid coverage for a maximum of three months immediately preceding the month of application if the applicant has unpaid medical expenses for dates of service and anytime during the three month period. 7 AAC 100.072(a)

² Although the application for Medicaid was made in September 2007 the testimony in this case focused on the month of October 2007, the month in which the Claimant incurred substantial medical expenses.

A fair hearing was held in the Office of Hearings and Appeals (Office) on April 9, 2008. [REDACTED] appeared in person and was the Fair Hearing Representative for the Adult Public Assistance Division. [REDACTED] appeared telephonically.

This Office has jurisdiction pursuant to 7 AAC 49.010.

ISSUES

Was the Division correct when it denied the Claimant's request for Retroactive Medicaid for October 2007?

Does the Claimant have a right to recovery under the theory of Equitable Estoppel?

FINDINGS OF FACT

1. September 26, 2007 Claimant applied to the Division for Medicaid, Food Stamps and Adult Public Assistance. (Ex. 1)
2. Claimant was authorized for Food Stamps on September 26, 2007. (Ex. 1)
3. In October 2007, the month after his September 2007 application, Claimant became very ill and required extensive medical treatments for a chronic failed kidney and for congenital heart failure. (Ex. 2.0) Claimant testified he met with the Division and discussed his Medicaid application and medical bills covering October 2007.
4. Sometime in October 2007 Claimant's Eligibility Technician discussed Retroactive Medicaid with him. (Ex. 2.2)
5. Claimant testified that at one of his meetings with Division personnel in October 2007 he was told he would receive Medicaid for the month of October 2007.
6. On October 19, 2007 the Division issued a notice to the Claimant requesting additional information. Specifically, this notice stated:

“Your Adult Public Assistance and Medicaid application received SEPTEMBER 26, 2007 is being held because we need more information. Please give us the items listed at the bottom of this notice by OCTOBER 29, 2007 or your application may be denied.” The notice also requested that the Claimant “Provide a current bank statement on your checking and savings account.” (Ex. A p. 5

7. Claimant testified that at a meeting with his Eligibility Technician in October 2007 he admitted to having excess resources for the month of October 2007.
8. In discussions between Claimant and the Eligibility Technician concerning requirements for the programs, the Division discussed the requirements of all of the programs concurrently and interchangeably. (Ex. pps.1-6 and testimony)
9. The Claimant did not understand the program requirements for Retroactive Medicaid or the significance of submitting copies of his bank statements. (Ex. pps. 1-6 and testimony)
10. On October 30, 2007 the Division received notice through an email message from the Social Security Administration, that Claimant would be eligible for SSI in December 2007. (Ex. A, p. 6)
11. In November 2007 Division personnel did an on-line query and learned that Claimant would receive SSI payments of \$631.00. The Division opened Client's Adult Public Assistance and Medicaid cases effective November 2007 for \$362.00 per month. (Ex. 1)
12. On February 21, 2008 Claimant was advised by his Eligibility Technician his Medicaid for October 2007 was not denied yet and that the case was in review. (Ex. 2.0) February 21, 2008 additional Division personnel explained to Claimant over the phone that

“according to SSI [Claimant] had resources in excess of \$2000. for October 2007 and was not eligible for Retroactive Medicaid.” (Ex. 2.0)

On the same day the Division accepted the Claimant's requested a fair hearing. (Ex. 2.0)
13. On February 22, 2008 the Division conducted a telephonic pre-hearing conference with the Claimant. (Ex. 2 .0) On that day the Eligibility Technician wrote:

“Per conversation with Social Security Client has \$1,800. in his personal checking account, \$2,027. in a Janus Fund and \$100. cash on hand.” (Ex. 2.0)
14. On February 25, 2008 the Division sent Claimant a notice informing claimant that Retroactive Medicaid for October 2007 was denied based on excess resources for October 2007 month as reported. (Ex. 2.2)

15. On February 28, 2008 the Division received hard copy verification of the Claimant's bank and brokerage accounts for October 2007 with a balance showing excess resources. (Ex. pp. 2.4 – 2.6)

PRINCIPLES OF LAW

Program benefits for Adult Public Assistance, Food Stamps, Medicaid, and Retroactive Medicaid are administered under different regulations and policies.

The Alaska Regulations in relevant part state:

(a) The Department will verify whether an applicant or recipient meets eligibility requirements.

(c) the Department will determine whether the verification and documentation supports a finding of eligibility by evaluating whether (1) it reasonably proves the fact in question; (2) is consistent with all other information contained in the application record; and (3) alternative types of verification documentation, if necessary, are obtained. 7 AAC 100.016(a)(b). To be eligible for assistance, an applicant must have non-excludable resources which do not exceed \$2,000 for an individual. 7 AAC 40.270(a)³

Verified documents are copies of a document which is shown by independent evidence to be true. *Blacks Law Dictionary*, 1064 (5th Ed. 1979)

A household will not be eligible for Retroactive Medicaid if they have countable resources in excess of \$2,000. *Family Medicaid Eligibility Manual* 5000-1

Relevant portions of the *Medicaid Manual* for Retroactive Medicaid are:

RETROACTIVE MEDICAID: The date of application, rather than the date of the eligibility determination, establishes the beginning of the three-month retroactive period. *Medicaid Manual* 516

The case record must show that all relevant eligibility criteria have been considered, and that necessary verification has been obtained. The case worker must document every eligibility decision well enough so that a reviewer examining the case record can understand what action was taken on the case and why it was taken. The requirement for documentation applies not only to recording how eligibility was verified, but also to recording how the case worker applied prudent judgment to determine eligibility. *Adult Public Assistance Manual* 400-5

REQUIREMENT TO PROVIDE NECESSARY VERIFICATION: An individual must satisfy many eligibility requirements to be determined eligible to receive APA benefits. The client must provide proof that he or she meets each factor of eligibility.

³ *Alaska Adult Public Assistance Manual*, 430-1 (Ex. page 5)

The proof offered by the individual may consist of written documents or, if appropriate, the names of collateral contacts who have knowledge of the client's circumstances. The case worker must evaluate the evidence offered and apply prudent judgment in deciding if the evidence shows that the eligibility factor is met. Guidelines for verification of each factor of eligibility are presented in the manual sections that specifically address each factor. *Medicaid Manual 400-4 A*

INFORMING THE CLIENT OF REQUIREMENT TO PROVIDE NECESSARY VERIFICATION: If a particular factor of eligibility must be verified so that a decision can be made on a client's eligibility for assistance, the case worker shall provide the client with a written notice that states what evidence is needed and gives a reasonable amount of time (at least 10 days) to submit the necessary proof. Whenever possible, the case worker should follow-up a written notice to a blind applicant or recipient with a telephone call.

FAILURE TO PROVIDE NECESSARY VERIFICATION: Eligibility does not exist if an applicant or recipient fails to provide necessary verification or refuses to allow the agency to verify information relevant to his or her eligibility for benefits. *Medicaid Manual 400-4 C*

Adult Public Assistance Program requirements for verification differ:

WHEN VERIFICATION IS NOT NECESSARY: It is not necessary to get documents or other evidence to verify that a client is ineligible for assistance if the client provides credible information which shows that he or she does not meet one or more factors of eligibility. If, for example, an individual alleges in an interview or on an application that he or she receives monthly excess resources in excess of the applicable maximum, assistance may be denied based on the client's statement. *Adult Public Assistance Manual 400-4E*

Food Stamps verification requirements provide in part:

For households who appear eligible, mandatory verification, including excess resources verification, must be obtained. *Food Stamps Manual 601-4*

Several data systems and computer interfaces are available through the Internet and on-line *EIS* access. In some situations, the information will be from the source and can be used as verification. In other situations, the caseworker must follow-up on the information. *Food Stamp Manual 601-4 A*

The elements of Equitable Estoppel are as follows:

1. Assertion of a governmental position by either conduct or words;
2. An act which reasonably relied upon the governmental position;
3. Resulting prejudice; and
4. "estoppel serves the interest of justice so as to limit public injury."

Wassink v. Hawkins, 763 P. 3rd 971 (Alaska 1988)

ANALYSIS

On February 21, 2007 the Claimant requested a fair hearing on the issue of the denial of Retroactive Medicaid benefits. (Ex. 2.0) Claimant testified to three reasons for his request:

- 1) He has been financially burdened because he could have been working to pay off medical bill that occurred in October 2007 and the Division's failure to act dragged the process out unnecessarily.
- 2) The Division failed to work with the Claimant to resolve his issues and denied his right to a fair hearing by a full month.
- 3) The Division acted inconsistently by granting Food Stamps while denying Retroactive Medicaid. The Claimant testified that had he known that he would not qualify for Retroactive Medicaid in October 2007 he would have returned to work.

It is undisputed that the claimant's medical expenses were incurred in October 2007. It is also undisputed that the Claimant received a denial of his request for "Retroactive Medicaid" for the month of October 2007 four months later, in February 2008.

Claimant testified that his attempt to understand his Medicaid benefits for October 2007 were not adequately addressed. Claimant testified he made continuous attempts to contact the Division to determine what his benefits were and what the Claimant's course of action should be regarding his benefits, for the purpose of returning to work. The Claimant admitted into evidence a letter from his doctor which states that Claimant "[f]inds the information he needs then follows through in a timely manner." (Ex. A p. 7) The Claimant's testimony concerning his attempts to contact the Division was credible. In addition, the Division did not refute the Claimant's testimony as to the lack of response to the Claimant's attempts to contact the Division or the delay in issuing a decision.

Each Benefit to be received under programs offered by the Department of Health and Social Services is governed by separate federal and state regulations, department manuals and policy. The "verification" requirements for Adult Public Assistance and Food Stamps differ from those for Retroactive Medicaid. Adult Public Assistance allows statements by the applicant to be used to prove resources. *Adult Public Assistance Manual* 400-E 4 Food Stamp Regulations allow verification by checking data systems. *Food Stamps Manual* 601-4 In the instance of verification for Medicaid, eligibility does not exist if an applicant or recipient fails to provide necessary verification. *Medicaid Manual* 400-4 C

The regulations require that resources be measured at the first moment of application. *Adult Public Assistance Manual* 430-3 Claimant testified, that at the time of his application, he told the Division of his resources and that they were over limit. This

admission of resources meets the verification requirements of Adult Public Assistance but not those of the Food Stamps or Retroactive Medicaid programs. 7 ACC 40.270(a) *Adult Public Assistance Manual 400-4E Food Stamps Manual 601-4, 601-4 A Medicaid Manual 516*

Eligibility Technicians have an obligation to clearly document their decisions. The case worker must document every eligibility decision well enough so that a reviewer examining the case record can understand what action was taken on the case and why it was taken. The requirement for documentation applies not only to recording how eligibility was verified, but also to recording how the case worker applied prudent judgment to determine eligibility. *Adult Public Assistance Manual 400-5*

Food Stamps were authorized September 26, 2007, five months before Retroactive Medicaid was denied. (Ex. pps. 1-6) Claimant testified this was inconsistent. What the Claimant perceives as inconsistencies are the result of several sets of regulations and policy manuals. *Medicaid Manual 400-4A, Food Stamp Manual 601-4, 601-4* The case notes support and explain his confusion. (Ex. 2.0) The case notes do not make the differences in the programs clear.

It appears from the evidence that in order to determine Claimant's eligibility for Retroactive Medicaid, the Eligibility Technician followed the three step process outlined by statute for verification of information. The evidence is silent on how Retroactive Medicaid could be applied to Claimant's medical bills for October 2007. It is questionable whether or not Retroactive Medicaid could be applied to these bills since the medical bills *did not occur three months before application. Medicaid Manual 516* The only reason on record for the Division's delay is the wait for the bank statements.

However, the Eligibility Technician mentions in the case notes that she relied on the Social Security representations that the Client was over resources. (ex.2.0) No mention is made in the notes that the delay in receiving the Claimant's bank statements was considered.

Verified documents are copies of a document which is shown by independent evidence to be true. *Blacks Law Dictionary, 1064 (5th Ed. 1979)* Where necessary, the Division is to obtain verifiable documentation of the fact in question. 7 AAC 100.016(a)(b)

The Claimant testified that during his application interview he told the Eligibility Technician that he was over resources. Since the information was against the Claimant's interests, it proves by preponderance that the statement was true. However, in order for the Claimant to receive Retroactive Medicaid the statement needed to be verified, that is, the information must come from an independent source. *Medicaid Manual 400-4 A Black's Law Dictionary, 1064 (5th Ed. 1979)*

On October 30, 2007 the Division received information from Social Security that the claimant would be eligible for SSI in December 2007. (Ex. A p. 6) However, the information provided by Social Security did not state where this information came from

and was, therefore, insufficient to verify Claimant's resources. The source of the income counted by Social Security is listed on the case notes for February 22, 2008 (Ex. 2.0) The required bank documents, requested in October 2007 to verify excess income were provided four months late. *Medicaid Manual* 400-4 C

Eligibility does not exist if an applicant or recipient fails to provide necessary verification relevant to his or her eligibility for benefits. *Medicaid Manual* 400-4 C On October 19, 2007, the Claimant received a letter asking him to submit "[a] current bank statement on your checking and savings account". (Ex. A p. 5) The Claimant provided the Division with the requested statement four months later in February 2008. The bank and brokerage account documents satisfy the "independent source" requirement of the regulations. 7 AAC 40.270(a) *Black's Law Dictionary* 1064 (5th Ed. 1979)

There is no ambiguity in the evidence on the issue of the Claimant being over resources in October 2007. The brokerage account statement provided by the Claimant shows that his Janus account had \$2,026.13 on September 30, 2007. His other bank accounts had \$244.53 and \$287.60 respectively. (Exs. 25, 2.6) These documents taken together with the testimony, case notes and notes from Social Security support the decision by the Eligibility Technician that the Claimant did not qualify for Retroactive Medicaid.

EQUITABLE ESTOPPEL

The Claimant's issue of returning to work to pay off medical bills raises the issue of Equitable Estoppel. This legal principle requires that a decision serve the interests of justice and limit public injury. *Wassink v Hawkins*, 763 P. 3rd 971 (Alaska 1988) In addition, the following elements of Equitable Estoppel must be met:

1. Assertion of a governmental position by either conduct or words;
2. An act which reasonably relied upon the governmental position; and
3. Resulting prejudice.

Claimant testified that in October 2007 his doctor released him to go back to work. Claimant testified the Division told him not to return to work. Claimant testified that the resulting prejudice he suffered, because of the Division's statement and delay in issuing a decision, was that he did not return to work. Evidence admitted by Claimant shows Claimant deposited money in September and October 2007 in an account. If the origin of the money was "income" that fact was never brought to light. Claimant's testimony was coherent, consistent and credible. Given the assurance from Division personnel that he would receive Medicaid for the month of October 2007 it was reasonable for the Claimant to rely on the representations of the Division.

The Claimant's medical expenses occurred outside of the period covered by Retroactive Medicaid. *Medicaid Manual* 516 The injury suffered was personal to the Claimant. Even though the testimony of the Claimant is believed to be true, the evidence provided in this case does not demonstrate so great a harm as to serve the interests of justice or to limit public injury. In this case the harm suffered by the Claimant was due, in part, to his delay

CERTIFICATE OF SERVICE

I certify that on this ___ day of _____, 2008, true and correct copies of the foregoing were sent to:

Claimant – Certified Mail, Return Receipt Requested.

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

Al Levitre
Law Office Assistant I