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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-0238
)		
Claimant.)	Division Case No.	██████████
_____)		

FAIR HEARING DECISION

STATEMENT OF THE CASE

Ms. ██████████ (Claimant) applied for Medicaid Home and Community Based Waiver¹ and Retroactive Medicaid (Medicaid) benefits on February 26, 2008. (Ex. 2.1-2.6) The application was denied by the Division of Public Assistance (Division) on March 28, 2008. On the same day, Division personnel explained why the application was denied in a telephonic conference with ██████████ the Claimant's social worker. (Ex. 3.2) On March 28, 2008 Ms. ██████████ requested a fair hearing. (Ex. 4.0) The Division sent the Claimant a formal denial notice on March 28, 2008. (Ex. 4)

A fair hearing was held on April 9, 2008 at the Office of Hearings and Appeals. ██████████ ██████████ Public Assistance Analyst with the Division of Public Assistance, appeared in person and represented the Division. The Claimant appeared telephonically and was represented by Ms. ██████████ a social worker with the ██████████ Pioneer Home, who also appeared telephonically.

This Office has jurisdiction pursuant to 7 AAC 49.010.

ISSUE

The Division's position was that the Claimant owned more than \$2,000 of countable resources for the months of November 2007 through February 2008, and that as a result

¹ Medicaid Home and Community Based Waiver (HCB) is a form of Medicaid provided to adults in long-term care facilities.

the Claimant was not financially eligible for Medicaid during those months.² The Claimant did not dispute the fact she owned over \$2,000 of countable resources for each of the months of November 2007 through February 2008. Instead, the Claimant argued that her finances were not within her control, and that she should therefore be excused from the Medicaid program's resource limit.

The resulting issue is:

Was the Division correct when it denied the Claimant's February 26, 2008 Home and Community Based Waiver and Retroactive Medicaid application, because her resources exceeded the Medicaid program's countable resource limit of \$2,000 for the month of application, as well as for the three months preceding the Claimant's application?

FINDINGS OF FACT

1. Claimant is [REDACTED] years old (birth date is [REDACTED]) and is a vulnerable adult. She resides at the [REDACTED] Pioneer Home. (Ex.2.1)
2. Claimant was a Medicaid recipient. Her specific eligibility category was the Medicaid Home and Community Based Waiver program. The Claimant's benefits expired at the end of October 2007 because she did not send in her review form. (Ex. 3.0)
3. On February 26, 2008 the Division received an application for Home and Community Based Waiver benefits and request for Retroactive Medicaid coverage for the Claimant. (Ex. 2.1-2.7)
4. On February 1, 2008, there was \$6,261.51 in a First National Bank account (bank account) held in the names of Claimant and her powers of attorney, [REDACTED] and [REDACTED]. (Ex. 2.9)
5. The Claimant's Medicaid application was denied on March 28, 2008 because she owned countable resources in excess of the Medicaid limit of \$2,000. (Ex. 4) From November 2007 through February 2008, the Claimant had balances in her bank account as follows:

<u>DATE</u>	<u>BALANCE</u>	
11/1/07	\$4,237.50	(Ex. 2.15)
12/1/07	\$5,373.45	(Ex. 2.14)

² Subsequently, on April 3, 2008, the Division determined that the Claimant was eligible for Medicaid benefits effective March 2008, because it was the first month in which she met the Medicaid resource eligibility requirements. (Ex. 5-5.1)

1/1/08	\$4,225.51	(Ex. 2.11)
2/1/08	\$6,262.56	(Ex. 2.9)

6. The Division was aware of the Claimant's State Subsidy debt for services from the [REDACTED] Pioneer Home. (Ex. A) The Claimant had the ability to pay the monthly amount due to the State but did not do so, which resulted in excess resources in her First National Bank account. (Testimony of Ms. [REDACTED])

7. Ms. [REDACTED] the Claimant's representative, argued during the hearing that the Claimant's competence, and the responsiveness of her powers of attorney, should have been considered. She argued that the Claimant was not responsible for her bank balances because her family members were supposed to take care paying her bills. If the Claimant's family members had acted responsibly, Claimant's finances would have allowed her to qualify for Medicaid. Specifically, if the family members had paid the rent and indebtedness owed to the State, the Claimant's bank account balance would have been reduced to \$2,000 or less, and therefore meet the Medicaid resource limit. Ms. [REDACTED] testified to the following:
 - a) Claimant's ability to handle her own affairs has been an issue for a few years.
 - b) Claimant's powers of attorney are family members. They have been non-responsive or intermittent in taking timely action with regard to Claimant's affairs. As a result, the Claimant lost a benefit she would have otherwise been eligible for.
 - c) A hearing for a conservatorship for the Claimant is scheduled for July 18, 2008.

8. Ms. [REDACTED] also argued that the debt owed to the State (total charges deferred by the state) exceeded the amount the Claimant had in the bank on the date of application. On January 31, 2008 the Claimant owed \$341,927.60 in deferred payments to the State of Alaska for rent and indebtedness for her residence in the Alaska Pioneer Home. (Ex. A) As of February 1, 2008 the Claimant had a bank account balance of \$6,262.56. (Ex. 2.9) Ms. [REDACTED] testified:
 - a) In order to be notified of the bills owed by the Claimant, she was added to the list of representatives of the Claimant in the [REDACTED] Public Assistance Office.
 - b) She was under the belief that she would be notified by the Pioneer Home Central Office when persons with powers of attorney did not pay Claimant's monthly rent and indebtedness.

- c) She was not notified that the rent and indebtedness obligation was in arrears until it was too late to do anything to rectify the failure to pay except reapply for Medicaid.
- d) When she received notice that the monthly payment to reduce the State Subsidy was not paid, she took Claimant to the bank and they paid the bill as evidenced by the copy of the check dated March 27, 2008, payable to the Alaska Pioneer Home. (Ex. 5.1)

PRINCIPLES OF LAW

The party wishing to change the status quo has the burden of proof.³ Thus, an applicant for benefits has the burden of proof, by a preponderance of evidence.⁴

In order to qualify for Medicaid, an individual must “meet the ...resource requirement of the appropriate cash assistance program for their status.” 42 CFR 435.210. The Medicaid Home and Community Based Waiver category uses the Adult Public Assistance resource requirements contained in 7 AAC 40.260-280, 7 AAC 100.400(a)(13)-(15); 7 AAC 100.500(3).

Alaska regulations 7 AAC 100.400(a)(14), 7 AAC 100.500, and 7 AAC 40.270(a)(1) set forth the Medicaid financial eligibility requirements for individuals 65 years old or older. An applicant for Medicaid cannot own more than \$2,000 in countable resources and be eligible for Medicaid. 7 AAC 40.270(a)(1)

Resources are valued as of the first day of the month. 7 AAC 40.270(b) If an applicant has non-excludable resources that exceed the applicable resource limit at any time on the first day of a calendar month, the applicant is considered not to have met the resource requirement for that month. 7 AAC 40.270 (b)

A Medicaid applicant may request retroactive Medicaid coverage at the time of application or interview, for a maximum of three months immediately preceding the

³ “Ordinarily the party seeking a change in the status quo has the burden of proof.” State Alcohol Beverage Control Board v. Decker, 700 P.2d 483, 485 (Alaska 1985).

⁴ 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 the fact sought to be proved is more probable than not.

Black's Law Dictionary 1064 (5th ed. 1979)

month of application if two conditions are met: that the applicant has unpaid medical expenses for dates of service any time during that three-month period,⁵ and that the applicant satisfies the Medicaid program's financial eligibility rules for each month. 7 AAC 100.072

ANALYSIS

The issue is whether or not the Division was correct when it denied the Claimant's February 26, 2008 Home and Community Based Waiver application and request for Retroactive Medicaid because her resources exceeded the Medicaid program's countable resource limit of \$2,000 for the month of application as well as for the preceding three months.

The Claimant is 102 years old and lives at the [REDACTED] Pioneer Home. She was a recipient of Home and Community Based Waiver benefits which expired at the end of October 2007 because she did not send in her review form. (Ex. 3.0) The Claimant submitted a Home and Community Based Waiver application and requested retroactive Medicaid. The application was received by the Division on February 26, 2008. (Ex. 2.1-2.8) The Claimant's Medicaid application was denied on March 28, 2008 because she owned countable resources in excess of the \$2,000 Medicaid limit (Ex. 4)

The applicability of Adult Public Assistance (APA) regulations that apply to Medicaid Eligibility for Aged and Disabled are listed at 7 AAC 100.400(a)(14) A recipient cannot own more than \$2,000 in countable resources and obtain or maintain Medicaid eligibility. 7 AAC 40.270(a)(1) and (b). The regulation is clear: if an applicant has non-excludable resources that exceed the \$2,000 applicable resource limit on the first day of the calendar month, the applicant is financially ineligible for that month. 7 AAC 40.270(a)(1) 7 AAC 40.270(b)

On February 1, 2008, the first day of the month of application, the Claimant's First National Bank account balance was \$6,262.56 (Ex. 2.9) Later that month, on February 26, 2008 the Claimant applied for Medicaid. Thus, the Claimant's First National Bank account balance was over the Medicaid resource limit of \$2,000 during the month of application, February 2008. Accordingly, the Division was correct when it denied the Claimant's application for Medicaid benefits for the month of February 2008 because she owned countable resources in excess of the Medicaid limit (Ex. 4)

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. However, the applicant must satisfy the Medicaid program's financial eligibility rules for each of those three months. 7 AAC 100.072 This includes not exceeding the allowable resource limit

⁵ The existence of unpaid medical bills during the preceding three months was not a contested issue in this case.

of \$2,000 on the first day of each of the three preceding months. The Claimant's bank account balances easily exceeded the \$2,000 limit in each of the three months preceding the February 2008 application (November 2007, December 2007, and January 2008). (Exs. 2.9, 2.11, 2.14, 2.15) Therefore, the Division was correct to deny the Claimant for Medicaid coverage for those three months.

The Claimant has not disputed the financial facts as presented by the Division. Instead, the Claimant's representative, Ms. [REDACTED], argued that the Claimant's competence non-responsiveness of her powers of attorney should have been considered. To support this argument, she cited the following facts: the Claimant is 102 years old and a vulnerable adult; the Claimant's ability to handle her own affairs has been at issue for a few years; and the Claimant's powers of attorney are family members who have been non-responsive or intermittent in taking timely action with regard to Claimant's affairs.

The Claimant's representative argued that the Claimant was not responsible for her bank balances because her family members were supposed to take care of paying her bills. If the Claimant's family members had acted responsibly, Claimant's finances would have allowed her to qualify for Medicaid. Specifically, if family members had paid the rent and indebtedness owed to the State, the Claimant's bank account balance would have been reduced to \$2,000 or less and would have met the Medicaid resource limit. However, the Medicaid financial eligibility regulations do not allow for such a defense. The simple fact is that the Claimant's bank balances exceeded \$2,000 on the first day of the four months in question (February 2008, the month of the application and November 2007 through January 2008).

Ms. [REDACTED] also argued that the debt owed to the State exceeded the amount the Claimant had in the bank on the date of application. On January 31, 2007 the Claimant owed a total of \$341,927.60 in "charges deferred by the State." (Ex. A) Ms. [REDACTED] argued that this outstanding balance owed by the Claimant exceeded the \$6,262.56 the Claimant had in her First National Bank account. (Ex. A, 5.1) After receiving notice that the State subsidy for rent and indebtedness had not been paid, Ms. [REDACTED] took the Claimant to First National Bank and the bank issued on March 27, 2008 a cashier's check for \$4,400.00 payable to the Alaska Pioneer Home in order to pay a portion of the "rent and indebtedness" the Claimant owed. (Ex. 5.1)

There is no provision in law mandating or even allowing the Division to subtract countable resources from debts owed before arriving at a determination that the Claimant is "over resources." Moreover, the cashier's check issued March 27, 2008 had no effect on the Division's eligibility determination because the bank account balance as of the first day in February 2008 was \$6,262.56. Per the applicable regulation, this account balance was over the allowable resource limit of \$2,000 and resources are valued as of the first day of the month. 7 AAC 40.270(a)(1) 7 AAC 40.270(b)

In summary, the Claimant's First National Bank account balance was over the Medicaid resource limit of \$2,000 during the month of application, February 2008 and for each of the three months preceding the Claimant's application: November 2007, December 2007, and January 2008. While the Claimant's funds may have exceeded the Medicaid program's resource limit because of the mishandling of the Claimant's bills by her family members, that does not constitute a defense to the Division's denial of Medicaid coverage based upon explicit regulatory requirements. In addition, there is no provision in law mandating or even allowing the Division to subtract countable resources from debts owed to the State before arriving at a determination that the Claimant is "over resources." Accordingly, the Claimant did not meet the burden of proof because the evidence presented on her behalf does not prove by a preponderance that the Claimant was entitled to Medicaid benefits. Therefore, she was not financially eligible for Medicaid.

CONCLUSION OF LAW

The Claimant did not qualify for Medicaid from November 2007 through February, 2008 because on the first day of each of these months, her bank balance exceeded the allowable limit of \$2,000.

DECISION

The Division was correct when it denied the Claimant's February 26, 2008 Home and Community Based Waiver and request for Retroactive Medicaid application, because Claimant's resources exceeded the Medicaid program's countable resource limit \$2,000 for the month of application as well as for the preceding three months of November 2007 through February 2008.

APPEAL RIGHTS

If for any reason the Claimant is not satisfied with this decision, she has the right to appeal by requesting a review by the Director. To do this, the Claimant must send a written request directly to:

Director of the Division of Public Assistance
Department of Health and Social Services
PO Box 110640
Juneau, AK 99811-0640

An appeal request must be sent within 15 days from the date of receipt of this decision.
Filing an appeal with the Director could result in the reversal of this decision.

DATED this 7 day of July, 2008.

[Redacted Signature]
Mary Jane Sutliff
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 7th day of July, 2008, true and correct copies of the foregoing were sent to:

Claimant c/o Ms. [Redacted] – Certified Mail, Return Receipt Requested.
[Redacted] Director
[Redacted], Policy & Program Development
[Redacted] Staff Development & Training
[Redacted], Fair Hearing Representative
Representatives with powers of attorney:

[Redacted]
Case File
Hearing File
[Redacted]
Al Levitre
Law Office Assistant I