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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-284
)	
Claimant.)	Division Case No. 05358645
_____)	

FAIR HEARING DECISION

STATEMENT OF THE CASE

██████████ (Claimant) submitted a recertification application for Adult Public Assistance and Medicaid in March of 2008.¹(Ex. 2) On March 20, 2008, the Division of Public Assistance (Division) sent him notice his recertification application for benefits was denied and his benefits would be terminated because of excess income. (Ex. 4) The Claimant requested a fair hearing contesting the denial and termination on April 14, 2008. (Ex. 5). This office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to Claimant's request, a hearing was held on May 15, 2008. The hearing was conducted by Hearing Authority Mary Jane Sutliff. The Claimant attended the hearing telephonically and represented himself. ██████████, Public Assistance Analyst with the Division, attended in person to represent the Division.

After the hearing, this case was reassigned to Hearing Authority Patricia Huna-Jines, who reviewed all the evidence, including the recording of the hearing, before issuing this decision.

¹ It is not clear exactly when the application was submitted. The Division date stamp on the application indicating the date the Division received the application is illegible. Some Division evidence indicates the application was received on March 12, 2008, (Ex. 1 & 4), other documentation indicates the application was received on March 3, 2008. (Ex. 3).

ISSUE

Was the Division correct to deny the Claimant's March 3, 2008 reapplication for and termination of Adult Public Assistance and Medicaid benefits because of excess income?

FINDINGS OF FACT

1. The Claimant is currently [REDACTED] years old (birthdate [REDACTED]). (Ex. 2.0) On March 3, 2008, Claimant submitted an application to renew his Adult Public Assistance and Medicaid benefits. (Ex. 2). At that time he was receiving both Adult Public Assistance and Medicaid. (Ex. 1).
2. On March 20, 2008, the Division sent Claimant notice his reapplication was denied and his Adult Public Assistance and Medicaid benefits would be terminated because the Division determined he exceeded the maximum income limit for the programs. (Ex. 4).
3. As of the May 15, 2008 hearing date, the Claimant was receiving Social Security, Title II Old Age, Survivors, and Disability (OASDI) benefits. The Claimant has been receiving OASDI since 2004. (Ex. 3.2).
4. A Social Security Administration letter sent to Claimant indicates these benefits increased to \$1,208.00 per month in 2008. This increase was due to a 2.3 percent rise in the cost of living. (Ex. C).
5. An April 21, 2008 case note in the Claimant's Division file states: "At some point during 2007, it appears [REDACTED]'s Social Security benefits were adjusted to a higher amount (not the COLA²) – then in 1/08, the COLA was made and [REDACTED]'s Social Security increased to \$1,208.00 gross." (Ex. 5.2).

PRINCIPLES OF LAW

This case involves a reapplication for and termination of Adult Public Assistance and Medicaid benefits. When benefits are terminated, the Division has the burden of proof³ by a preponderance of the evidence.⁴

Adult Public Assistance (APA) is a benefit provided by the State of Alaska to every aged, blind, or disabled needy resident who exceeds Social Security income standards. 7 AAC 40.170(c) and (b); AS

² COLA is defined as: Cost of Living Allowance.

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 *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.

47.25.430. However, there are income eligibility standards for APA. For Claimant's household, the income standard is \$1,183.00. Therefore, the household income may not exceed \$1,183.9 per month in order for an individual to be eligible for APA. However, the first \$20.00 per month of income is excluded in determining the total monthly income. 7 AAC 40.320.

An individual who is eligible for and receiving Adult Public Assistance is eligible for Medicaid. 7 AAC 100.410. When that person no longer is eligible for APA, that person typically loses his eligibility for Medicaid. However, there is a mandatory category of Medicaid coverage where an individual is allowed to continue receiving Medicaid even if that person loses APA benefits. 7 AAC 100.002(4) defines one of these individuals as follows:

(4) individuals who would be eligible for SSI or APA if the individual had not received the annual cost-of-living increase to that individual's OASDI benefits and who

(A) meet the requirements of 42 C.F.R. 435.135,⁵ revised as of October 1, 2005 and adopted by reference;

(B) meet the requirements set out in sec. 503, P.L. 94-566;⁶ and

⁵ This Federal Regulation states in pertinent part:

(a) If an agency provides Medicaid to aged, blind, or disabled individuals receiving SSI or State supplements, it must provide Medicaid to individuals who--

(1) Are receiving OASDI;

(2) Were eligible for and receiving SSI or State supplements but became ineligible for those payments after April 1977; and

(3) Would still be eligible for SSI or State supplements if the amount of OASDI cost-of-living increases paid under section 215(i) of the Act, after the last month after April 1977 for which those individuals were both eligible for and received SSI or a State supplement and were entitled to OASDI, were deducted from current OASDI benefits.

(b) Cost-of-living increases include the increases received by the individual or his or her financially responsible spouse or other family member (e.g., a parent).

(c) If the agency adopts more restrictive eligibility requirements than those under SSI, it must provide Medicaid to individuals specified in paragraph (a) of this section on the same basis as Medicaid is provided to individuals continuing to receive SSI or State supplements. If the individual incurs enough medical expenses to reduce his or her income to the financial eligibility standard for the categorically needy, the agency must cover that individual as categorically needy. In determining the amount of his or her income, the agency may deduct the cost-of-living increases paid under section 215(i) after the last month after April 1977 for which that individual was both eligible for and received SSI or a State supplement and was entitled to OASDI, up to the amount that made him or her ineligible for SSI.

⁶ This Public Law reads in pertinent part:

(C) are eligible under 7 AAC [100.416](#);⁷

ANALYSIS

The issue in this case is whether the Division was correct to deny the Claimant's March 3, 2008 reapplication for Adult Public Assistance and Medicaid benefits and to terminate these benefits because he was over income.

Claimant's household income is \$1,208.00. The first \$20.00 per month of income is excluded, therefore, reducing his income to \$1,188.00. This amount is over the Adult Public Assistance standard of \$1,183.00. Therefore, Claimant's income is over the eligibility standard for Adult Public Assistance, and he does not qualify for that benefit. However, Claimant does qualify for Medicaid coverage under 7 AAC 100.002(4), as explained below.

// 42 USC 1396a note. // PRESERVATION OF MEDICAID ELIGIBILITY FOR INDIVIDUALS WHO CEASE TO BE ELIGIBLE FOR SUPPLEMENTAL SECURITY INCOME BENEFITS ON ACCOUNT OF COST- OF LIVING INCREASES IN SOCIAL SECURITY BENEFITS.

In addition to other requirements imposed by law as a condition for the approval of any State plan under title XIX of the Social Security Act, // 42 USC 1396. // there is hereby imposed the requirement (and each such State plan shall be deemed to require) that medical assistance under such plan shall be provided to any individual, for any month after June 1977 for which such individual is entitled to a monthly insurance benefit under title II of such Act // 42 USC 401. // but is not eligible for benefits under title XVI of such Act, // 42 USC 1381. // in like manner and subject to the same terms and conditions as are applicable under such State plan in the case of individuals who are eligible for and receiving benefits under such title XVI for such month, if for such month such individual would be (or could become) eligible for benefits under such title XVI except for amounts of income received by such individual and his spouse (if any) which are attributable to increases in the level of monthly insurance benefits payable under title II of such Act which have occurred pursuant to section 215(i) of such Act, in the case of such individual, since the last month after April 1977 for which such individual was both eligible for (and received) benefits under such title XVI and was entitled to a monthly insurance benefit under such title II, and, in the case of such individual's spouse (if any), since the last such month for which such spouse was both eligible for (and received) benefits under such title XVI and was entitled to a monthly insurance benefit under such title II. Solely for purposes of this section, payments of the type described in section 1616(a) of the Social Security Act // 42 USC 1382e. // or of the type described in section 212(a) of Public Law 93-66 // 87 Stat. 155. // shall be deemed to be benefits under title XVI of the Social Security Act.

⁷ 7 AAC 100.416 states:

To be eligible for Medicaid under 7 AAC [100.002\(b\)](#) (4) and this section, an individual must

(1) have been entitled to receive both OASDI and either SSI or APA cash benefits in at least one month after April 1977;

(2) be eligible for and receiving OASDI benefits during the month of application for Medicaid;

(3) be ineligible for SSI or APA in the month of application for Medicaid; and

(4) have a level of income that would enable the individual to financially qualify for SSI or APA if all OASDI cost-of-living adjustments received since the last month the individual was eligible for both OASDI and either SSI or APA cash benefits were deducted.

The Social Security Administration letter in evidence indicates the increase in Claimant's Social Security benefit was a cost-of-living increase in 2008. Since 7 AAC 100.002(4) provides that a person in Claimant's circumstances can continue receiving Medicaid if he would have been eligible had he not received the cost-of living increase, and Claimant was eligible until he received the cost-of-living increase, Claimant continues to be eligible for Medicaid. There is a Division case note indicating the Claimant may have received an increase in 2007 that was more than just the cost-of-living increase. This case note states: "[a]t some point during 2007, it appears [REDACTED]'s Social Security benefits were adjusted to a higher amount (not the COLA)." However, there is nothing else in evidence to substantiate that claim and the rest of the case note acknowledges the increase in 2008 was a cost of living adjustment: "then in 1/08, the COLA was made and [REDACTED]'s Social Security increased to \$1,208.00 gross." (Ex. 5.2). Therefore, Division did not meet its burden to show Claimant was ineligible for Medicaid under the aforementioned category.

CONCLUSIONS OF LAW

1. The Claimant's income is over the eligibility standard for Adult Public Assistance, and therefore, he does not qualify for Adult Public Assistance benefits.
2. The Claimant qualifies for Medicaid under 7 AAC 100.002(4).

DECISION

1. The Division was correct when it denied the Claimant's March 3, 2008 reapplication for Adult Public Assistance.
2. The Division was not correct when it denied the Claimant's March 3, 2008 reapplication for Medicaid benefits.

APPEAL RIGHTS

If for any reason the Claimant is not satisfied with this decision, the Claimant 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.

