

Office of Hearings and Appeals
3601 C Street, Suite 1322
P. O. Box 240249
Anchorage, AK 99524-0249
Ph: (907)-334-2239
Fax: (907)-334-2285

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

In the Matter of)
)
 [REDACTED],) OHA Case No. 08-FH-312
)
 Claimant.) Division Case No. [REDACTED]
_____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) was receiving Medicaid benefits in November 2006. (Ex. 3.0) On November 28, 2006, the Division of Public Assistance (Division) sent the Claimant two separate written notices his Medicaid coverage would be terminated effective December 31, 2006, due to a projected income increase, unless he set up a Medicaid Qualifying Trust after which time his Medicaid benefits could be reinstated. (Exs. 3.0, 3.1)

[REDACTED], the Claimant's widow¹, (hereinafter "Wife") contacted the Division on March 11, 2008, inquiring why she had received medical bills for the Claimant that should have been paid for by Medicaid. (Ex. 5) The Claimant's widow requested a fair hearing on April 24, 2008 because she was informed that Medicaid would not pay those medical bills because the Claimant's Medicaid coverage had been terminated effective December 31, 2006. (Exs. 6.0 – 6.2) This office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to Claimant's request, a hearing was held on June 3, July 15, August 19, and September 30, 2008. The Claimant's Wife attended the hearing telephonically and represented the Claimant's interest. [REDACTED], Public Assistance Analyst with the Division, attended the June 3, July 15, and August 19, 2008 portions of the hearing in person to represent the Division. Ms. [REDACTED] attended the September 30, 2008 portion of the hearing telephonically.

¹ The Claimant is deceased as of April 4, 2007. ([REDACTED] testimony)

The Division moved to dismiss this case for timeliness issues prior to the hearing. However, after listening to the Wife's testimony, on the July 15, 2008 portion of the hearing, it was determined the Wife did act in a timely manner, and the hearing proceeded on the merits.

ISSUE

The Division's position in this case was that the Claimant did not create and fund a Medicaid Qualifying Income Trust (trust), as required by the Division, and it therefore acted properly when it terminated the Claimant's Medicaid coverage. The Claimant's Wife argued that she did set up the trust in a timely manner and that the Claimant's Medicaid coverage should not have been terminated.

The resulting issue is:

Was the Division correct to terminate the Claimant's Medicaid coverage effective December 31, 2006?

FINDINGS OF FACT

1. The Claimant was receiving Medicaid benefits in November 2006 (Ex. 1) He was residing in a nursing home. (Ex. 1)
2. The Claimant had two sources of income, as of November 2006. The first was his federal retirement, which was then \$1,165 per month gross. (Ex. 2.3) The second was his Social Security retirement, which was then \$474 per month. (Ex. 2.1) This totaled \$1,639 in monthly gross income.
3. The Claimant was scheduled to receive increases in both his retirement payments. His Social Security retirement payment increased to \$489 monthly beginning in December 2006. (Ex. 2.1) His federal retirement payment increased to \$1203 gross per month effective January 2007. (Ex. 2.3) This totaled \$1,692 in monthly gross income starting in January 2007.
4. On November 28, 2006, the Division sent the Claimant written notice his Medicaid coverage would be terminated at the end of December 2006, because his projected income of \$1,692 was greater than the Medicaid program's income limit of \$1,656. (Ex. 3.0) That same written notice, and an additional notice also sent to the Claimant on November 28, 2006, advised the Claimant he could maintain his Medicaid eligibility by creating a Medicaid qualifying trust. (Exs. 3.0, 3.1)
5. The Claimant's wife took immediate action to set up the trust. She hired a lawyer, who drafted an "Irrevocable Income Trust" for the Claimant. (Ex. A, pp. 17 - 25). A trust bank account was set up on December 6, 2006. (Ex. A, pp. 1, 3) The trust was registered with the Probate Court on December 11, 2006. (Ex. A. p. 2) The Claimant's wife did not place any funds in the trust account, other than the initial deposit

of \$20, nor did she transfer any of the Claimant's retirement payments into the trust account. (Wife's testimony)

6. The Claimant's federal retirement and Social Security payments were made, both before and after the creation of the trust, directly to the Claimant's personal bank account. (Ex. A, pp. 5, 8, 31) No deposits were made into the trust account other than the initial \$20 deposit. (Ex. A, pp. 3, 7, 9)

7. The Claimant's wife attempted to give a copy of the trust to her husband's Public Assistance caseworker, but was unable to because the caseworker was out of the office. She informed the nursing home staff she had set up a Medicaid qualifying trust. (Wife's testimony)

8. The Claimant's wife left the State of Alaska on December 11, 2006 to care for an ill family member. (Wife's testimony) She did not hear anything further from the State of Alaska. She thought the creation of the Medicaid trust stopped any termination of her husband's Medicaid case. *Id.* She did not become aware her husband's Medicaid case had been closed by the Division until she received a bill in 2008 from the nursing home. (Wife's testimony; Ex. A, p. 26)

9. The Division did not have a copy of the Medicaid trust in its files. (██████████ testimony)

PRINCIPLES OF LAW

This case involves the termination of benefits. When benefits are terminated, the Division has the burden of proof² by a preponderance of the evidence.³

In order to financially qualify for Alaska Medicaid, a person residing in a "medical or intermediate care facility" may not have an income greater than \$1,656 per month. AS 47.07.020(b)(6); 7 AAC 43.020(a)(3).⁴ There are no deductions allowed from a person's income. *Id.*

² "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)

³ Preponderance of the evidence is defined as follows:

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

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

⁴ This case predates the July 20, 2007 adoption of comprehensive regulations that address the requirements for Medicaid qualifying trusts. *See* 7 AAC 100.600 et. seq. This Decision therefore refers to the Alaska statute and regulations that governed Medicaid eligibility and Medicaid qualifying trusts as they existed in November and December 2006, the relevant time frame for this case.

A Medicaid applicant/recipient who is not financially eligible for Medicaid services due to excess income may become financially eligible by creating an approved Medicaid-qualifying trust. AS 47.07.020(f). The trust must satisfy the requirements of 42 USC 1396p(d)(4), i.e. be composed of pension, retirement, and other income of the Claimant, and be payable to the State after the Claimant's death. *Id.* Income that is placed into the trust is not counted as a Medicaid applicant/recipient's income for financial qualification purposes. *Id.*

ANALYSIS

The issue in this case is whether or not the Division was correct when it terminated the Claimant's Medicaid coverage effective the end of December 2006.

The following facts are undisputed:

1. The Claimant's total monthly income was \$1,692 beginning with the month of January 2007. (Federal retirement of \$1,203 and Social Security retirement income of \$489)
2. The Claimant had Medicaid qualifying trust set up and registered with the Alaska Courts as of December 11, 2006. However, none of the Claimant's income was ever placed into it.

The facts of this case show the Claimant, starting in January 2007, exceeded the Medicaid program's monthly income limit of \$1,656 for a person residing in a nursing home. The Claimant's income could have been reduced to less than \$1,656 per month, qualifying him for continued Medicaid coverage, if some or all of his income had placed into a Medicaid qualifying trust.

The Claimant's wife took the first steps by setting up a Medicaid qualifying trust, registering it with the courts, and by setting up a trust bank account. However, there needed to be one final step, funding the trust with the Claimant's income. The final step, funding the trust with the Claimant's income, and therefore reducing his countable income, did not occur.

Because the Claimant's countable income was not reduced to less than the \$1,656 Medicaid income limit, by placing his income into the Medicaid qualifying trust, he did not financially qualify for Medicaid coverage effective after December 2006. The Division met its burden of proof and was correct when it terminated his Medicaid coverage after December 2006.

CONCLUSIONS OF LAW

1. The Claimant was not eligible for Medicaid coverage after the end of December 2006 because his monthly income increased to \$1,692 in January 2007, which was

greater than the Medicaid income limit of \$1,656 for a person who resided in a nursing home.

2. The Claimant could have been eligible for continued Medicaid coverage if his countable monthly income had been reduced to less than \$1,656 by placing some or all of his monthly income into his Medicaid qualifying trust. However, none of the Claimant's income was placed into his Medicaid qualifying trust, and his countable income was therefore not reduced to less than \$1,656.

3. The Division met its burden of proof and established it was correct when it terminated the Claimant's Medicaid coverage effective the end of December 2006.

DECISION

The Division was correct when it terminated the Claimant's Medicaid coverage effective the end of December 2006.

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, 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


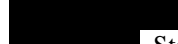
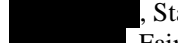

If the Claimant appeals, the request must be sent within 15 days from the date of receipt of this Decision. Filing an appeal with the Director could result in the reversal of this Decision.

DATED this 14th day of November 2008.

/Signed/
Larry Pederson
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 14th day of November 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

Larry Pederson