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

In the Matter of)
)
 [REDACTED]) OHA Case No. 08-FH-507
)
 Claimant.) Division Case No.
 [REDACTED])
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) applied for Medicaid coverage under the Denali KidCare program (Denali KidCare), for her minor son, on July 2, 2008. (Exs. 2.0 – 2.3) On July 14, 2008, the Division of Public Assistance (Division) sent the Claimant notice her Denali KidCare application was denied because her household income exceeded the Denali KidCare income limit. (Ex. 4) The Claimant requested a fair hearing on July 22, 2008. (Ex. 5.1) This Office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to Claimant's request, a hearing was held on August 26, 2008. The Claimant appeared telephonically and represented herself. The Claimant's husband, [REDACTED], also attended telephonically and testified on the Claimant's behalf. [REDACTED], Public Assistance Analyst with the Division, attended in person to represent the Division.

The record was left open after the hearing for the Claimant to submit additional income information, and for the Division's written response. (Exs. A and 23 respectively)

ISSUE

The Division's position on this case was that the Claimant's husband was not self-employed, and it was required to use his gross income figures from his fishing

crewmember income in determining the Claimant's Denali KidCare eligibility. The Claimant's position was that her husband was self-employed, and that the Division over counted his income. The resulting issue is:

Was the Division correct to deny the Claimant's July 2, 2008 Denali KidCare application because her household income alleged exceeded the Denali KidCare program's income limit?

FINDINGS OF FACT

1. The Claimant is married. She resides with her husband and their minor son. (Ex. 2.0) They do not have health insurance. (Ex. 2.2)
2. The Claimant applied for Denali KidCare coverage (Medicaid coverage) for her minor son on July 2, 2008. (Exs. 2.0 – 2.3)
3. The Claimant does not have any income. She stays at home and takes care of the minor child. (Claimant testimony)
4. The Claimant's husband works as a crewmember on fishing boats. (Husband testimony) In 2007, he received an IRS 1099 form showing that he received \$18,032.65 in "Fishing boat proceeds." (Ex. A, p. 1)
5. For the period from March 2008 through the end of May 2008, the husband worked as a crewmember for the ██████ Boat, LLC. (Ex. 2.4)
6. The husband received a crewshare from ██████ Boat, LLC for his efforts. The crewshare was 7 percent of the boat's gross income less operating expenses. The husband then had deductions taken from his crewshare for food and crew expenses. *See e.g.* Ex. 2.5
7. For the period from March 2008 through May 2008, the Claimant received the following income from the ██████:

<u>Date</u>	<u>Gross Crewshare</u>	<u>Food & Crew Exp</u>	<u>Amt to Crewmember</u>
3/25/2008	\$252.79	\$323.67	- 0 -
4/6/2008	\$739.18	\$203.17	\$ 536.02
4/14/2008	\$3,087.78	\$303.54	\$2,784.25
5/5/2008	\$1,592.10	\$207.01	\$1,385.10
5/23/2008	\$2,173.40	\$549.88	\$1,623.52

(Exs. 2.4 – 2.5; A, pp. 8, 10, 12)

8. The husband receives an IRS 1099 form and does not have taxes taken out of his paycheck. (Husband testimony) He is therefore responsible for filing his own taxes as a

self-employed person and paying for his own expenses. The Division did not ask the husband for copies of his tax returns. (Husband testimony)

9. The husband's fishing season for 2008 was from March through August, a six month time period. (Husband testimony) As of the August 26, 2008 hearing date, he had only had self-employment fishing income for the calendar year 2008. *Id.*

10. The Division took the husband's gross crewshare amounts for April and May 2008 (\$739.18, \$3,087.78, \$1,592.10, and \$2,173.40) added them together (\$7,592.46) and divided the total by 2 months to arrive at an average monthly household income of \$3,796.23. (Ex. 3.0) The Division allowed the household one deduction of \$90, and denied the Claimant's application for Denali KidCare because the monthly household income exceeded the Denali KidCare's income limit of \$3,209 for a three person household.

PRINCIPLES OF LAW

This case involves the denial of an application for benefits. Because this is the Division's action denying an application, the Claimant has the burden of proof¹ by a preponderance of the evidence.²

Denali KidCare is a form of Family Medicaid coverage provided to children under the age of 19, pregnant women, post partum women and newborn children in households that are not financially eligible for regular Family Medicaid coverage. *See Alaska Medical Assistance Manual* §5300.

Denali KidCare has its own financial eligibility criteria. For households without health insurance, Denali KidCare provides Medicaid coverage if the household income does not exceed an amount specified in Alaska Statute 47.07.020(b)(13). 7 AAC 100.312(a)(2). The monthly income eligibility limit for a household of three without health insurance is \$3,209. *Alaska Family Medicaid Eligibility Manual Addendum 1.*

"The department will consider a crew member of a fishing vessel who is receiving a share of the profit to be self-employed." 7 AAC 100.172(d). When determining financial eligibility for self-employed persons, the Division "will use the prior year's actual self-employment income for an applicant who applies before or during the current self-employment period or the current year's self employment income for an applicant who applies after the current self-employment period." 7 AAC 100.172(j).

¹ "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)

² 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)

When a person is a self-employed fisherman, he is allowed to deduct his “nonpersonal costs of doing business” from his gross self-employment income. 7 AAC 100.172(d), (h), and (i). After the non-personal business costs are deducted from the gross self-employment income, the result is required to be pro-rated, over the number of months the person is self-employed if the self-employment income for the year is less than 185 percent of the federal poverty level. 7 AAC 100.174. That yearly amount, for a three person household for the period beginning March 1, 2008, is \$40,700. *Alaska Family Medicaid Eligibility Manual Addendum 3*.

ANALYSIS

The issue here is whether or not the Division was correct when it denied the Claimant’s Denali KidCare application because the household made too much money to qualify for the program. The Claimant has the burden of proof on this issue by a preponderance of the evidence.

The Claimant’s husband is the sole source of income for the family. At the time of the application, and during 2007, he worked as a crewmember on a fishing boat. In processing the Claimant’s application, the Division erred in two ways. First, the Division analyzed his income as if he were an employee receiving W-2 wages. It totaled his gross crewshare income before the fishing vessel took any deductions. However, the record is clear the husband receives a crewshare. The Medicaid financial eligibility regulations are very clear on this issue: “[t]he department will consider a crew member of a fishing vessel who is receiving a share of the profit to be self-employed.” 7 AAC 100.172(d). The Division should therefore have handled this case as the husband being self-employed.

Second, the Division should have made its income eligibility determination based upon a proration of the husband’s previous year’s (2007) self-employment income, rather than his current season income. Because the Claimant applied during the husband’s current self-employment season, the Division was required to base its financial eligibility decision using the husband’s “prior year’s actual self-employment income.” 7 AAC 100.172(j). That income as shown on the husband’s 2007 1099³ was \$18,032.65 in “Fishing boat proceeds.”(Ex. A, p. 1) This was his total self-employment income for 2007. Because the husband testified his 2008 fishing year had been March through August, a 6 month period, it is assumed that these proceeds were received during the same time period, from March through August in 2007.

³ It should be noted that if the Claimant’s husband had actually been an employee, instead of self-employed, he would have received an IRS W-2 form rather than a 1099 form.

Dividing the husband's 2007 1099 income of \$18,032.65 by 6 months,⁴ results in a gross income of \$3,005.44. This amount, which does not include allowable deductions for non-personal business costs,⁵ is less than the Denali KidCare income limit of \$3,209 for a three person family.⁶

In summary, the Claimant's three person household had a monthly gross household income of \$3,005.44 which is less than the Denali KidCare monthly income limit of \$3,209. The Division was therefore not correct when it denied the Claimant's July 2, 2008 Denali KidCare application.

CONCLUSIONS OF LAW

1. The sole source of income for the Claimant's household, as of the date of her July 2, 2008 Denali KidCare application, was her husband's self-employment income.
2. The husband's monthly gross self-employment income, without subtracting any allowable deductions, based on his 2007 self-employment income, was \$3,005.44, which was less than the Denali KidCare's monthly income limit of \$3,209 for a three person household.
3. The Division was therefore not correct when it denied the Claimant's July 2, 2008 Denali Kidcare application based upon her household income .

DECISION

The Division was not correct when it denied the Claimant's July 2, 2008 Denali Kidcare application based upon her household income.

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

⁴ Because \$18,032.65 is less than \$40,700 (185 percent of the federal poverty limit for a three person household), that figure is divided by the 6 month self-employment income period rather than being pro-rated over one year. 7 AAC 100.174.

⁵The 2007 tax returns were not part of the record, and there was no evidence presented regarding the husband's actual non-personal business costs.

⁶ The husband most likely had business deductions that would lower this figure. However, because no evidence was presented on this point, it would be speculative to impute them.

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 30th day of October, 2008.

Larry Pederson
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 30th day of October, 2008, true and correct copies of the foregoing were sent to:

Claimant – Certified Mail, Return Receipt Requested.

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

Al Levitre, Law Office Assistant I