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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-563
)
 Claimant.) Division Case No. [REDACTED]
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) was receiving Alaska Adult Public Assistance and Medicaid benefits in June 2008. (Ex. 1.0) The Division of Public Assistance (Division) received his renewal application for Adult Public Assistance and Medicaid benefits on June 24, 2008. (Ex. 2.0) On July 23, 2008, the Division terminated the Claimant's Adult Public Assistance and Medicaid benefits effective July 31, 2008, because it determined the Claimant was a Texas resident, and no longer an Alaska resident. (Ex. 2.4) The Claimant requested a fair hearing on August 1, 2008. (Ex. 3.1) This Office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to Claimant's request, a hearing was held on September 2 and 23, 2008. The Claimant appeared telephonically and represented himself. [REDACTED], Public Assistance Analyst with the Division, attended in person to represent the Division.

ISSUE

Was the Division correct to terminate the Claimant's Adult Public Assistance and Medicaid benefits effective July 31, 2008?

FINDINGS OF FACT

1. The Claimant began receiving Medicaid benefits from ██████ in July 2004. (Ex. 2.3) He is also receiving federal Social Security Supplemental Security Income benefits. (Ex. 2.5)
2. The Claimant moved to Alaska in 2006. *Id.* The Claimant began receiving Adult Public Assistance and Medicaid benefits from the State of Alaska in July 2006. (Ex. 1.0)
3. The Claimant was only in Alaska for approximately one month in 2006. (Ex. 2.3) He became seriously ill, and his doctor told him that he needed to leave the State of Alaska and get on a waiting list for a double lung transplant. (Claimant testimony) The Claimant moved back to ██████ on August 29, 2006. (Claimant testimony) He then began receiving Medicaid benefits again from ██████ *Id.*
4. The Division became aware the Claimant was living in ██████ when he requested renewal of his Alaska Adult Public Assistance and Medicaid benefits on June 24, 2008. (Ex. 2.0)
5. On July 22, 2008, a Division eligibility technician called the ██████ Department of Human Services and was informed the Claimant was currently receiving Medicaid from the State of ██████. (Ex. 2.2) She also called federal Social Security staff in ██████ and was informed the Claimant “was only off the ██████ Medicaid rolls for one month in 2006 when he reported he moved to Alaska for one month and then moved back to the State of ██████.” (Ex. 2.3)
6. On July 23, 2008, the Division terminated the Claimant’s Adult Public Assistance and Medicaid benefits effective July 31, 2008, because it determined the Claimant was a ██████ resident, and no longer an Alaska resident. (Ex. 2.4)
7. The Claimant testified as follows:
 - a. He had lived in Alaska most of his life. He could not remember exactly when he went to ██████ but it was for health reasons.
 - b. He then came back to Alaska in 2006. After he became seriously ill, he went to ██████ based on his doctor’s advice he get on a waiting list for a double lung transplant.
 - c. He did not apply for ██████ Medicaid benefits. When he returned to ██████, which was on August 29, 2006, he called Social Security and informed them he had returned to ██████. As a result, he automatically started receiving ██████ Medicaid benefits.

- d. He did not intend to become a [REDACTED] resident or give up his Alaska residency. He has a son and a grandchild in Anchorage. The only reason he left was for medical treatment.
- e. His previous Alaska caseworker knew he was receiving [REDACTED] Medicaid. His living in [REDACTED] did not become an issue until he tried to renew his Alaska benefits in 2008.

PRINCIPLES OF LAW

This case involves the termination of benefits. Because this is the Division's action terminating benefits, the Division has the burden of proof¹ by a preponderance of the evidence.²

Both the Adult Public Assistance and Medicaid programs require that program recipients be Alaska residents. 7 AAC 40.090(2); 7 AAC 40.110(a) (Adult Public Assistance); 7 AAC 100.060(a) (Medicaid) Both the Adult Public Assistance and Medicaid regulations define a "resident" as an individual who is physically present in the state voluntarily and who intends to remain in the state. AS 47.25.430(a); 7 AAC 40.110(a) (Adult Public Assistance); 7 AAC 100.060(b) (Medicaid).

The Adult Public Assistance program regulations explicitly deal with the issue of when an Adult Public Assistance recipient can leave the State of Alaska and still remain a "resident" for Adult Public Assistance eligibility purposes:

- (c) An individual who is absent from the state for 30 days or more is not eligible for assistance unless the individual leaves this state to
 - (1) obtain prescribed medical treatment that is not available in this state and
 - (A) does not establish residency outside this state; and
 - (B) intends to return to this state once the prescribed medical treatment is completed;

7 AAC 40.110(c).

The Alaska Medicaid regulations do not contain the same detail with regard to residency. They provide as follows:

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)

(e) Once an applicant establishes state residency, the applicant retains state residency until the applicant establishes residency in another place.

7 AAC 100.060(e).

A [REDACTED] Medicaid recipient must be a [REDACTED] resident:

(a) General requirements. To be eligible for the [REDACTED] Medical Assistance Program, an individual must be a resident of the State of [REDACTED]; that is, he must have established residence in [REDACTED] and he must intend to remain in [REDACTED]. A visit to another state does not terminate [REDACTED] residence if the individual intends to return when he completes the purpose of the visit. If an individual is placed by an agency of another state in an institution located in [REDACTED], the individual remains a resident of the state that made the placement.

1 Texas Administrative Code Part 15, Rule §358.301.

ANALYSIS

The issue here is whether or not the Division was correct when it terminated the Claimant's Adult Public Assistance and Medicaid benefits effective July 31, 2008 because he was no longer an Alaska resident.

Both the Alaska Adult Public Assistance and Medicaid programs require that program recipients be Alaska residents. These programs have slightly different rules regarding residency. They are therefore each addressed separately below.

A. Adult Public Assistance

The Adult Public Assistance program allows an Adult Public Assistance recipient to leave the State of Alaska for over thirty days if the following conditions are **each** satisfied:

- 1) The purpose of the absence is to obtain prescribed medical treatment unavailable in Alaska;
- 2) The Claimant does not establish residency in another state; and
- 3) The Claimant intends to return to Alaska.

7 AAC 40.110(c).

It is undisputed the Claimant began receiving Medicaid benefits from the State of [REDACTED] in 2006. The Claimant testified he did not apply for Medicaid benefits in [REDACTED], but rather received them automatically because he notified the federal Social Security office he had returned to Texas. The Claimant also testified he did not intend to give up his Alaska residency.

However, the Claimant was required to be a [REDACTED] resident in order to receive Medicaid benefits from the State of [REDACTED]. 1 [REDACTED] Administrative Code [REDACTED]. Regardless of the Claimant's intent to remain an Alaska resident, and regardless of the fact he may not have formally applied for [REDACTED] Medicaid benefits, he accepted Medicaid benefits from the State of [REDACTED]. This was a benefit available only to [REDACTED] residents, making the Claimant a *de facto* [REDACTED] resident.

The Claimant could not be a resident of both [REDACTED] and Alaska simultaneously. Once he became a [REDACTED] resident, he lost his Alaska residency. Once he became a [REDACTED] resident, he was no longer eligible to receive Adult Public Assistance benefits from the State of Alaska.³ Because the Claimant was receiving [REDACTED] Medicaid benefits in June 2008, and had been receiving them continuously since the fall of 2006,⁴ the Division met its burden of proof establishing the Claimant was not an Alaska resident. The Division was therefore correct to terminate the Claimant's Alaska Adult Public Assistance benefits effective July 31, 2008.

B. Medicaid

The Alaska Medicaid regulations do not have a specific time limit on how long a recipient may stay outside Alaska and still receive Alaska Medicaid benefits. Instead, the pertinent regulation provides "the applicant retains state residency until the applicant establishes residency in another place." 7 AAC 100.060(e).

As shown above, the Claimant has been a [REDACTED] resident since the fall of 2006, because of his acceptance of Medicaid benefits from the State of [REDACTED]. Because he is a [REDACTED] resident, he is not eligible to receive Medicaid benefits from the State of Alaska. The Division has therefore met its burden of proof establishing the Claimant is not an Alaska resident. The Division was therefore correct to terminate the Claimant's Alaska Medicaid benefits effective July 31, 2008.

CONCLUSIONS OF LAW

1. The Claimant is and has been a resident of the State of [REDACTED] since the fall of 2006.

³ The Claimant's testimony provided that he did not intend to abandon his Alaska residency, and that he left Alaska for medical treatment unavailable in [REDACTED]. However, in order to prevail, he would have to establish all three factors contained in the regulations: 1) he left the state for prescribed medical treatment unavailable in Alaska, 2) no establishment of residency outside Alaska, and 3) intent to return. 7 AAC 40.110(c). Because the Claimant established residency in [REDACTED], he cannot prevail based upon his intent to return to Alaska, or his leaving Alaska for prescribed medical treatment unavailable in Alaska. It should also be noted the Claimant did not provide proof, other than his unsupported testimony, that he left Alaska for **prescribed** medical treatment.

⁴ See Findings of Fact 3 and 5 above.

2. The Claimant, as the resident of another state, is not eligible to receive either Adult Public Assistance or Medicaid benefits from the State of Alaska.

3. The Division met its burden of proof by a preponderance of the evidence, and was therefore correct to terminate the Claimant's Alaska Adult Public Assistance and Medicaid benefits effective July 31, 2008.

DECISION

The Division was correct when it terminated the Claimant's Alaska Adult Public Assistance and Medicaid benefits effective July 31, 2008.

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 20th day of November, 2008.

Larry Pederson
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 20th day of November 2008, true and correct copies of the foregoing were sent to:
Claimant – Certified Mail, Return Receipt Requested.

[REDACTED], Fair Hearing Representative
[REDACTED], Director
[REDACTED], Policy & Program Development
[REDACTED], Staff Development & Training

Al Levitre, Law Office Assistant I