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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. 09-FH-184
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) submitted an Application for Medicaid benefits (Application) on February 23, 2009 and requested retroactive payment of medical expenses incurred during August, October and November of 2007. (Ex. 2.0-2.7) Claimant's Application was approved. (Ex. 1) However, the Division of Public Assistance (Division) notified Claimant on March 18, 2009 it had denied Claimant's request for retroactive Medicaid coverage because the medical expenses for which he sought retroactive payment were not incurred within three months of the date of his Application or interview. (Ex. 4)

Claimant requested a Fair Hearing on March 20, 2009. (Ex. 6.0-6.1) This Office of Hearings and Appeals has jurisdiction under authority of 7 AAC 49.020(4).

The Fair Hearing was held on May 12, 2009. Claimant appeared telephonically and testified. [REDACTED], Public Assistance Analyst representing the Division of Public Assistance, appeared in person and testified for the Division.

ISSUE

Was the Division correct to deny Claimant's Application for retroactive payment of medical expenses under the Medicaid program because the expenses for which Claimant sought payment were incurred too long before Claimant filed his Application?

FINDINGS OF FACT

1. Claimant completed and signed an Application for Medicaid program benefits (Application) on February 19, 2009. (Ex. 2.0-2.7) The Division received this application on February 23, 2009. (Ex. 2.0) Claimant sought public assistance and “medicare to go with federal ssi for disability.” (Ex. 2.5)
2. Claimant engaged in a telephonic eligibility interview on February 25, 2009. (Ex. 3.0) During the interview, he informed the Division Eligibility Technician that he had applied for Supplemental Security Income (SSI) when he lived in New Mexico in 2006 and had recently been awarded benefits for SSI effective as of 2006. (Ex. 3.0) Claimant requested retroactive payment of Medicaid benefits through the State of Alaska to pay for medical expenses he incurred in 2006. (Ex. 3.0). The Technician informed him that retroactive Medicaid benefits were paid in Alaska only for the medical expenses incurred three months immediately prior to the filing of the Application. (Ex. 3.0; ██████ testimony)
3. Claimant testified that he moved to Alaska in summer of 2007, probably in July. (See also Ex. 3.0) The Eligibility Technician recommended Claimant pursue the application for Medicaid benefits he submitted in New Mexico to see if the medical expenses could be paid through New Mexico. (Ex. 3.0)
4. On March 18, 2009, Claimant sought to have Medicaid pay for medical expenses he incurred during August 2007, October 2007 and November 2007 by requesting payment during a telephone call with a Division staff member. (Ex. 4) The Division personnel informed Claimant that the months of August 2007, October 2007 and November 2007 were not the three months immediately preceding his February 19, 2009 Application and therefore expenses incurred then could not be paid through retroactive Medicaid coverage. (Ex. 3; ██████ testimony)
5. On March 19, 2009, the Division issued Claimant written notice of the denial of his request for retroactive Medicaid payment of medical expenses incurred in August, October and November 2007. (Ex. 5)
6. Claimant requested a Fair Hearing concerning the denial. (Ex. 6.0-6.1)
7. At the Fair Hearing, the Claimant reiterated his request for retroactive payment of the August, October and November 2007 medical expenses. (Claimant testimony) Claimant testified that after arriving in Alaska, he pursued his disability status with SSI but did not apply through the State of Alaska for Medicaid benefits. Claimant believed the ██████ application for Medicaid benefits would “transfer” to Alaska because his SSI application (the denial of which had been appealed) had persisted. (Claimant testimony)

PRINCIPLES OF LAW

I. Burden of Proof

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). Claimant's Application seeks a change from the status quo and therefore Claimant has the burden of proof.

II. Standard of Proof

The regulations applicable to this case specify the standard of proof is by a preponderance of the evidence. A preponderance of the evidence is the normal standard of proof in an administrative proceeding. *Amerada Hess Pipeline v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986).

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)

III. Medicaid Program

The Medicaid Program (Program) is a federal program administered by the states. In Alaska, the regulations governing eligibility for retroactive Medicaid are at 7 AAC 100.072. The regulations relevant to this case state:

(a) 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 if the applicant has unpaid medical expenses for dates of service any time during that three-month period. If the applicant fails to request an eligibility determination for retroactive coverage at the time of application or interview, the applicant forfeits the opportunity to receive retroactive benefits during that period.

(b) The department will inform the applicant about potential retroactive coverage under this section as part of the application and interview process.

ANALYSIS

I. Issue

Was the Division correct to deny Claimant's Application for retroactive Medicaid benefits because the medical expenses for which he sought coverage were incurred more than three months prior to Claimant's Application or interview?

II. Burden of Proof

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). Because Claimant’s Application seeks to change the status quo, Claimant has the burden of proof in this case.

III. Medicaid law

Regulation 7 AAC 100.072(a) is very explicit: it does not permit retroactive Medicaid coverage beyond the three months immediately preceding the date of the Application for Medicaid or date of interview pursuant to the Application. There is no good cause or other basis for an exception to the time restriction.

Claimant requests retroactive Medicaid coverage for medical expenses incurred in August 2007, October 2007 and November 2007. (Ex. 4; Claimant’s testimony) Claimant filed his Application for Medicaid coverage in Alaska on February 23, 2009. (Ex. 2) Claimant’s eligibility interview occurred on February 25, 2009. (Ex. 3) He was informed at that time that his medical expenses from 2006 were not subject to retroactive coverage under the Medicaid program and that only expenses for the three months immediately preceding an Application could be covered. (Ex. 3) At the time Claimant filed his Application and/or had the interview, the law provided that only medical expenses incurred between November 2008 and February 2009 were eligible for retroactive Medicaid coverage. 7 AAC 100.072(a).

The fact that Claimant delayed filing for Medicaid over 18 months after arriving in Alaska effectively precludes Claimant from having retroactive Medicaid coverage for his fall 2007 medical expenses. In order for the medical expenses of August, October, and November 2007 to be paid by Medicaid, Claimant would have had to have applied at least by November 2007 and have been approved. Claimant failed to do so.

The Division is required to abide by the law and therefore correctly denied Claimant’s request for retroactive Medicaid coverage for August 2007, October 2007 and November 2007 medical expenses.

CONCLUSIONS OF LAW

1. Claimant did not meet his burden of proving by a preponderance of the evidence that the Division erred when it denied payment of medical expenses incurred in August 2007, October 2007 and November 2007 because Claimant did not apply for Medicaid in Alaska until February 23, 2009.

DECISION

The medical expenses incurred by Claimant in August, October and November 2007 are not subject to retroactive payment under Medicaid coverage because the expenses were

incurred more than three months immediately prior to the date Claimant filed his Application for Medicaid coverage or had an Application eligibility interview in Alaska.

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
P.O. 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 June _____, 2009

Claire Steffens
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this ___ day of June , 2009 true and correct copies of the foregoing were sent to Claimant (via U.S.P.S.):
Claimant, Certified Mail, Return Receipt Requested.

and to other listed persons (via e-mail), as follows:

_____, Director
_____, Administrative Assistant II
_____, Policy & Program Development
_____, Eligibility Technician I
_____, Staff Development & Training
_____, Fair Hearing Representative

Al Levitre, Law Office Assistant I