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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-362
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) applied for Adult Public Assistance and Medicaid benefits on May 6, 2009. (Exs. 2.0 – 2.7) The Claimant was verbally informed on May 29, 2009 that he was not financially eligible for Adult Public Assistance and Medicaid. (Ex. 3.0) The Claimant requested a fair hearing on May 29, 2009. (Ex. 3.5) Subsequently, on June 8, 2009, the Division of Public Assistance (Division) sent the Claimant formal written notice it was denying his application for Adult Public Assistance and Medicaid benefits because his household’s countable monthly income was greater than the Adult Public Assistance income limit of \$1,504 for his household size. (Ex. 4) This office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to the Claimant’s request, a hearing was held on July 23 and August 6, 2009. The Claimant attended both hearing dates in person, represented himself and testified on his own behalf. [REDACTED], with [REDACTED], attended the July 23, 2009 hearing and assisted the Claimant with his representation. [REDACTED], with [REDACTED], attended the August 6, 2009 hearing, assisted the Claimant with his representation and testified on his behalf.

[REDACTED], Public Assistance Analyst with the Division, attended both hearing dates in person and represented the Division.

ISSUE

The Division denied the Claimant’s May 6, 2009 Adult Public Assistance and Medicaid application because his household’s countable income exceeded the Adult Public Assistance income limit. (Exs. 3.0, 4) The Claimant argued it was not fair to count his wife’s income, because he is disabled and she is not. He also spoke at length about his family’s expenses,

specifically child care costs, implicitly arguing that he should receive some deductions or credits for those costs. The Claimant also requested relief at the hearing for medical bills incurred during late 2007 and 2008.

The issues are therefore as follows:

1. Was the Division correct to include the Claimant's wife's income when it determined the Claimant's eligibility for Adult Public Assistance and Medicaid?
2. Was the Division correct when it determined the Claimant's countable monthly household income exceeded the income limit for the Adult Public Assistance program and its related Medicaid coverage?
3. Should the Medicaid program pay for the Claimant's uncovered medical bills from 2007 and 2008?

FINDINGS OF FACT

The following facts are established by a preponderance of the evidence:

1. Claimant applied for Adult Public Assistance and Medicaid benefits on May 6, 2009.¹ (Exs. 2.0 – 2.7) He has a household of four persons: himself, his wife, and two minor children. (Ex. 2.1) The application for Medicaid benefits was only for him. (Claimant testimony)
2. At the time of his May 6, 2009 application and at the time of this hearing, the Claimant was receiving and continues to receive Medicaid benefits under the “working disabled” eligibility category. (Ex. 3.0; Claimant testimony)
3. The Claimant receives Social Security Disability Income in the amount of \$940 per month. (Exs. 2.3, 3.1) The Claimant also works part-time; his average gross monthly income from his part-time job at the time of the application was \$481. (Ex. 3.0)
4. The Claimant's wife is not disabled. (Claimant testimony) She works fulltime where her average gross monthly income is \$2,499.39. (██████ testimony) The Claimant's wife also receives \$157 per month from the Social Security Administration due to her husband's disability. (Ex. 3.3) This income is issued pursuant to Title II of the Social Security Act. *Id.*
5. The Claimant's two minor children also each receive \$157 per month from the Social Security Administration due to their father's disability. (Exs. 3.2 – 3.3) This income is issued pursuant to Title II of the Social Security Act. *Id.*
6. The Claimant did not dispute or disagree with the income figures recited in Findings 3 through 5 above.

¹ The application was signed by the Claimant on May 1, 2009. (Ex. 2.7) It was received by the Division on May 6, 2009. (Ex. 2.0)

7. The Division reviewed the Claimant's household income and denied his May 6, 2009 application for Adult Public Assistance and Medicaid because his household's monthly countable income was greater than the Adult Public Assistance income limit of \$1,504 for his household size. (Exs. 3.0, 4)

8. The Claimant's household's monthly countable income, as calculated by the Division, totals \$2,354.99.² (██████ testimony)

9. The Claimant's family used to receive Alaska Temporary Assistance benefits. (Claimant testimony) He used to receive Medicaid benefits and lost them. *Id.* The Claimant's family also used to receive Child Care Assistance benefits. *Id.* The Claimant's family lost all these benefits because their income increased from the Claimant's wife's job. *Id.* However, the loss of these benefits is not the subject matter for this case.

10. The Claimant's family has suffered a cascade of effects from losing their benefits. The Claimant's family now incurs child care costs, which cost the family \$1,150 for the month of June 2009. (Ex. H) The Claimant's family requires these child care services because the Claimant's disability affects his ability to care for his children. (Claimant testimony) As a result of paying for childcare, the Claimant's mortgage is several months in arrears. (Ex. B) In addition, the Claimant's utility bills have also been delinquent. (Exs. D – E, I, pp. 11, 24)

11. The Claimant did not have Medicaid coverage during all of 2008 and during part of 2007. (Claimant testimony) Claimant has applied for Adult Public Assistance and Medicaid benefits several times in the past. *Id.* Those applications were denied and he did not appeal the denials. *Id.* He regained Medicaid benefits in January 2009. *Id.* His Medicaid eligibility category is "working disabled." (Ex. 3.0)

12. The Claimant has outstanding medical bills arising from treatment on October 12, 2007, December 5, 2007, January 1, 2008, and February 1, 2008. (Ex. I, pp. 26 – 29)

PRINCIPLES OF LAW

This case involves the question of whether or not the Division was correct to deny the Claimant's application for Adult Public Assistance and Medicaid benefits. Because this case involves the

²The countable monthly income figure was arrived at adding together the Claimant and his wife's employment income (earned income) and their unearned income (Social Security payments). The wife's earned income figure was \$2,139.38 (arrived at by deducting \$360 from the wife's gross earned income: \$2,499.38 - \$360 = \$2,139.38) because the household has two minor children. This deduction takes into account the Social Security income each child receives. The Claimant's gross earned income (\$481.60) was added to the wife's earned income (2,139.38 + \$481.60 = \$2,620.98). The earned income deduction of \$65 plus one-half of the remaining balance was applied to arrive at a figure of \$1,277.99 for countable earned income (((\$2,620.98 - \$65)/2 = \$1,277.99). The unearned income figure was arrived at by adding together the Claimant's unearned income (SSDI of \$940) to the wife's unearned income (Social Security of \$157) and subtracting the standard \$20 deduction (\$940 + \$157 - \$20 = \$1,077) The earned income after deductions (\$1,277.99) and the unearned income after deduction (\$1,077) totaled \$2,354.99. (██████ testimony)

denial of an application, the Claimant has the burden of proof³ by a preponderance of the evidence.⁴

Adult Public Assistance is a cash benefit program provided to financially eligible persons who are “aged, blind, or disabled.” AS 47.25.430.

“The income and resources of an applicant’s spouse who is living with him are considered income and resources of the applicant.” 7 AAC 40.240(a). Countable monthly income for Adult Public Assistance purposes is calculated by adding together an applicant’s and her spouse’s gross monthly income, both earned and unearned, and subtracting allowable income deductions. 7 AAC 40.300; 7 AAC 40.310(a); 7 AAC 40.350.

The Adult Public Assistance program’s list of allowable deductions from an applicant’s income and his spouse’s income is provided in 7 AAC 40.320 and 7 AAC 40.330. There is a general deduction of \$20. 7 AAC 40.330(a)(23). Among the other possible deductions is one provided pursuant to federal regulation 20 CFR 416.1163. 7 AAC 40.330(b). This deduction is given only to households that include a spouse, who is not eligible for Adult Public Assistance, and one or more children: “[w]e then deduct an allocation for ineligible children in the household.” 20 CFR 416.1163(b). An “ineligible child” is defined as an individual’s “natural child or adopted child, or the natural or adopted child of [their] spouse, or the natural or adopted child of [their] parent or of [their] parent’s spouse. . . who is under age 21, lives in the same household with you, and is not eligible for SSI benefits.” 20 CFR 416.1160(d).

The Adult Public Assistance program also allows a deduction from household earned income of “65 per month of any earned income plus one-half of the remainder.” 7 AAC 40.320(a)(20). There is no deduction provided for utilities, mortgage payments, or childcare costs. *See* 7 AAC 40.320 - 330.

If an applicant, who is part of a married couple who live together in their own home, where only one is eligible⁵ for Adult Public Assistance, have a countable monthly income that exceeds \$1,504, the applicant is not financially eligible for Adult Public Assistance. 7 AAC 40.310(a)(5) and (c); *Alaska Adult Public Assistance Manual Addendum 1*.

A person who has been approved for Adult Public Assistance is automatically eligible for Medicaid benefits. 7 AAC 100.002(d)(1); 7 AAC 100.410(b).

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 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 “[e]vidence 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)

⁵ 65 years of age or older, blind, or permanently and totally disabled. *See* 7 AAC 40.020 and 7 AAC 40.120.

“[A] legislative rule is . . . binding on the agency that issues it.” Pierce, *Administrative Law Treatise*, § 6.6 (4th Ed. 2002). Legislative regulations “are laws in every meaningful sense and annulling any one of them effects a change in the law.” *State v. ALIVE*, 606 P.2d 769, 777 (Alaska 1980). Invalidation of a regulation is a judicial function: the Alaska Administrative Procedure Act specifically provides that “[a]n interested person may get a judicial declaration on the validity of a regulation by bringing an action for declaratory relief in the superior court.” AS 44.62.300. An administrative agency, even acting in a quasi-judicial status, does not have judicial powers. *Alaska Public Interest Research Group v. State*, 167 P.2d 27, 35 – 37 (Alaska 2007).

A request for a fair hearing must be requested within 30 days of the date a Claimant receives notice the Division has taken an adverse action on his case. 7 AAC 49.040.

ANALYSIS

This case involves an application for benefits. Because the Claimant is applying for benefits, as the party seeking to change the status quo, he has the burden of proof by a preponderance of the evidence. The relevant facts in this case are not disputed. They are as follows:

1. The Claimant receives Social Security Disability Income (i.e. he is disabled). He does not receive Supplemental Security Income.
2. The total household monthly income consists of the following:

a.	Claimant:	SSDI	\$ 940
b.	Claimant:	Employment	\$ 481
c.	Claimant Wife:	Employment	\$2,499.39
d.	Claimant Wife:	Social Security	\$ 157
e.	Claimant Children:	Social Security	\$ 314
3. The Claimant received Medicaid benefits in the past which were terminated due to his wife’s employment income.
4. The Claimant currently receives Medicaid coverage under the “working disabled” category of Medicaid.

A. Was the Division correct to include the Claimant’s wife’s income when it determined the Claimant’s eligibility for Adult Public Assistance and Medicaid?

The Claimant is disabled. His wife is not. The Claimant argued that his wife’s income should not be counted when determining his financial eligibility for Adult Public Assistance and Medicaid.

The Adult Public Assistance regulations are quite clear. “The income and resources of an applicant’s spouse who is living with him are considered income and resources of the applicant.” 7 AAC 40.240(a). They do not provide an exception when an applicant is disabled and his spouse is not. The Claimant’s argument would require that this Office ignore the clear language

of the regulation, and rewrite it to exempt his wife's income from being counted in his eligibility determination.

This Office does not have jurisdiction to ignore or rewrite a regulation for several reasons. First, an agency is required to follow its own regulations. Pierce, *Administrative Law Treatise*, § 6.6 (4th Ed. 2002). Second, annulling a regulation is a judicial function, restricted to the courts, which is not given to quasi-judicial agencies such as this Office. AS 44.62.300; *Alaska Public Interest Research Group v. State*, 167 P.2d 27, 35 – 37 (Alaska 2007).

The Division followed the regulation, 7 AAC 40.240(a), when it included the Claimant's wife's income to determine the Claimant's financial eligibility for Adult Public Assistance and Medicaid. The Division was required to follow its own regulations, as a matter of law. The Division was therefore correct to count the Claimant's wife's income.

B. Was the Division correct when it determined the Claimant's countable monthly household income exceeded the income limit for the Adult Public Assistance program and its related Medicaid coverage?

The Division determined that the Claimant's countable monthly household income totaled \$2,354.99. *See* Finding of Fact 8 above. The Division denied the Claimant's Adult Public Assistance and Medicaid application because his countable household monthly income exceeded the \$1,504 limit for his household type.

The Claimant did not disagree with the income figures the Division used in calculating his financial eligibility for Adult Public Assistance and Medicaid. He did argue his wife's income should not be used in determining his financial eligibility. As is shown above, the Division was correct to use his wife's income in its calculations.

However, the Claimant spoke at length about his family's expenses, specifically child care costs. He therefore implicitly argued that he should receive some deductions or credits for those costs. In order to address this issue, two questions need to be resolved. First, did the Division provide the Claimant with all his applicable income deductions? Second, did the Division properly calculate the Claimant's countable household monthly income?

1. Income Deductions

The Division provided the Claimant with deductions for his children, the standard \$20 income deduction, and the earned income deduction provided for in 7 AAC 40.320(a)(20). *See* Finding of Fact 8 and fn. 2 above. The Claimant provided proof of his childcare bills, and the fact his utility payments were late, and his mortgage was in arrears. *See* Finding of Fact 10 above. The Claimant testified the childcare services were necessary because his disability affects his ability to care for the children. *Id.*

Childcare costs, however necessary, utility payments and mortgage payments are not among the allowable income deductions listed in the applicable regulations, 7 AAC 40.320 – 330. The Claimant, who had the burden of proof in this case, did not present any evidence of any

additional income deductions he was entitled to. Accordingly, the Division provided the Claimant with all the income deductions to which he was entitled.

2. Countable Monthly Income

The Division's calculations of the Claimant's countable household monthly income are described in fn. 2 above. This calculation follows the instructions set forth in the applicable regulations. The Claimant's earned and unearned income and his wife's earned and unearned income are the total household income. 7 AAC 40.240(a); 7 AAC 40.300. The allowed income deductions provided for in 7 AAC 40.320 – 330 were subtracted from the earned and unearned income. 7 AAC 40.310(a); 7 AAC 40.350. *See* Finding of Fact 8 and fn. 2 above. The Division correctly applied the rules set out in these regulations and arrived at a total monthly countable household income of \$2,354.99.

The maximum countable monthly income the Claimant could have and still be eligible for Adult Public Assistance was \$1,504. 7 AAC 40.310(a)(5) and (c); *Alaska Adult Public Assistance Manual Addendum 1*. Because the Claimant's monthly countable household income of \$2,354.9 was greater than \$1,504, the Division correctly denied his application for Adult Public Assistance.

The consequence of this denial for Adult Public Assistance is that the Claimant is not eligible for Adult Public Assistance related Medicaid coverage. 7 AAC 100.002(d)(1); 7 AAC 100.410(b). It should be noted that this does not affect or eliminate the Claimant's current Medicaid coverage, which he receives under the "working disabled" category. *See* Finding of Fact 11 above.

C. Should the Medicaid program pay for the Claimant's uncovered medical bills from 2007 and 2008?

The Claimant presented outstanding medical bills arising from treatment on October 12, 2007, December 5, 2007, January 1, 2008, and February 1, 2008. *See* Finding of Fact 12 above. He requested the Division pay these outstanding medical bills. As was noted at hearing, this was not the subject matter of the Claimant's hearing request, which only deal with the denial of the Claimant's application for Adult Public Assistance and Medicaid. The Claimant was therefore advised the issue of his outstanding medical bills would not be considered.

It further needs to be noted that these medical bills would necessarily relate back to the early termination of the Claimant's former Medicaid coverage,⁶ which is not the subject matter of this hearing, and which would be time barred. *See* 7 AAC 49.040 (A request for a fair hearing must be requested within 30 days of the date a Claimant receives notice the Division has taken an adverse action on his case).

For both of the above reasons (subject matter and lack of timeliness), this Office does not have jurisdiction to address the issue of the Claimant's outstanding medical bills from 2007 and 2008. They will not be addressed.

⁶ The Claimant did not have Medicaid coverage during all of 2008 and during part of 2007. *See* Finding of Fact 11 above.

CONCLUSIONS OF LAW

1. The Division was correct to include the Claimant's wife's income when it determined the Claimant's eligibility for Adult Public Assistance and Medicaid.
2. The Division was correct when it determined the Claimant's countable monthly household income exceeded the income limit for the Adult Public Assistance program and its related Medicaid coverage.
3. The Division's action denying Claimant's May 6, 2009 Adult Public Assistance and Medicaid application was therefore correct.
4. This Office lacks subject matter jurisdiction to address the issue of the Claimant's uncovered medical bills from 2007 and 2008.

DECISION

The Division was correct to deny the Claimant's May 6, 2009 Adult Public Assistance and Medicaid application. In addition, the Claimant's request that the Medicaid program pay for his uncovered medical bills from 2007 and 2008 is denied due to a lack of subject matter jurisdiction.

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.

DATED this 24th day of September, 2009.

/Signed/

Larry Pederson
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 24th day of September 2009, true and correct copies of the foregoing were sent to:

Claimant – Certified Mail, Return Receipt Requested.

[REDACTED], Fair Hearing Representative - email
[REDACTED], Director - email
[REDACTED], Director's Office - email
[REDACTED], Policy & Program Development - email
[REDACTED], Policy & Program Development - email
[REDACTED], Staff Development & Training - email

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Law Office Assistant I