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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-444
)
 Claimant.) DPA Case No. [REDACTED]
_____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) was a recipient of Adult Public Assistance (APA) and Medicaid benefits (Ex. 1; DPA hearing representative testimony). On July 15, 2009 the Division of Public Assistance (DPA or Division) mailed to the Claimant a notice stating that his APA and Medicaid cases would close as of July 31, 2009 (Ex. 3.0). The Claimant requested a fair hearing contesting the termination of his benefits on July 29, 2009 (Ex. 4.1).

A hearing was held on November 19, 2009 before Hearing Officer Larry Pederson.¹ The Claimant appeared by telephone, represented himself, and testified on his own behalf. DPA Public Assistance Analyst [REDACTED] appeared in person to represent and testify on behalf of the Division. All testimony and exhibits offered by the parties were received into evidence. At the end of the hearing on November 19, 2009 the record was closed and the case was submitted for decision.

This office has jurisdiction pursuant to 7 AAC 49.010.

¹ Following the hearing this case was reassigned to Hearing Officer Jay Durych. Mr. Durych reviewed this Office's case file, and the audio recording of the Claimant's hearing, prior to preparing and issuing this decision.

ISSUE

Was the Division correct to terminate the Claimant’s Adult Public Assistance and Medicaid benefits as of July 31, 2009 based on the assertions that the Claimant failed to advise the Division that he had moved outside of the State of Alaska and/or that the Claimant was no longer a resident of the State of Alaska?

FINDINGS OF FACT

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

- 1. The Claimant received Adult Public Assistance (APA) and APA-related Medicaid benefits at all times relevant hereto prior to July 31, 2009 (Ex. 1).
- 2. The Claimant submitted an application for Adult Public Assistance benefits on June 13, 2006 (Exs. 5.1 – 5.7). As part of that application the Claimant was given a form titled “Your Rights and Responsibilities” (form Gen 51) (Exs. 5.8 – 5.11). Page 3 of this form stated in relevant part as follows (Ex. 5.10):

Reporting Changes in Your Household Circumstances. You must report changes in your household within 10 days of when you know of the change

* * * * *

Adult Public Assistance and Medicaid You must report all changes

* * * * *

- 3. The Claimant left Alaska in January 2009 and flew to [REDACTED] (Claimant hearing testimony). His plan at that time was to attend vocational / technical training in the automotive field. *Id.*
- 4. On July 14, 2009 DPA determined, based on returned mail and a search of a Social Security Administration database, that the Claimant was no longer using an Anchorage, Alaska mailing address and was instead using a mailing address in [REDACTED] (Ex 2.0).
- 5. On July 15, 2009 DPA mailed to the Claimant a notice of termination of his APA and Medicaid benefits (Ex. 3.0). That notice stated in relevant part as follows:

Your Adult Public Assistance (APA) and Medicaid case is closed as of July 31, 2009

Your APA and Medicaid case closed because . . . [y]ou no longer live in the State of Alaska or did not give us proof of a new residence address. This action is based on APA Manual Section 423.

* * * * *

6. At the time the Claimant's benefits were terminated, the Claimant had been receiving Medicaid benefits under a Medicaid category for which he was eligible due to his receipt of Supplemental Security Income from the United States Social Security Administration (Ex. 2.0).

7. On July 29, 2009 the Claimant advised a DPA employee by phone that, as of that time, he had been outside Alaska for six (6) months (Ex. 4.0).

8. On July 29, 2009 the Claimant requested a hearing contesting the termination of his Adult Public Assistance (APA) and Medicaid benefits (Exs. 4.0, 4.1).

9. The Claimant's mailing address at the time of the hearing was in [REDACTED] (Claimant hearing testimony). He is currently enrolled in vocational / technical training classes. *Id.* The classes he is enrolled in include Automotive Technology, Chassis Fabrication, and Automotive Engines. *Id.* However, he cannot actually *attend* these classes until he pays off an old student loan. *Id.* He owed \$1,118.80 on the loan as of the date of the hearing. *Id.*

10. The Division reviewed its files and could not find any indication that the Claimant had ever advised DPA, prior to July 2009, that he planned to attend vocational / technical training outside of Alaska (DPA representative's testimony).

11. The Claimant was asked on two occasions during the hearing of November 19, 2009 whether he had orally advised the Division, at the time he left Alaska in January 2009, that he would be traveling outside the state to attend vocational / technical training. He initially stated that he had not communicated with a DPA caseworker "since [REDACTED];" the Claimant did not specify a timeframe for this communication with [REDACTED]. He later stated that he "did not recall" whether he had orally advised the Division of his planned trip within ten days of leaving Alaska.

12. The Claimant also did not recall giving DPA written notice that he would be traveling outside Alaska to attend vocational / technical training (Claimant hearing testimony).

13. The Claimant was aware, based on his prior dealings with DPA, that he was required to advise DPA if he would be traveling outside Alaska (Claimant hearing testimony).

14. The Claimant was also aware of the DPA's regulations regarding educational absences from the state, and related pre-notification requirements, based on the Claimant's participation in a case decided by this Office in 2004 (OHA Case No. 04-FH-061).

15. At the hearing of November 19, 2009 the Claimant testified telephonically that:

a. He has had problems ("negative communication") with his DPA caseworkers for "many years." By "negative communications" he means that he would call and leave messages for his caseworkers, but they would not return his calls.

b. He had been scheduled to attend out-of state vocational training in 2007, but was ultimately not able to attend because of problems obtaining a student loan from the State of Alaska.

c. The University of Alaska at Anchorage offers an associate degree program in automotive technology. However, the automotive program for which he is enrolled outside Alaska is a more accelerated program than that available in Alaska. He will be able to complete the program in which he is currently enrolled in approximately nine (9) months; it would take six (6) years for the Claimant to complete an equivalent program in Alaska.

PRINCIPLES OF LAW

I. Burden of Proof and Standard of Proof.

This case involves a termination of existing benefits. The Division therefore has the burden of proving its assertions² by a preponderance of the evidence.³

II. The Adult Public Assistance Program.

The Adult Public Assistance (APA) Program was established to furnish financial assistance to needy aged, blind, and disabled persons and to help them attain self-support or self-care. See A.S. 47.25.590(b); see also DPA website at <http://health.hss.state.ak.us/dpa/programs/apa/> (date accessed July 31, 2009). People who receive APA financial assistance are over 65 years old or have severe and long term disabilities that impose mental and physical limitations on their day-to-day functioning. *Id.*

APA regulation 7 AAC 40.090 provides in relevant part as follows:

Eligibility for assistance is based upon (1) U.S. citizenship or resident alien status; (2) *residence in the state*; (3) age; (4) residence outside certain institutions; (5) blindness, for aid to the blind; (6) disability, for aid to the permanently and totally disabled; (7) financial need with respect to resources; and (8) financial need with respect to income.

² “Ordinarily the party seeking a change in the status quo has the burden of proof.” *State of Alaska Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985). Here the Division is seeking to change the existing status quo by terminating the Claimant’s benefits.

³ The “preponderance of the evidence” standard is the normal standard of proof in an administrative proceeding. *Amerada Hess Pipeline v. Alaska Public Utilities Commission*, 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 (West Publishing, Fifth Edition, 1979).

APA regulation 7 AAC 40.110 provides in relevant part as follows:

* * * * *

(b) Except as provided in (c) and (d) of this section, an individual who leaves the state is not eligible for assistance during that individual's absence, unless the absence is temporary. A temporary absence is an absence of less than 30 days.

(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 . . . (3) obtain vocational, professional, or other special education lasting more than 90 days if a comparable program is not reasonably available in this state and (A) notifies the division of the intended absence before leaving this state

* * * * *

APA regulation 7 AAC 40.440 provides in relevant part as follows:

(a) From the date of application until an applicant is determined to be ineligible for assistance, the applicant . . . must report any change in circumstances which may affect his eligibility or assistance payment within 10 days of the change. The report may be made in person, by telephone, or by mail to the nearest office of the division.

(b) Changes which must be reported under (a) of this section include any (1) change in mailing or residence address

* * * * *

APA regulation 7 AAC 40.450(a) provides in relevant part as follows:

(a) Upon receipt of information from any source that indicates that a change in circumstances affecting an applicant's eligibility or amount of assistance may have occurred, the division shall investigate and, if necessary, adjust the amount of assistance or suspend or terminate assistance

APA regulation 7 AAC 40.460(b) provides in relevant part as follows:

(b) If the division determines that an applicant who has been receiving assistance is ineligible for assistance and that the cause of ineligibility appears to be of uncertain or indefinite duration, it will terminate assistance

Alaska Adult Public Assistance Manual Section 423, cited by the Division in its benefit termination notice, essentially summarizes and restates the requirements of 7 AAC 40.090, 7 AAC 40.110, and 7 AAC 40.440 (all quoted above).

III. The Medicaid Program.

Medicaid is an entitlement program created by the federal government. See DOA website at <http://health.hss.state.ak.us/dpa/programs/medicaid/> (date accessed July 31, 2009). It is the primary public program for financing basic health and long-term care services for low-income Alaskans. *Id.* It is funded fifty percent by federal funds and fifty percent by State general funds. *Id.* The program focuses on coverage for low-income children, pregnant women, families, the elderly, blind and the permanently disabled. *Id.*

The Medicaid program is administered in Alaska by the Division of Health Care Services (DHCS). *Id.* While DHCS is responsible for program and policy development, the Division of Public Assistance (DPA) is responsible for determining the eligibility of individuals and families in need of Medicaid benefits. *Id.* The majority of Medicaid recipients are beneficiaries of other programs and services administered and delivered by DPA. *Id.* Almost 70,000 Alaskans receive medical benefits through the Medicaid Program. *Id.*

An individual who is eligible for and receiving Supplemental Security Income (SSI) from the United States Social Security Administration is automatically eligible for Medicaid pursuant to 7 AAC 100.410(a) and 7 AAC 100.002(b) (1). This category of Medicaid eligibility will, in the interest of brevity, subsequently be referred to in this decision as “SSI-related Medicaid.”

State of Alaska Medicaid regulation 7 AAC 100.400(a) provides in relevant part as follows:

- (a) The following APA regulations apply to Medicaid eligibility determinations for the eligibility categories described in 7 AAC 100.002(b) , (d), and (e) and 7 AAC 100.400 - 7 AAC 100.426, unless otherwise provided in this chapter
- (2) 7 AAC 40.090 (Factors of Eligibility)

Thus, pursuant to 7 AAC 100.400(a), a recipient of SSI-related Medicaid ceases to be eligible for SSI-related Medicaid if the recipient ceases to satisfy certain APA eligibility criteria, including the requirement under 7 AAC 40.090 that the recipient be a resident of the State of Alaska.

A.S. 01.10.055 defines Alaska residency in relevant part as follows:

- (a) A person establishes residency in the state by being physically present in the state with the intent to remain in the state indefinitely and to make a home in the state.

* * * * *

- (c) A person who establishes residency in the state remains a resident during an absence from the state unless during the absence the person establishes or claims residency in another state, territory, or country, or performs other acts or is absent under circumstances that are inconsistent with the intent required under (a) of this section to remain a resident of this state.

7 AAC 100.060 provides in relevant part as follows:

(a) To be eligible for Medicaid in this state an applicant must be a resident of the state.

(b) Except as otherwise provided in (c) in this section, a resident of the state is an individual who is physically present in the state and living in the state voluntarily with the intent to remain in the state permanently or for an indefinite period of time. The department will determine if an individual is a resident of the state using the methodology established in 42 C.F.R. 435.403

* * * * *

(d) An applicant or recipient is not required to have a permanent mailing address as a condition of eligibility. If an applicant or recipient does not have a permanent mailing address, the applicant or recipient must keep the department informed of a mailing address at which the applicant or recipient can receive mail

* * * * *

42 C.F.R. § 435.403(i)(1) provides in relevant part as follows:

(i) Individuals Age 21 and over. (1) For any individual not residing in an institution as defined in paragraph (b), the State of residence is the State where the individual is - (i) Living with the intention to remain there permanently or for an indefinite period . . . or [not applicable].

Section 520F of the State of Alaska’s *Aged, Disabled, and Long-Term Care Medicaid Eligibility Manual* adopts, by reference, Adult Public Assistance Manual Section 480-3. Section 480-3B(1) requires that a benefit recipient report a change in mailing or residence address within 10 days of the date the recipient knows of the change.

ANALYSIS

Introduction.

The issue in this case is whether the Division was correct to terminate the Claimant’s Adult Public Assistance and SSI-related Medicaid benefits as of July 31, 2009 based on the assertions (1) that the Claimant failed to advise the Division that he had moved outside of the State of Alaska and/or (2) that the Claimant is no longer a resident of the State of Alaska. Because each of these two benefit programs are subject to slightly different regulations, the two programs will be discussed separately. The Division has the burden of proving its case by a preponderance of the evidence under each of the two benefit programs (see discussion in Principles of Law, above).

I. Was The Division Correct To Terminate The Claimant's Adult Public Assistance Benefits?

The law applicable to the Claimant's Adult Public Assistance benefits is not in dispute. Pursuant to APA regulation 7 AAC 40.110 and Alaska Adult Public Assistance Manual Section 423, an individual leaving Alaska for vocational / technical training continues to be eligible for Adult Public Assistance benefits *only if* (1) "comparable education is not readily available in Alaska and the education will last more than 90 days," *and* (2) the individual notifies the Division of his intent to leave Alaska before leaving the state.

In this case the Division did not contest the Claimant's assertion that the automotive technician program available in Alaska was not comparable to the automotive technician program for which he had enrolled outside Alaska. However, the Division did present credible evidence indicating that the Claimant had never advised DPA, prior to July 2009, that he planned to attend vocational / technical training outside of Alaska (see Findings of Fact at paragraph 10). The Claimant admitted that, based on his prior dealings with DPA, he knew he was required to timely advise DPA if he would be traveling outside Alaska (see Findings of Fact at paragraphs 13-14). However, the Claimant could not recall giving DPA either verbal or written notice, prior to leaving Alaska, that he would be traveling outside Alaska to attend vocational / technical training in January 2009 (see Findings of Fact at paragraphs 11-12).

It should also be noted that, pursuant to APA regulation 7 AAC 40.110, an individual must be actually *attending* technical / vocational classes to remain eligible for APA benefits while outside Alaska. In this case, the Claimant admitted that, although he was *enrolled* in technical / vocational classes, he was not yet *attending* classes for financial reasons (see Findings of Fact at paragraph 9).

In summary, the Claimant did not offer any evidence contradicting DPA's evidence that the Claimant had failed to give notice of his change of address, and DPA's evidence on this point must therefore be accepted. In addition, the Claimant admitted that, although he was *enrolled* in technical / vocational classes, he was not yet *attending* classes for financial reasons. Accordingly, the Division proved, by a preponderance of the evidence, that it was correct to terminate the Claimant's APA benefits (pursuant to 7 AAC 40.110, 7 AAC 40.440(a-b), and Alaska Adult Public Assistance Manual Section 423) for the two reasons discussed immediately above.

II. Was The Division Correct To Terminate The Claimant's Medicaid Benefits?

The law applicable to the Claimant's SSI-related Medicaid benefits is likewise not in dispute. Pursuant to 7 AAC 100.400(a), a recipient of SSI-related Medicaid ceases to be eligible for SSI-related Medicaid if the recipient ceases to satisfy certain APA eligibility criteria, including the requirement under 7 AAC 40.090 that the recipient be a resident of the State of Alaska. In addition, Section 520F of the State of Alaska's *Aged, Disabled, and Long-Term Care Medicaid Eligibility Manual* adopts, by reference, Adult Public Assistance Manual Section 480-3. Section 480-3B(1) requires that a benefit recipient report a change in mailing or residence address within 10 days of the date the recipient knows of the change; *see also* 7 AAC 100.060(d).

The Division did not present evidence as to several of the residency factors stated in A.S. 01.10.055, 7 AAC 100.060, and/or 42 C.F.R. § 435.403(i)(1) (quoted in the Principles of Law, above). Accordingly, the Division failed to prove, by a preponderance of the evidence, that the Claimant was no longer a resident of the State of Alaska at the time the Claimant's Medicaid benefits were terminated.

However, 7 AAC 100.060(d) and Adult Public Assistance Manual Section 480-3(B)(1), (adopted by reference in Section 520F of the State of Alaska's *Aged, Disabled, and Long-Term Care Medicaid Eligibility Manual*), requires that a benefit recipient report a change in mailing or residence address within ten (10) days of the date the recipient knows of the change. As discussed in Analysis Section I, above, the Claimant did not report his change in mailing or residence address to the Division until July 2009, approximately six (6) months after the Claimant would have known of the change.

Accordingly, the Division proved, by a preponderance of the evidence, that it was correct to terminate the Claimant's SSI-related Medicaid benefits, (pursuant to 7 AAC 100.060(d) and Alaska Adult Public Assistance Manual Section 480-3(B)(1)), based on the Claimant's failure to report a change in the Claimant's mailing or residence address to the Division within ten (10) days of the date the Claimant was aware of the change.

CONCLUSIONS OF LAW

1. The Division carried its burden and proved, by a preponderance of the evidence, that:
 - a. The Claimant failed to report to the Division, prior to leaving Alaska, that he would be leaving Alaska to pursue vocational / technical training.
 - b. The Claimant failed to report a change in the Claimant's mailing or residence address to the Division within ten (10) days of the date the Claimant became aware of the change.
2. The Division was therefore correct to terminate the Claimant's Adult Public Assistance benefits pursuant to 7 AAC 40.440(a-b) and Alaska Adult Public Assistance Manual Section 423.
3. The Division was therefore correct to terminate the Claimant's Medicaid benefits pursuant to 7 AAC 100.060(d) and Section 520F of the State of Alaska's *Aged, Disabled, and Long-Term Care Medicaid Eligibility Manual*, which incorporates Alaska Adult Public Assistance Manual Section 480-3(B)(1) by reference.

DECISION

The Division was correct when it terminated the Claimant's Adult Public Assistance and Medicaid benefits as of July 31, 2009 because the Claimant failed to timely advise the Division that he had moved outside of the State of 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, 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 _____ day of December, 2009.

/Signed/
Jay Durych
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this _____ day of December 2009 true and correct copies of the foregoing document were sent to the Claimant via U.S.P.S. mail, and to the remainder of the service list by e-mail, as follows:

Claimant – Certified Mail, Return Receipt Requested

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

J. Albert Levitre, Jr.
Law Office Assistant I