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

In the Matter of)
)
 [REDACTED],)
)
 Claimant.) OHA Case No. 09-FH-482
) Division Case No. [REDACTED]
_____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

Mr. [REDACTED] (Claimant) applied for Medicaid on May 8, 2009. (Ex. 1) On June 10, 2009, the Division of Public Assistance (Division) notified Claimant he was eligible for the Working Disabled Medicaid Buy-In program (Program) effective February 2009. (Ex. 3) On June 12, 2009, the Division notified Claimant he was required to pay a monthly premium of \$263.00 to participate in the Program. (Ex. 5) Claimant requested a Fair Hearing on September 10, 2009. (Ex. 9.1)

This Office has jurisdiction pursuant to 7 AAC 49.010.

The Fair Hearing began on November 18, 2009.¹ Claimant attended the hearing telephonically and testified on his own behalf. Ms. [REDACTED], Public Assistance Analyst with the Division, attended the hearing in person and represented the Division. The Hearing was continued to January 20, 2010. Claimant attended the hearing telephonically and testified on his own behalf. Ms. [REDACTED] again attended in person, represented the Division and testified on its behalf.

¹ The hearing took place before Hearing Authority Jay Durych. Subsequently, the case was transferred to Hearing Authority Claire Steffens, who concluded the hearing. Prior to writing this decision, Hearing Authority Steffens reviewed the entire case file and the electronic record of the entire hearing.

STATEMENT OF THE ISSUE

Claimant raised two issues:

First, was the Division's assessment of a monthly premium of \$263.00 excessive;

Second, did the Division err in not reducing or excusing payment of the \$263.00 monthly premium because his family's temporary economic hardship? *See also*, Ex. 9.1.

FINDINGS OF FACT

The following facts were proved by a preponderance of the evidence.

1. Claimant applied for Medicaid on May 8, 2009 as a disabled member of a two person family. (Ex. 1)
2. In support of his application, Claimant supplied spouse's earnings statements for pay periods April 7, 2009 through May 1, 1009 showing gross earnings of \$4,577.60. (Exs. 2.1-2.5).
3. Claimant's income is \$1,027.00 that he receives monthly from Social Security Disability. (Ex. 2.0)
4. On May 28, 2009, the Eligibility Technician held an eligibility interview and determined Claimant was eligible for the Working Disabled Medicaid Buy-In Program (Program) effective "May 2009 onward." (Ex. 2.0)
5. The Eligibility Technician applied Adult Public Assistance calculation methodology. (Ex. 2.0) This information resulted in a determination that the monthly net family income is \$3,435.00. (Ex. 2.0; Ex. 21.0; Ex. 21.2)
6. The calculations disclosed that Claimant's annual net family income was less than 250% of the official poverty standard. (Ex. 21.1)
7. On June 10, 2009, the Division notified Claimant he was eligible for the Medicaid Working Disabled "Buy-In category", retroactive to February 2009, based on his May 8, 2009 application. (Ex. 3)
8. On June 12, 2009, the Division notified Claimant he would be required to pay a premium of \$263.00 each month "based on the income used to calculate (his) eligibility for the Working Disabled Medicaid category." (Ex. 5)
9. On September 10, 2009, Claimant filed a request for a Fair Hearing asking his family income be re-calculated to take in account household expenses and debts, including the garnishment of his wife's income. (Ex. 9.0; Ex. 9.1)

10. At a pre-hearing conference, and during the Fair Hearing, Claimant also requested the monthly premium be reduced or suspended for a period of time because economic hardship his family was experiencing presently. (Ex. 9.2; Claimant's 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).

II. Standard of Proof

The regulations applicable to this case do not specify any particular standard of proof. 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). Therefore, the standard of proof is the preponderance of the evidence.

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. Working Disabled Medicaid Program (Program)

Alaska Statute 47.07.020(b)(12) provides medical assistance to persons who meet the Federal Medicaid definition of disabled persons. AS 47.07.020(b)12 applies to disabled persons who are in families whose incomes are less than 250 percent of the federal poverty line applicable to a family of that size but have earnings in excess of the maximum earning allowed to qualify for federal Supplemental Security Income.

Alaska Statute 47.07.121(b)(12), further provides that persons eligible for state medical assistance provided by AS 47.07.020(b)(12), but who are not eligible for state medical assistance under the other provisions of AS 47.07.020, "shall pay a premium or other cost-sharing charges according to a sliding fee scale that is based on income as established by ..." the Department of Health and Social Services in regulations. AS 47.07.020(b)(12).

Regulations 7 AAC 100.001-.0074 and 7 AAC 100.400-.426 apply to disabled persons seeking or receiving Medicaid benefits. Regulations 7 AAC 100.002(b), (d), and (e) govern eligibility of persons who are disabled² but whose family income exceeds the income level permitting them to qualify for Supplemental Security Income. A person qualifying for State medical assistance

² These regulations also apply to persons over the age of 65 years. Age is not at issue here.

under 7 AAC 100.002(b), (d), or (e) is subject to further regulations, including 7 AAC 100.400-.426.

Regulation 7 AAC 100.426 governs disabled persons who need medical assistance but whose incomes are too high to qualify them for Medicaid. This regulation provides for assistance through a “Working Disabled Medicaid Buy-In” program (Program) and requires the individual to pay “a monthly premium...” 7 AAC 100.426(a)(6). The premium is determined by the department and is assessed on a “sliding fee schedule based on the family’s annual net income” and calculated using a formula established by statute. 7 AAC 100.426(d)

Regulation 7 AAC 100.426(d) the disabled person whose family has an annual income below 100 percent of the federal poverty guidelines for Alaska from paying a premium. For 2009, the federal poverty guideline for a family of 2 in Alaska was \$18,210.00.³ (See, official Department of Health and Human Services Annual Update of Poverty Guidelines for Alaska 2009 reported at 74 Fed. Reg. Vol. 14, 4,199-4,201 (2009); or the website address:

<http://frwebgate4.access.gpo.gov/cgi-bin/PDFgate.cgi?WAISdocID=309857386769+1+2+0&WAISaction=retrieve> (date accessed February 4, 2010)

Regulation 7 AAC 100.426(d) additionally provides that a participant’s monthly premium may not exceed 10 percent of the disabled individual’s net family income.

ANALYSIS

Issue:

Claimant raised two issues:

First, was the Division’s assessment of a monthly premium of \$263.00 too high and should be reduced; and

Second, did the Division err in not excusing payment of a premium altogether because of Claimant’s family’s temporary economic hardship?

II. Burden of Proof and Standard of Proof

“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). The Claimant is seeking to change the status quo by applying for Medicaid benefits. Therefore, the Claimant has the burden of proving by a preponderance of the evidence he prevails on the issues he has raised.

³ The federal poverty guidelines for Alaska are adopted by reference by regulation 7 AAC 100.980.

III. Working Disabled Medicaid Buy-In Program (Program)

Payment of a premium is required by law for all participants in the Working Disabled Medicaid Buy-In program (Program). AS 47.07.020 and Regulation 7 AAC 100.426(d) each unequivocally state that Program participants must pay monthly premiums.

Claimant does not dispute:

- a) His monthly net household income is \$3,435.00, as determined by the Division;
- b) He is required to pay a premium to participate in the Program;
- c) The premium is determined by applying his monthly net household income to the sliding fee schedule set by regulation and statute; and
- d) The monthly premium amount of \$263.00 is correct when his family's net monthly income of \$3,435.00 is applied to the sliding fee schedule.

However, Claimant complains that the monthly premium amount of \$263.00 is too high because he cannot afford to pay it. Claimant seeks to reduce the premium amount by having his family's income reduced by the amount of his household expenses and debts. In the alternative, Claimant argues he should be excused from paying any premium until his period of economic hardship ends.

IV. Claimant Did Not Prove He Qualifies to Be Excused From Paying the Required Premium.

As stated above, participation in the Program requires the participant pay a monthly premium. The premium is determined by applying the participant family's net monthly income to a sliding fee schedule, which results in a premium amount.

However, regulation 7 AAC 100.426(d) provides the sole exception to paying a monthly premium to participate in the Program. Regulation 7 AAC 100.426(d) excuses participants in the Program from paying a premium if their family's annual income is below 100 percent of the federal poverty level guidelines. In 2009, the federal poverty level guideline for a family of two Alaskans was \$18,210.00 income per year.

Claimant's 2 person family's net monthly income is undisputed as \$3,435.00. This monthly amount multiplied by 12 months yields an annual income of \$41,220.00. Comparing the Claimant's family's annual income of \$41,220.00 ($\$3,435.00 \times 12$ months) to the 2009 federal poverty guideline for a 2 person Alaskan household of \$18,220.00, it is clear Claimant's annual family income is not below the federal poverty level for a household of his size in Alaska. Claimant's family's annual income is \$33,000.00 over the federal poverty guideline for a 2 person Alaskan family. Therefore, Claimant is not excused from paying the premium required for participation in the Program.

Claimant has not met his burden of proving he may be excused from paying a monthly premium to participate in the Program.

V. Claimant Did Not Prove His Monthly Premium Should be Reduced.

When it calculates net family income for the Program, the Division is required to apply the rules and formulas applicable to Adult Public Assistance programs for disabled-persons. 7 AAC 100.426(b).

Here, the Division applied the Adult Public Assistance rules. After calculating the family's net monthly income using the Adult Public Assistance rules, the Division then is required to assess a monthly premium derived by applying the family's net monthly income to a sliding fee schedule. 7 AAC 100.426(d). The sliding fee schedule is calculated using a formula established by the Alaska Legislature. 7 AAC 100.426(d).

The Division correctly applied Claimant's family's net monthly income of \$3,435.00 to the sliding fee schedule. The Division assessed Claimant a monthly premium of \$263.00 as a result.

Claimant seeks relief from paying the monthly premium of \$263.00 on grounds of economic hardship. Although Claimant does not dispute the Division's calculation of family net monthly income, Claimant seeks to reduce this net monthly family income by deducting household expenses and debts from it before the income is applied to the sliding fee schedule.

Two of the Adult Public Assistance regulations which the Division applies address exclusions from family income. These are regulations 7 AAC 40.320 and regulation 7 AAC 40.330. Regulation 7 AAC 40.320 itemizes the exclusions from income which are permitted when determining total monthly income of a family. Regulation 7 AAC 40.330 identifies exclusions from a spouse's income. In these regulations, specific types or sources of income may be excluded from income. A family's expenses, debts, or other uses of income are not listed as permitted exclusions from income.

Accordingly, the fact that Claimant's family has household expenses which leave insufficient money to pay the assessed premium does not relieve him from his obligation to pay the premium. The premium is based on income, not on household financial obligations. Here, the Claimant does not dispute his family's net monthly income as determined by the Division and there is no provision for reducing it by any amount of debt or expense. Claimant has not proved he is entitled to a reduced premium payment.

VI. Claimant Did Not Prove His Premium of \$263.00 is Excessive

As discussed above, the Division determined the premium amount assessed to Claimant by applying Claimant's family's monthly income to a sliding fee schedule established under a formula set by statute. 7 AAC 100.426(d). Claimant asserts that the monthly premium amount of \$263.00 is excessive for his family's circumstances.

Regulation 7 AAC 100.426(d) protects against assessment of excessive premiums by comparing a family's net monthly income to the assessed premium. This regulation provides that a participant's monthly premium may not exceed 10 percent of the participant's net family income. The regulation states: "[a]n individual's monthly premium may not exceed 10 percent of the disabled individual's net family income."⁴

As discussed above, Claimant's monthly premium is \$263.00, which is below ten percent of his family's net monthly income of \$3,435.00, which is \$343.00. Alternatively, Claimant's family's annual net income is \$41,220.00. Ten percent of \$41,220.00 is \$4,122.00. This exceeds the Claimant's total annual premium assessment of \$3,156.00. Accordingly Claimant's premium does not exceed 10 percent of his net family income.

Therefore, the Claimant has not met his burden of proving the Division erred when it assessed a monthly premium of \$263.00.

CONCLUSIONS OF LAW

1. Claimant has not met his burden of proving by a preponderance of the evidence that the Division was not correct to assess a monthly premium of \$263.00 for his participation in the Working Disabled Medicaid Buy-In program.
2. Claimant has not met his burden of proving by a preponderance of the evidence that the Division should have reduced or excused the assessment of a \$263.00 monthly premium payment.

DECISION

The Division was correct when it assessed a \$263.00 monthly premium as a requirement of his participation in the Working Disabled Buy-In Program.

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 This regulation is unclear whether the 10 percent amount relates to the disabled individual's net *monthly* or *annual* income. In this case, the uncertainty makes no difference. Ten percent of \$3,435.00 is \$343.00 and when compared to a monthly premium of \$263.00, it is clear the premium of \$263.00 does not exceed \$343.00. Calculated annually, ten percent of annual net family income of \$41,220.00 is \$4,122.00; compared to 12 months of the monthly premium at \$263.00 results in \$3,156, which is less than \$4,122.00. The assessed \$263.00 monthly premium is below 10 percent of Claimant's net monthly family income.

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 10th day of February 2010.

/signed/

Claire Steffens
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 10th day of February 2010, true and correct copies of the foregoing were sent to:

Claimant, by U.S.P.S., Certified Mail, Return
Receipt Requested
and to other listed persons by e-mail:
[REDACTED], Public Assistant Analyst
[REDACTED], Chief of Field Services
[REDACTED], Director
[REDACTED], Policy & Program Development
[REDACTED], Staff Development & Training
[REDACTED], Administrative Assistant II
[REDACTED], Eligibility Technician I

J. Albert Levitre, Jr.
Law Office Assistant I