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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-597  
 )  
 Claimant. ) Division Case No. [REDACTED]  
 )  
 \_\_\_\_\_ )

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

[REDACTED] (Claimant) applied for Denali Kid Care Medicaid (Denali KidCare) benefits on October 12, 2009. (Ex. 1). On October 23, 2009, the Division of Public Assistance (Division) denied Claimant's application because her income exceeded the Denali KidCare's income limits for a family that has health insurance.<sup>1</sup> (Ex. 4 – 5) Claimant requested a fair hearing on November 6, 2009. (Ex. 5.0)

This office has jurisdiction pursuant to 7 AAC 49.010.

The hearing was scheduled for January 7, 2010. At the Claimant's request, it was rescheduled for February 3, 2010. A hearing was held on February 3, 2010. The Claimant attended the hearing in person, represented herself and testified on her own behalf. [REDACTED] Public Assistance Analyst with the Division, attended the hearing in person, representing and testifying on behalf of the Division.

**ISSUE**

In this case, the Division determined the Claimant's gross monthly income exceeded the Denali KidCare program's gross monthly income limit for a family of four with health care insurance. In its income calculations to determine eligibility, the Division included the entire monthly Benefit Contribution (\$1,324) the Claimant receives from her employer, the Municipality of Anchorage, as part of her gross monthly income.

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<sup>1</sup> The October 23, 2009 notice also stated Claimant was denied because she had other insurance. However, the Division never pursued this reason for rejection after the notice was sent. (Ex. 4)

The Claimant argued she was required to purchase the insurance and the amount of the Benefit Contribution spent on health care insurance was not gross income, as shown by the fact it was not included as gross income on her paystubs. The Division argued: "the deductions made from the flex credit payments are "before tax" deductions. This means any monies issued to Ms. [REDACTED] prior to the deductions being taken are taxable earnings."<sup>2</sup> (February 9, 2010 Division letter) The Division also refers to the benefit contribution as in-kind income. (Division Position Statement p. 2)

Was the Division correct to deny Claimant's October 12, 2009 application for Denali Kid Care Medicaid benefits because it included the entire Municipality of Anchorage Benefit Contribution (\$662 bimonthly; \$1,324 per month), as part of her gross monthly income when calculating her gross monthly income, thus causing her gross monthly income to exceed the program requirements?

### FINDINGS OF FACT

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

1. Claimant signed and submitted an application for Denali Kid Care Medicaid benefits on October 12, 2009. (Ex. 1)
2. The Division sent Claimant notice on October 23, 2009, denying her application. The notice stated the application was denied because she exceeded the Denali KidCare's income limits for a family that has health insurance. (Ex. 4).
3. The Claimant has four persons in her household, herself and three minor children. (Ex. 1) For the Denali KidCare program, the maximum household gross monthly income for Claimant's household size with insurance is \$3,447.00. (Claimant does not dispute this income limit stated in Division's Position statement)
4. Claimant is employed at the [REDACTED]. The [REDACTED] provides to Claimant \$662.00 that is identified as a "Benefit Contribution" twice per month (a total of \$1,324 per month). (Ex. B, p.2 & Ex. 3.3).
5. The Claimant's income is as follows:

The Division attributes the following income to the Claimant, which the Claimant does not dispute:

Child support: \$400.00 - \$50.00 pass through = \$350.00

[REDACTED] wages: \$2,654.56<sup>3</sup> - \$90.00 work deduction = \$2564.56

<sup>2</sup> The Division refers to the Benefit Contribution as "flex credits." However, the [REDACTED] does not use this terminology.

<sup>3</sup> The Division arrived at this figure by taking the two September 2009 paystubs, taking the gross income figures indicated on each check (\$1,268.53 and \$1,200.83), adding the two figures together, dividing them by two to arrive

Total income that is not in dispute: \$2,914.56.

The Division also includes as income the entire [REDACTED] Benefit Contribution of \$1,324 per month (\$662.00 biweekly) as income.<sup>4</sup> The Claimant does dispute this amount being considered income for determining eligibility for the Denali Kid Care Medicaid program.

6. With the \$662.00/bimonthly in Benefit Contributions, Claimant is **required** to purchase health care insurance from the [REDACTED] (Ex. B, p. 2) This amount is not included in “total gross” earnings, as indicated in Claimant’s paystub. (Ex. 3.3)

7. The least expensive health care insurance plan Claimant can purchase cost \$496.50 bimonthly. (Ex. C) Claimant can also purchase benefits that cost more than \$662.00. (Ex. C)

8. If Claimant purchases a plan that cost less than \$662.00 the remainder of that money is identified in her pay stub as “Benefit Contribution Excess” and is listed explicitly on the pay stub as earnings. This money is also included in “total gross” earnings on her paycheck. (Ex. 3.3 & 3.4) In contrast, the money that is used to purchase health care insurance is **not** characterized on the pay stub as earnings, and not included in “total gross” earnings (Ex. 3.3 – 3.4)

9. If Claimant purchased the least expensive plan of \$496.50, she would have \$165.50 remaining as income twice a month, or \$331.00.<sup>5</sup> Claimant does not dispute this should be considered income for determining eligibility for the Denali Kid Care Medicaid program. However, adding this amount to her already undisputed income of \$2,914.56 results in an income of \$3,245.56 which would not put her over the \$3,447.00 income restriction of the Denali Kid Care Medicaid program.

10. If the entire Benefit Contribution amount (\$662), which twice a month equals \$1,324.00, were added to Claimant’s undisputed income of \$2,914.56, Claimant’s income would be \$4,238.56, which would put her income over the \$3,447.00 program income limitation.

11. Claimant’s paystub also reflects she receives the following employer paid benefits: voluntary life insurance, long term disability, public employee retirement, employee assistance program, and life insurance, which are not taxed and not included in gross income as set forth in her pay stub. (Ex. 3.3 & 3.4) The Division does not consider these benefits when calculating earned income for the Denali Kid Care Medicaid program. (Division position statement)

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at an average biweekly gross income figure of \$1,234.68, and multiplying the \$1,234.68 biweekly gross income figure by 2.15 to arrive at a monthly gross income figure. (Exs. 3.3, 3.4; [REDACTED] testimony)

<sup>4</sup> The Division initially assumed the [REDACTED] provided this \$662.00 contribution in every pay check. The [REDACTED] pays its employees every two weeks, therefore, in some months the employees receive three pay checks. After the hearing, the Claimant provided clear evidence she only received the \$662.00 Benefit Contribution twice a month, and any third check she received a month did not provide any Benefit Contribution. Accordingly, the Claimant receives a “Benefit Contribution” of \$1,324 per month.

<sup>5</sup> Claimant in fact purchases a plan which costs \$606.50 per month. (Ex. 3.3 and B, p.2) However, Claimant is willing to concede that the least expensive benefit plan should be used when calculating her income to determine eligibility for the program.

**PRINCIPLES OF LAW**

“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). The standard of proof in an administrative proceeding is a “preponderance of the evidence,” unless otherwise stated. *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Com’n*, 711 P.2d 1170, 1183 (Alaska 1986)

“Where one has the burden of proving asserted facts by a preponderance of the evidence, he must induce a belief in the minds of the triers of fact that the asserted facts are probably true.” *Robinson v. Municipality of Anchorage*, 69 P.3d 489, 493 Alaska 2003)

Congress enacted the State Children’s Health Insurance Program (SCHIP) as part of the Balanced Budget Act of 1997 (Public Law 105-33, 111 Stat. 251).<sup>6</sup> Alaska’s Denali Kid Care (DKC) Program constitutes Alaska’s implementation of this federal program. Its regulations are located at 7 AAC 100.300 – 7 AAC 100.316.

The federal regulations implementing the State Children’s Health Insurance Program (42 CFR Sections 457.1 – 457.1190) do not include any substantive provisions regarding financial eligibility, leaving that to the individual states. See 42 CFR 457.320(a). Accordingly, financial eligibility for Alaska’s Denali Kid Care Program is determined pursuant to Alaska’s Family Medicaid regulations (7 AAC 100.100 - 7 AAC 100.199).

7 AAC 100.312 provides in relevant part as follows:

(a) To be eligible under one of the poverty-level eligibility categories listed in 7 AAC 100.310(a) , a child must have monthly household income that does not exceed (1) 150 percent of the federal poverty guidelines for this state, adopted by reference under 7 AAC 100.980, for the size of the child's household; or (2) the appropriate income level in AS 47.07.020 (b)(13) . . . .

\* \* \* \* \*

7 AAC 100.158, titled “Types of Income,” provides in relevant part as follows:

(a) For the purpose of determining Family Medicaid eligibility, the department will review all household income that is not exempt income under 7 AAC 100.160 and 7 AAC 100.162 to determine if that income is earned income, self-employment income, or unearned income.

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<sup>6</sup> The law was codified under Title XXI of the Social Security Act at 42 U.S.C. §§ 1397aa, et seq., and at 42 C.F.R. § 457 *et seq.* The purpose of the law was to “enable [states] to initiate and expand the provision of child health assistance to uninsured low-income children in an effective and efficient manner.” 42 U.S.C. § 1397aa(a).

(b) *Earned income is gross income* paid in cash or in kind as wages, salary, or commissions, and that is earned by an employee in exchange for the performance of services by the employee, before any deductions are made for the cost of earning that income, including taxes, child care, or transportation expenses. An employee's earned income includes (1) all payments made at one time to that employee by the employer for services performed by the employee . . . . [Emphasis added].

“In kind” is defined as:

Of the same species or category. In the same kind, class, or genus. A loan is returned “in kinds” when not the identical article, but one corresponding and equivalent to it, is given to the lender.

Black’s Law Dictionary 707 (5<sup>th</sup> ed. 1979)<sup>7</sup>

Anchorage Municipal Code (AMC) 3.30.161(A) states: “Regular employees who are scheduled to work at least 20 hours each week shall participate in insurance and medical benefit programs established by the mayor.”

In two prior decisions issued by this office, it was determined the full amount of a benefit contribution provided by an employer was considered income for purposes of establishing income under the Denali KidCare program. In those cases the Claimant did not establish that she was **required** to purchase benefits with that benefit contribution. Furthermore, the **entire** benefit contribution amount was counted as part of the employee’s “gross income” on the employee’s pay stub. (Office of Hearing and Appeal Case Number 06-FH-443 issued October 13, 2006 and 05-FH-609 issued September 4, 2005).

### ANALYSIS

The issue in this case is whether the Division was correct to deny Claimant’s October 12, 2009 application for Denali Kid Care Medicaid benefits, because it included the \$662.00 bimonthly [REDACTED] Benefit Contribution when calculating her income to determine eligibility for the program. This caused the Claimant’s income to exceed the program requirements.

Because this case involves an application for benefits, the Claimant is the party seeking to change the status quo, therefore she has the burden of proof by a preponderance of the evidence.

Regulation 7 AAC 100.158 states for purposes of determining Family Medicaid eligibility, the department will consider earned income. That regulation defines earned income as “gross income paid in cash or in kind as wages, salary, or commissions, and that is earned by an employee in exchange for the performance of services by the employee, before any deductions

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<sup>7</sup> “In kind” is not defined in Webster’s II, New Riverside University Dictionary, (1988).

are made for the cost of earning that income, including taxes, child care, or transportation expenses.”<sup>8</sup>

Claimant’s pay check stub sets forth the amount of “total gross” earnings and does not include the portion of the Benefit Contribution that is used to purchase health care insurance (\$662.00 twice per month). In contrast, the portion that is not used to purchase insurance, is clearly identified on the pay check stub as the “Benefit Contribution Excess,” listed as earnings and included in “total gross” income. The record shows that the Benefit Contribution Excess is \$54.62 per month (\$27.31 twice per month).

In light of how the Claimant’s check pay stub categorizes the portion of the Benefit Contribution used for the purchase of health care insurance, it is consistent with regulation 7 AAC 100.158 to consider this money not “gross income.” It should be noted that neither the Division’s financial eligibility regulations, 7 AAC 100.158, or the Division’s *Family Medicaid Manual* provide any guidance on this issue. There also appears to be no case law guidance on the issue.

This interpretation is consistent with the way the Division considers other benefits Claimant receives from her employer. These benefits are; long term disability, voluntary life insurance, retirement, employee assistance program and life insurance. The Division did not consider the value of these benefits as income when calculating Claimant’s income for Denali Kid Care Medicaid purposes. On the pay check stub, these were categorized as employer paid benefits, as opposed to before tax deductions. These benefits were not listed as earnings or part of the Claimant’s “total gross” income.

Aside from how the Benefit Contribution is set forth in the pay check stub, the Claimant is required to purchase benefits. Specifically, AMC 3.30.161 and the administration at the [REDACTED] require Claimant to purchase health care benefits with the \$662.00/bimonthly Benefit Contribution. She must purchase benefits that cost at least \$496.50/bimonthly. The most money that could ever be attributed to “gross earnings” from the benefit contribution after her health care selection is \$165.50 /bimonthly or \$331.00 /monthly. Claimant does not dispute that this \$331.00 amount should be included in her earnings.

Therefore, pursuant to the definition of “gross income” in 7 AAC 100.158 and Division method of considering other benefits, the full \$662.00/bimonthly in benefit contribution should not be considered income. At most, \$331.00 from the benefit contribution should be considered “gross income” when calculating income for Medicaid benefits.

The Division defines the Benefit Contribution as in-kind income and considers such income part of gross income. (Division position statement) However, “in kind” is defined as “in the same kind, class, or genus.” Black’s Law Dictionary 707 (5<sup>th</sup> ed. 1979) Regulation 7 AAC 100.158(b) states “earned income is gross income paid in cash or in kind as wages, salary, or commissions.”

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<sup>8</sup> There is no helpful guidance defining “gross income” in either the Division Policy Manual or the Division regulations set forth in Title 7 of the Alaska Administrative Code. Furthermore, the regulations which follow 7 AAC 100.158, do not assist in clarifying “gross income” for the purposes of this decision. See, 7 AAC 100.160 – 199).

If the words “in kind” were replaced with the dictionary definition, the regulation would read: earned income is gross income paid in cash or in the equivalent as wages, salary, or commissions. Thus, health benefits are not equivalent to wages, salary, or commissions.

Finally, the Division’s calculations would result in some amount of income being counted twice. The Division added the entire \$662.00 Benefit Contribution to Claimant’s gross income. (Ex. 3.3) However, a review of the pay check stub shows that the “total gross” income includes the Benefit Contribution Excess, money not used to purchase benefits. Therefore, if Claimant purchased the least amount of health insurance of \$496.50/bimonthly, the Division would attribute an extra \$165.50/bimonthly or \$331.00/monthly Contribution Benefit Excess to Claimant’s income, while also including the full Benefit Contribution (\$662 bimonthly; \$1,324 per month) as income.

### Previously Issued Decisions

In the two previous decisions issued by this office, it was determined the full amount of a benefit contribution provided by an employer was included as income for purposes of determining eligibility for the Denali KidCare program. However, both of those cases are distinguishable from this case because in those cases, the **entire** benefit contributions were listed under “gross income” and thus, included in “gross income.” Furthermore, in the previous case, the Claimant did not establish she was required to purchase benefits with that employer provided benefit contribution. (Office of Hearing and Appeal Case Number 06-FH-443 issued October 13, 2006). In this case, the Claimant established that she was **required** to purchase benefits. In addition, the Claimant’s pay check stub clearly identifies the Benefit Contribution portion **not** used to purchase health care insurance as “Benefit Contribution Excess,” is characterized as earnings and is included in “total gross.” In contrast, the portion of the Benefit Contribution that is used to purchase health care insurance is not characterized as earnings and not included in “total gross” earnings.

### CONCLUSIONS OF LAW

Claimant met her burden of proof by a preponderance of the evidence that the Division erred when it included the full bimonthly [REDACTED] Benefit Contribution (\$662.00 bimonthly; \$1,324 per month) as income when calculating Claimant’s income to determine eligibility for Denali Kid Care Medicaid benefits. The Division was therefore not correct when it denied the Claimant’s October 12, 2009 application for Denali KidCare Medicaid benefits.

### DECISION

The Division erred when it denied Claimant’s October 12, 2009 application for Denali Kid Care Medicaid benefits.

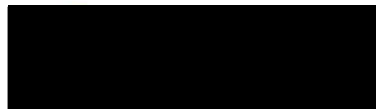
### APPEAL RIGHTS

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 2nd day of April, 2010.

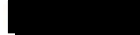



Patricia Huna  
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 2nd day of April 2010, true and correct copies of the foregoing were sent to:







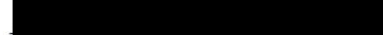
Claimant – via e-mail

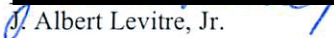
 Fair Hearing Representative  


I certify that on this 5<sup>th</sup> day of April 2010, true and correct copies of the foregoing were sent to:

Claimant – Certified Mail, Return Receipt Requested.

A copy set via e-mail to the following:

, DPA Director  
, DPA Director's Office  
, DPA director's Office  
, Chief of Field Services  
, Policy & Program Development  
, Staff Development & Training  


 Albert Levitre, Jr.  
Law Office Assistant I