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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-667  
 )  
 Claimant. ) DPA Case No. [REDACTED]  
 )  
 \_\_\_\_\_ )

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

[REDACTED] (Claimant) was a recipient of benefits under the Adult Public Assistance (APA) Program and the Medicaid Program (Ex. 1, DPA Representative's testimony). On November 18, 2009 the Claimant completed and signed an Eligibility Review Form (Form Gen-72) (Exs. 2.0 – 2.5). The State of Alaska Department of Health and Social Services, Division of Public Assistance (DPA or Division) received the Claimant's recertification application on December 14, 2009 (Ex. 2.0). On December 21, 2009, the Division mailed to the Claimant a notice stating her APA and Medicaid benefits were being terminated because she was over-income for the two programs (Ex. 4).<sup>1</sup> The Claimant prepared and signed a Fair Hearing Request on December 28, 2009; this was received by the Division on December 30, 2009 (Ex. 5).

This Office has jurisdiction to resolve this dispute pursuant to 7 AAC 49.010.

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<sup>1</sup> The Division's notice dated December 21, 2009 (Ex. 4) was written as if it were denying an initial application for benefits. However, it is clear from the record that the notice was actually terminating existing benefits. See Exs. 1 and 2.0; see also the Division's Position Statement, (which was adopted as the sworn testimony of the Division's Hearing Representative), at page 2, paragraph 2.

In some cases an error of this type could require the reversal of the Division's termination of benefits based on inadequate notice. See generally *Allen v. State of Alaska Department of Health & Social Services, Division of Public Assistance*, 203 P.3d 1155 (Alaska 2009). However, even with the error noted above, the Division's notice still satisfies the minimum notice requirements stated in the pertinent regulations (7 AAC 49.060, 7 AAC 49.070, and 42 CFR 431.211). Further, it is clear the Division did not attempt to terminate the Claimant's benefits prior to the end of the ten day notice period ending December 31, 2009 (see Ex. 1). Accordingly, although the Division's notice was not completely accurate, neither was it fatally defective.

On January 27, 2010 the Division notified the Claimant that the hearing regarding the termination of her APA and Medicaid benefits would be held on February 18, 2010 (Ex. 17). The hearing was held as scheduled on February 18, 2010 before Hearing Examiner Patricia Huna.<sup>2</sup> The Claimant participated in the hearing telephonically, represented herself, and testified on her own behalf. [REDACTED], a Public Assistance Analyst with the Division, attended the hearing in person and represented and testified on behalf of the Division. The parties' testimony was received and all exhibits submitted were admitted into evidence. At the end of the hearing the record was closed and the case was submitted for decision.

### ISSUES

1. Was the Division correct to terminate the Claimant's Adult Public Assistance (APA) benefits, effective December 31, 2009, based on the assertion that the Claimant's household's monthly income exceeded the Adult Public Assistance Program's applicable monthly income limit?
2. Was the Division correct to terminate the Claimant's APA-related Medicaid Program benefits, effective December 31, 2009, based on the assertion that the Claimant's household's monthly income exceeded the APA-related Medicaid Program's applicable monthly income limit?

### FINDINGS OF FACT

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

1. The Claimant's household consists of one person – the Claimant herself (Ex. 2.0).
2. On November 18, 2009, the Claimant completed and signed an Eligibility Review Form (Form Gen-72) for the APA and APA-related Medicaid programs (Exs. 2.0 – 2.5). As of that date, the Claimant's countable monthly income (i.e. income other than Adult Public Assistance and related APA/Medicaid benefits from the State of Alaska) consisted of (a) Social Security Disability Income (SSDI) from the United States Social Security Administration in the amount of either \$1,168.00 or \$1,268.00 per month; and (b) back child support in the amount of either \$304.00 or \$313.30 per month (Exs. 2.2, 3, Claimant hearing testimony).<sup>3</sup>
3. Thus, pursuant to the income figures referenced in the preceding paragraph, the Claimant's total monthly income was either \$1,472.00 (according to the Claimant), or \$1,581.30 (according to the Division).
4. At the time the Claimant completed her Eligibility Review Form (referenced above) in November 2009, she had only been receiving back child support for about one (1) month (since October 2009) (Ex. 3).

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<sup>2</sup> Following the hearing this case was reassigned to Hearing Examiner Jay Durych. He reviewed this Office's hardcopy case file, and listened to the digital recording of the hearing held in this case, prior to preparing and issuing this decision.

<sup>3</sup> The lower income figures are per the Claimant's hearing testimony; the higher income figures are per the Division's exhibits.

5. The Division received the Claimant's recertification application on December 14, 2009 (Ex. 2.0). On December 18, 2009, the Division determined that the Claimant's monthly income exceeded the applicable maximum monthly income limit of \$1,252.00 for the APA and APA-related Medicaid programs (Ex. 3).

6. On December 21, 2009 the Division mailed to the Claimant a notice stating that her APA and APA-related Medicaid benefits were being terminated because her countable monthly income of \$1,561.00 exceeded the monthly income limit of \$1,252.00 for a household of one (1) (Ex. 4). The notice stated that it was based on APA Manual Sections 451 and 452. Although the notice itself did not state the date on which the Claimant's benefits were to be terminated (Ex. 4), the Division intended to terminate the Claimant's benefits effective December 31, 2009 (Ex. 1).

7. The Claimant prepared and signed a Fair Hearing Request on December 28, 2009; this was received by the Division on December 30, 2009 (Exs. 5, 19). In her Fair Hearing Request, the Claimant also requested that her benefits be continued pending the outcome of the hearing (Exs. 5, 19).

8. The Claimant suffers from major depression (Claimant testimony). She normally sees 2-3 doctors a month at a cost of approximately \$600.00. *Id.* Without Medicaid she will now only be able to go to the doctor once a month at best. *Id.* Without Medicaid she cannot afford her medications and proper medical care. *Id.*

## PRINCIPLES OF LAW

### I. Burden of Proof and Standard of Proof.

This case involves the Division's termination of existing benefits. The party seeking a change in the status quo normally has the burden of proof.<sup>4</sup> In this case the Division is attempting to change the status quo or existing state of affairs by terminating existing benefits. Accordingly, the Division bears the burden of proof in this case.

The regulations applicable to this case do not specify any particular standard of proof. Therefore, the "preponderance of the evidence" standard is the standard of proof applicable to this case.<sup>5</sup> This standard is met when the evidence, taken as a whole, shows that the facts sought to be proved are more probable than not or more likely than not.<sup>6</sup>

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<sup>4</sup> *State of Alaska Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

<sup>5</sup> A party in an administrative proceeding can assume that preponderance of the evidence is the applicable standard of proof unless otherwise stated. *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Commission*, 711 P.2d 1170 (Alaska 1986).

<sup>6</sup> *Black's Law Dictionary* at 1064 (West Publishing, 5<sup>th</sup> Edition, 1979).

II. The Adult Public Assistance Program.

The Adult Public Assistance (APA) Program is a cash benefit program established to furnish financial assistance to needy aged, blind, and disabled persons and to help them attain self-support or self-care. See AS 47.25.430, AS 47.25.590(b), and the 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.*

The APA Program has financial eligibility requirements. Countable monthly income for APA purposes is calculated by adding together an applicant's and his/her spouse's gross monthly income (both earned and unearned) and then subtracting allowable income deductions. 7 AAC 40.300; 7 AAC 40.310(a); 7 AAC 40.350. "The income and resources of an applicant's spouse who is living with [him or her] are considered income and resources of the applicant." 7 AAC 40.240(a).

7 AAC 40.300 defines "income" for purposes of the APA Program in relevant part as follows:

- (a)(1) "income" means any property, money, or service received by an applicant, together with the applicant's spouse . . . which can be used, directly or indirectly to meet the applicant's need for food, clothing, and shelter;
- (a)(2) "earned income" means wages or other compensation paid by an employer in exchange for service rendered . . .
- (a)(3) "unearned income" means any income that is not earned, including income from . . . disability benefits . . . social security payments . . . assistance payments such as SSI . . . [child] support and alimony . . . and any income considered available to the individual under 7 AAC 40.240.

\* \* \* \* \*

7 AAC 40.320 defines "income exclusions" for purposes of the APA Program in relevant part as follows:

- (a) The following income is excluded in determining the total monthly income of an applicant, together with the applicant's spouse under 7 AAC 40.240: . . . (20) \$65.00 per month of any earned income plus one-half of the remainder . . . (23) the first \$20.00 per month of income, earned or unearned, other than unearned income based on need.

\* \* \* \* \*

- (b) The exclusions in (a) of this section apply first to unearned income and then to earned income in the order in which they are listed . . .

7 AAC 40.350 states how an applicant's total monthly income is computed for purposes of the Adult Public Assistance Program:

The following computations are made to determine total monthly income: (1) the monthly income available to the applicant is identified by source, type, and amount; (2) from the amounts identified are subtracted any amounts which are excluded under 7 AAC 40.320 or 7 AAC 40.330; (3) the resulting amounts, if any, are added and rounded to the nearest dollar. This amount, which cannot be less than zero, is the total monthly income.

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 \$20.00. 7 AAC 40.330(a)(23). There is no deduction allowed for medical costs.

For 2009, if an applicant or recipient lived alone and independently, and had a countable monthly income that exceeded \$1,252.00, then the applicant or recipient was not financially eligible for Adult Public Assistance. 7 AAC 40.310; *Alaska Adult Public Assistance Manual Addendum 1* (Ex. 15).

### III. APA-Related Medicaid.

Medicaid is a cooperative federal-state program that is jointly financed with federal and state funds. *Wilder v. Virginia Hospital Association*, 496 U.S. 498, 501, 110 S.Ct. 2510, 110 L.Ed.2d 455 (1990). Medicaid was established by Title XIX of the Social Security Act in 1965 to provide medical assistance to certain low-income needy individuals and families. 42 USC § 1396 et. seq.

On the federal level, the Secretary of the U.S. Department of Health and Human Services ("HHS") administers the program through the Health Care Financing Administration ("HCFA"). In Alaska, the Department of Health and Social Services ("DHSS") administers the Medicaid program in accordance with applicable federal and state laws and regulations.

Because Medicaid is a federal program, many of its requirements are contained in the Code of Federal Regulations (CFRs) at Title 42, Part 435 and Title 45, Part 233. The Medicaid Program's general eligibility requirements are set forth at 42 CFR Sections 435.2 – 435.1102.

The State of Alaska's statutes implementing the federal Medicaid Program are set forth at AS 47.07.010 – AS 47.07.900. The State of Alaska's regulations implementing the Medicaid program are set forth in the Alaska Administrative Code at Title 7, Chapters 43 and 100.

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). The category of Medicaid which a person automatically obtains as a result of APA eligibility is known as "APA-related Medicaid."

Most Medicaid eligibility categories other than Family Medicaid (specifically including APA-related Medicaid) use the APA financial eligibility criteria (discussed above) for making APA-related Medicaid financial eligibility determinations. See 7 AAC 100.400. That regulation, titled "Applicability of APA Regulations," 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 . . . (11) 7 AAC 40.240

(Income and Resources of Spouses) . . . . (16) 7 AAC 40.300 (Income); (17) 7 AAC 40.310 (Income Eligibility Standards); (18) 7 AAC 40.320 (Income Exclusions); (19) 7 AAC 40.350 (Computation of Income) . . . .

Thus, if a person is not financially eligible for Adult Public Assistance, the person is likewise not eligible for APA-related Medicaid.

## ANALYSIS

### Introduction: Definition of Issues.

The Division asserts that the Claimant is over-income for the APA and APA-related Medicaid Programs. The Claimant asserts that she has a great need for the benefits provided by these programs (*see* Findings of Fact at Paragraph 8, above). The Claimant did not, however, assert:

- a. that the Division's findings as to the sources or amounts of the Claimant's household's income were materially incorrect;<sup>7</sup>
- b. that the Division's mathematical calculations regarding the Claimant's household's countable monthly income were in any way incorrect; or
- c. that the Division applied an incorrect income standard in making its APA and/or its APA/Medicaid eligibility determinations.

Accordingly, there are two real issues to be decided in this case:

1. Was the Division correct when on December 21, 2009, it notified the Claimant that her Adult Public Assistance Program benefits were being terminated (effective December 31, 2009) based on the assertion that the Claimant's household's monthly income exceeded the Adult Public Assistance Program's applicable monthly income limit?
2. Was the Division correct when on December 21, 2009, it notified the Claimant that her APA-related Medicaid Program benefits were being terminated (effective December 31, 2009) based on the assertion that the Claimant's household's monthly income exceeded the APA-related Medicaid Program's applicable monthly income limit?

These issues will be addressed separately in the order stated above. Because the Division is the party attempting to change the status quo, the Division bears the burden of proof on these issues (see Principles of Law at page 3, above).

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<sup>7</sup> It is true that the Claimant asserts that her Social Security Disability Income (SSDI) from the United States Social Security Administration is \$1,168.00, while the Division asserts that it is \$1,268.00 per month (Exs. 2.2, 3, Claimant hearing testimony). It is also true that the Claimant asserts that her back child support is \$304.00 per month, while the Division asserts that it is \$313.30 per month. *Id.* However, the \$109.30 difference between the Claimant's figures and the Division's figures is not *material* because, even accepting the Claimant's lower figures, the Claimant is still over-income for the programs at issue, as discussed below.

## I. Was The Division Correct To Terminate The Claimant's APA Benefits?

The Division terminated the Claimant's Adult Public Assistance (APA) benefits, effective December 31, 2009, based on the assertion that the Claimant's household's countable income exceeded the applicable APA program limit (Ex. 7.1). To determine whether this decision was correct, the Claimant's household's income must be analyzed according to the applicable regulations.

The amount of the Claimant's household's income is not really in dispute (see footnote 7, above). At the time of the Division's eligibility determination on December 18, 2009 (Ex. 3), the Claimant's monthly income consisted of (a) Social Security Disability Income (SSDI) from the United States Social Security Administration in the amount of either \$1,168.00 or \$1,268.00 per month; (b) back child support in the amount of either \$304.00 or \$313.30 per month; and (c) Adult Public Assistance and related APA/Medicaid benefits from the State of Alaska (Exs. 2.2, 3, Claimant testimony).<sup>8</sup>

The first step in calculating the household's countable monthly income is to add-up the individual income items. This result is either  $\$1,168.00 + \$304.00 = \$1,472.00$  (according to the Claimant's figures), or  $\$1,268.00 + \$313.00$  (rounded) =  $\$1,581.00$  (according to the Division's figures).

The Adult Public Assistance Program's list of allowable deductions from income is set forth in 7 AAC 40.320 and 7 AAC 40.330. The only deduction available based on the facts of this case is a general deduction of \$20.00 under 7 AAC 40.320(a)(23) for "the first \$20 per month of income, earned or unearned, other than unearned income based on need." This reduces the Claimant's countable monthly household income to either \$1,452.00 (according to the Claimant's figures) or \$1,561.00 (according to the Division's figures).

At the time the Claimant submitted her Eligibility Review Form on December 14, 2009 (Ex. 2.0), if an applicant or recipient lived alone and independently, and had a countable monthly income that exceeded \$1,252.00, then the applicant or recipient was not financially eligible for Adult Public Assistance. 7 AAC 40.310; *Alaska Adult Public Assistance Manual Addendum 1* (Ex. 15). In this case, according to the Claimant's own figures, her countable monthly income was at least \$1,452.00. This is \$200.00 over the Adult Public Assistance Program's applicable monthly income limit of \$1,252.00.

In summary, the Division has carried its burden and has proven, by a preponderance of the evidence, that the Claimant's household's countable monthly income (\$1,452.00) exceeded the Adult Public Assistance Program's applicable monthly income limit (\$1,252.00). Accordingly, the Division was correct when on December 21, 2009 it notified the Claimant that it was terminating her Adult Public Assistance benefits (effective December 31, 2009) because of excess household income.

## II. Was The Division Correct To Terminate The Claimant's APA-Related Medicaid Benefits?

The Division terminated the Claimant's APA-related Medicaid benefits based on the assertion that the Claimant's household's countable income exceeded the applicable APA-related Medicaid Program

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<sup>8</sup> The lower income figures are per the Claimant's hearing testimony; the higher income figures are per the Division's exhibits.

limit (Ex. 4). To determine whether this decision was correct, the Claimant's household's income must again be analyzed according to the applicable regulations.

Most Medicaid eligibility categories other than Family Medicaid (and specifically APA-related Medicaid) use the APA financial eligibility criteria (discussed above) for making Medicaid financial eligibility determinations. See 7 AAC 100.400. Thus, if a person is not financially eligible for APA, the person is likewise not eligible for APA-related Medicaid.

As demonstrated above, the Claimant's household's countable monthly income of \$1,452.00 exceeded the APA Program's applicable monthly income limit of \$1,252.00. Because the Claimant's household's countable monthly income exceeded the Adult Public Assistance Program's applicable monthly income limit, it also exceeded the applicable APA-related Medicaid program limit.<sup>9</sup>

Accordingly, the Division has carried its burden and proven, by a preponderance of the evidence, that the Claimant's household's countable monthly income exceeded the APA-related Medicaid Program's applicable monthly income limit. The Division was therefore correct when on December 21, 2009, it notified the Claimant that it was terminating her APA-related Medicaid benefits, (effective December 31, 2009), because of excess household income.

### **CONCLUSIONS OF LAW**

1. The Division carried its burden and proved, by a preponderance of the evidence, that:
  - a. As of the date of the Division's receipt of the Claimant's Eligibility Review Form on December 14, 2009 (and continuing through the date of the Division's notice of December 21, 2009), the Claimant was no longer eligible for Adult Public Assistance (APA) because her household's countable monthly income exceeded the APA Program's applicable household monthly income limit of \$1,252.00.
  - b. As of the date of the Division's receipt of the Claimant's Eligibility Review Form on December 14, 2009, (and continuing through the date of the Division's notice of December 21, 2009), the Claimant was no longer eligible for APA- related Medicaid Program benefits because her household's countable monthly income exceeded the Program's applicable household monthly income limit of \$1,252.00.
2. The Division was therefore correct when on December 21, 2009 it notified the Claimant that it was terminating her Adult Public Assistance (APA) Program benefits, and her APA-related Medicaid benefits, (effective December 31, 2009), because of excess household income.

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<sup>9</sup> It should be noted that Medicaid eligibility is based on gross income; it does not take a person's medical costs into account. Because the Medicaid Program does not take a person's medical costs into account, the fact that the Claimant has high medical bills does not provide her with Medicaid eligibility.



## DECISION

The Division was correct when on December 21, 2009, it notified the Claimant that it was terminating her Adult Public Assistance (APA) Program benefits, and her APA-related Medicaid benefits, (effective December 31, 2009), because of excess household income.

## 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

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 23rd day of March, 2010.

\_\_\_\_\_/signed/\_\_\_\_\_  
Jay Durych  
Hearing Authority

## CERTIFICATE OF SERVICE

I certify that on this 23rd day of March 2010 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  
[REDACTED], DPA Hearing Representative

[REDACTED], Director, Division of Public Assistance  
[REDACTED], Policy & Program Development  
[REDACTED], Staff Development & Training  
[REDACTED], Chief of Field Services  
[REDACTED], Administrative Assistant II  
[REDACTED], Eligibility Technician I

\_\_\_\_\_  
J. Albert Levitre, Jr.  
Law Office Assistant I