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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. 10-FH-001
)
 Claimant.) DPA Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) completed and signed an application for Alaska Temporary Assistance Program (ATAP) benefits and Family Medicaid Program benefits on December 30, 2009 (Exs. 2.0 – 2.9). The State of Alaska Department of Health and Social Services, Division of Public Assistance (DPA or Division) received the Claimant’s application on December 30, 2009 (Ex. 2.0). On December 30, 2009, the Division mailed to the Claimant a notice stating that her application for ATAP and Family Medicaid benefits had been denied because her monthly household income exceeded the limit for the two programs (Ex. 4). The Claimant submitted a Fair Hearing Request to the Division on January 7, 2010 (Ex. 5.0).

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

On January 7, 2010 the Division notified the Claimant that the hearing regarding the denial of her application for ATAP and Family Medicaid benefits would be held on February 18, 2010 (Ex. 32). The hearing was held as scheduled on February 18, 2010 before Hearing Examiner Patricia Huna.¹ The Claimant participated in the hearing by telephone, 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.

¹ 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.

ISSUES

1. Was the Division correct when, on December 30, 2009, it denied the Claimant's application for Alaska Temporary Assistance Program (ATAP) benefits, based on the assertion that the Claimant's household's monthly income exceeded the Alaska Temporary Assistance Program's applicable monthly income limit?
2. Was the Division correct when, on December 30, 2009, it denied the Claimant's application for Family Medicaid Program benefits, based on the assertion that the Claimant's household's monthly income exceeded the Family 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 two persons – the Claimant and her son (Ex. 2.1).
2. On December 30, 2009 the Claimant completed and signed an application for Alaska Temporary Assistance Program (ATAP) benefits and Family Medicaid Program benefits (Exs. 2.0 – 2.9). As of that date, the Claimant's household's monthly income consisted of (a) the Claimant's Social Security Survivor's Benefits payment from the United States Social Security Administration in the amount of \$676.00 per month; and (b) the Claimant's son's matching monthly Survivor's Benefits payment in the amount of \$676.00 per month (Exs. 2.3, 2.10).
3. Thus, pursuant to the income figures provided by the Claimant, the Claimant's total monthly income as of December 2009 was \$1,352.00 (Exs. 3.2, 4).
4. The Division received the Claimant's application on December 30, 2009 (Ex. 2.0). On December 30, 2009 the Division determined that the Claimant's monthly income exceeded the applicable maximum monthly income limit for the Alaska Temporary Assistance Program and Family Medicaid Program (Ex. 3.0).²
5. On December 30, 2009 the Division mailed to the Claimant a notice stating that her application for ATAP and Family Medicaid benefits had been denied (Ex. 4). The notice stated in relevant part as follows:

² The Division's records (Ex. 3.0) indicate that the denial decision was made on December 29, 2009. However, the Claimant dated her application December 30, 2009, and the Division's faint date stamp on the upper right-hand corner of the first page of the application (Ex. 2.0) indicates that the Division did not receive the Claimant's application until December 30, 2009. Accordingly, either the date of the Division's date stamp, or the date of the Division's case note (Ex. 3.0) is not correct. This discrepancy is not, however, material.

Your application for [ATAP and Family Medicaid benefits], received on December 2, 2009,³ is denied because your monthly countable income of \$1,352.00 is more than the ATAP income limit The income limit for your family is \$1,301.00 This action is supported by [ATAP] regulations at 7 AAC 45.470 and [Family Medicaid] regulations at 7 AAC 100.180.

6. The Claimant submitted a Fair Hearing Request on January 7, 2010 (Exs. 5.0. 5.1).
7. At the hearing of February 18, 2010 the Claimant testified in relevant part as follows:
 - a. The Claimant receives Survivor Benefits from the U.S. Social Security Administration because her husband was killed two years ago in an automobile accident.
 - b. Before becoming disabled she was a hard worker. Now, however, she has a medical condition (chronic pancreatitis), is disabled, and needs to see a doctor regularly.
 - c. She needs help. Her Survivor Benefits alone are just not enough to get by on. Without ATAP and Medicaid benefits the Claimant cannot afford proper medical care.
 - d. The amount of Survivor Benefits the Claimant receives is only about \$50.00 over the monthly income cutoff for the ATAP and Family Medicaid Programs. It is not fair. She is “falling through the cracks” of these benefit programs.

PRINCIPLES OF LAW

I. Burden of Proof and Standard of Proof.

The party seeking a change in the status quo normally bears the burden of proof.⁴ In this case the Claimant is attempting to change the status quo or existing state of affairs by applying for and obtaining ATAP and Family Medicaid benefits. Accordingly, the Claimant 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

³ The notice dated December 30, 2009 (Ex. 4) indicates that the Claimant’s application was received on December 2, 2009, while the Division’s faint date stamp on the upper right-hand corner of the first page of the application (Ex. 2.0) indicates that the Division did not receive the Claimant’s application until December 30, 2009. Accordingly, either the date of the Division’s date stamp, or the date of receipt stated in the Division’s denial notice (Ex. 4) is incorrect. This discrepancy is not, however, material.

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

this case.⁵ 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.⁶

II. The Alaska Temporary Assistance Program – in General.

The Alaska Temporary Assistance Program (“ATAP”) is a program created by the Alaska Statutes. See AS 47.05.010(1); AS 47.27.005 – AS 47.27.990. Because ATAP is a state program, its governing regulations are found in the Alaska Administrative Code (AAC). The Alaska Temporary Assistance Program’s regulations are set forth in 7 AAC 45.149 – 7 AAC 45.990.

III. The Alaska Temporary Assistance Program – Financial Eligibility Requirements.

7 AAC 45.210(b) provides in relevant that “[a]n ATAP assistance unit . . . must satisfy the ATAP eligibility requirements for financial need

7 AAC 45.275 provides in relevant part as follows:

(a) A caretaker relative and dependent child . . . are eligible for ATAP benefits if the caretaker relative and dependent child are financially needy

(b) Financial need exists . . . if the following conditions are met (2) the total monthly income available to meet the needs of the assistance unit, after certain amounts are disregarded or deducted under this chapter, does not exceed the "185 percent eligibility standard" established in 7 AAC 45.520 for the assistance unit's size and type; (3) the total monthly income available to meet the needs of the assistance unit, after certain amounts are disregarded or deducted under this chapter, does not exceed the "need standard" established in 7 AAC 45.520 for the assistance unit's size and type; and [not applicable].

7 AAC 45.375(b) provides in relevant part as follows:

(b) For the purpose of determining ATAP eligibility and calculating ATAP payments, unearned income is income that is not earned income as defined in (a) of this section. Unearned income includes . . . social security payments

7 AAC 45.470 provides in relevant part as follows:

(a) To determine if an assistance unit is income eligible under this section, the department will first determine if an assistance unit's . . . (2) total nonexempt

⁵ 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).

⁶ *Black’s Law Dictionary* at 1064 (West Publishing, 5th Edition, 1979).

gross monthly income is equal to, or less than, the applicable 185 percent standard established in 7 AAC 45.520.

(b) For an assistance unit that qualifies under (a) of this section, the department will determine if that assistance unit meets the applicable need standard established in 7 AAC 45.520 by determining that assistance unit's countable income. Countable income is determined by (1) adding an assistance unit's total gross monthly income; and (2) allowing for all applicable deductions and disregards from income under 7 AAC 45.475 - 7 AAC 45.500.

(c) The department will determine an assistance unit to be income eligible if that assistance unit's countable income is equal to, or less than, the applicable need standard in 7 AAC 45.520

The ATAP adult-included income eligibility standard (“need standard”) for a household of two, effective for the period January 1, 2009 through December 31, 2009, was \$1,301.00. 7 AAC 45.520, *Alaska Temporary Assistance Program Manual*, Addendum 2 (Ex. 12).

IV. Family Medicaid – In General.

Medicaid was established in 1965 by Title XIX of the Social Security Act to provide medical assistance to certain needy individuals and families. 42 USC § 1396 et. seq. It 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).

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.

The Medicaid Program has a large number of eligibility groups because it covers needy individuals in a variety of circumstances. See 7 AAC 100.002. One of the Medicaid Program’s eligibility groups provides medical coverage for financially eligible households that include minor children. See 7 AAC 100.002(a)(1)(B); 7 AAC 100.100. This particular type of Medicaid coverage is known as Family Medicaid. *Id.*

V. Family Medicaid – Financial Eligibility Requirements.

7 AAC 100.150(b) provides in relevant part as follows:

(b) Except as otherwise provided in this chapter, the department will determine the availability of income to a Family Medicaid household as follows: (1) the income received by a parent who resides with that parent's dependent child is available to the dependent child . . . (3) except as a provided in 7 AAC 100.162 and (5) of this subsection, the income of a dependent child is available to the household in which the child is a mandatory member of the household under 7 AAC 100.104

7 AAC 100.158(d) provides in relevant part as follows:

(d) Unearned income is gross income that is not earned income under (b) of this section or self-employment income under (c) of this section. Unearned income includes . . . (2) social security payments

7 AAC 100.180 provides in relevant part as follows:

(a) Before determining eligibility under (b) of this section, the department will first determine if a household's (2) total monthly income is equal to, or less than, the applicable 185-percent standard established in 7 AAC 100.190.

(b) For a household that qualifies under (a) of this section, the department will determine if that household meets the applicable need standard established in 7 AAC 100.190 by determining that household's countable income. Countable income is the total monthly income less all applicable deductions and disregards from income under 7 AAC 100.184 and 7 AAC 100.186.

(c) The department will determine a household to be income eligible for Family Medicaid if (1) that household's countable income is equal to, or less than, the applicable need standard in 7 AAC 100.190; and (2) each individual included in the household meets all other eligibility requirements of this chapter.

7 AAC 100.199 provides in relevant part as follows:

In 7 AAC 100.100 - 7 AAC 100.199, unless the context requires otherwise, (1) "countable income" means total monthly income less all applicable deductions and disregards from income under 7 AAC 100.184 and 7 AAC 100.186 (7) "total monthly income" means the sum of a household's nonexempt earned income, self-employment income, and unearned income that is received or anticipated to be received in a month; (8) "unearned income" means income that is not earned income or self-employment income

The Family Medicaid net income eligibility standard for a household of two, effective for the period January 1, 2009 through December 31, 2009, was \$1,301.00. *Alaska Family Medicaid Manual*, Addendum 2 (Ex. 27).

ANALYSIS

Introduction: Definition of Issues.

The Division asserts that the Claimant is over-income for the Alaska Temporary Assistance Program and the Family Medicaid Program. The Claimant asserts that she has a great need for the benefits provided by these programs (*see* Findings of Fact at Paragraph 7, above), and her testimony in this regard is uncontested. The Claimant did not, however, assert:

1. That the Division's findings as to the sources or amounts of the Claimant's household's income were not correct;
2. That the Division's mathematical calculations regarding the Claimant's household's countable monthly income were in any way not correct; or
3. That the Division applied an incorrect income standard in making its ATAP and/or its Family Medicaid income eligibility determinations.

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

1. Was the Division correct when, on December 30, 2009, it denied the Claimant's application for Alaska Temporary Assistance Program (ATAP) benefits, based on the assertion that the Claimant's household's monthly income exceeded the Alaska Temporary Assistance Program's applicable monthly income limit?
2. Was the Division correct when, on December 30, 2009, it denied the Claimant's application for Family Medicaid Program benefits, based on the assertion that the Claimant's household's monthly income exceeded the Family Medicaid Program's applicable monthly income limit?

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

I. Was The Division Correct To Deny The Claimant's Application For ATAP Benefits?

The Division denied the Claimant's ATAP application based on the assertion that the Claimant's household's monthly income exceeded the Alaska Temporary Assistance Program's applicable monthly income limit. 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 in dispute. At the time of the Division's eligibility determination on December 30, 2009, the Claimant's household's monthly income consisted of (a) the Claimant's Social Security Survivor's Benefits payment from the United States Social Security Administration in the amount of \$676.00 per month; and (b) the Claimant's son's matching monthly Survivor's Benefits payment in the amount of \$676.00 per month (Exs. 2.3, 2.10). Thus, pursuant to the income figures provided by the Claimant, the Claimant's total monthly income as of December 2009 was \$1,352.00 (Exs. 3.2, 4).

The Alaska Temporary Assistance Program's list of allowable deductions and disregards from income is set forth in 7 AAC 45.475 - 7 AAC 45.500. See 7 AAC 45.470, set forth in the Principles of Law at page 4, above. However, none of those income deductions and/or disregards are applicable to the facts of this case. Accordingly, the Claimant's total countable monthly income for ATAP purposes was \$1,352.00 for the month of December 2009.

The ATAP adult-included monthly income eligibility standard ("need standard") for a household of two, effective for the period January 1, 2009 through December 31, 2009, was \$1,301.00. 7 AAC 45.520, *Alaska Temporary Assistance Program Manual*, Addendum 2 (Ex. 12). Thus, at the time the Claimant submitted her application in December 2009, and at the time the Division made its eligibility decision in December 2009, the Claimant's total countable monthly income was \$51.00 over the Alaska Temporary Assistance Program's applicable monthly income limit (i.e. \$1,352.00 minus \$1,301.00 equals \$51.00 over-income). See Ex. 3.2.

In summary, the un-contradicted evidence in this case demonstrates that in December 2009 the Claimant's household's countable monthly income (\$1,352.00) exceeded the Alaska Temporary Assistance Program's applicable monthly income limit (\$1,301.00). Accordingly, the Division was correct when, on December 30, 2009, it denied the Claimant's application for Alaska Temporary Assistance Program benefits due to excess household income.

II. Was The Division Correct To Deny The Claimant's Application For Family Medicaid Benefits?

The Division denied the Claimant's application for Family Medicaid Program benefits based on the assertion that the Claimant's household's monthly income exceeded the Family Medicaid Program's applicable monthly income limit. To determine whether this decision was correct, the Claimant's household's income must again be analyzed according to the applicable regulations.

In the Family Medicaid Program, a household's countable income is basically calculated by totaling together the household's gross non-exempt income and then deducting \$90.00 for each wage earner in the applicant's household. 7 AAC 100.178; 7 AAC 100.180(b); 7 AAC 100.184(1). In this case, pursuant to the income figures provided by the Claimant, her household's total monthly income as of December 2009 was \$1,352.00 (Exs. 3.2, 4). The Claimant did not receive the \$90.00 "wage earner" deduction because there are no wage earners in her household. Further, none of the other minor income exemptions provided in the above-referenced regulations apply in this case.

The Family Medicaid net income eligibility standard for a household of two, effective for the period January 1, 2009 through December 31, 2009, was \$1,301.00. 7 AAC 100.190; *Alaska Family Medicaid Manual*, Addendum 2 (Ex. 27). Thus, at the time the Claimant submitted her application in December 2009, and at the time the Division made its eligibility decision in December 2009, the Claimant's total countable monthly income was \$51.00 *over* the Family Medicaid Program's applicable monthly income limit (\$1,352.00 minus \$1,301.00 = \$51.00 over-income). See Ex. 3.2.

In summary, the un-contradicted evidence in this case demonstrates that in December 2009 the Claimant's household's countable monthly income (\$1,352.00) exceeded the Family Medicaid Program's applicable monthly income limit (\$1,301.00). Accordingly, the Division was correct when, on December 30, 2009, it denied the Claimant's application for Family Medicaid Program benefits because of excess household monthly income.

CONCLUSIONS OF LAW

1. The Claimant failed to carry her burden, and did not prove by a preponderance of the evidence, that:
 - a. In December 2009 the Claimant's household's countable monthly income (\$1,352.00) was less than the Alaska Temporary Assistance Program's applicable monthly income limit (\$1,301.00); or
 - b. In December 2009 the Claimant's household's countable monthly income (\$1,352.00) was less than the Family Medicaid Program's applicable monthly income limit (\$1,301.00).
2. The Division was therefore correct when, on December 30, 2009, it notified the Claimant that her applications for Alaska Temporary Assistance Program (ATAP) benefits and Family Medicaid Program benefits were denied because of excess household monthly income.

DECISION

The Division was correct when, on December 30, 2009, it notified the Claimant that her applications for Alaska Temporary Assistance Program (ATAP) benefits and Family Medicaid Program benefits were denied because of excess household monthly 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 1st day of April, 2010.

/signed/
Jay Durych
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 1st day of April 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