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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-53
)
 Claimant.) DPA Case No. [REDACTED]
)
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

On January 13, 2010 [REDACTED] (Claimant) and her husband completed and signed a joint Application for Services (Form Gen 50B) which requested Medicaid (and other) benefits (Exs. 2 – 2.9). The Claimant’s Application was received by the State of Alaska Department of Health and Social Services, Division of Public Assistance (DPA or Division) on January 19, 2010 (Exs 2 – 2.9).

On January 25, 2010 the Claimant participated in an eligibility interview with a DPA Eligibility Technician (Ex. 3). At that interview the Claimant was orally advised that she was not eligible for Medicaid benefits because the total countable value of her resources exceeded the maximum value allowed by the Medicaid Program. *Id.* On January 26, 2010 the Division mailed to the Claimant a written notice confirming its denial of the Claimant’s application for Medicaid benefits (Exs. 4, 5.2). On February 19, 2010 the Claimant requested a fair hearing to contest the Division’s denial of her application for Medicaid benefits (Exs. 5, 5.1).

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

A hearing was held as scheduled on March 30, 2010 before Hearing Examiner Patricia A. Huna.¹ The Claimant participated by telephone, represented herself, and testified on her own behalf. Public Assistance Analyst [REDACTED] attended the hearing in person to represent and

¹ Following the hearing this case was re-assigned to Hearing Examiner Jay Durych. He reviewed the file, and listened to the digital recording of the hearing, prior to preparing and issuing this decision.

testify on behalf of the Division. The witnesses' testimonies were 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.

ISSUE

Was the Division correct when, on January 26, 2010, it denied the Claimant's application for Medicaid benefits on the grounds that the total value of the Claimant's countable resources exceeded the maximum allowable resource value under the Medicaid Program?

FINDINGS OF FACT

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

1. The Claimant and her husband are legally married (Claimant testimony). At all times relevant hereto the Claimant's husband has owned certain real property located in ██████ County, Nevada (Exs. 3.1 – 3.7; undisputed hearing testimony). This real property is more particularly identified as Parcel No. ██████, located at ██████ Avenue, ██████, Nevada (hereafter "the ██████ property") (Exs. 3.1 – 3.7).
2. The ██████ County Treasurer has valued the Claimant's husband's ██████ property as having a tax value of \$8,023.00 through June 30, 2009 (Ex. 3.1), and a tax value of \$8,995.00 during the period July 1, 2009 through June 30, 2010 (Ex. 3.4).
3. The Claimant's husband's ██████ property may have a fair market value of only \$6,620.00 because it has no well and no wooden deck (Claimant testimony).
4. The ██████ property is owned solely by the Claimant's husband – the Claimant herself has no legal interest in the property (Ex. 3.5).
5. The Claimant and her husband do not currently use the ██████ property as their principal place of residence; rather, they intend to develop that property as a possible future retirement home (Ex. 2.3; Claimant testimony).
6. On January 13, 2010 the Claimant and her husband completed and signed a joint Application for Services (Form Gen 50B) requesting Medicaid (and other) benefits (Exs. 2 – 2.9). The Claimant's Application was received by the Division on January 19, 2010 (Exs 2 – 2.9).
7. In the joint Application, the Claimant indicated that she and her husband were living together at the time (Ex. 2.1). In the Application the Claimant disclosed her husband's ownership of the ██████ property (Ex. 2.3). The Claimant valued the property at \$7,000.00 in her Application. *Id.*
8. On January 25, 2010 the Claimant participated in an eligibility interview with a DPA Eligibility Technician (Ex. 3). At that interview the Claimant was orally advised that she and her

husband were not eligible for Medicaid benefits because the total countable value of their resources exceeded the maximum value allowed by the Medicaid Program. *Id.* According to the Division, the asset which put the Claimant and her husband over-resource for the Medicaid Program was the [REDACTED] property. *Id.* The Division valued that property at \$8,023.00 for purposes of the Claimant's Application. *Id.*

9. On January 26, 2010 the Division mailed to the Claimant a written notice confirming its denial of the Claimant's application for Medicaid benefits (Exs. 4, 5.2). That notice stated in relevant part as follows:

Your Medicaid application received on January 12, 2010 is denied because your countable resources are over the limit for this program . . . \$3,000.00 is the Medicaid resource limit . . . \$8,023.00 is the amount of your countable resources for Medicaid . . . Family Medicaid Manual Section 5150, Aged / Disabled Long Term Care Medicaid Manual Section 524, and [Adult Public Assistance] Manual Section 430 supports this action . . . Resources we counted: [the Claimant's husband's] property in Nevada valued at \$8,023.00 per 2008 – 2009 property tax [appraisal].

10. On February 19, 2010 the Claimant requested a fair hearing to contest the Division's denial of her application for Medicaid benefits (Exs. 5, 5.1).

11. At the hearing, the Claimant testified that:

a. She has been physically separated from her husband since August 2009; he does not currently live with her. However, he often comes to the Claimant's residence and assists the Claimant with things that she cannot do because of her health problems.

b. The Claimant and her husband separated solely in an effort to qualify for Medicaid, and not as a result of any marital problems between them. *Id.*

PRINCIPLES OF LAW

I. Burden of Proof and Standard of Proof.

This case involves the Claimant's initial application for Medicaid benefits. The party seeking a change in the status quo or existing state of affairs normally bears the burden of proof.² Accordingly, because the Claimant is attempting to alter the status quo by obtaining Medicaid benefits, 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

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

this case.³ 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.⁴

II. The Medicaid Program – In General.

Medicaid was established by Title XIX of the Social Security Act in 1965 to provide medical assistance to certain needy individuals and families. 42 USC § 1396 et. seq. 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, in the words of Judge Friendly, is “a statute of unparalleled complexity.” *DeJesus v. Perales*, 770 F.2d 316, 321 (2nd Cir. 1985).

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 administers the Medicaid program in accordance with applicable federal and state statutes 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 A.S. 47.07.010 – A.S.47.07.900. The State of Alaska’s regulations implementing the Medicaid program are set forth in the Alaska Administrative Code at Title 7, Chapter 43 and Chapters 100 - 160.

III. Relevant Medicaid and Adult Public Assistance Regulations Concerning Resources.

Alaska Medicaid Regulation 7 AAC 100.400 makes a number of Adult Public Assistance (APA) regulations applicable to Medicaid eligibility determinations involving certain Medicaid eligibility categories. The APA regulations which are relevant to this case and which are made applicable by 7 AAC 100.400 are 7 AAC 40.230 (concerning financial need); 7 AAC 40.240 (concerning treatment of the income and resources of spouses); 7 AAC 40.260 (concerning resources); 7 AAC 40.270 (concerning resource limits); and 7 AAC 40.280 (concerning resource exclusions).

³ 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).

⁴ *Black’s Law Dictionary* at 1064 (West Publishing, 5th Edition, 1979); see also *Robinson v. Municipality of Anchorage*, 69 P.3d 489, 495-496 (Alaska 2003) (“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”).

7 AAC 40.230, titled "Financial Need," provides in relevant part as follows:

To be eligible for assistance, an applicant may not have resources which, after permissible exclusions, exceed the amounts specified in 7 AAC 40.270

7 AAC 40.240, titled "Income and Resources of Spouses," provides in relevant part as follows:

(a) The income and resources of an applicant's spouse *who is living with him* are considered income and resources of the applicant. [Emphasis added].

(b) For the purposes of this section "spouse" includes (1) persons who are legally married; and (2) unmarried persons who live together and hold themselves out to the community as husband and wife.

(c) In this section, "living with" means residing as a family unit in a single residence, except that . . . (2) spouses, only one of whom is otherwise eligible for assistance, who have separated are rebuttably presumed to no longer live together on the first day of the calendar month following the month of separation

* * * * *

7 AAC 40.260(a), titled "Resources," provides in relevant part as follows:

(a) In this chapter, "resources" means any real or personal property that an applicant . . . owns and can convert to cash to be used for his or her support and maintenance.

7 AAC 40.270, titled "Resource Limits," provides in relevant part that "(a) To be eligible for assistance, an applicant . . . must have non-excludable resources which do not exceed . . . (1) \$2,000 for an individual; or (2) \$3,000 for an individual *living with a spouse*, whether or not the spouse is otherwise eligible for assistance." [Emphasis added].

7 AAC 40.280(a), titled "Resource Exclusions," provides in relevant part as follows:

(a) The following resources are excluded in determining the resources of an applicant, together with resources of the applicant's spouse under 7 AAC 40.240: (1) the home of an applicant if used as his principal place of residence, all land contiguous to it, and all outbuildings necessary for operation of the home

ANALYSIS

Introduction: Definition of Issue; Burden of Proof.

The issue in this case is whether or not the Division was correct to deny the Claimant's application for Medicaid benefits on the grounds that the total value of *the Claimant's countable*

resources exceed the maximum allowable resource value of \$3,000.00 applicable under the Medicaid Program. This issue breaks down into the following three sub-issues:

1. Are the resources at issue *attributable to the Claimant* pursuant to the applicable regulations?
2. Are the resources at issue *countable* (i.e. non-exempt) pursuant to the applicable regulations?
3. Does the *value* of the resources at issue exceed the maximum value of countable resources allowed pursuant to the applicable regulations?

These three issues will be addressed below in the order stated. Because the Claimant is attempting to change the status quo or existing state of affairs by obtaining benefits, the Claimant bears the burden of proof on these issues. *See Principles of Law* at page 3, above.

I. Are the Resources at Issue Legally Attributable to the Claimant?

The first issue to be resolved is whether the value of the asset which the Division counted against the Claimant (i.e. her husband's [REDACTED], Nevada property) may be attributed to the Claimant pursuant to the applicable regulations. The general rule on this issue is stated by 7 AAC 40.240(a), which provides in relevant part that "[t]he income and resources of an applicant's spouse *who is living with him* are considered income and resources of the applicant" (emphasis added).

Initially, the Claimant and her spouse are married (Claimant testimony). The next issue, pursuant to 7 AAC 40.240(a), is whether the Claimant's spouse *is living with her*.

7 AAC 40.240(c) defines whether spouses are living together for purposes of this Medicaid case. 7 AAC 40.240(c) provides in relevant part as follows:

In this section, "living with" means residing as a family unit in a single residence, except that . . . (2) spouses, only one of whom is otherwise eligible for assistance, who have separated are rebuttably presumed to no longer live together on the first day of the calendar month following the month of separation

In this case, the Claimant testified at the hearing that her husband had not lived with her since August 2009. Were this the case, the Claimant's husband's property *would not* be attributable to the Claimant pursuant to 7 AAC 40.240(c).

However, in her Application for Services, the Claimant stated that her husband *was in fact living with her* (Ex. 2.1). The statements made in the Claimant's Application carry significant weight

because they were made under penalty of perjury (Ex. 2.7).⁵ In addition, the Claimant made no mention in her eligibility interview that she and her husband were living apart. (Ex. 3).

In summary, the Claimant's hearing testimony (that her husband had not lived with her since August 2009) is contradicted by the Claimant's prior statements. For this reason, the Claimant's hearing testimony on this point is suspect and is not as credible as it would otherwise seem.

The Claimant has therefore failed to carry her burden and has not proven, by a preponderance of the evidence, that she and her husband are living apart. Accordingly, pursuant to 7 AAC 40.240(a), the Claimant's husband's Battle Mountain property must be considered to be a resource of the Claimant.

II. Are The Resources at Issue *Countable* Resources Pursuant to The Applicable Regulations?

The next issue is whether the resource which the Division attributed to the Claimant (i.e. her husband's Battle Mountain property) is *countable* (i.e. is non-exempt) pursuant to the applicable regulations.

7 AAC 40.260(a) broadly defines "resources" as including "any real or personal property that an applicant . . . owns and can convert to cash to be used for his or her support and maintenance." In this case, the Claimant does not legally *own* the [REDACTED] property (Ex. 3.5). However, because the property is owned by the Claimant's husband, and because the Claimant and her husband live together, the [REDACTED] property is treated *as if it were owned by the Claimant herself* (see Section I, above).

The specific types of assets which are not counted toward resource limits for purposes of Adult Public Assistance and Medicaid are set forth in 7 AAC 40.280. Subsection (a) of that regulation excludes "the home of an applicant" if the home is "used as his principle place of residence." However, the Claimant and her husband are not using the [REDACTED] property as their principle place of residence (Ex. 2.3; Claimant testimony).

In summary, the [REDACTED] property is not an exempt resource pursuant to 7 AAC 40.280. Accordingly, the Claimant failed to carry her burden and did not prove, by a preponderance of the evidence, that the Division erred by counting the [REDACTED] property as a resource for Medicaid purposes.

III. Does The Value of The Resources at Issue Exceed The Maximum Value of Countable Resources Allowed Pursuant to The Applicable Regulations?

The last issue to be determined is whether the *value* of the resources at issue in this case exceed the maximum value of countable resources allowed pursuant to the applicable regulations.

⁵ Item 33 at the bottom of the last page of the Application (Ex. 2.7) states in relevant part that "Under penalty of perjury, I [the Claimant] certify that all information contained in this application . . . is true and correct to the best of my knowledge."

The only resource at issue in this case is the Claimant's husband's [REDACTED] property. The [REDACTED] County Treasurer valued this property as having a tax value of \$8,023.00 through June 30, 2009 (Ex. 3.1), and a tax value of \$8,995.00 during the period July 1, 2009 through June 30, 2010 (Ex. 3.4). The Division accepted the lower of these values for purposes of determining the Claimant's eligibility for Medicaid benefits (Exs. 4, 5.2).

In her Application, the Claimant valued the [REDACTED] property at \$7,000.00 (Ex. 2.3). At the hearing, the Claimant stated that the [REDACTED] property had a fair market value of only \$6,620.00 because it has no well and no wooden deck.

Pursuant to 7 AAC 40.270, to be eligible for Adult Public Assistance and/or Medicaid, the value of the non-excludable resources owned by an individual living with a spouse may not exceed \$3,000.00. Thus, even accepting the Claimant's own valuation of \$6,620.00, the value of the countable resources attributable to the Claimant exceeds the \$3,000.00 limit by over \$3,000.00.

In summary, the Claimant failed to carry her burden and did not prove, by a preponderance of the evidence, that the value of the [REDACTED] property was less than \$3,000.00. Accordingly, the Division was correct when it concluded that the Claimant was over-resource pursuant to 7 AAC 40.270.

CONCLUSIONS OF LAW

1. The Claimant failed to carry her burden and did not prove, by a preponderance of the evidence:

a. That as of January 13, 2010 (the date she signed the Application), her husband's property *should not* be attributable to her pursuant to regulation 7 AAC 40.240(c). The Claimant stated in her Application that her husband was living with her, and made no mention during her eligibility interview that she and her husband were living apart. Accordingly, the Claimant's husband's [REDACTED] property must be considered to be a resource of the Claimant pursuant to regulation 7 AAC 40.240(a).

b. That the [REDACTED] property is not a *countable resource* (i.e. is an exempt resource) pursuant to regulation 7 AAC 40.280; or

c. That the value of the [REDACTED] property is less than the \$3,000.00 maximum resource limit specified by regulation 7 AAC 40.270 (i.e. that the value of the resource at issue does not exceed the maximum value of countable resources allowed pursuant to 7 AAC 40.270).

2. Accordingly, the Division was correct when, on January 26, 2010, it denied the Claimant's application for Medicaid benefits on the grounds that the total value of the Claimant's countable resources exceeded the \$3,000.00 maximum allowable resource value applicable under the Medicaid Program.

