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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-67
)
 Claimant.) DPA Case No. [REDACTED]
)
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) was, prior to February 2, 2010, a recipient of Adult Public Assistance (APA) related Medicaid benefits (Ex. 2.0). On February 2, 2010 the State of Alaska Department of Health and Social Services, Division of Public Assistance (DPA or Division) received information that the Claimant's income had increased because he had begun receiving unemployment insurance benefits (Ex 2.0).

On February 3, 2010 the Division mailed to the Claimant two written notices (Exs. 3.0, 3.1). These notices stated that the Claimant's APA-related Medicaid benefits would be terminated after February 2010 because the Claimant's household income exceeded the applicable maximum income limit for the APA-related Medicaid Program (Exs. 3.0, 3.1). The notices further stated that the Claimant was now eligible for coverage under, and had been enrolled in, the Medicaid Working Disabled Program (Ex. 3.0).

On February 18, 2010 the Division mailed to the Claimant a written notice stating that the amount of the Claimant's monthly premium payment under the Medicaid Working Disabled Program was \$34.00 (Ex. 5). On March 3, 2010 the Claimant requested a fair hearing to contest the Division's closure of his APA-related Medicaid case, and its reassignment of the Claimant to the Medicaid Working Disabled Program (Exs. 6.1, 6.2).

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 Larry Pederson. The Claimant participated by telephone, represented himself, and testified on his own behalf. Public Assistance Analyst [REDACTED] attended the hearing in person to represent and testify on behalf of

the Division. At this hearing the Claimant requested that the hearing be postponed to give him an opportunity to retain an attorney.

The hearing reconvened as scheduled on April 27, 2010 before Hearing Examiner Jay Durych. The same parties who participated in the hearing of March 30, 2010 participated in the hearing of April 27, 2010, and in the same capacities.

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.

ISSUES

1. Was the Division correct when, on February 3, 2010, it notified the Claimant that it was terminating his APA-related Medicaid benefits after February 2010, and instead enrolling him in the Medicaid Working Disabled Program, based on the assertion that the Claimant's household income exceeded the applicable maximum income limit for the APA-related Medicaid Program?
2. Was the Division correct when, on February 18, 2010, it notified the Claimant that in order to maintain coverage under the Medicaid Working Disabled Program, he would need to pay monthly premiums of \$34.00, due by the first day of each month, beginning on April 1, 2010?

SUMMARY OF DECISION

The Division was correct to terminate the Claimant's APA-related Medicaid benefits after February 2010, and to instead enroll him in the Medicaid Working Disabled Program, because the Claimant's household's countable monthly income exceeded the applicable maximum monthly income limit for the APA-related Medicaid Program.

The Division was also correct to require that the Claimant pay monthly premiums of \$34.00, due by the first day of each month, beginning on April 1, 2010, in order to maintain Medicaid coverage under the Working Disabled Program.

FINDINGS OF FACT

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

1. The Claimant was, prior to February 2, 2010, a recipient of APA-related Medicaid benefits (Ex. 2.0).
2. On February 2, 2010 the Division received information that the Claimant's income had increased because he had begun receiving \$791.20 per month in unemployment insurance benefits on or about December 12, 2009 (Exs 2.0, 2.3).
3. As of February 2, 2010, the Claimant's income consisted of (a) \$791.20 per month in unemployment insurance benefits; (b) \$481.00 per month in disability benefits from the United States Social Security Administration; and (c) an additional unemployment insurance benefit of

\$25.00 per week / \$107.50 per month pursuant to the American Recovery and Reinvestment Act of 2009 (Ex. 2.1).¹

4. In addition, as of February 2, 2010, the Claimant's wife was receiving monthly employment income in the average amount of \$1,485.22 per month (Exs. 2.1, 2.5 – 2.7).

5. Based on the income referenced in Paragraphs 3 and 4, above, the Division calculated that the Claimant's household had an estimated average countable monthly income of \$2,134.81, and that this figure exceeded the applicable APA need standard of \$1,504.00 by \$630.81 (Ex. 2.8).

6. On February 3, 2010 the Division mailed to the Claimant two written notices (Exs. 3.0, 3.1). These notices stated that the Claimant's APA-related Medicaid benefits would be terminated after February 2010 because the Claimant's household income exceeded the applicable \$1,504.00 maximum household income limit for the APA-related Medicaid Program (Exs. 3.0, 3.1). The notices further stated that the Claimant was now eligible for coverage under, and had been enrolled in, the Medicaid Working Disabled Program (Exs. 3.0, 3.1).

7. One of the two notices dated February 3, 2010 (discussed above) states in relevant part as follows (Ex. 3.1):

Your category of Medicaid is changing to the Working Disabled Medicaid Buy-In Category as of March 1, 2010.

It is changing because: [the Claimant] has started collecting unemployment, which when added to [the Claimant's wife's] wages, causes him to be ineligible for standard APA Medicaid.

There is no difference in the medical coverage you have been receiving but you may have to pay a monthly premium for this category of Medicaid. You will be notified in a separate letter if a premium is due.

. . . . Changes in income . . . may affect the premium amount.

Aged, Disabled, and Long-Term Care Medicaid Manual Section 534 supports this action.

8. On February 17, 2010 the Division calculated the amount of the Claimant's monthly Medicaid Working Disabled Program premium, using its computer software, as \$34.00 per month (Exs. 4.0, 4.1). This calculation was based on a monthly premium equal to 1.68% of a countable monthly household income of \$2,070.00. *Id.*

¹ The American Recovery and Reinvestment Act of 2009 (ARRA) was signed into law by President Obama on February 17th, 2009 as Public Law No. 111-5. Among other things, it provided 40 billion dollars to provide extended unemployment benefits and to increase the amount of those benefits by \$25.00 per week. See United States Department of Labor website at <http://www.dol.gov/recovery>.

9. On February 18, 2010 the Division mailed to the Claimant a written notice stating that the amount of the Claimant's monthly premium payment under the Medicaid Working Disabled Program would be \$34.00 (Ex. 5). The Claimant was to begin making premium payments to the Division, on the first day of each month, beginning on April 1, 2010 (Ex. 5).

10. On March 3, 2010 the Claimant requested a fair hearing to contest the Division's closure of his APA-related Medicaid case, and its assessment of a monthly premium under the Medicaid Working Disabled Program (Exs. 6.1, 6.2).

11. At the hearing of April 27, 2010 the Claimant testified in relevant part that:

- a. He received unemployment insurance benefits in February 2010 and through the first week of March 2010, but was no longer receiving them at the time of the hearing.
- b. He will probably not be able to work much longer due to his disability.
- c. He cannot currently afford to pay the Working Disabled Medicaid premiums on top of his other bills / expenses.

12. At the hearing of April 27, 2010 the Division's Representative testified that:

- a. The Division does not dispute that the Claimant is disabled.
- b. The Division calculated that the Claimant would be over-income in March 2010 based on unemployment insurance benefits that the Claimant had received in February 2010.
- c. If the Claimant's unemployment insurance benefits terminate, the Claimant should notify the Division, and the Division would then re-assess the Claimant's eligibility for APA-related Medicaid.

PRINCIPLES OF LAW

I. Burden of Proof and Standard of Proof.

This case involves the Division's change in the type of Medicaid provided to the Claimant from APA-related Medicaid benefits to Working Disabled Medicaid benefits. The party seeking a change in the status quo or existing state of affairs normally bears the burden of proof.² Accordingly, the Division bears the burden of proof in this case because the Division is attempting to change the status quo by altering the Claimant's Medicaid benefits.

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.³ This

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

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).

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 Income.

A person who has been approved for Adult Public Assistance (APA) 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 for making APA-related Medicaid financial eligibility determinations. See 7 AAC 100.400. That regulation makes a number of APA regulations directly applicable to APA-related Medicaid eligibility determinations. The APA regulations which are relevant to this case and which are made applicable by 7 AAC 100.400 are 7 AAC 40.090 (factors of eligibility); 7 AAC 40.240 (concerning treatment of the income and resources of spouses); 7 AAC 40.300 (concerning income); 7 AAC 40.310 (concerning income eligibility standards); 7 AAC 40.320 (concerning income exclusions); and 7 AAC 40.350 (concerning computation of income).

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 40.240, 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].

* * * * *

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 . . . unemployment compensation . . . and any income considered available to the individual under 7 AAC 40.240.

* * * * *

7 AAC 40.310, titled "Income Eligibility Standards," provides in relevant part as follows:

(a) For an applicant to be eligible for assistance, the applicant's total monthly income, together with that of the applicant's spouse under 7 AAC 40.240, after all exclusions set out in 7 AAC 40.320 have been applied, may not exceed . . . (5) \$1,259 for a couple in which only one individual is eligible, living independently or residing in an assisted living home

* * * * *

7 AAC 40.320, titled "Income Exclusions," provides 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 per month of any earned income plus one-half of the remainder (23) the first \$20 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 one's total monthly income is computed under the APA 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.

If an applicant is part of a married couple who live together in their own home, and only one of them is otherwise eligible ⁵ for Adult Public Assistance, and the couple have a countable monthly income that exceeds \$1,504.00, then the applicant is not financially eligible for Adult Public Assistance. 7 AAC 40.310(a)(5) and (c); *Alaska Adult Public Assistance Manual* Addendum 1.

IV. Medicaid Regulations Concerning the Working Disabled Program. ⁶

7 AAC 100.426, titled "Working Disabled Medicaid Buy-in," provides in relevant part as follows:

(a) An individual with a disability who is ineligible for APA under 7 AAC 40 or APA-related Medicaid under 7 AAC 100.400 - 7 AAC 100.424 because of earned income that is either the individual's own income or the income of the individual's spouse, is eligible for Medicaid under 7 AAC 100.002(d)(6) and this section if (6) *the individual pays a monthly premium as required under this section.* [Emphasis added].

(b) The department will determine net family income by combining all non-excluded income of each family member and then . . . subtracting all disregards and exclusions

(c) When determining the unearned income of a disabled individual, the department will count the unearned income of a spouse.

(d) A disabled individual eligible under this section must pay a premium to the state as determined by the department. Premiums will be assessed on a sliding fee schedule based on the family's annual net income An individual is not subject to a premium if the annual family income is below 100 percent of the federal poverty guidelines for this state, adopted by reference under 7 AAC 100.980. An individual's monthly premium may not exceed 10 percent of the disabled individual's net family income. Eligibility for Medicaid under this section will be terminated if an individual is 60 days delinquent in paying a premium.

* * * * *

⁵ An applicant is otherwise eligible if he or she is 65 years of age or older, blind, or permanently and totally disabled. See 7 AAC 40.020 and 7 AAC 40.120.

⁶ Aged, Disabled, and Long-Term Care Medicaid Manual Section 534, cited by the Division in the notices issued to the Claimant in this case, essentially re-states 7 AAC 100.426, quoted below.

ANALYSIS

Introduction: Definition of Issues; Burden of Proof.

The first main issue in this case is whether or not the Division was correct when, on February 3, 2010, the Division notified the Claimant that it was terminating his APA-related Medicaid benefits after February 2010, and instead enrolling him in the Medicaid Working Disabled Program, based on the assertion that the Claimant's household's income exceeded the applicable maximum income limit for the APA-related Medicaid Program. This issue breaks down into the following two sub-issues:

1. Were the types / items of income included by the Division *properly countable*?
2. Does the amount of the Claimant's household's properly countable monthly income *exceed* the maximum monthly income limit for the APA-related Medicaid Program?

The second main issue in this case is whether the Division was correct when, on February 18, 2010, it notified the Claimant that in order to maintain coverage under the Medicaid Working Disabled Program, he would need to pay monthly premiums of \$34.00, due by the first day of each month, beginning on April 1, 2010.

These issues will be addressed below in the order stated. Because the Division is attempting to change the status quo or existing state of affairs by altering the Claimant's Medicaid benefits, the Division bears the burden of proof on these issues. *See* Principles of Law at page 4, above.

I. Were The Types / Items Of Income Included By The Division *Properly Countable*?

The first issue is whether the items of income which the Division included in determining the Claimant's household's monthly income were properly countable under the applicable regulations. This is a purely legal issue.

The items of income which the Division counted for purposes of determining the Claimant's continued APA-related Medicaid eligibility were (a) \$791.20 per month in unemployment insurance benefits; (b) \$481.00 per month in disability benefits from the United States Social Security Administration; (c) an additional unemployment insurance benefit of \$25.00 per week / \$107.50 per month pursuant to the American Recovery and Reinvestment Act of 2009 (ARRC) (Ex. 2.1); and (d) the Claimant's wife's employment income in the average amount of \$1,485.22 per month (Exs. 2.1, 2.5 – 2.7).

A review of the applicable regulations shows that the Division was correct to count these items of income for purposes of determining APA-related Medicaid eligibility. The Claimant's unemployment insurance benefits are properly countable as unearned income for purposes of the APA Program pursuant to 7 AAC 40.300(a)(3). The Claimant's Social Security disability benefits are properly countable as unearned income for purposes of the APA Program pursuant to 7 AAC 40.300(a)(3). The Claimant's ARRC extended unemployment benefits are properly countable as unearned income for purposes of the APA Program pursuant to 7 AAC 40.300(a)(3). Finally, the

Claimant's wife's monthly employment income is properly countable as earned income for purposes of the APA Program pursuant to 7 AAC 40.300(a)(1-3) and 7 AAC 40.240.

In summary, the Division carried its burden and proved, by a preponderance of the evidence, that it was correct to include the Claimant's unemployment insurance benefits, the Claimant's Social Security disability benefits, the Claimant's UIB extended medical benefits and Food Stamp benefits, and the Claimant's wife's employment income, in determining the Claimant's household's monthly income for purposes of determining the Claimant's eligibility for APA-related Medicaid. The next issue is whether the amount of the Claimant's household's properly countable monthly income *exceeded* the maximum monthly income limit for the APA-related Medicaid Program.

II. Does The Amount Of The Claimant's Household's Properly Countable Monthly Income Exceed The Maximum Monthly Income Limit For The APA-Related Medicaid Program?

As of February 2, 2010, the Claimant's household's income consisted of (a) \$791.20 per month in unemployment insurance benefits; (b) \$481.00 per month in disability benefits from the United States Social Security Administration; (c) \$107.50 per month in ARRC extended unemployment benefits (Ex. 2.1); and (d) the Claimant's wife's monthly employment income in the average amount of \$1,485.22 per month (Exs. 2.1, 2.5 – 2.7), for a total of \$2,864.92.

The only income exclusions which are applicable based on the record in this case are (1) an earned income exclusion of \$710.00 calculated pursuant to 7 AAC 40.320(a)(20); (2) a \$65.00 "work incentive" exclusion pursuant to 7 AAC 40.320(a)(20); and (3) a general income exclusion of \$20.00 pursuant to 7 AAC 40.320(a)(23). These three income exclusions reduce the Claimant's household's countable monthly income from \$2,864.92 to \$2,069.92. This figure (\$2,069.92) is \$565.92 greater than the applicable APA need standard of \$1,504.00. See 7 AAC 40.310(a)(5) and (c); *Alaska Adult Public Assistance Manual Addendum 1*.

In summary, the Division carried its burden and proved, by a preponderance of the evidence, that the amount of the Claimant's household's properly countable monthly income *exceeded* the maximum monthly income limit for the APA-related Medicaid Program.

III. Was the Division Correct to Require Premium Payments Under the Medicaid Working Disabled Program?

The last issue in this case is whether the Division was correct when, on February 18, 2010, it notified the Claimant that in order to maintain coverage under the Medicaid Working Disabled Program, he would need to pay monthly premiums of \$34.00, due by the first day of each month, beginning on April 1, 2010.

Initially, it is clear as a matter of law that pursuant to 7 AAC 100.426(a-d), a recipient is required to pay premiums in order to maintain Medicaid coverage under the Working Disabled Program (see Principles of Law at page 7, above). The only remaining issue is the *amount* of that premium.

On February 17, 2010 the Division calculated the amount of the Claimant's monthly Medicaid Working Disabled Program premium, using its computer software, as \$34.00 per month (Exs. 4.0 4.1). This calculation was based on a monthly premium equal to 1.68% of a countable monthly

household income of \$2,070.00. *Id.* The multiplier used by the Division (1.68%) appears to be correct under 7 AAC 100.426(d) (“[p]remiums will be assessed on a sliding fee schedule based on the family's annual net income . . . [but will] not exceed 10 percent of the disabled individual's net family income”). Finally, the Claimant did not assert any specific challenge to the Division’s premium calculations.

Accordingly, the Division has carried its burden and proven, by a preponderance of the evidence, that pursuant to 7 AAC 100.426 it was correct when, on February 18, 2010, it notified the Claimant that in order to maintain coverage under the Medicaid Working Disabled Program, he would need to pay monthly premiums of \$34.00, due by the first day of each month, beginning on April 1, 2010.

CONCLUSIONS OF LAW

1. The Division carried its burden and proved by a preponderance of the evidence:
 - a. That pursuant to 7 AAC 40.300 it was correct to include the Claimant’s unemployment insurance benefits, the Claimant’s Social Security disability benefits, the Claimant’s extended unemployment benefits, and the Claimant’s wife’s employment income, in determining the Claimant’s household’s monthly income for purposes of determining the Claimant’s eligibility for APA-related Medicaid.
 - b. That pursuant to 7 AAC 40.310(a)(5) and (c) and *Alaska Adult Public Assistance Manual* Addendum 1, the amount of the Claimant’s household’s properly countable monthly income *exceeded* the APA-related Medicaid Program’s applicable maximum monthly income limit of \$1,504.00.
2. The Division was therefore correct when, on February 3, 2010, the Division notified the Claimant that it was terminating his APA-related Medicaid benefits after February 2010, and instead enrolling him in the Medicaid Working Disabled Program, because the Claimant’s household’s countable monthly income exceeded the applicable maximum monthly income limit for the APA-related Medicaid Program.
3. The Division was therefore also correct pursuant to 7 AAC 100.426 when, on February 18, 2010, it notified the Claimant that, in order to maintain coverage under the Medicaid Working Disabled Program, he would need to pay monthly premiums of \$34.00, due by the first day of each month, beginning on April 1, 2010.

DECISION

The Division was correct when, on February 3, 2010, the Division notified the Claimant that it was terminating his APA-related Medicaid benefits after February 2010, and instead enrolling him in the Medicaid Working Disabled Program, because the Claimant’s household’s countable monthly income exceeded the applicable maximum monthly income limit for the APA-related Medicaid Program.

The Division was also correct when, on February 18, 2010, it notified the Claimant that in order to maintain coverage under the Medicaid Working Disabled Program, he would need to pay monthly premiums of \$34.00, due by the first day of each month, beginning on April 1, 2010.

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 14th day of June, 2010.

/signed/
Jay Durych
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 14th day of June 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

██████████, DPA Hearing Representative

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

J. Albert Levitre, Jr.
Law Office Assistant I