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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-70
)
 Claimant.) Division Case No. [REDACTED]
_____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) was receiving Adult Public Assistance and Medicaid benefits in January 2010. (Ex. 1) On January 19, 2010, the Division of Public Assistance (Division) sent the Claimant written notice that she would no longer receive Adult Public Assistance and its related Medicaid benefits after January 2010, i.e. she would not receive Adult Public Assistance and its related Medicaid benefits beginning with the month of February 2010. (Ex. 3) The Claimant had a series of discussions with the Division beginning on or about February 1, 2010 and formally requested a fair hearing on March 4, 2010. (Exs. 7.0 – 7.3)

This Office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to the Claimant's request, a hearing was held on April 15, 2010. The Claimant attended the hearing telephonically, represented herself and testified on her own behalf. [REDACTED], Public Assistance Analyst with the Division, attended the hearing in person, testified on the Division's behalf and represented the Division.

The record was left open after the hearing until April 29, 2010 for the parties to address the issue of whether the Claimant was financially eligible for Family Medicaid benefits. The Division's response was received on April 15, 2010. (Exs. 26.0 – 26.2) The Claimant did not submit a response.

ISSUES

1. Was the Division correct to terminate the Claimant's Adult Public Assistance and Adult Public Assistance related Medicaid benefits after the month of January 2010?
2. Should the Claimant have received Family Medicaid benefits after her Adult Public Assistance related Medicaid benefits were terminated?

SUMMARY OF DECISION

1. The Claimant's countable monthly Social Security income of \$1,278.00 per month caused her to exceed the Adult Public Assistance program's gross income limit (need standard) of \$1,252.00 per month. The Division was therefore correct when it terminated her Adult Public Assistance and Adult Public Assistance related Medicaid benefits after the month of January 2010.
2. The Claimant's total countable household income of \$1,759.09 was greater than the Family Medicaid program's monthly household income limit of \$1,464.00 for a household of three people. As a result, the Claimant did not financially qualify for Family Medicaid benefits; the Division was correct when it did not provide her with Family Medicaid benefits after her Adult Public Assistance related benefits were terminated.

FINDINGS OF FACT

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

1. The Claimant was receiving Adult Public Assistance and Medicaid benefits in January 2010. (Ex. 1) Her household consists of herself and her two minor children. *Id.*
2. On January 17, 2010, the Division was informed that the Claimant, who had previously been receiving gross federal Supplemental Security Income of \$647.00 per month, was no longer receiving federal Supplemental Security Income and was instead receiving gross federal Social Security Disability Insurance income of \$1,298.00 per month. (Exs. 2.0 – 2.1)
3. The Division then determined that the Claimant was not financially eligible for Adult Public Assistance and its related Medicaid benefits because her countable monthly income of \$1,278.00¹ exceeded the Adult Public Assistance need standard of \$1,252.00 per month. (Ex. 2.2) On January 19, 2010, the Division of Public Assistance (Division) sent the Claimant written notice that she would no longer receive Adult Public Assistance and its related Medicaid benefits after January 2010 due to her income increase. (Ex. 3)
4. The Claimant does not receive the full \$1,298.00 per month in Social Security payments. She only receives \$1,130.00 per month because her Social Security payment is garnished for past due student loans. (Ex. 7.0; Claimant testimony)

¹ The figure of \$1,278.00 was arrived at by taking the Claimant's gross monthly Social Security payment of \$1,298.00 and deducting a \$20.00 unearned income "disregard." *See* Ex. 2.2.

5. The Claimant's two minor children each receive \$324.00 per month from the Social Security Administration. (Ex. 26.2) This income is issued pursuant to Title II of the Social Security Act. *Id.*

6. After the April 15, 2010 hearing, the record was left open for the Division to submit its written position on the issue of whether the Claimant was eligible for Family Medicaid benefits. The Division's April 15, 2010 written statement provided that the Claimant's household income made her not financially eligible for Family Medicaid. (Ex. 26.0 – 26.1) The Division counted the Claimant's entire Social Security payment of \$1,298.00 (before garnishment), the two children's Social Security payments of \$324.00 apiece, and provided the Claimant with a deduction of \$186.91 for a child support payment, to arrive at her household's countable income of \$1,759.09. (Exs. 26.0 – 26.2) The Claimant did not submit a response to the Division's April 15, 2010 written statement.

PRINCIPLES OF LAW

This case involves the question of whether or not the Division was correct to terminate the Claimant's Adult Public Assistance and its related Medicaid benefits. Because this case involves the termination of benefits, the Division has the burden of proof² by a preponderance of the evidence.³

Adult Public Assistance and Adult Public Assistance related Medicaid

Adult Public Assistance is a cash benefit program provided to financially eligible persons who are "aged, blind, or disabled." AS 47.25.430.

Financial eligibility is determined, in part, by an applicant's income (which also include a spouse's income, if the applicant is married and living with his/her spouse). 7 AAC 40.240(a). Countable monthly income for Adult Public Assistance purposes is calculated by totaling an applicant's gross monthly income, both earned and unearned, and subtracting allowable income deductions. 7 AAC 40.300; 7 AAC 40.310(a); 7 AAC 40.350. Earned income consists of wages and self-employment income. 7 AAC 40.300(a)(2). Unearned income consists of "income that is not earned" and includes such items as Social Security payments, disability benefits, pensions, and retirement payments. 7 AAC 40.300(a)(3).

The Adult Public Assistance program's list of allowable deductions from an applicant's (and spouse's if applicable) income is provided in 7 AAC 40.320 and 7 AAC 40.330. There is a general deduction of \$20. 7 AAC 40.320(a)(23). There is no deduction for child support

² "Ordinarily the party seeking a change in the status quo has the burden of proof." *State, Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985)

³ Preponderance of the evidence is the normal standard of proof in an administrative proceeding. *Amerada Hess Pipeline v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986). Preponderance of the evidence is defined as "[e]vidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th Ed. 1979)

payments made by an applicant. *See* 7 AAC 40.320 and 330. There is no deduction provided for funds garnished from an applicant's income. *See* 7 AAC 40.320 and 330. The *Alaska Adult Public Assistance Manual* § 443-1 explains further:

The full amount of income, before amounts are withheld to satisfy a debt, counts as income. Amounts withheld because of a garnishment, or to make certain other payments (such as Medicare premiums or tax payments) are included when determining earned or unearned income amounts.

Items for which amounts may be withheld but considered received include, but are not limited to:

* * *

- Payments on loans or other debts;
- Garnishments;

If an applicant, who resides in her own home without a spouse, has a countable monthly income that exceeds \$1,252.00, 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.

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).

Medicaid Termination/Continuing Coverage

When the Division terminates a recipient's Medicaid coverage under one category, it is required to determine if the recipient is eligible for coverage under another Medicaid category: "[t]he agency must – . . . (b) Continue to furnish Medicaid regularly to all eligible individuals until they are found to be ineligible." 42 CFR 435.930.

Family Medicaid

Family Medicaid is the category of Medicaid coverage for families with minor children. 7 AAC 100.100. A Family Medicaid household consists of the dependent children in the household and the parent or parents or other caregivers that reside with them. 7 AAC 100.104.

The Family Medicaid program has financial eligibility requirements. In order for a household of three people to qualify for Family Medicaid, among other criteria, the household's monthly countable income cannot exceed \$1,464. 7 AAC 100.180(b); 7 AAC 100.190(a)(1); *Alaska Family Medicaid Eligibility Manual* Addendum 2.

The household countable income is calculated by totaling together the household's gross non-exempt income, including earned income and unearned income, and then subtracting allowable deductions. 7 AAC 100.180(b). Earned income consists of wages; unearned income is income other than wages or self-employment income, such as Social Security payments. 7 AAC

100.158. Unearned income of a minor child of an applicant is considered household income. 7 AAC 100.158(b)(3). Child support payments made by an applicant are deducted from gross income in order to arrive at a household's countable income. 7 AAC 100.184(3). Garnishment payments are not listed as an authorized deduction. *See* 7 AAC 100.184. The *Alaska Family Medicaid Eligibility Manual* § 5160-13 A explains further: "[t]he amount withheld for the garnishment **is counted** when determining the gross income from any source." (emphasis in original).

ANALYSIS

This case involves a termination of benefits. The Division, as the party seeking to change the status quo, has the burden of proof by a preponderance of the evidence. The relevant facts in this case are not disputed. They are as follows:

1. The Claimant receives monthly Social Security Disability Income in the gross amount of \$1,298.00 per month. She only actually receives \$1,130.00 per month because her Social Security payment is garnished for student loans. She does not receive Supplemental Security Income.
2. The Claimant's children each receive \$324.00 per month in Social Security payments, for a total of \$648.00 per month.
3. The Claimant is responsible for a child support payment in the amount of \$186.91 per month.⁴
4. The Division terminated the Claimant's Adult Public Assistance and its related Medicaid benefits after the month of January 2010 because of her income.

A. Was the Division correct to terminate the Claimant's Adult Public Assistance and Adult Public Assistance related Medicaid benefits after the month of January 2010?

The undisputed facts show that the Claimant receives \$1,298.00 gross Social Security income per month. She, however, only receives \$1,130 per month because her Social Security payment is garnished to pay off student loans.

The Adult Public Assistance income eligibility rules have a countable income limit for an adult, not living with a spouse, who lives on her own, of \$1,252.00 per month. 7 AAC 40.310(a)(5) and (c); *Alaska Adult Public Assistance Manual* Addendum 1.

The first issue to be resolved is whether the Claimant's net monthly Social Security income of \$1,130.00 (after student loan garnishment) should be used in resolving her eligibility instead of her gross monthly Social Security income of \$1,298.00. This is a purely legal issue. The Alaska Adult Public Assistance regulations do not provide an exemption for garnished funds. *See* 7

⁴ The child support figure was supplied by the Division in its April 15, 2010 post-hearing documentation. *See* Finding of Fact 6 above. The Claimant did not object to the figure or argue it should have been higher. *Id.* The figure is therefore taken as established for the purposes of this Decision.

AAC 40.320 and 330; *Alaska Adult Public Assistance Manual* § 443-1. Consequently, the gross monthly Social Security income of \$1,298.00 is the Claimant's monthly income for the purposes of determining her Adult Public Assistance eligibility.

The next question is what income deductions the Claimant is entitled to receive from her Social Security (unearned) income. There is a standard deduction of \$20.00 per month. 7 AAC 40.320(a)(23). There is no deduction for child support payments contained in 7 AAC 40.320 or 330. Because there is only a \$20.00 deduction available to the Claimant, her monthly countable income for Adult Public Assistance purposes is \$1,278.00 per month (\$1,298.00 - \$20.00).

The \$1,278.00 monthly income amount is greater than the Adult Public Assistance income limit of \$1,252.00. This causes the Claimant to not be eligible for Adult Public Assistance. Because the Claimant was receiving Medicaid benefits due to being qualified for Adult Public Assistance, her loss of Adult Public Assistance eligibility also caused her to lose her Adult Public Assistance related Medicaid benefits. 7 AAC 100.002(d)(1); 7 AAC 100.410(b).

The Division was therefore correct to terminate the Claimant's Adult Public Assistance and its related Medicaid benefits after the month of January 2010.

B. Should the Claimant have received Family Medicaid benefits after her Adult Public Assistance related Medicaid benefits were terminated?

When the Division terminates a recipient's Medicaid coverage under one category, it is required to determine if the recipient is eligible for coverage under another Medicaid category: "[t]he agency must – . . . (b) Continue to furnish Medicaid regularly to all eligible individuals until they are found to be ineligible." 42 CFR 435.930.

The Claimant has two minor children in her home. She was therefore potentially eligible for Medicaid coverage under the Family Medicaid category. 7 AAC 100.100. A Family Medicaid household consists of the dependent children in the household and the parent or parents or other caregivers that reside with them. 7 AAC 100.104.

The Family Medicaid program has financial eligibility requirements. In order for a household of three people to qualify for Family Medicaid, among other criteria, the household's monthly countable income cannot exceed \$1,464. 7 AAC 100.180(b); 7 AAC 100.190(a)(1); *Alaska Family Medicaid Eligibility Manual* Addendum 2.

The question that arises is whether the Claimant's household's countable monthly income is greater than \$1,464.00. Unlike Adult Public Assistance, Family Medicaid counts not only the adult's income but also counts the unearned income of the minor children in the household. 7 AAC 100.158(b)(3). Like Adult Public Assistance, the Family Medicaid regulations do not contain a deduction from gross income for garnished payments. 7 AAC 100.184; *Alaska Family Medicaid Eligibility Manual* § 5160-13 A. However, the Family Medicaid regulations do allow a deduction for child support payments made by an applicant. 7 AAC 100.184(3).

Applying the Family Medicaid income eligibility rules, the Claimant's household's countable income is:

Claimant Social Security payment before garnishment:	\$1,298.00
Children's Social Security payment (\$324.00 x 2):	\$ 648.00
Child Support payment:	<u><\$ 186.91></u>
Countable Monthly Income:	\$1,759.09

The Claimant's household's countable monthly income of \$1,759.09 is greater than the Family Medicaid program's monthly three person household limit of \$1,464.00. As a result, the Claimant does not qualify for Family Medicaid coverage. The Division was therefore correct to not provide her with Family Medicaid coverage after it terminated her Adult Public Assistance related Medicaid.

CONCLUSIONS OF LAW

1. The Division correctly counted the entire amount of the Claimant's monthly Social Security payment of \$1,298.00 per month as her income, instead of the post-garnishment amount of \$1,130.00.
2. The Claimant's total countable monthly income of \$1,278.00 is greater than the Adult Public Assistance income limit of \$1,252.00. The Division was therefore correct to terminate the Claimant's Adult Public Assistance and its related Medicaid benefits after the month of January 2010.
3. The Claimant's household's countable monthly income of \$1,759.09 is greater than the Family Medicaid program's monthly three person household limit of \$1,464.00. As a result, the Claimant does not qualify for Family Medicaid coverage. The Division was therefore correct to not provide her with Family Medicaid coverage after it terminated her Adult Public Assistance related Medicaid..

DECISION

The Division was correct to terminate the Claimant's Adult Public Assistance and its related Medicaid benefits after the month of January 2010. The Division was also correct when it did not provide the Claimant with Family Medicaid coverage.

APPEAL RIGHTS

If for any reason the Claimant is not satisfied with this decision, the Claimant has the right to appeal by requesting a review by the Director. To do this, the Claimant must send a written request directly to:

Director of the Division of Public Assistance
Department of Health and Social Services
PO Box 110640
Juneau, AK 99811-0640

An appeal request must be sent within 15 days from the date of receipt of this decision. Filing an appeal with the Director could result in the reversal of this decision.

DATED this 15th day of June, 2010.

/Signed/
Larry Pederson
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 15th day of June 2010, true and correct copies of the foregoing were sent to:

Claimant – Certified Mail, Return Receipt Requested.

[REDACTED], Fair Hearing Representative - email
[REDACTED], Director - email
[REDACTED], Director's Office - email
[REDACTED], Policy & Program Development - email
[REDACTED], Policy & Program Development - email
[REDACTED], Staff Development & Training – email
[REDACTED], Chief of Field Services

J. Albert Levitre, Jr.
Law Office Assistant I