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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-117
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) applied for Medicaid benefits on March 12, 2010. (Exs. 2.0 – 2.10) On April 22, 2010, the Division notified the Claimant that his application for Medicaid benefits was denied. (Ex. 6.0; [REDACTED] testimony) The Claimant requested a fair hearing that same day. (Exs. 6.0 – 6.1) The Division then sent the Claimant written notice of the denial on April 28, 2010. (Ex. 8)

This office has jurisdiction pursuant to 7 AAC 49.010.

A hearing was held, pursuant to Claimant's request, on May 18, 2010. The Claimant appeared telephonically; he represented himself and testified on his own behalf. The Claimant's wife, [REDACTED], also appeared telephonically and testified on the Claimant's behalf. [REDACTED], Public Assistance Analyst with the Division, attended in person; she represented the Division and testified on its behalf.

STATEMENT OF ISSUES¹

Was the Division correct to deny the Claimant's March 12, 2010 application for Medicaid benefits because he owned resources, consisting of a Workers' Compensation Medicare Set-aside account, in the amount of \$7,748.00?

¹ The Claimant requested that this Office authorize him to use his Workers' Compensation Medicare Set-aside Account for payment of general medical expenses. This Office does not have jurisdiction to address Medicare issues and expresses no opinion on that issue.

SUMMARY OF DECISION

The Claimant was not eligible for Medicaid benefits because he owned a savings account worth more than \$3,000.00. Even though the funds in that savings account were subject to a Workers' Compensation Medicare Set-aside Arrangement, those funds were a countable resource for Medicaid eligibility purposes.

FINDINGS OF FACT

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

1. The Claimant is currently 69 years old and receives Medicare benefits. (Ex. 2.1, 2.6) He resides with his wife and grandchild. (Ex. 2.1) He is not employed. (Ex. 2.3) He does not receive Supplemental Security Income benefits. *Id.* He does receive Social Security income of \$1,115.00 per month. (Claimant testimony).
2. The Claimant is a previous recipient of Medicaid benefits; he lost those benefits due to his income. (Claimant testimony)
3. The Claimant set up a "Miller Trust" (Medicaid Qualifying Trust) to allow him to qualify for Medicaid, despite his income, and reapplied for Medicaid benefits on March 12, 2010. (Exs. 2.0 – 2.10; Claimant testimony)
4. The Claimant had a Workers' Compensation covered injury from 1985 that resulted in him losing his eye and receiving an artificial eye. (Ex. 5.5)
5. The Claimant's artificial eye requires periodic cleaning and replacement. (Ex. 5.6) In 2009, the Centers for Medicare & Medicaid Services (CMS) approved a Workers' Compensation Medicare Set-aside Arrangement whereby the Claimant was to receive a lump-sum payment, through Worker's Compensation, in the amount of \$7,748.00 for the estimated future medical expenses for his artificial eye care. (Exs. 5.0 – 5.6) The Worker's Compensation Medicare Set-side Arrangement provides that the funds are to "be placed in an interest bearing account" and "should not be used for any purpose other than payment of future medical expenses and future prescription drug expenses related to the work injury or disease that would otherwise be reimbursable by Medicare." (Ex. 5.2) Medicare will not pay for his artificial eye care until the artificial eye care costs "equal the amount of the lump-sum payment of \$7, 748.00." *Id.*
6. The Claimant's Workers' Medicare Compensation Set-Aside Arrangement was funded in the amount of \$7,748.00. (Exs. 5.7 – 5.8) Those funds were not placed in a trust, but are rather held in a separate savings account (Medicare account). *Id.*
7. The Division determined the Claimant's Medicare account was a countable resource for the purposes of the Medicaid program. (Ex. 6.0). The Division sent the Claimant written notice on April 28, 2010 that his application for Medicaid was denied because he owned countable resources that were

worth more than the \$2,000 resource limit. (Ex. 8) The denial notice specifically informed the Claimant it was valuing his Medicare account at over \$9,000.00 which placed him over the \$2,000.00 Medicaid resource limit. *Id.*

PRINCIPLES OF LAW

This case involves the question of whether or not the Division was correct to deny the Claimant's application for Medicaid benefits. Because this case involves the denial of an application, the Claimant has the burden of proof² by a preponderance of the evidence.³

Medicaid applicants, who are not receiving Supplemental Security Income benefits, who are either disabled or over the age of 65 years old, must satisfy the Medicaid financial eligibility requirements in order to qualify for Medicaid benefits. 7 AAC 100.400; 7 AAC 100.410. Among those eligibility requirements is one that a non-working married person, living with his spouse, may not own more than \$3,000.00 in countable resources. 7 AAC 40.270(a)(2); 7 AAC 100.400(a)(14).

A resource is "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 40.260(a); 7 AAC 100.400(a)(13). Resources are counted unless they fall in the list of exclusions contained in 7 AAC 40.280, or unless they are contained in a Medicaid Special Needs Trust.⁴ 7 AAC 100.400(a)(15); 7 AAC 100.612. Neither Medicare Workers' Compensation Set-aside funds nor funds held in savings accounts are listed as being excluded as resources in 7 AAC 40.280.

ANALYSIS

The issue in this case is whether the Division was correct when it denied the Claimant's application for Medicaid benefits. The Claimant has the burden of proof by a preponderance of the evidence.

As a legal matter, it must first be noted the Claimant is a non-working 69 year old adult male who resides with his wife and grandchild. He does not receive Supplemental Security Income benefits. As a consequence, his eligibility for Medicaid coverage requires that he not own a countable resource worth in excess of \$3,000.00. 7 AAC 40.270(a)(2); 7 AAC 100.400(a)(14).

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)

⁴ A Medicaid Special Needs Trust is not available to the Claimant in this case, because it must be created before the applicant becomes 65 years old. 7 AAC 100.612(a)(1). The Claimant is currently 69 years old.

It is undisputed that the Claimant owns his Medicare account, which has a balance of \$7,748. It is not a trust. And neither Workers' Compensation Medicare Set-aside funds nor savings accounts are specifically listed as not being counted as resources in the applicable regulation, 7 AAC 40.280. On its face, he owns a resource that is worth more than \$3,000.00.⁵

The Claimant's argument in this case is that the funds are restricted, by Medicare rules, to be used only for the medical expenses associated with his artificial eye. This is an argument that his Medicare account is not a countable resource for Medicaid eligibility purposes, because he cannot use the funds for his "support and maintenance." *See* 7 AAC 40.260(a); 7 AAC 100.400(a)(13). However, a review of the Workers' Compensation Medicare Set-aside Arrangement reveals that there is no legal mechanism in place keeping the Claimant from using the funds for other than their designated use. *See* Ex. 5.2. Instead, the consequence to the Claimant is that if he uses the funds for other than their designated use, Medicare will not pay for his artificial eye care until the artificial eye care costs "equal the amount of the lump-sum payment of \$7, 748.00." *Id.*

Because the Claimant has the legal ability to access the Medicare account for any purpose, albeit with potential consequences to future Medicare coverage for his artificial eye care, he is able to use these funds for his "support and maintenance." Because he is able to use the funds in his Medicare account for his "support and maintenance", they are a countable resource for the purposes of determining his Medicaid eligibility.

The Claimant has the burden of proof in this case. He did not meet it. He undisputedly has more than \$3,000 in Workers' Compensation Medicare Set-aside funds in a savings account. He can use those funds for his "support and maintenance." Consequently, he is not financially eligible for Medicaid coverage. The Division was therefore correct when it denied his March 12, 2010 application for Medicaid benefits.

CONCLUSIONS OF LAW

1. The Claimant's savings account that contained his Worker's Compensation Medicare Set-aside funds in the amount of \$7,748.00 was a countable resource for the purposes of determining his eligibility for Medicaid benefits
2. The Claimant's savings account caused him to exceed the \$3,000.00 Medicaid resource limit for his household. As a result he was not eligible to receive Medicaid benefits.
3. The Division was therefore correct when it denied the Claimant's March 12, 2010 application for Medicaid benefits.

⁵ It must be noted that the Division's April 28, 2010 Medicaid denial notice contains several errors. It states the resource limit is \$2,000.00. (Ex. 8.0) Because the Claimant resides with his spouse, the limit is \$3,000.00. 7 AAC 40.270(b); 7 AAC 100.400(a)(14). The notice also states that the value of the Medicare account is over \$9,000.00. (Ex. 8) Neither of these errors are material, given that the notice clearly informs the Claimant that his Medicaid application was denied because of his Medicare account.

