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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-138
)
 Claimant.) DPA Case No. [REDACTED]
)
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) is the husband of Medicaid applicant [REDACTED] (Ex. 2.1). On March 22, 2010 the Claimant's wife¹ completed, signed, and submitted an Application for Services (Form Gen-50B) to the State of Alaska Division of Public Assistance (DPA or Division) (Exs. 2.0 – 2.10). The application pertained to the Food Stamp and Medicaid Programs (Ex. 2.0).

On April 30, 2010 the Division mailed to the Claimant a written notice denying the Claimant's application for retroactive Medicaid benefits (Ex. 10). The notice stated that the Claimant was not eligible for retroactive Medicaid benefits because the Claimant's total countable resources exceeded the maximum resource value allowed by the Medicaid Program. *Id.*

On May 3, 2010 the Claimant requested a fair hearing to contest the Division's denial of his application for retroactive Medicaid benefits (Ex. 11.1).

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

¹ The initial application was completed by the Claimant's wife (Ex. 2.1), and the Claimant's wife is therefore technically the proper party. However, it was the Claimant that submitted the hearing request (Ex. 11.1), so this Office's case was opened in the name of the Claimant (husband). Accordingly, this decision refers to the husband as the Claimant. As a practical matter it makes no difference whether the husband or wife is treated as the Claimant because they both belong to the same household.

A hearing was held as scheduled on June 9, 2010 before Hearing Examiner Patricia A. Huna.² The Claimant participated by telephone, represented himself, and testified on his own behalf. Public Assistance Analyst ██████████ attended the hearing in person to represent and 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 April 30, 2010, it denied the Claimant's application for retroactive Medicaid benefits dated March 22, 2010 on the grounds that the total value of the Claimant's countable resources as of February 2010 exceeded the Family Medicaid Program's applicable maximum resource limit?

SUMMARY OF DECISION

The Claimant's household had a minimum of \$2,160.00 in countable, non-exempt resources available to it as of February 1, 2010. This exceeded the applicable \$2,000.00 maximum countable (non-exempt) resource limit specified by 7 AAC 100.130. Accordingly, the Division was correct when, on April 30, 2010, it denied the Claimant's application for retroactive Medicaid benefits dated March 22, 2010 because the total value of the Claimant's countable resources as of February 2010 exceeded the Family Medicaid Program's applicable maximum resource limit.

FINDINGS OF FACT

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

1. On March 22, 2010 the Claimant's wife completed, signed, and submitted an Application for Services (Form Gen-50B) to the Division (Exs. 2.0 – 2.10). The application pertained to the Food Stamp and Medicaid Programs (Ex. 2.0). At the time the application was filed, no member of the Claimant's household had yet reached sixty (60) years of age.
2. At page 5 of the application (Ex. 2.4) the Claimant's wife indicated that the family had a checking account at Wells Fargo Bank, but did not have any cash on hand. The amount of money in the checking account was not stated. *Id.*
3. At page 6 of the application (Ex. 2.6), the Claimant's wife indicated that she needed financial assistance to pay medical bills incurred by her in February and March 2010.
4. On March 24, 2010 the Claimant's wife participated in an eligibility interview with a DPA Eligibility Technician (Ex. 3). At that interview the Claimant's wife did not disclose that the family had any cash on hand. *Id.*

² 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.

5. On March 25, 2010 the Division mailed to the Claimant a notice requesting additional information and/or documentation (Ex. 4). One of the items requested was a copy of the family's bank statements for the month of February 2010. *Id.*

6. On March 30, 2010 the Claimant provided the requested bank statements to the Division (Exs. 5.0 – 5.5). The Claimant's bank statements showed that a deposit of \$2,160.00 was made to the Claimant's account on March 16, 2010 (Ex. 5.1).

7. On April 26, 2010 the Division mailed to the Claimant a written notice requesting additional information and/or documentation (Ex. 7). Specifically, the notice requested a signed and dated statement from the Claimant specifying (among other things) (1) the amount of money at the Claimant's residence as of January 31, 2010, and (2) the amount of money at the Claimant's residence as of February 1, 2010. *Id.*

8. On April 28, 2010 the Claimant submitted to the Division the signed and dated statement the Division had requested (Ex. 8). The Claimant's statement stated in relevant part as follows:

The money in the amount of \$2,160.00 was collected from work in the summer of 2009. We had that money and only that money until it was deposited on March 16. There is nothing else added to it.

9. On April 30, 2010 the Division mailed to the Claimant a notice stating that the Claimant's request for retroactive Medicaid benefits has been denied (Ex. 10). The notice stated in relevant part as follows:

Your request for retroactive Medicaid benefits was received on March 22, 2010. It is denied because of the reasons given below:

5008 is the Medicaid Manual Section that supports this action.

Reasons: The family's resources were over the Family Medicaid limit of \$2,000.00, as the life savings of \$2,160.00 were available to the family since "the summer of 2009," along with the money in the Wells Fargo Bank account in February 2010.

10. On May 3, 2010 the Claimant requested a fair hearing to contest the Division's denial of his application for retroactive Medicaid benefits (Ex. 11.1).

11. At the hearing of June 9, 2010 the Claimant initially testified that he had earned the \$2,160.00 at issue over a long period of time and had it in his possession, in the form of cash, long prior to the time he deposited it into his bank account (Claimant hearing testimony). He subsequently testified that he did not receive the money until March 16, 2010. *Id.* He then changed his position again and stated that the version of the facts set forth in his signed statement dated April 28, 2010 (Ex. 8) was correct.

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.³ The Claimant is attempting to change the status quo by obtaining 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 this case.⁴ 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.⁵

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

³ *State of Alaska Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

⁴ 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).

⁵ *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").

program are set forth in the Alaska Administrative Code at Title 7, Chapter 43 and Chapters 100 - 160.

III. Retroactive Medicaid Eligibility.

7 AAC 100.072, titled “Retroactive Medicaid Eligibility,” states in relevant part as follows:

- (a) At the time of application or interview, an applicant may request Medicaid coverage for a maximum of three months immediately preceding the month of application if the applicant has unpaid medical expenses for dates of service any time during that three-month period. If the applicant fails to request an eligibility determination for retroactive coverage at the time of application or interview, the applicant forfeits the opportunity to receive retroactive benefits during that period.
- (b) The department will inform the applicant about potential retroactive coverage under this section as part of the application and interview process.
- (c) Eligibility must be determined separately for each retroactive month in which the applicant seeks coverage. The applicant need not be eligible for Medicaid in the month of application to be found eligible in any of the retroactive months
- (d) The department will use the income and resource methodology of the eligibility category for which the applicant is applying to determine the following (3) actual resources that were available in that month.

* * * * *

Alaska Family Medicaid Eligibility Manual (“AFMEM”) Section 5008 provides in relevant part that “Retroactive Medicaid is determined using . . . Actual resources that were available in each month.”

IV. Relevant Family Medicaid Regulations Concerning Resources.

7 AAC 100.102, titled “Determining Eligibility,” states in relevant part as follows:

- (a) To determine eligibility for Family Medicaid, the department will first determine who is in the Family Medicaid household under (b) of this section and then determine if the household is financially eligible under (c) of this section.
- (b) A Family Medicaid household is the combination of individuals whose financial needs the department considers for the purpose of determining eligibility. A Family Medicaid household includes (3) any individual who is required to have the individual's financial needs, income, and resources included in the financial eligibility determination, even though that individual does not receive Medicaid benefits for reasons identified in 7 AAC 100.120(b).

(c) A household is financially eligible if (1) the total amount of the resources available to meet the financial needs of the household under 7 AAC 100.132 and 7 AAC 100.134 does not exceed the resource limitation of 7 AAC 100.130

(d) If the department determines that a household is financially eligible under (c) of this section, and the household is otherwise eligible . . . the household is eligible to receive Family Medicaid benefits under this chapter.

7 AAC 100.130, titled “Resource Limit,” provides in relevant part as follows:

(a) A household is not eligible for Family Medicaid if the household has nonexempt resources, as determined under 7 AAC 100.138 and 7 AAC 100.140, with a total value, as determined under 7 AAC 100.144, in excess of \$2,000.00 or, if the household includes an individual 60 years of age or older, in excess of \$3,000.00.

(b) The department will determine the value of a household's resources (1) for an applicant, as of the date eligibility is being determined; and (2) for a recipient, as of the first day of the month for which eligibility is being determined.

7 AAC 100.138, titled “Exempt Resources,” provides in relevant part as follows:

(a) The department will not consider exempt resources in determining eligibility for Family Medicaid benefits. A resource is exempt if it is determined to be wholly or partially exempt under this section or 7 AAC 100.140 [concerning pension plans].

* * * * *

(q) Cash on hand or in an account is an exempt resource if it was received as (1) an educational, personal, commercial, or other loan for which the borrower has an obligation, and expresses intent, to repay; (2) federal major disaster and emergency assistance . . . and comparable disaster assistance provided by the state, a local government, or a disaster assistance organization; (3) a restitution payment made to Aleuts or individuals of Japanese ancestry . . . (4) income earned from participation in a youth activity operated under 29 U.S.C. 2854 (sec. 129 of the Workforce Investment Act of 1998); or (5) a cash distribution exempt under (d) or (e) of this section [concerning distributions from Alaska Native corporations and payments made to members of Indian tribes under federal law].

Alaska Family Medicaid Eligibility Manual (“AFMEM”) Section 5150 provides in relevant part as follows:

A household or child will not be eligible for Family Medicaid if they have countable resources in excess of \$2,000, or \$3,000 if the household includes a

person who is age 60 or older The resource limit can be reached by any combination of the following types of resources: (1) Cash on hand or deposit

* * * * *

5150-5 Definition Of Resources. A resource is cash, or an asset that can be converted to cash

5150-6 When Resource Values Are Measured.

5150-6 A. Applicants. The total value of all resources held at the time eligibility is being determined or re-determined for each month is used for applicant households. If the household's total countable resources exceed the resource limit, the household is ineligible and the application is denied.

* * * * *

Alaska Family Medicaid Eligibility Manual (“AFMEM”) Section 5152-4(a) provides in relevant part as follows:

All cash on hand and other liquid resources . . . which belong to the dependent child and/or his legal or adoptive parent residing with him and which are not otherwise exempt will be counted against the resource limit. Cash-on-hand or on deposit will be counted against the limit

ANALYSIS

The issue in this case is whether or not the Division was correct to deny the Claimant’s application for retroactive Family Medicaid benefits for the month of February 2010 on the grounds that, as of that month, the total value of the Claimant’s countable resources exceeded the applicable \$2,000.00 maximum resource limit specified by the Family Medicaid Program.

There is no factual issue with regard to the amount of money that was available to the Claimant’s household as of February 1, 2010. The Claimant’s written statement (Ex. 8) states that the \$2,160.00 at issue was collected from work performed during the summer of 2009. The Claimant’s hearing testimony confirmed this. The \$2,160.00 was in the Claimant’s possession, in the form of cash, until it was deposited to the Claimant’s bank account on March 16, 2010 (Ex. 5.1). Accordingly, it is established that the Claimant’s household had a minimum of \$2,160.00 available to it as of February 1, 2010. Whether the Claimant was eligible for retroactive Family Medicaid benefits during February 2010 can thus be determined by applying the applicable law to the undisputed relevant facts.

Cash on hand is clearly a resource. *See* Alaska Family Medicaid Eligibility Manual (“AFMEM”) Sections 5150-5 and 5152-4(a). Pursuant to 7 AAC 100.130, “[a] household is not eligible for Family Medicaid if the household has nonexempt resources . . . with a total value . . . in excess of \$2,000.00.” The \$2,160.00 at issue exceeds the \$2,000.00 resource limit specified

by 7 AAC 100.130. Accordingly, *unless the \$2,160.00 at issue can be classified as an exempt resource*, it causes the Claimant's available resources to exceed the Family Medicaid Program's applicable resource limit.

Pursuant to 7 AAC 100.138(q), cash on hand or in an account is considered a non-exempt (countable) resource *unless* it was received (1) as an educational, personal, commercial, or other loan; (2) as a federal, state, or local government's disaster or emergency assistance payment; (3) as a restitution payment made to Aleuts or individuals of Japanese ancestry . . . (4) as income earned from participation in certain youth activities; or (5) as a cash distribution from an Alaska Native corporation or as a payment made to members of Indian tribes under federal law. There is no evidence in the record indicating that the \$2,160.00 at issue falls within one of the five exemptions provided by 7 AAC 100.138(q).

In summary, the \$2,160.00 at issue is not an exempt resource pursuant to 7 AAC 100.138(q). Thus, the \$2,160.00 at issue must be counted toward the Claimant's resource limit pursuant to 7 AAC 100.130 and Alaska Family Medicaid Eligibility Manual Sections 5150-5 and 5152-4(a). The \$2,160.00 at issue exceeds, by \$160.00, the \$2,000.00 maximum resource limit specified by 7 AAC 100.130. Accordingly, the Division was correct when, on April 30, 2010, it denied the Claimant's application for retroactive Medicaid benefits for February 2010 on the grounds that the total value of the Claimant's countable resources exceeded the Family Medicaid Program's applicable maximum resource limit.

CONCLUSIONS OF LAW

1. The Claimant failed to carry his burden and did not prove, by a preponderance of the evidence, that:
 - a. He possessed less than \$2,000.00 worth of resources during the month of February 2010, or
 - b. That the portion of his resources exceeding \$2,000.00 were exempt resources pursuant to 7 AAC 100.138.

2. Accordingly, the Division was correct when, on April 30, 2010, it denied the Claimant's application for retroactive Medicaid benefits dated March 22, 2010 on the grounds that the total value of the Claimant's countable resources as of February 2010 exceeded the Family Medicaid Program's applicable maximum resource limit.

DECISION

The Division was correct when, on April 30, 2010, it denied the Claimant's application for retroactive Medicaid benefits dated March 22, 2010 on the grounds that the total value of the Claimant's countable resources as of February 2010 exceeded the Family Medicaid Program's applicable maximum resource limit.

