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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-200
)	
Claimant.)	Division Case No. [REDACTED]
_____)	

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) applied for retroactive Medicaid benefits on June 1, 2010. (Ex. 1) On June 2, 2010, the Division of Public Assistance (Division) sent the Claimant notice his application for retroactive Medicaid benefits was denied. (Ex. 3) The Division received a fair hearing request from the Claimant on June 10, 2010. (Ex. 4.0)

This Office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to Claimant's request, a hearing was held on July 13, 2010. The Claimant attended the hearing in person; he represented himself and testified on his own behalf. [REDACTED], Public Assistance Analyst with the Division, attended the hearing in person; she represented the Division and testified on its behalf.

On July 20, 2010, this Office, on its own initiative, requested that the parties submit post-hearing briefing on the issue of whether the Division provided the Claimant with legally adequate notice of its position that he was not eligible to receive retroactive Medicaid benefits because his child had already received Medicaid benefits in another household (duplication of benefits). The Division's post-hearing brief was received on July 21, 2010. In its July 21, 2010 post-hearing briefing the Division conceded "the fact legally adequate notice was not provided to [the Claimant] back in June of 2010 regarding the duplication of benefits." The Claimant did not submit a post-hearing brief.

ISSUE¹

The Claimant applied for Food Stamp and Temporary Assistance benefits on June 1, 2010. The Division, after speaking to the Claimant, also treated the application as one for retroactive Medicaid benefits. The Division then denied the Claimant's application for retroactive Medicaid benefits because it determined the Claimant's minor child was residing with her grandmother over 50 percent of the time in May 2010. (Ex. 3) The denial notice did not state which months it was denying retroactive Medicaid coverage for. *Id.*

The Claimant filed a fair hearing request that stated "child was with me 66% of the time for both April and May." (Ex. 4.0) At hearing, the Claimant stated he was challenging the retroactive Medicaid denial for the months of April and May 2010, and that Food Stamp and Temporary Assistance benefits were not being disputed.

The resulting issue is:

Was the Division correct to deny the Claimant's June 1, 2010 application for retroactive Medicaid benefits for the months of April and May 2010 because his minor child was residing with her grandmother for over 50 percent of the time during May 2010?

SUMMARY OF DECISION

The Claimant's minor child was residing with him the majority of the time during the months of April and May 2010, rather than her spending the majority of the time with her grandmother. As a result, the Division was not correct to deny his June 1, 2010 application for retroactive Medicaid benefits for May 2010 for its stated reason that his minor child was residing with her grandmother for over 50 percent of the time during May 2010. However, because the Claimant's June 1, 2010 application for benefits did not request assistance for unpaid medical bills for April 2010, the Division's denial of benefits for April 2010 was correct.

FINDINGS OF FACT

1. The Claimant applied for Food Stamp and Temporary Assistance benefits for his two person household consisting of his minor child and himself on June 1, 2010. (Exs. 2.0 – 2.9) The June 1, 2010 application contained a question asking if "anyone in your household need[s] help paying for any unpaid medical bills from the past three months?" (Ex. 2.6) The Claimant responded to that question stating he required help paying medical bills which were incurred in May 2010. *Id.*

¹ In its July 21, 2010 post-hearing briefing the Division conceded "the fact legally adequate notice was not provided to [the Claimant] back in June of 2010 regarding the duplication of benefits." Consequently, this Decision will not address this issue as it was conceded by the Division on procedural grounds.

2. The Division treated the Claimant's June 1, 2010 Food Stamp and Temporary Assistance application as also being one for retroactive Medicaid benefits. (Ex. 2.10)
3. The Eligibility Technician processing the Claimant's June 1, 2010 application spoke both to the Claimant and his minor child's grandmother. The Eligibility Technician's June 1, 2010 casenote states that the Claimant told the Eligibility Technician that he and the grandmother "have been sharing custody of child since April and that he has her most of the time now, except during day when ch (sic) is at grandmas or daycare." (Ex. 2.10)
4. The June 1, 2010 casenote states the grandmother told the Eligibility Technician that she had a "court order for full physical custody" but that the grandmother and the Claimant had a verbal agreement to share custody, and that the current arrangement was that the Claimant would drop the child off at the grandmother's between 7 a.m. to 9 a.m. and pick the child up from the grandmother's between 4 to 5 p.m. (Ex. 2.10)
5. The grandmother also informed the Division staff that the Claimant had the child for evenings/overnights only 5 or 6 nights per week during the month of May 2010 and that the child did not stay with the Claimant for a total of 9 complete days in May 2010 when the Claimant was in the hospital. (██████ testimony)
6. The Eligibility Technician's June 1, 2010 casenote states that the Claimant is not eligible for retroactive Medicaid coverage for the month of May 2010 because the child was in the grandmother's house more than 50 percent of the time. (Ex. 2.10) On June 2, 2010, the Division sent the Claimant a written notice that informed him his application for retroactive Medicaid benefits was denied because his child "was residing with her grandmother more than 50 (sic) of the time for the month of May." (Ex. 3) The notice does not state what specific months the denial covered. *Id.*
7. At the end of March 2010, the Claimant and the grandmother entered into a formal Custody Settlement Agreement in an Anchorage, Alaska Superior Court child custody case (Case No. ████████ CI) which specifically provided that the Claimant would have "sole legal and primary physical custody of the minor child" and that he would have custody of the child during the week beginning on April 1, 2010 with the grandmother to have unspecified visitation until the end of the school year, at which point the grandmother would have visitation of one weekend per month. (Ex. A) That agreement was signed by the grandmother on March 30, 2010 in front of a notary. *Id.* The Claimant testified that the grandmother did not actually have weekend visitations in April and May 2010 because she was taking care of the child during the daytime during the week. (Claimant testimony)
8. The Claimant testified, starting at the beginning of April 2010, the parties' actual practice was that the grandmother would care for the child during the week days and he would have the child evenings and overnight. (Claimant testimony) This pattern continued from April 2010 until mid June 2010, with the exception of an approximately 5 day period in May 2010 when he experienced medical problems that resulted in him

being hospitalized. *Id.* The grandmother had full care of the child during that approximately 5 day period. *Id.*

9. The Claimant did not claim to be disabled. He is currently 26 years old (birth date [REDACTED]). (Ex. 2.1)

PRINCIPLES OF LAW

A party who is seeking a change in the status quo has the burden of proof by a preponderance of the evidence. *State, Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985); *Amerada Hess Pipeline v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986). “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.” *Robinson v. Municipality of Anchorage*, 69 P.3d 489, 495 (Alaska 2003).

The Medicaid program provides medical coverage for financially eligible households that have minor children in them. 7 AAC 100.002(a)(1); 7 AAC 100.100. This Medicaid coverage category is referred to as Family Medicaid. *Id.* 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.

In order for a household to qualify for Family Medicaid, among other requirements, there must be a dependent child residing in the household. 7 AAC 100.110(a). Where there are 2 separate caretaker relatives/parents of a dependent child, who do not reside together, who are both claiming Family Medicaid eligibility, the caretaker relative/parent of the dependent child who “is exercising the primary responsibility for the care and control of the child” is the one who is eligible for Family Medicaid. 7 AAC 100.110(e). The following factors are used in determining which caretaker relative/parent has primary responsibility for the dependent child:

- (1) in whose home the child is living;
- (2) how long the child will likely remain in that home;
- (3) what percentage of the month the child is in the separate home of each of the two relatives;
- (4) who provides the majority of the child’s guidance, discipline, physical, and financial needs;
- (5) the nature and frequency of the contacts made with the child by each relative.

7 AAC 100.110(f).

An applicant for Medicaid benefits is eligible for “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.” 7 AAC 100.072(a). The Claimant must request retroactive Medicaid coverage. *Id.*

ANALYSIS

The issue in this case is whether or not the Division was correct when it denied the Claimant's June 1, 2010 application for retroactive Medicaid benefits for the months of April and May 2010. Because this case involves the Claimant's application for benefits, the Claimant has the burden of proof by a preponderance of the evidence.

It must first be noted the Claimant is a 26 year old male, who is not disabled. Given his age (under 65), and his lack of disability, his only eligibility category for Medicaid coverage would be Family Medicaid, which requires there be a dependent child in the household. *See* 7 AAC 100.002 for a complete list of the Medicaid coverage categories.

The chief prerequisite for Family Medicaid coverage is the presence of a minor child in a household. 7 AAC 100.110(a). Consequently, if there is not a minor child in the Claimant's household, then the Claimant is not eligible for Family Medicaid coverage.

The Division does not dispute that there was a minor child in the Claimant's household during the month of May 2010. However, it denied the Claimant's application for Medicaid coverage because his child "was residing with her grandmother more than 50 (sic) of the time for the month of May." (Ex. 3)

It must be noted that the Division's June 2, 2010 denial notice did not specify which months the denial of retroactive coverage applied to. Since retroactive Medicaid coverage is available for up to three months before the month of the application, the months of March, April, and May 2010 are potentially at issue. *See* 7 AAC 100.072(a). However, the Claimant's hearing request only referred to the months of April and May 2010. *See* Ex. 4.0.

There is a factual dispute in this case: who had the primary responsibility and care of the Claimant's child, her grandmother or the Claimant?

The grandmother told the Eligibility Technician she had a court order for full physical custody, but that she took care of the child during the day. The grandmother further notified the Division the Claimant had the child at night for only 5 to 6 nights per week in May 2010, and that the Claimant did not have care of the child for 9 complete days when the Claimant was hospitalized in May 2010.

The Claimant testified that his child stayed with him on evenings/overnights for the months of April and May 2010 with the exception of approximately 5 days when he was ill and had to be hospitalized. In addition, the Claimant submitted a copy of a Custody Settlement Agreement signed by the grandmother on March 30, 2010, which provided that he would have custody of the child beginning April 1, 2010. (Ex. A)

The grandmother did not testify at hearing. Her statements regarding the amount of time the child spent in her care were made to the Division's representatives. They were therefore hearsay. The Claimant's live sworn testimony, which was subject to cross-examination, is given more weight than the grandmother's hearsay statements, which were not sworn and which were not subject to cross-examination. Accordingly, the Claimant's testimony is found to be more credible than the grandmother's hearsay statements made to the Division personnel. In addition, the Claimant's testimony is corroborated by the signed Custody Settlement Agreement that specifically provides that he was to receive custody of the child beginning on April 1, 2010. This signed Custody Settlement Agreement directly contradicts the grandmother's hearsay statement that she had a court order for full physical custody.

The Claimant has therefore established by a preponderance of the evidence that his child stayed with him in the evenings and overnight during the months of April and May 2010 with the exception of approximately 5 days in May 2010 when he was ill and had to be hospitalized. The grandmother took care of the child during the day time during this period, except for that approximately 5 day period in May 2010.

Because the Claimant had the child for evenings and overnights with the exception of approximately 5 days in May 2010, while the grandmother took care of her during the day time, the Claimant had the child in his residence for well over 50% of the time during the months of April and May 2010. This along with the Custody Settlement Agreement satisfy the factors contained in the applicable regulation, 7 AAC 100.110(f) as follows:

1. The child was living in the Claimant's home at the time of application and during the two preceding months of April and May 2010. 7 AAC 100.110(f)(1).
2. The child was expected to remain in the home indefinitely given that the Claimant and the grandmother had signed an agreement giving the Claimant sole legal and full physical custody. 7 AAC 100.110(f)(2).
3. The child was staying fulltime in the Claimant's home with the exception of daycare during the week and for an approximately 5 day time period in May 2010. 7 AAC 100.110(f)(3).
4. Because the Claimant had agreed to sole legal and full physical custody of the child, he was responsible for providing the majority of the child's guidance, discipline, physical, and financial needs. 7 AAC 100.110(f)(4).
5. The grandmother had frequent contact with the child during April and May 2010 because she was taking care of the child during the week days, while the Claimant had the child evenings and overnights. This shows that the clear majority of the time, the Claimant was primarily responsible for the child's care and control. 7 AAC 100.110(f)(5).

As a result, the Division was not correct to deny the Claimant's application for retroactive Medicaid coverage for the month of May 2010 for the reason that his child "was residing with her grandmother more than 50 (sic) of the time for the month of May." (Ex. 3)

This leaves the issue of whether the Division should have approved retroactive Medicaid coverage for the Claimant for the month of April 2010. As found above, the Claimant had primary physical custody of his child during the month of April 2010. However, the Claimant's June 1, 2010 application only notified the Division that he needed help paying May 2010's medical bills. It did not request assistance in paying April 2010's medical bills. *See* Finding of Fact 1 above.

The applicable regulation requires that a Medicaid applicant request retroactive Medicaid coverage. 7 AAC 100.072(a). The Claimant did that, via his June 1, 2010 application, for the month of May 2010. However, he did not notify the Division that he had unpaid medical bills for the month of April 2010. The Division therefore cannot be faulted for not providing the Claimant with retroactive Medicaid coverage for the month of April 2010. As a result, the Division was correct to deny the Claimant's retroactive Medicaid coverage for the month of April 2010.

CONCLUSIONS OF LAW

1. The Claimant had the burden of proof in this case by a preponderance of the evidence. He met that burden of proof and established that he had physical custody of his minor child for well over 50 percent of the time during the months of April and May 2010.
2. The Claimant was therefore potentially eligible for retroactive Medicaid coverage during the months of April and May 2010 under the Family Medicaid coverage category because he had his minor child in his household.
3. The Division was therefore not correct to deny the Claimant's June 1, 2010 application for retroactive Medicaid coverage for the month of May 2010 because his child "was residing with her grandmother more than 50 (sic) of the time for the month of May." In addition, the facts of this case demonstrate that the Claimant was primarily responsible for the care and control of the minor child as required by 7 AAC 100.110(f)
4. However, the Claimant only requested retroactive Medicaid coverage for the month of May 2010, given that his June 1, 2010 application only notified the Division that he needed assistance paying May 2010 medical bills. He did not request retroactive Medicaid coverage for the month of April 2010. As a result, the Division's denial of retroactive Medicaid coverage for the month of April 2010 was correct.

