

Office of Hearings and Appeals  
3601 C Street, Suite 1322  
P. O. Box 240249  
Anchorage, AK 99524-0249  
Phone: (907) 334-2239  
Fax: (907) 334-2285

**STATE OF ALASKA  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
OFFICE OF HEARINGS AND APPEALS**

In the Matter of: )  
 )  
 [REDACTED], ) OHA Case No. 10-FH-293  
 )  
 Claimant. ) DPA Case No. [REDACTED]  
 )  
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**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

On July 20, 2010 [REDACTED] (Claimant) completed and signed an Application for Services which requested Medicaid benefits (Exs. 2.0 – 2.9).<sup>1</sup> The Claimant’s application was received by the State of Alaska Department of Health and Social Services, Division of Public Assistance (DPA or Division) on July 21, 2010 (Ex 2).

On August 3, 2010 the Claimant participated by telephone in an interview with a DPA Eligibility Technician (Ex. 3). At that interview the Claimant was verbally advised that she was not eligible for Medicaid benefits because the total value of her countable / non-exempt resources exceeded the Medicaid Program’s applicable maximum resource limit. *Id.* On August 5, 2010 the Division mailed to the Claimant a written notice confirming its denial of the Claimant’s application for Medicaid benefits (Ex. 5). On August 20, 2010 the Claimant requested a fair hearing to contest the Division’s denial of her application for Medicaid benefits (Ex. 6).

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

The Claimant’s hearing began as scheduled on September 21, 2010 before Hearing Examiner Jay Durych. The Claimant attended the hearing in-person, represented herself, and testified on her own

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<sup>1</sup> The specific Medicaid sub-programs for which the Claimant applied were Adult Public Assistance -related Medicaid, Working Disabled Medicaid, Home and Community-Based Waiver Services, the Qualified Medicare Beneficiary Program, and the Special Low Income Medicare Beneficiary Program (Ex. 2).

behalf. Public Assistance Analyst [REDACTED] 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.

During the hearing of September 21, 2010 the Claimant requested that the hearing be continued (i.e. that another hearing be held) because, at that time, she was interested in consulting with and/or retaining a legal representative to assist her with her case. The Division did not object to the Claimant's request, and an additional hearing was scheduled for October 27, 2010.

The hearing continued on October 27, 2010. The same persons were in attendance as at the prior hearing, and they participated in the same capacities. At the end of the hearing the parties requested the opportunity to submit post-hearing briefing. The Claimant's post-hearing filing was due by November 12, 2010. The Division's post-hearing filing was due by November 26, 2010. No post-hearing filings were received from either party. Accordingly, after November 26, 2010 the record was closed and the case became ripe for decision.

### ISSUE

The specific Medicaid sub-programs for which the Claimant *originally* applied were Adult Public Assistance-related ("APA-related") Medicaid, Working Disabled Medicaid, Home and Community-Based Waiver Services, the Qualified Medicare Beneficiary Program, and the Special Low Income Medicare Beneficiary Program (*see* Ex. 2.0). However, at hearing, the Claimant clarified that she was only contesting her eligibility for benefits under the APA-related and Working Disabled Medicaid Programs.

At hearing, the Claimant asserted that the issues to be resolved in this case were (1) whether she was *over-resource* for the APA-related and Working Disabled Medicaid Programs; *and* (2) whether she was *over-income* for the APA-related and Working Disabled Medicaid Programs. The Division asserted, however, that the only issue is whether the Claimant was *over-resource* for the APA-related and Working Disabled Medicaid Programs. The Division asserts that excess resources was the sole basis for the Division's denial and that the Division therefore did not even reach the issue of income eligibility.

The Division's denial notice dated August 5, 2010 (Exs. 5, 14.3) supports the Division's position that eligibility was denied based solely on excess resources, although the notice also explained that the Claimant's income was not high enough to qualify her for Working Disabled Medicaid. Accordingly, the issue in this case is:

Was the Division was correct when, on August 5, 2010, it denied the Claimant's application for APA-related Medicaid and Working Disabled Medicaid, based on the assertion that the total value of the Claimant's countable / non-exempt resources <sup>2</sup> exceeded the \$2,000.00 maximum resource

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<sup>2</sup> Even if the Claimant's income was properly at issue, it is not necessary to address whether the Claimant is over-income because resolution of the excess resource issue is dispositive in this case.

limit applicable to the APA-related Medicaid Program, and the \$10,000.00 maximum resource limit applicable to the Working Disabled Medicaid Program?<sup>3</sup>

### SUMMARY OF DECISION

The Claimant's stocks and IRA accounts are *countable resources* (i.e. they are not exempt or excluded from being counted as resources) as defined by regulation 7 AAC 40.280. The value of the Claimant's stocks and IRA accounts exceeds the \$2,000.00 maximum resource limit applicable to the APA-related Medicaid Program, and the \$10,000.00 maximum resource limit applicable to the Working Disabled Medicaid Program.

The Claimant asserted a Constitutional argument against a strict construction of the applicable resource limits to her case. However, this Office does not have jurisdiction to decide Constitutional issues, and therefore cannot consider that argument.

Finally, the Claimant requested that the applicable resource and income standards be relaxed based on the circumstances of her case. However, because two directly applicable regulations set specific and clear resource eligibility standards for the APA-related Medicaid and Working Disabled Medicaid programs, the Division does not have the discretion to relax the applicable resource eligibility requirements. Accordingly, the Division was correct when it concluded that the Claimant was over-resource for those programs pursuant to 7 AAC 40.270 and 7 AAC 100.426(a)(4).<sup>4</sup>

### FINDINGS OF FACT

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

1. On July 20, 2010 the Claimant completed and signed an Application for Services (Form Gen 50B) which requested Medicaid benefits for a household of one (i.e. for the Claimant herself) (Exs. 2.0 – 2.9). The Claimant's Application was received by the Division on July 21, 2010 (Ex 2.0).
2. At the time she completed her application on July 20, 2010 the Claimant was working part-time (Ex. 2.2). She indicated on her application that she earned \$386.33 from her employment during June 2010 (Ex. 2.2).
3. At the time she completed her application on July 20, 2010 the Claimant was also receiving unearned income (Ex. 2.3). This unearned income consisted of \$1,024.00 per month in Social Security Disability Insurance (SSDI); approximately \$200.00 per year in interest and/or dividends, and the annual State of Alaska Permanent Fund Dividend (Ex. 2.3).

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<sup>3</sup> Although this is the *ultimate* issue, there are several *sub-issues*; these are identified and addressed in the Analysis section of this decision, below.

<sup>4</sup> Because the Division was correct to deny the Claimant's Medicaid application on the basis that the Claimant's countable / non-exempt resources exceeded (a) the \$2,000.00 maximum resource limit applicable to the APA-related Medicaid Program, and (b) the \$10,000.00 maximum resource limit applicable to the Working Disabled Medicaid Program, it is not necessary to address whether the Claimant was *over-income* for these programs. Even if the Claimant was not over-income for these programs, the Division would still have been required to deny the Claimant's application because (as demonstrated herein) she is clearly over-resource for these programs.

4. At the time she completed her application on July 20, 2010 the Claimant owned certain banks accounts, stocks, and IRA accounts (Ex. 2.4). These consisted of the following (Ex. 2.4):

Checking Account	\$100.85
Savings Account	\$5.00
IRA Account – Charles Schwab	\$7,930.00
IRA Account – Fidelity	\$2,877.00
Stock - Manulife Financial	\$1,089.00
Stock - News Corp	\$25.00

5. On August 5, 2010 the Division mailed to the Claimant a written notice stating that the Claimant’s application for Medicaid benefits had been denied (Exs. 5, 14.3). The notice stated in relevant part as follows (original formatting of notice modified here to condense text):

Your Medicaid application received on July 21, 2010 is denied because your countable resources are over the limit for this program . . . . \$2,000.00 is the Medicaid resource limit . . . . \$11,921.00 is the amount of your countable resources for Medicaid . . . . Family Medicaid Manual Section 5150, Aged / Disabled / Long Term Care Medicaid Manual Section 524, and [Adult Public Assistance] Manual Section 430 supports this action . . . . Resources we counted:

IRA Account – Charles Schwab	\$7,930.00
IRA Account – Fidelity	\$2,877.00
Manulife Financial	\$1,089.00
<u>News Corp</u>	<u>\$25.00</u>
[Total]:	\$11,921.00

We looked at your eligibility for Working Disabled Medicaid, and [APA-related] Medicaid. Your resources exceed the limits for the programs.

APA Resource Limit	\$2,000.00
Working Disabled [Resource Limit]	\$10,000.00

Per Aged, Disabled and Long Term Care Medicaid Eligibility Manual Section 534, an individual with a disability who is ineligible for [APA and/or APA-related Medicaid] because of earned income . . . may be eligible for Medicaid under the Working Disabled [Program] . . . . Since your earned income does not make you ineligible for APA and [APA-related] Medicaid, there is no eligibility for the Working Disabled Medicaid buy-in category . . . .

6. On August 20, 2010 the Claimant requested a fair hearing to contest the Division’s denial of her application for Medicaid benefits (Ex. 6).

7. At the hearings of September 21, 2010 and October 27, 2010 the Claimant testified in relevant part as follows:

a. She has late-stage cancer.

b. Her gross earned income is approximately \$400.00 per month. She also receives \$1,024.00 per month in SSDI. Thus, her monthly gross income, before disregards, is \$1,424.00.

c. Her current income is too high to allow her to qualify for APA-related Medicaid, but too low to allow her to qualify for Working Disabled Medicaid.

d. The value of the Claimant's investment accounts rise and fall with the national and/or international financial markets. In recent times the value of her accounts has varied from a low of approximately \$10,000.00 to a high of approximately \$13,000.00.

e. The account values listed on the Claimant's application, based on which the Division made its eligibility decision, were accurate as of the date of application. She is not asserting that the Division's valuation of her resources was incorrect or that the Division applied the wrong resource standard.

## **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.<sup>5</sup> Accordingly, because the Claimant is attempting to alter the status quo by obtaining Medicaid benefits, 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.<sup>6</sup> 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.<sup>7</sup>

### II. Administrative Agencies do not Have Jurisdiction to Decide Constitutional Issues.

"Administrative agencies do not have jurisdiction to decide issues of constitutional law." *Alaska Public Interest Research Group v. State*, 167 P.3d 27, 36 (Alaska 2007). Accordingly, an agency does not have the authority to adjudicate the constitutionality of its own regulations. *See generally Howard v. Federal Aviation Administration*, 17 F.3d 1213, 1218 (9<sup>th</sup> Cir. 1994); *Gilbert v. National Transportation Safety Board*, 80 F.3d 364, 366-367 (9<sup>th</sup> Cir. 1996). Likewise, a hearing officer who

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<sup>5</sup> *State of Alaska Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

<sup>6</sup> 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).

<sup>7</sup> *Black's Law Dictionary* at 1064 (West Publishing, 5<sup>th</sup> 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").

derives his authority from an agency does not have the authority to determine that an agency regulation is unconstitutional or invalid. *Id.*

### III. 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 Medicaid Program through the Centers for Medicare and Medicaid Services (“CMS”). 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.

In Alaska, the Department of Health and Social Services administers the Medicaid program in accordance with applicable federal and state statutes and regulations. 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, Chapters 43 and Chapters 100 - 160.

### IV. APA- Related Medicaid.

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.”

### V. Working Disabled Medicaid.

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

(1) the family monthly net income as determined under (b) of this section is less than 250 percent of the federal poverty guidelines for this state, adopted by reference under 7 AAC 100.980;

(2) excluding all earned income, including any deemed earned income as determined under (c) of this section, the disabled individual's remaining unearned income is equal to or less than the monthly need standard identified in 7 AAC 40.310;

(3) the Department of Labor and Workforce Development or the United States Social Security Administration determines that the individual is disabled according to SSI criteria;

(4) the individual's non-excludable resources do not exceed \$10,000 for the individual or, if the individual is living with a spouse, the non-excludable resources of the individual and individual's spouse do not exceed \$15,000;

(5) the individual meets all other nonfinancial eligibility criteria for APA; and

(6) the individual pays a monthly premium as required under this section.

#### VI. Relevant Medicaid and Adult Public Assistance Regulations Concerning Resources.

Most Medicaid eligibility categories, other than Family Medicaid, use the Adult Public Assistance Program's financial eligibility criteria for making Medicaid financial eligibility determinations. *See* 7 AAC 100.400.

Alaska Medicaid Regulation 7 AAC 100.400 makes a number of Adult Public Assistance (APA) regulations applicable to eligibility determinations involving certain Medicaid categories. The APA regulations which are relevant to this case and which are made applicable by 7 AAC 100.400 are 7 AAC 40.230 (concerning financial need); 7 AAC 40.260 (concerning resources); 7 AAC 40.270 (concerning resource limits); and 7 AAC 40.280 (concerning resource exclusions).

7 AAC 40.230, titled "Financial Need," provides in relevant part as follows:

To be eligible for assistance, an applicant may not have resources which, after permissible exclusions, exceed the amounts specified in 7 AAC 40.270 . . . .

7 AAC 40.260, titled "Resources," provides as follows:

(a) In this chapter, "resources" means any real or personal property that an applicant, together with his or her spouse under 7 AAC 40.240 owns and can convert to cash to be used for his or her support and maintenance.

(b) Any cash or other property received from the sale, exchange, or other disposition of a resource retains the character of a resource.

7 AAC 40.270, titled "Resource Limits," provides in relevant part that "(a) To be eligible for assistance, an applicant . . . must have non-excludable resources which do not exceed . . . (1) \$2,000 for an individual . . . ."

7 AAC 40.280, titled "Resource Exclusions," lists a number of types of resources which are exempt (not countable) for purposes of determining an individual's resources under the APA Program. Investment accounts (such as stocks, IRAs, and bank accounts) are not among the types of assets excluded by 7 AAC 40.280.

## VII. Lack of Agency Discretion to Disregard Applicable Regulations.

An administrative agency is “bound by [its] regulations unless and until it repeals or amends the regulation using the proper procedure. Administrative agencies are bound by their regulations just as the public is bound by them.” *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868–869 (Alaska 2010).

### **ANALYSIS**

#### Introduction: Definition of Issues; Burden of Proof.

The ultimate issue in this case (as noted at p. 2, above) is whether or not the Division was correct to deny the Claimant’s application for Medicaid benefits on the grounds that the total value of the Claimant’s countable resources exceeded the maximum allowable resource limits of \$2,000.00 (for the APA-related Medicaid Program) and \$10,000.00 (for the Working Disabled Medicaid Program). However, the Claimant also raised the following sub-issues at hearing:<sup>8</sup>

1. Is the Division’s application of the relevant resource limits, under the particular circumstances of the Claimant’s case, arbitrary and capricious, thereby violating the Due Process Clause (Article I, Section 7) of the Constitution of the State of Alaska?
2. Does the Division have the discretion to relax the otherwise applicable resource limits under the sympathetic facts of this case? Stated another way, does the Division have the discretion to consider a particular applicant’s circumstances and apply more lenient resource standards?<sup>9</sup>

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<sup>8</sup> In addition to her legal arguments, the Claimant also asserted the following observations regarding Medicaid policy:

- a. Income disregards were first implemented in 1996. They were intended to *help* people qualify for Medicaid. However, in this case, the income disregards are *preventing* the Claimant from qualifying for Working Disabled Medicaid because she does not earn enough money, after application of disregards, to qualify for the program. This is bad public policy and contrary to the purposes of the Medicaid program.
- b. The Claimant wants to work. However, there is a disincentive to work under the APA-related Medicaid Program.
- c. The federal Medicaid statutes and regulations allow states to choose between certain criteria which are more restrictive, and other criteria which are less restrictive. The State of Alaska has chosen to adopt the less restrictive, more inclusive criteria.

Although the foregoing are technically neither factual assertions nor legal arguments within the jurisdiction of this Office, they are preserved here for the record.

<sup>9</sup> By way of example, the Claimant stated at hearing that if the Division could “disregard the applicable income disregards,” she would meet the income level necessary to qualify for Working Disabled Medicaid.



These issues will be addressed below in the order stated. Because the Claimant is attempting to change the status quo or existing state of affairs by obtaining benefits, the Claimant bears the burden of proof on all factual issues (*see* Principles of Law at page 5, above).

I. Does The Value of The Claimant’s Countable Resources Exceed the Maximum Countable / Non-Exempt Resource Limits Allowed Pursuant to The Applicable Regulations?<sup>10</sup>

The Claimant acknowledged at hearing that the account values listed on the Claimant’s application, which the Division used in making its eligibility determination, were accurate as of the date of application. *See* Findings of Fact at Paragraph 7(g), above. Further, the Claimant did not assert that the Division’s mathematical calculation of her total countable resources was in any way incorrect, or that the Division applied the wrong resource standards. *Id.* Accordingly, this case does not involve any disputed material facts, and the issues raised can be determined as matters of law.

As stated in the Findings of Fact at Paragraph 4, above, at the time the Claimant completed her application on July 20, 2010 the Claimant owned certain banks accounts, stocks, and IRA accounts (Ex. 2.4). These consisted of the following (Ex. 2.4):

Checking Account	\$100.85
Savings Account	\$5.00
IRA Account – Charles Schwab	\$7,930.00
IRA Account – Fidelity	\$2,877.00
Stock - Manulife Financial	\$1,089.00
Stock - News Corp	\$25.00

The Division counted the following resources when it denied the Claimant’s application for APA-related and Working Disabled Medicaid benefits (Exs. 5, 14.3):

IRA Account – Charles Schwab	\$7,930.00
IRA Account – Fidelity	\$2,877.00
Stock - Manulife Financial	\$1,089.00
Stock - News Corp	\$25.00
Total:	\$11,921.00

The four specific resources counted by the Division (as set forth above) are clearly “resources” as that term is defined by 7 AAC 40.260 (*see* Principles of Law at page 8, above). Further, the stocks and IRAs at issue are *not* among the types of resources excluded (i.e. made exempt or non-countable) by 7 AAC 40.280. *Id.* Accordingly, the Division was correct to include the four resources referenced in its denial letter (totaling \$11,921.00) as countable (non-exempt) resources for purposes of APA-related Medicaid and Working Disabled Medicaid.

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<sup>10</sup> Because the Division was correct to deny the Claimant’s Medicaid application on the basis that Claimant’s countable / non-exempt resources exceeded (a) the \$2,000.00 maximum resource limit applicable to the APA-related Medicaid Program, and (b) the \$10,000.00 maximum resource limit applicable to the Working Disabled Medicaid Program, it is not necessary to address whether the Claimant was *over-income* for these programs. Even if the Claimant was not over-income for these programs, the Division would still be required to deny the Claimant’s application because (as demonstrated below) she is clearly over-resource for these programs.

Pursuant to 7 AAC 40.270, to be eligible for Adult Public Assistance and/or APA-related Medicaid, the value of the non-excludable resources owned by an individual applicant may not exceed \$2,000.00. Thus, accepting the Claimant's own valuation of \$11,921.00, the value of the countable resources attributable to the Claimant exceeds the \$2,000.00 limit for APA and APA-related Medicaid by almost \$10,000.00.

Pursuant to 7 AAC 100.426(a)(4), to qualify for Working Disabled Medicaid, an "individual's non-excludable resources [may] not exceed \$10,000 for the individual . . . ." Thus, accepting the Claimant's own valuation of \$11,921.00, the value of the countable resources attributable to the Claimant exceeds the \$10,000.00 Working Disabled resource limit by almost \$2,000.00.

In summary, the Claimant failed to carry her burden and did not prove, by a preponderance of the evidence, that the value of her countable resources was less than the applicable resource limits for the APA-related Medicaid and Working Disabled Medicaid programs. Accordingly, the Division was correct when it concluded that the Claimant was over-resource for these programs pursuant to 7 AAC 40.270 and 7 AAC 100.426(a)(4).

This conclusion does not, however, end the analysis in this case. It must next be determined whether the Claimant's Constitutional argument, and/or her "relaxation of the eligibility standards based on unique circumstances" argument, excuse strict compliance with the resource eligibility rules otherwise applicable to this case.

## II. Does the Office of Hearings and Appeals Have Jurisdiction to Decide the Constitutional Arguments Raised By The Claimant?

Regulation 7 AAC 49.170, titled "Limits of the Hearing Authority," confines the role of the Office of Hearings and Appeals "to the ascertainment of whether the laws, regulations, and policies [of the State of Alaska Department of Health and Social Services] have been properly applied," and "whether the computation of [any] benefit amount, if in dispute, is in accordance with them."

The Office of Hearings and Appeals, although independent of the Divisions (such as DPA) whose cases it hears, is never-the-less a part of the State of Alaska Department of Health and Social Services. Thus, although this Office independently exercises quasi-judicial functions, it is still an administrative agency, and "administrative agencies do not have jurisdiction to decide issues of constitutional law." *Alaska Public Interest Research Group v. State*, 167 P.3d 27, 36 (Alaska 2007); *see also* cases cited in the Principles of Law, above. Accordingly, the Claimant's Constitutional (substantive due process) argument is noted for the record, but it cannot be addressed in this decision.

## III. Does the Division Have Discretion to Relax the Resource Eligibility Limit In a Particular Case?

The last issue to be determined in this case is whether the Division has the discretion to relax the otherwise applicable resource limit under the facts of this case. Stated another way, the issue is whether the Division has the discretion to consider a specific applicant's particular circumstances and apply more lenient resource standards than those specified in the regulations.

In this case there are two directly applicable regulations which set specific and clear resource eligibility standards for the APA-related Medicaid and Working Disabled Medicaid programs. *See* 7

AAC 40.270 and 7 AAC 100.426(a)(4) (set forth in the Principles of Law, above). Where (as here) applicable regulations exist, an administrative agency is “bound by [its] regulations unless and until it repeals or amends the regulation using the proper procedure.” See *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010). *Burke* confirmed that “[a]dministrative agencies are bound by their regulations just as the public is bound by them.” *Id.*

In summary, because of the two directly applicable regulations which set specific and clear resource eligibility standards for the APA-related Medicaid and Working Disabled Medicaid programs, the Division does not have the discretion to relax the applicable resource eligibility requirements. Accordingly, the Division was correct when it concluded that the total value of the Claimant’s resources exceeded the maximum resource limits for these programs pursuant to 7 AAC 40.270 and 7 AAC 100.426(a)(4).

### CONCLUSIONS OF LAW

1. The Claimant failed to carry her burden and did not prove, by a preponderance of the evidence:
  - a. That her stocks and IRA accounts were not *countable resources* (i.e. that they were exempt resources) as defined by regulation 7 AAC 40.280; or
  - b. That the value of her stocks and IRA accounts was less than the \$2,000.00 maximum resource limit applicable to the APA-related Medicaid Program; or
  - c. That the value of her stocks and IRA accounts was less than the \$10,000.00 maximum resource limit applicable to the Working Disabled Medicaid Program.
2. The Office of Hearings and Appeals does not have jurisdiction to decide issues of Constitutional law. Accordingly, the Constitutional / substantive due process issue raised by the Claimant cannot be addressed in this decision.
3. The Division does not have the discretion to relax the specific and clear resource eligibility requirements of the APA-related Medicaid Program or the Working Disabled Medicaid Program (7 AAC 40.270 and 7 AAC 100.426(a)(4), respectively).
4. Accordingly, the Division was correct when, on August 5, 2010, it denied the Claimant’s application for APA-related Medicaid and Working Disabled Medicaid because the total value of the Claimant’s countable / non-exempt resources exceeded the \$2,000.00 maximum resource limit applicable to the APA-related Medicaid Program, and the \$10,000.00 maximum resource limit applicable to the Working Disabled Medicaid Program.

### DECISION

The Division was correct when, on August 5, 2010, it denied the Claimant’s application for APA-related Medicaid and Working Disabled Medicaid, because the total value of the Claimant’s countable / non-exempt resources exceeded the \$2,000.00 maximum resource limit applicable to the

APA-related Medicaid Program, and the \$10,000.00 maximum resource limit applicable to the Working Disabled Medicaid Program.

### 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 31st day of January, 2011.

(signed)

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Jay Durych  
Hearing Authority

### CERTIFICATE OF SERVICE

I certify that on this 31<sup>st</sup> day of January 2011 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 – via Certified Mail, Return Receipt Requested

[REDACTED], DPA Hearing Representative  
[REDACTED], DPA Hearing Representative

[REDACTED], Policy & Program Development  
[REDACTED], Staff Development & Training  
[REDACTED], Administrative Assistant II  
[REDACTED], Eligibility Technician I

(signed)

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J. Albert Levitre, Jr.  
Law Office Assistant I