

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-417
)
 Claimant.) DPA Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) is an applicant for benefits under the Denali KidCare (DKC) Program (Ex. 1). The Claimant completed and signed her Denali KidCare application on November 10, 2010 (Exs. 2.0 – 2.3). The Claimant’s application was received by the State of Alaska Division of Public Assistance (DPA or Division) on November 15, 2010 (Ex. 2.0). On November 24, 2010 the Division mailed a notice to the Claimant stating that her Denali KidCare application had been denied because her household’s countable monthly income exceeded the Denali KidCare Program’s applicable maximum gross income limit for a household having other health insurance coverage (Exs. 5, 6). The Claimant submitted a written hearing request which was received by the Division on December 1, 2010 (Ex. 6.1).

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

The Claimant’s hearing was held on January 12, 2011 before Hearing Examiner Jay Durych. The Claimant participated in the hearing by telephone, represented herself, and testified on her own behalf. [REDACTED], a Public Assistance Analyst with the Division, attended the hearing in person and represented and testified on behalf of the Division. All of the testimony presented by the parties and all of the parties’ proposed exhibits were admitted into evidence. The hearing record was then closed and the case became ripe for decision.

ISSUE

Was the Division correct when, on November 24, 2010, it denied the Claimant’s Denali KidCare application, based on the assertion that her household’s countable monthly income exceeded the Denali KidCare Program’s applicable maximum gross income limit for a household of four (4) persons having other health insurance coverage?

SUMMARY OF DECISION

The Claimant's total countable monthly income of \$3,534.90 exceeded the Denali KidCare Program's applicable maximum qualifying monthly income limit of \$3,447.00. The Division does not have the discretion to relax the financial eligibility criteria for the Denali KidCare Program on a case-by-case basis. Accordingly, the Division was correct when, on November 24, 2010, it denied the Claimant's Denali KidCare application, because her household's countable monthly income exceeded the Denali KidCare Program's applicable maximum income limit for a household of four (4) persons having other health insurance coverage.

FINDINGS OF FACT

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

1. The Claimant has a four (4) person household (Exs. 1, 2.1, 3.0). The household consists of the Claimant, her husband, and their two (2) minor children. *Id.*
2. The Claimant completed and signed her Denali KidCare application on November 10, 2010 (Exs. 2.0 – 2.3). The Claimant's application was received by DPA on November 15, 2010 (Ex. 2.0).
3. In her Denali KidCare application, the Claimant wrote that she was employed and paid once every two (2) weeks, and that her husband was currently unemployed (Ex. 2.1).
4. In her Denali KidCare application, the Claimant wrote that she and her two minor children had health insurance coverage through Blue Cross / Blue Shield (Ex. 2.2).
5. On November 12, 2010 and November 19, 2010 the Division received from the Claimant pay statements, prepared by the Claimant's employer, for (a) the pay period beginning October 9, 2010 and ending October 29, 2010 (Ex. 4.1); and (b) the pay period beginning September 25, 2010 and ending October 8, 2010 (Ex. 4.2). These pay statements listed the Claimant's gross wages for each of the two pay periods as \$1,686.00 (Exs. 4.1, 4.2).
6. On November 23, 2010 a DPA Eligibility Technician reviewed the Claimant's pay statements (referenced above) to determine the Claimant's financial eligibility for the Denali KidCare Program (Ex. 4.0). The income considered by the DPA Eligibility Technician consisted of the two paychecks referenced above, for a total gross earned income of \$3,372.00 (Ex. 4.0).
7. The DPA Eligibility Technician took the Claimant's actual gross income for the period September 25, 2010 through October 29, 2010 (\$3,372.00), divided that number by two, (resulting in \$1,686.00), and multiplied \$1,686.00 by 2.15, (resulting in \$3,624.90) (Ex. 4.0).
8. The Eligibility Technician then subtracted a \$90.00 work deduction from the Claimant's gross income figure of \$3,624.90, resulting in total countable income of \$3,534.90 (Ex. 4.0).
9. On November 24, 2010 the Division mailed a notice to the Claimant stating that her Denali KidCare application had been denied because her household's countable monthly income

exceeded the Denali KidCare Program's applicable maximum gross income limit for a household having other health insurance coverage (Exs. 5, 6). The notice states in relevant part as follows:

Your [DKC] application received on November 12, 2010 is denied because you have other health insurance coverage.

Your countable income of \$3,534.90 is more than 150% of the federal poverty level of \$3,447.00 for your household size. Children or youth with other health insurance and with countable income above the 150% limit cannot receive [DKC].

If your income falls below the 150% limit, there may be [DKC] eligibility regardless of any other health insurance you have.

Family Medicaid Manual section 5300 and 7 AAC 100.312 support this action.

This is how we calculated your household income: We took the gross amounts of [the Claimant's] pay stubs and added them up ($\$1,686.00 + \$1,686.00 = \$3,372.00$). We then divide the total by two ($\$3,372.00$ [divided by] $2 = \$1,686.00$). Since [the Claimant] gets paid bi-weekly we have to use a conversion factor and multiply the total by 2.15 ($\$1,686.00 \times 2.15 = \$3,624.90$). We allow a \$90.00 work deduction ($\$3,624.90 - \$90.00 = \$3,534.90$).

10. On December 1, 2010 the Division received a Fair Hearing Request (in letter form) from the Claimant (Ex. 6.1). The Claimant's letter stated in relevant part as follows:

I realize I am \$87.00 over-qualified and over the 150% federal poverty rate. My daughter [REDACTED] needs orthodontic treatment which is a service that is not available in Galena, but only in Fairbanks. The only way to Fairbanks is by commercial airline which is a cost of \$692.00 for her and myself. She needs to see her doctor every six weeks for the next 20 – 24 months As you can see this is a very expensive cost and financial burden to my family and I

11. At the hearing of January 12, 2011 the Claimant testified in relevant part as follows:

- a. She is the only member of her household that is currently receiving income.
- b. Her daughter [REDACTED] really needs braces for her teeth. Proper orthodontic treatment will require a trip to Fairbanks every six weeks or so for the next two years or so. The airfare for so many trips will be expensive. She had hoped that the Denali KidCare Program would be able to help with the cost of the airfare.
- c. She does not need Denali KidCare for her other daughter; her other daughter is fine.
- d. The cost of living in her village is high. Gas currently costs about \$5.70 per gallon. A gallon of milk also costs about \$5.70 per gallon. Her monthly electric bill is about \$200.00.

e. Her household income does not exceed the Denali KidCare income by very much, and there are other persons with greater incomes than hers that still qualify for the program.

f. The orthodontic treatment airfare costs are just a heavy burden; her family can't make it on her salary alone.

PRINCIPLES OF LAW

I. Burden of Proof and Standard of Proof.

The law generally places the burden of proof on the party attempting to change the status quo or existing state of affairs.¹ This case involves the Division's denial of an initial application for Denali KidCare benefits. The Claimant is attempting to change the existing status quo by obtaining Denali KidCare 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.² This standard is met when the evidence, taken as a whole, shows that the fact sought to be proved is more probable than not or more likely than not.³

II. Over-View of the Denali KidCare Program.

Congress enacted the State Children's Health Insurance Program (SCHIP) as part of the Balanced Budget Act of 1997 (Public Law 105-33, 111 Stat. 251). The law was codified at 42 U.S.C. § 1397aa *et seq.*, and at 42 C.F.R. § 457 *et seq.* The program was designed to expand health insurance coverage for uninsured children of families whose incomes are too high to qualify for Medicaid, but too low to purchase private health insurance independently. *See* 42 U.S.C. § 1397jj.

The Denali KidCare Program is Alaska's version of the federal Children's Health Insurance Program (discussed above). Its regulations are located at 7 AAC 100.300 – 7 AAC 100.316.

Denali KidCare has two sub-programs. The first program provides coverage for pregnant women and newborns (7 AAC 100.300 – 7 AAC 100.306). The second program (at issue here) provides coverage for poverty level children (7 AAC 100.310 – 7 AAC 100.316).

¹ Ordinarily, the party seeking a change in the status quo has the burden of proof. *State of Alaska Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

² 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).

³ *Black's Law Dictionary* at page 1064 (Fifth Edition, 1979).

III. Denali KidCare Program – Regulations Relevant to Income Eligibility Issues.

The Denali KidCare Program provides some of its own financial eligibility regulations, and borrows other criteria by incorporating certain Family Medicaid Program regulations by reference. Denali KidCare regulation 7 AAC 100.310, titled “Applicability of Family Medicaid to Poverty-Level Children,” provides in relevant part as follows:

(a) Medicaid eligibility for poverty-level children under 7 AAC 100.002(a)(6) and (7) and 7 AAC 100.002(c)(8) will be determined according to Family Medicaid eligibility requirements in 7 AAC 100.100 - 7 AAC 100.199, except as otherwise provided in 7 AAC 100.310 - 7 AAC 100.314.

Denali KidCare regulation 7 AAC 100.312 provides in relevant part as follows:

(a) To be eligible under one of the poverty-level eligibility categories listed in 7 AAC 100.310(a), a child must have monthly household income that does not exceed (1) 150 percent of the federal poverty guidelines for this state, adopted by reference under 7 AAC 100.980, for the size of the child's household

(b) [T]he department will include in the child's household the child's parents and siblings who live in the same home as the child

Family Medicaid regulation 7 AAC 100.158, titled “Types of Income,” provides in relevant part:

(b) Earned income is gross income paid in cash or in kind as wages, salary, or commissions, and that is earned by an employee in exchange for the performance of services by the employee, before any deductions are made for the cost of earning that income, including taxes, child care, or transportation expenses

Family Medicaid regulation 7 AAC 100.160 lists the types of income which are exempt or non-countable for purposes of the Family Medicaid Program. However, none of the types of income counted by the Division in this case are listed as exempt under 7 AAC 100.160.

Family Medicaid regulation 7 AAC 100.168, titled “Best Estimate of Prospective Income,” provides in relevant part as follows:

(d) If income from a source is received on a weekly or biweekly basis, the department will estimate the anticipated monthly income by multiplying weekly amounts by 4.3 and biweekly amounts by 2.15.

Family Medicaid regulation 7 AAC 100.180 provides in relevant part as follows:

(b) For a household that qualifies under (a) of this section, the department will determine if that household meets the applicable need standard established in 7 AAC 100.190 by determining that household's countable income. Countable income is the total monthly income less all applicable deductions and disregards from income under 7 AAC 100.184 and 7 AAC 100.186.

(c) The department will determine a household to be income eligible for Family Medicaid if (1) that household's countable income is equal to, or less than, the applicable need standard in 7 AAC 100.190

Family Medicaid regulation 7 AAC 100.184 provides in relevant part as follows:

In calculating a household's countable income under 7 AAC 100.180(b), the department will deduct (1) \$90 from the total gross monthly earned income of each individual included in the household who is employed

Family Medicaid regulation 7 AAC 100.199 provides in relevant part as follows:

In 7 AAC 100.100 - 7 AAC 100.199, unless the context requires otherwise, (1) "countable income" means total monthly income less all applicable deductions and disregards from income under 7 AAC 100.184 and 7 AAC 100.186 (7) "total monthly income" means the sum of a household's nonexempt earned income, self-employment income, and unearned income that is received or anticipated to be received in a month

Under the Denali KidCare Program, since March 1, 2009, the maximum qualifying monthly income level, for a household of four (4) persons who have health insurance, is \$3,447.00. *See* State of Alaska Department of Health and Social Services' (DHSS) Family Medicaid and Denali KidCare Manual, Addendum 1 (Ex. 12).

IV. 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 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

I. Introduction; Issues.

The Claimant acknowledges that she is over-income for the Denali KidCare Program. *See* Findings of Fact at Paragraphs 10 and 11(e), above. However, she asserts that it is unfair to deny her application for Denali KidCare Program benefits because she is not very far over the income limit, and because her family has a great need for Denali KidCare Program benefits. *See* Findings of Fact at Paragraphs 10 and 11(b), (d), and (f), above. The Claimant *did not assert*:

1. That the Division's findings as to the *sources or amounts* of the Claimant's income were not correct;
2. That the Division's *mathematical calculations* regarding the Claimant's household's countable monthly income were not correct; or

3. That the Division applied an *incorrect income standard* in making its Medicaid eligibility determination.

Accordingly, there are no disputed factual issues to be decided in this case. Rather, it is only necessary to apply the relevant regulations and policy manual provisions to the undisputed facts and to determine (1) whether the Division correctly applied the governing financial eligibility regulations to the Claimant's case; and (2) whether the Division has the discretion to disregard the financial eligibility limits on a case-by-case basis. Because the relevant facts are not disputed, these are both purely legal issues.

II. Does the Claimant's Monthly Countable Income Exceed the Applicable DKC Income Limit?

The relevant facts in this case are not disputed. Specifically, it is undisputed that:

1. The Claimant has private health insurance coverage for her two minor children through Blue Cross / Blue Shield (Ex. 2.2).
2. The Claimant's total countable monthly income for purposes of the Denali KidCare Program, after subtracting all available deductions from income, was \$3,534.90 (Exs. 5, 6).

Pursuant to 7 AAC 100.312 and Family Medicaid and Denali KidCare Manual, Addendum 1, to be eligible for DKC under one of the poverty-level eligibility categories, a child's household must have monthly household income that does not exceed 150 percent of the federal poverty guidelines for Alaska. The maximum qualifying monthly income level for a household of four (4) persons who have health insurance was \$3,447.00 as of the date of action on the Claimant's application. *See* DHSS' Family Medicaid and Denali KidCare Manual, Addendum 1 (Ex. 12).

In this case, the Claimant's average gross wages were \$1,686.00 every two weeks (Exs. 4.1, 4.2). Pursuant to 7 AAC 100.168(d), if income from a source is received on a biweekly basis, the department estimates the anticipated monthly income by multiplying biweekly amounts by 2.15. Multiplying the Claimant's bi-weekly income of \$1,686.00 by the 2.15 conversion factor results in total gross monthly income of \$3,624.90.

The next step, pursuant to 7 AAC 100.180(b), is to deduct from the total countable gross income any deductions or exemptions from income for which the Claimant qualifies. In this case, the only exemption for which the Claimant qualified was the \$90.00 work exemption provided by 7 AAC 100.184. Subtracting the \$90.00 work exemption from the Claimant's total gross monthly income of \$3,624.90 results in total countable monthly income of \$3,534.90.

The final step is to compare the Claimant's total countable monthly income to the applicable maximum qualifying monthly income level. As discussed above, the Claimant's total countable monthly income was \$3,534.90. The maximum qualifying monthly income level for a household of four persons with health insurance was \$3,447.00 as of the date of action on Claimant's application. *See* DHSS' Family Medicaid and Denali KidCare Manual, Addendum 1 (Ex. 12). Thus, the Claimant's total countable monthly income exceeded the applicable maximum qualifying monthly income level by \$87.90.

In summary, the Division correctly adhered to the governing financial eligibility regulations and policy manual provisions, and correctly determined that the Claimant's total countable monthly income exceeded the applicable maximum qualifying monthly income level for the Denali KidCare Program. Therefore, the sole remaining issue is whether the Division has the discretion to relax the financial eligibility criteria as requested by the Claimant in this case.

II. Can the Division Disregard Otherwise Applicable DKC Income Eligibility Regulations?

The Claimant requests that the Division relax the financial eligibility criteria for the Denali KidCare Program because she is only \$87.90 over the applicable income limit. However, in *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010), the Alaska Supreme Court clearly stated that an administrative agency is “bound by [its] regulations just as the public is bound by them.” Accordingly, pursuant to *Burke*, the Division does not have the discretion to relax the financial eligibility criteria for the Denali KidCare Program on a case-by-case basis.

CONCLUSIONS OF LAW

1. The Claimant failed to carry her burden and did not prove, by a preponderance of the evidence, that her household's total countable monthly income was less than the Denali KidCare Program's applicable maximum qualifying monthly income limit of \$3,447.00 for a household of four (4) persons with health insurance.
2. Pursuant to the Alaska Supreme Court's decision in *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010), the Division does not have the discretion to relax the financial eligibility criteria for the Denali KidCare Program on a case-by-case basis.
3. The Division was therefore correct when, on November 24, 2010, it denied the Claimant's Denali KidCare application, because her household's countable monthly income exceeded the Denali KidCare Program's applicable maximum income limit for a household of four (4) persons having other health insurance coverage.

DECISION

The Division was correct when, on November 24, 2010, it denied the Claimant's Denali KidCare application, because her household's countable monthly income exceeded the Denali KidCare Program's applicable maximum income limit for a household of four (4) persons having other health insurance 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, 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 1st day of March, 2011.


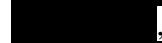
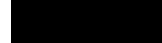
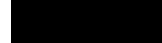
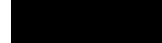
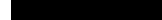
(signed)

Jay Durych
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 1st day of March, 2011 true and correct copies of the foregoing decision were sent to the Claimant via USPS Mail, and to the remainder of the service list by e-mail, as follows:

Claimant – Certified Mail, Return Receipt Requested

, DPA Fair Hearing Representative
, DPA Fair Hearing Representative
, Policy & Program Development
, Staff Development & Training
, Administrative Assistant II
, Eligibility Technician I

(signed)

By: _____

J. Albert Levitre, Jr.
Law Office Assistant I