

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-423
)
Claimant.) DPA Case No. [REDACTED]
_____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

Mr. [REDACTED] (Claimant) completed and signed an application for Family Medicaid Program benefits on November 9, 2010 (Exs. 2.0 – 2.9). The State of Alaska Department of Health and Social Services, Division of Public Assistance (DPA or Division) received the Claimant’s application on November 12, 2010 (Ex. 2.0). On November 15, 2010 the Division mailed to the Claimant a notice stating that his application for Family Medicaid benefits had been denied because his countable gross¹ monthly household income exceeded the Family Medicaid Program’s applicable maximum monthly income limit (Ex. 6). The Claimant verbally requested a Fair Hearing on November 17, 2010, and subsequently submitted a written hearing request on January 5, 2011 (Ex. 10; DPA Representative’s testimony). This Office has jurisdiction to resolve this dispute pursuant to 7 AAC 49.010.

The Claimant’s hearing was held on February 23, 2011 before Hearing Examiner Jay Durych. The Claimant attended the hearing in person, represented himself, and testified on his own behalf. [REDACTED], a Public Assistance Analyst with the Division, attended the hearing in person and represented and testified on behalf of the Division. The parties’ testimonies were received and all exhibits submitted by the parties were admitted into evidence. At the end of the hearing the record was closed and the case became ripe for decision.

ISSUE

Was the Division correct when, on November 15, 2010, it denied the Claimant’s application for Family Medicaid Program benefits dated November 9, 2010, based on the assertion that the Claimant’s

¹ The Division’s notice did not actually use the term “gross” (see Ex. 6). However, it is obvious from the other evidence in the record that the Division’s denial was based on excess *gross* income rather than excess *net* income.

countable gross monthly household income exceeded the Family Medicaid Program's applicable maximum gross monthly income limit?

SUMMARY OF DECISION

Applicable regulations require that a Medicaid applicant seek to maximize his or her income by applying for other types of benefits, (specifically including unemployment insurance benefits), for which the applicant may be eligible. Applicable regulations also require that the Division prospectively estimate an applicant's expected future income. The Division's financial eligibility calculations in this case were mathematically correct,² and the Division applied the correct income standards. Accordingly, the Division was correct when, on November 15, 2010, it denied the Claimant's application for Family Medicaid Program benefits dated November 9, 2010, because the Claimant's household's countable gross monthly income exceeded the Family Medicaid Program's applicable maximum gross monthly income limit.

FINDINGS OF FACT

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

1. The Claimant's household consists of a total of four (4) persons (Exs. 1, 2.1). These are the Claimant, the Claimant's wife, and the Claimant's two minor children (Exs. 1, 2.1).
2. On November 9, 2010 the Claimant completed and signed an application for Family Medicaid benefits (Exs. 2.0 – 2.9). The Claimant's application was received by the Division on November 12, 2010 (Ex. 2.0).
3. At page 3 of the application (Ex. 2.2) the Claimant wrote that his wife was working full time; was being paid at the rate of \$14.16 per hour; and was paid bi-weekly. The Claimant also wrote that he was receiving unemployment benefits bi-weekly, although the exact rate at which he was receiving those benefits was unclear (Ex. 2.2).
4. On November 12, 2010 the Claimant attended an eligibility interview with a DPA Eligibility Technician (Ex. 3). During this interview, the Claimant provided the Division with the following information regarding his wife's income (Ex. 3):

<u>Pay Period</u>	<u>Pay Date</u>	<u>Gross Wages</u>	<u>Hours Worked</u>
9-12 through 9-25, 2010	10-01-10	\$1,143.54	80 ³
9-26 through 10-9, 2010	10-15-10	\$1,153.93 ⁴	80 ⁵

² There were some minor errors in the Division's calculations. However, as demonstrated in the Analysis section of this decision, below, these minor errors did not make a difference in the Claimant's eligibility for benefits.

³ The Claimant's wife's paystub shows that she actually worked 80.5 hours during this pay period (see Ex. 3.1). However, as demonstrated in the Analysis section of this decision, below, even had the extra 0.5 hour been credited, it would not have made a difference in the Claimant's eligibility for benefits.

<u>Pay Period</u>	<u>Pay Date</u>	<u>Gross Wages</u>	<u>Hours Worked</u>
10-10 though 10-23, 2010	10-29-10	\$1,138.23	80.25 ⁶

5. The Claimant was previously performing work involving heavy lifting at the airport (Claimant testimony). However, he now has injuries (hernias and back problems) which prevent him from performing the heavy physical work which he previously performed. *Id.* Accordingly, he is currently drawing unemployment while receiving re-training from the Division of Vocational Rehabilitation. *Id.*

6. During the November 12, 2010 eligibility interview, the Claimant and the State of Alaska Department of Labor provided the Division with information that the Claimant was receiving Unemployment Insurance Benefits (UIB) in the amount of \$242.00 per week (Ex. 3).⁷

7. Based on the income referenced in Paragraphs 4 and 6, above, the Division calculated that the Claimant's average gross monthly household income was \$3,502.85 (Ex. 3, DPA Hearing Representative's testimony).

8. During the 2010 calendar year, the Family Medicaid gross monthly income limit for a household consisting of two adults and two children was \$3,009.00 (Ex. 5; DPA Hearing Representative's testimony). Accordingly, based on the Division's calculations, the Claimant's gross monthly household income of \$3,502.85 exceeded the applicable Family Medicaid gross monthly income limit of \$3,009.00 by \$493.85.

9. On November 15, 2010 the Division mailed a notice to the Claimant stating that his application for Family Medicaid Program benefits had been denied (Ex. 6). The notice stated in relevant part as follows [Ex. 6 - text format condensed for brevity]:

Your Medicaid application received in our office [on] November 12, 2010 is denied Because your monthly countable income is more than the limit for this program. \$3,009.00 is the Medicaid countable income for your household. \$3,502.85 is the Medicaid income limit for your household size.

* * * * *

This office verified . . . your unemployment benefits. [The Unemployment Benefits Unit] confirmed that . . . you will still receive the same amount The income that we

⁴ The Claimant's wife's paystub shows that she actually earned \$1,155.93 during this pay period (see Ex. 3.2). However, as demonstrated in the Analysis section of this decision, below, even had the extra \$2.00 been credited, it would not have made a difference in the Claimant's eligibility for benefits.

⁵ The Claimant's wife's paystub shows that she actually worked an additional hour (81 hours total) during this pay period (see Ex. 3.2). However, as demonstrated below, even had the extra 1.0 hour been credited, it would not have made a difference in the Claimant's eligibility for benefits.

⁶ The Claimant's wife's paystub for this pay period confirms that the figures used in the Division's calculations, for this pay period, were correct (see Ex. 3.3).

⁷ Computerized records of the State of Alaska Department of Labor confirm that the Claimant received \$242.00 per week in unemployment insurance benefits from August 28, 2010 through January 1, 2011 (Ex. 4).

[used] is from your unemployment benefits . . . and also [your wife's] income from [her employment]. We allowed all . . . deductions that you are entitled to

10. At the hearing of February 23, 2011 the Claimant testified in relevant part as follows:
 - a. His prior unemployment insurance coverage ended, but now he is receiving federal emergency (“Tier IV”) unemployment benefits. He is upset because the Division required him to apply for and collect unemployment insurance benefits. It is the unemployment insurance benefits which are causing his income to exceed the applicable Medicaid Program limit.
 - b. His wife does not always work 40 hours per week. Sometimes she works less.

PRINCIPLES OF LAW

I. Burden of Proof and Standard of Proof.

The party seeking a change in the status quo normally bears the burden of proof.⁸ In this case the Claimant is attempting to change the status quo or existing state of affairs by obtaining Family 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.⁹ 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.¹⁰

II. Medicaid – In General.

Medicaid was established in 1965 by Title XIX of the Social Security Act to provide medical assistance to certain needy individuals and families. 42 USC § 1396 *et. seq.* On the federal level, the U.S. Department of Health and Human Services (“HHS”) administers the program through the Centers for Medicare and Medicaid Services (“CMS”). In Alaska, the State Department of Health and Social Services (“DHSS”) administers the Medicaid program at the state level.

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 AS 47.07.010 – AS 47.07.900. The State of Alaska’s regulations implementing the Medicaid program are set forth in the Alaska Administrative Code at Title 7, Chapter 43 and Chapter 100 *et. seq.*

⁸ *State of Alaska Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

⁹ 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, 1179 (Alaska 1986).

¹⁰ *Black’s Law Dictionary* at 1064 (West Publishing, 5th Edition, 1979).

The Medicaid Program has a large number of eligibility groups because it covers needy individuals in a variety of circumstances. See 7 AAC 100.002. One of the Medicaid Program's eligibility groups provides medical coverage for financially eligible households that include minor children. See 7 AAC 100.002(a)(1)(B); 7 AAC 100.100. This type of Medicaid coverage is known as Family Medicaid. *Id.*

III. Family Medicaid – Relevant Financial Eligibility Requirements.

7 AAC 100.032, titled "Development of Income," provides in relevant part as follows:

(a) . . . [T]o be eligible for Medicaid, a member of a household who may be eligible for benefits under one or more of the following programs must apply for and, if eligible, accept benefits from that program (7) *unemployment insurance benefits* under AS 23.20.330 - 23.20.405. [Emphasis added].

7 AAC 100.102, titled "Determining Eligibility," provides in relevant part as follows:

(c) A household is financially eligible if . . . (2) the total monthly income available to meet the financial needs of the household does not exceed the 185 percent qualifying income standard established in 7 AAC 100.190 for the household's size and type

7 AAC 100.152, titled "Income Period," provides in relevant part as follows:

The department will determine, on a monthly basis, eligibility for Family Medicaid benefits and when income is considered available to the applicant or recipient

7 AAC 100.154, titled "Prospective Eligibility Determination," provides in relevant part:

[DPA] will determine the prospective eligibility of a household by making . . . its best estimate of income . . . for the household during the month for which eligibility is being determined [DPA] will consider the (1) circumstances of the preceding month and the current month that will affect . . . eligibility; and (2) household's estimate of what is likely to change during the month for which eligibility is being determined.

7 AAC 100.168, titled "Best Estimate of Prospective Income," provides in relevant part:

(a) [In] determining the eligibility . . . for Family Medicaid benefits . . . [DPA] will make a best estimate of the prospective income for a household by using the actual income received or anticipated to be received in the month for which the determination is being made.

(b) If receipt of income from a source cannot reasonably be anticipated in a month for which a determination is being made, the department will not include income from that source in the estimate of income.

(c) In determining the amount of income anticipated to be received, the department may average the monthly income received from the source in previous months.

(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.

7 AAC 100.180 provides in relevant part as follows:

(a) Before determining eligibility under (b) of this section, the department will first determine if a household's . . . (2) total monthly income is equal to, or less than, the applicable 185-percent standard established in 7 AAC 100.190.

During the 2010 calendar year, the Family Medicaid *gross income limit* for a family consisting of 2 adults and 2 children was \$3,009.00. 7 AAC 100.190; Alaska Family Medicaid Manual, Addendum 2.

ANALYSIS

Introduction: Definition of Issues.

The Claimant did not assert that the Division's mathematical calculations regarding the Claimant's household's countable gross monthly income were in any way incorrect, or that the Division applied an incorrect gross income standard in making its Family Medicaid income eligibility determination. Rather, the Claimant questioned only:

- (1) Whether the Family Medicaid regulations required him to apply for and accept any Unemployment Insurance Benefits (UIB) for which he is eligible; and
- (2) Whether the Division was correct to prospectively estimate his wife's income from employment, based on the income she received in three pay periods immediately preceding the filing of the Claimant's application, when his wife does not always work as many hours as she did during those pay periods.

Accordingly, there are no disputed factual issues in this case. The two issues raised by the Claimant (stated above) are purely legal issues which can be decided by applying the relevant regulations. These issues will be discussed below in the order stated.¹¹

I. Must the Claimant Apply for Available UIB as a Pre-Condition to Receiving Medicaid Benefits?

The Claimant asserts that he should be allowed *not* to apply for and receive the Unemployment Insurance Benefits for which he is currently eligible. According to the Division's calculations, the Claimant's gross monthly household income is \$3,502.85 (Ex. 5; DPA Hearing Representative's testimony). Of this sum, the Claimant's Unemployment Insurance Benefits (UIB) account for \$242.00 per week or \$1,040.60 per month (Exs. 3, 4). Accordingly, if the Claimant were allowed to exclude this \$1,040.60 per month from his countable gross income, he would easily qualify for Family Medicaid based on the applicable gross income limit of \$3,009.00.

¹¹ As stated above, the Claimant did not contest the Division's calculation of his household's gross income. However, as discussed in footnotes 1 – 4, above, there were in fact several very minor errors in the Division's income calculations. Accordingly, even though the Claimant did not raise the issue, it is appropriate that this decision demonstrate that the mathematical errors at issue were harmless. This is done in Section III of this Analysis at pages 8-9, below.

The applicable regulations do not, however, allow an applicant or recipient of Family Medicaid benefits to decline income which is (or may be) available from other sources. Family Medicaid regulation 7 AAC 100.032, titled “Development of Income,” provides that, except in a few limited circumstances not applicable here:

(a) [T]o be eligible for Medicaid, a member of a household who may be eligible for benefits under one or more of the following programs *must apply for and, if eligible, accept benefits from that program . . .* (7) unemployment insurance benefits under AS 23.20.330 - 23.20.405. [Emphasis added].

Because 7 AAC 100.032(a) uses mandatory language (i.e. states that the applicant or recipient “*must apply for*” benefits), neither the Division nor this Office has the authority to disregard it or grant an exception to it. Accordingly, the Claimant was required to apply for and receive any available Unemployment Insurance Benefits, and the Division was likewise correct to count those benefits as income for the purpose of determining eligibility for the Family Medicaid Program.

II. Was the Division Correct to Prospectively Estimate the Claimant’s Wife’s Employment Income?

The Claimant testified that his wife sometimes works less than 40 hours per week, and therefore receives less in income, than was attributed to her by the Division (see Findings of Fact at Paragraph 10, above). The Division calculated that the Claimant’s gross countable monthly household income of \$3,502.85 exceeded the applicable Family Medicaid gross income limit of \$3,009.00 by \$493.85 (see Findings of Fact at Paragraph 9, above).

The applicable regulations do not allow the Division to arbitrarily pick and choose which pay periods to include when determining income. Pursuant to 7 AAC 100.152 and 7 AAC 100.154, the Division must prospectively estimate a household’s income based on “(1) circumstances of the preceding month and the current month that will affect . . . eligibility; and (2) household’s estimate of what is likely to change during the month for which eligibility is being determined.” Also, pursuant to 7 AAC 100.168, the Division may average the monthly income received in previous months if this is likely to result in a more accurate estimate of the household’s future income.

In this case, the Claimant completed his application on November 9, 2010 (Ex. 2.0). In calculating the Claimant’s wife’s income, the Division considered the Claimant’s wife’s wages from the three (3) pay periods immediately preceding the date of the Claimant’s application (Exs. 3.0 – 3.3). This was entirely consistent with the regulations discussed above. Further, there is no evidence in the record that any decrease in the Claimant’s wife’s wages was expected at the time the Division made its eligibility determination. Accordingly, the Division was not required to consider future pay periods during which the Claimant’s wife received less income than during the pay periods that were considered, particularly given that there is no evidence in the record that such pay records for periods of decreased earnings were ever provided to the Division.

III. Did the Claimant’s Countable Monthly Gross Income Exceed the Family Medicaid Program’s Applicable Monthly Gross Income Limit?

The Division denied the Claimant’s application for Family Medicaid Program benefits based on the assertion that the Claimant’s household’s gross countable income exceeded the Family Medicaid Program’s applicable gross income limit. To determine whether this decision was correct, the Claimant’s household’s income must be analyzed according to the applicable regulations.

The procedure for determining financial eligibility under the Family Medicaid Program has two (2) steps. First, the applicant must first meet the gross income test. *See* 7 AAC 100.102(c) and 7 AAC 100.180. If the applicant meets the *gross income test*, he or she must then satisfy the *net income test*. *Id.* Thus, an applicant is only eligible for Family Medicaid if he or she satisfies *both* the gross income test *and* the net income test. *Id.* However, if the applicant fails the gross income test, *the applicant is denied at that point without determining whether the applicant satisfies the net income test. Id.*

In this case, the Claimant's only two countable sources of income were (1) his wife's income from employment; and (2) his Unemployment Insurance Benefits (see Findings of Fact at Paragraphs 3-7).

The three (3) bi-weekly pay statements submitted by the Claimant showed that his wife was paid \$1,143.54, \$1,155.93, and \$1,138.23 during those three pay periods (Exs. 3.1 – 3.3). The Division began by averaging the income from those three pay periods pursuant to 7 AAC 100.168(c) (Ex. 3.0). The Claimant's average pay for those three pay periods was \$1,145.90. Then, the Division multiplied the biweekly average of \$1,145.90 by 2.15 (pursuant to 7 AAC 100.168(d)) to arrive at a monthly average of \$2,463.69.

The records of the Department of Labor show that the Claimant received Unemployment Insurance Benefits in the amount of \$242.00 per week during the two months prior to his application (Ex. 4). The Division multiplied this weekly average by 4.3 (again pursuant to 7 AAC 100.168(d)) to arrive at a monthly average of \$1,040.60 (Ex. 3.0).

The Division then added the Claimant's wife's monthly average income from employment of \$2,463.69 to the Claimant's monthly average UIB income of \$1,040.60, resulting in total monthly gross income of \$3,504.29 (Ex. 3.0). During the 2010 calendar year, the Family Medicaid gross income limit for a family consisting of two adults and two children was \$3,009.00 (*see* 7 AAC 100.190 and Alaska Family Medicaid Manual, Addendum 2). Accordingly, the Claimant's total gross monthly household income of \$3,504.29 exceeded the applicable Family Medicaid gross income limit of \$3,009.00 by \$495.29.¹² The Division was therefore correct when it denied the Claimant's application for Family Medicaid because the Claimant's household's gross monthly income exceeded the Family Medicaid Program's applicable maximum monthly gross income limit.

CONCLUSIONS OF LAW

1. The Claimant was required to apply for and receive any available Unemployment Insurance Benefits pursuant to 7 AAC 100.032(a), and the Division was likewise required to count those benefits as income for purposes of the Family Medicaid Program pursuant to 7 AAC 100.032(a).
2. The Division was correct to prospectively estimate the Claimant's wife's employment income based on her three most recent wage statements pursuant to 7 AAC 100.150, 7 AAC 100.152, 7 AAC 100.154, and 7 AAC 100.168.

¹² As discussed in footnotes 1-4, above, there were some very minor discrepancies in some of the earned income figures used by the Division. However, the total gross income figure calculated by the Division (\$3,502.85 – see Ex. 6) is only \$1.44 less than the Claimant's actual gross monthly household income of \$3,504.29. Accordingly, as demonstrated in Analysis Section III, above, these minor errors did not affect the outcome of the case.

3. The Division applied the correct income eligibility standards pursuant to 7 AAC 100.190 and Alaska Family Medicaid Manual, Addendum 2.

4. Accordingly, the Division was correct when, on November 15, 2010, it denied the Claimant's application for Family Medicaid Program benefits dated November 9, 2010, because the Claimant's household's countable gross monthly income exceeded the Family Medicaid Program's applicable maximum gross monthly income limit.

DECISION

The Division was correct when, on November 15, 2010, it denied the Claimant's application for Family Medicaid Program benefits dated November 9, 2010, because the Claimant's household's countable gross monthly income exceeded the Family Medicaid Program's applicable maximum gross monthly income limit.

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 22nd day of March, 2011. (signed)

Jay Durych
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 22nd day of March 2011 true and correct copies of this document were sent to the Claimant via USPS mail, and to the remainder of the service list by secure / encrypted e-mail, as follows:

Claimant – Certified Mail, Return Receipt Requested

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

(signed)

By: _____
J. Albert Levitre, Jr., Law Office Assistant I