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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. 11-FH-34  
 )  
 Claimant. ) Division Case No. [REDACTED]  
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**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

[REDACTED] (Claimant) was a recipient of Adult Public Assistance related Medicaid benefits in March and April 2010. (Ex. 1) She requested that she receive a different category of Medicaid benefits – Medicaid Home and Community Based Waiver benefits (Medicaid Waiver).<sup>1</sup> On April 1, 2010, the Division of Senior and Disabilities Services notified the Claimant that she was medically eligible to receive Medicaid Waiver benefits. (Ex. 2) On June 2, 2010, the Division of Public Assistance (Division) sent the Claimant written notice that her Medicaid Waiver benefits were approved effective May 1, 2010. (Ex. 6.0)

On January 25, 2011, the Division received the Claimant’s fair hearing request contesting the start date of May 1, 2010 for her Medicaid Waiver benefits. (Exs. 8.1 – 8.2)

This Office has jurisdiction pursuant to 7 AAC 49.010.

The Division moved to dismiss this case as having been untimely filed on January 31, 2011. After reviewing the Claimant’s February 8, 2011 opposition to the dismissal request, the Division withdrew its dismissal request. The dismissal request was denied based upon the Division’s withdrawal.

A hearing was held, pursuant to Claimant’s request, on March 1 and 9, 2011. The Claimant did not attend the hearing. [REDACTED], the Claimant’s son and her designated power of attorney, appeared telephonically; he represented the Claimant and testified on her behalf. [REDACTED], Public Assistance Analyst with the Division, attended in person; she represented the Division and testified on its behalf. [REDACTED], an Eligibility Technician employed by the Division, attended the March 9, 2011 portion of the hearing telephonically and testified at the Claimant’s request.

<sup>1</sup> The record does not indicate the date of Claimant’s request.

## STATEMENT OF ISSUES

Was the Division correct when it, on June 2, 2010, notified the Claimant she was eligible for Claimant's Medicaid Waiver benefits effective May 1, 2010, instead of being eligible for Medicaid Waiver benefits during the month of April 2010?

## FINDINGS OF FACT

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

1. The Claimant is a married woman who resides separately from her husband in an assisted living facility. (Exs. 3.0, 5.0)
2. The Claimant was receiving Adult Public Assistance related Medicaid benefits in March and April 2010. (Ex. 1)
3. On March 17, 2010, the Division sent the Claimant written notice that she was required to apply for federal Supplemental Security Income benefits and provide the Division with proof of her application by April 15, 2010. (Ex. 8.5)
4. The Claimant applied to receive Medicaid Waiver benefits.<sup>2</sup> On April 1, 2010, the Division of Senior and Disabilities Services sent the Claimant notice that she met the "Medicaid Level of Care criteria for Home and Community Based Waiver eligibility for the period 3/25/10 to 3/24/11." (Ex. 2) The Claimant's family immediately moved her into an assisted living facility. (██████ testimony)
5. In April 2010, while preparing the Claimant's Supplemental Security Income application, the Claimant's son reviewed the Claimant's financial documents and discovered a life insurance policy with a cash surrender value, which Claimant had thought was a burial policy. *Id.* The Claimant's son notified the Division of this life insurance policy, and submitted an Eligibility Review form on April 13, 2010 to renew the Claimant's Adult Public Assistance benefits that disclosed she owned a life insurance policy with a cash surrender value of \$13,636.25. (██████ testimony; Exs. 3.1, 4.1)
6. The Claimant's son testified that the Eligibility Technician handling the Claimant's public assistance benefits told him that if he spent the life insurance policy funds within 30 days it would not affect the Claimant's public assistance benefits. (██████ testimony) He interpreted this to mean that if he spent the funds down with 30 days, that the Claimant's assisted living facility costs would be covered by Medicaid for the month of April 2010. *Id.*
7. The Eligibility Technician handling the Claimant's public assistance benefits testified she told the Claimant's son he needed to spend down the life insurance policy funds to below the allowable resource limits within 30 days. (██████ testimony) This would allow the Claimant to continue to receive Adult Public Assistance and her Adult Public Assistance related Medicaid benefits. *Id.*

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<sup>2</sup> The record does not contain the date of the Claimant's application for Medicaid Waiver benefits.

8. The Claimant's son was able to spend down the Claimant's funds to less than \$2,000 for the Claimant's benefit before May 1, 2010. (Ex. 5.0) He provided the Division with proof of the spend down on May 3, 2010. (Exs. 4.0 – 4.27)

9. On June 2, 2010, the Division sent the Claimant notice that she was approved for Medicaid Waiver benefits effective May 1, 2010. (Ex. 6.0) That notice explained as follows:

Your original approval date was supposed to be 3/25/2010 but because you were over resource (life insurance policy worth \$13636.25) during the month of March and it was not corrected until 5/2010, your waiver approval date has been moved to that month.

*Id.*

10. The approval of the Claimant's Medicaid Waiver benefits effective May 1, 2010 meant that her assisted living facility costs for the month of April 2010, in the amount of \$3,500, were not paid for by the Medicaid program. (██████ testimony)

### **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 Alaska Medicaid program contains a variety of coverage categories. *See* 7 AAC 100.002 Each of these categories have different eligibility requirements. For example, Adult Public Assistance related Medicaid provides regular Medicaid coverage to persons who receive Adult Public Assistance benefits. *See* 7 AAC 100.002(d)(1) and 7 AAC 100.410(b).

Medicaid Waiver is a special category of Medicaid that pays for medical care services not covered by regular Medicaid, such as assisted living facility costs. *See e.g.* 7 AAC 130.255(a). Eligibility for Medicaid Waiver coverage is dependent upon the applicant satisfying both medical eligibility requirements and financial eligibility requirements. 7 AAC 100.500; 7 AAC 100.502(a) and (d). Among the financial eligibility requirements is one that an individual, who is not living with a spouse, may not own more than \$2,000.00 in countable resources. 7 AAC 40.270(a)(1); 7 AAC 100.400(a)(14); 7 AAC 100.502(a)(2).

A resource is "any real or personal property that an applicant . . . owns and can convert to cash to be used for his or her support and maintenance." 7 AAC 40.260(a); 7 AAC 100.400(a)(13). Resources are counted unless they fall in the list of exclusions contained in 7 AAC 40.280, or unless they are contained in a Medicaid Special Needs Trust. 7 AAC 100.400(a)(15); 7 AAC 100.612. Burial insurance is excluded from being counted as a resource. 7 AAC 40.280(a)(7). Life insurance policies

with a cash surrender value exceeding \$1,500 are not excluded from being counted as resources. 7 AAC 40.280(a)(7).

Resources for Medicaid Waiver applicants are measured on the first day of the calendar month: “[i]f an applicant has non-excludable resources that do not exceed the applicable resource limit at any time on the first day of a calendar month, the applicant is considered to meet the resource requirement for that month.” 7 AAC 40.270(b).

### ANALYSIS

The issue in this case is whether the Division was correct when it approved the Claimant for Medicaid Waiver benefits effective May 1, 2010, rather than March 25, 2010. Because this case involves the Claimant requesting a change in her Medicaid benefits, she has the burden of proof by a preponderance of the evidence.

As a legal matter, it must first be noted the Claimant does not reside with her husband. As a consequence, her eligibility for Medicaid Waiver benefits requires that she not own countable resources worth in excess of \$2,000.00. 7 AAC 40.270(a)(1); 7 AAC 100.400(a)(14).

It is undisputed that the Claimant owned a life insurance policy with a cash surrender value of \$13,636.25 during the months of March and April 2010. This was a countable resource for Medicaid purposes. 7 AAC 40.280(a)(7).

The Claimant’s son discovered that the Claimant owned the life insurance policy, during April 2010; the Claimant had previously thought it was a burial policy. He promptly disclosed it to the Division. He spent down the funds for the Claimant’s benefit to less than the \$2,000 Medicaid resource limit before May 1, 2010.

The Medicaid Waiver program determines financial eligibility, based on resources, for each month on the first day of the month. 7 AAC 40.270(b). This means that if a Medicaid applicant owns countable resources exceeding the resource limit on the first day of a month, she is not eligible for Medicaid benefits for the entire month. Because the Claimant owned the life insurance policy and its value exceeded \$2,000 during March 2010, and at the beginning of April 2010, she, as a matter of law, was not financially eligible to receive Medicaid Waiver benefits during the months of March or April 2010. 7 AAC 40.270(b).

The Claimant’s son’s testimony about his conversations with the Eligibility Technician does not change this result. It is clear that there was some misunderstanding between them. The Eligibility Technician testified she told him that if he spent down the life insurance funds within 30 days, it would not affect the Claimant’s ongoing Adult Public Assistance benefits and her Adult Public Assistance related Medicaid benefits. The Claimant’s son thought this referred to the Medicaid Waiver benefits.

However, the Medicaid Waiver benefits had not yet been completely approved in April 2010; medical eligibility had been found, financial eligibility had not been found. In other words, the only ongoing/already approved benefits that could have been affected by the Claimant’s life insurance funds

were her Adult Public Assistance benefits along with its related Medicaid benefits. The Eligibility Technician could not have told the Claimant's son his mother's Medicaid Waiver benefits would be unaffected by the life insurance funds because the Medicaid Waiver benefits had not yet been approved when the life insurance policy was discovered in April 2010, .

Even if the misunderstanding about spending down the Claimant's life insurance policy value had not occurred, it would not have changed the outcome. This is because the Claimant's son discovered the life insurance policy during the month of April 2010. Because the Claimant owned the life insurance policy on the first day of April 2010, she was not financially eligible for Medicaid Waiver benefits during the months of March or April 2010.

In summary, the Claimant managed to spend down her life insurance funds to under the \$2,000 Medicaid Waiver resource limit during April 2010. She was therefore under the \$2,000 Medicaid Waiver resource limit on May 1, 2010. Because the Claimant had a) already been found medically eligible for Medicaid Waiver benefits and b) was financially eligible for Medicaid Waiver benefits, when she had not been earlier, she qualified for Medicaid Waiver benefits effective May 1, 2010. 7 AAC 100.502(a) and (d).

The Claimant had the burden of proof in this case. She did not meet it. She undisputedly had more than \$2,000 in the cash surrender value of her life insurance policy during March and April 2010. This made her financially not eligible for Medicaid Waiver benefits during the months of March and April 2010. Because she was able to spend her life insurance funds to less than \$2,000 during the month of April 2010, she satisfied the Medicaid Waiver financial eligibility requirements as of May 1, 2010. The Division was correct to start her Medicaid Waiver benefits on May 1, 2010, rather than finding her eligible for Medicaid Waiver benefits for the month of April 2010.

### **CONCLUSIONS OF LAW**

1. The Claimant owned a life insurance policy with a cash surrender value of \$13,636.25 during the month of March 2010 and on April 1, 2010. As a result, pursuant to 7 AAC 40.270(a)(1) and 7 AAC 40.270(b), she was not eligible to receive Medicaid Waiver benefits during the months of March and April 2010.
2. Because the Claimant managed to spend down her life insurance policy cash value to less than \$2,000 during the month of April 2010, she became financially eligible for Medicaid Waiver benefits as of May 1, 2010. *See* 7 AAC 40.270(a)(1) and 7 AAC 40.270(b).
3. The Division was therefore correct when it, on June 2, 2010, approved the Claimant for Medicaid Waiver benefits effective May 1, 2010 rather than finding her eligible for Medicaid Waiver benefits for the month of April 2010.

### **DECISION**

The Division was correct to provide for a May 1, 2010 start date for the Claimant's Medicaid Waiver benefits.

