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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-148
)
 Claimant.) Division Case No. [REDACTED]
_____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) applied for Medicaid benefits under the Denali KidCare program (Denali KidCare) for herself on April 6, 2011. (Exs. 2.1 – 2.9) Her application was denied that same day. (Exs. 2.0, 2.15) On April 7, 2011, the Claimant resubmitted the application for her five children. (Exs. 3.1 – 3.9) The Claimant was then verbally informed on April 7, 2011 that four of her children were approved for Denali KidCare and that her youngest son was not. (Ex. 3.10) The Claimant requested a Fair Hearing on April 7, 2011. (Exs. 3.10, 3.12) On April 8, 2011, the Division of Public Assistance (Division) sent the Claimant written notice that the Denali KidCare application for her and her youngest son was denied, whereas the application was approved for her other four children. (Exs. 4.0 – 4.2)

This Office has jurisdiction pursuant to 7 AAC 49.010.

The Claimant's hearing was held on May 10, 2011. The Claimant attended the hearing telephonically; she represented herself and testified on her own behalf. [REDACTED], Public Assistance Analyst with the Division, attended the hearing in person; she represented the Division and testified on its behalf.

STATEMENT OF ISSUES

The Division argued that the Claimant's household income made the Claimant and her youngest son financially not eligible for Denali KidCare benefits. The Claimant argued that the Division erred when it counted her husband's base housing allowance as part of her household income, which resulted in her and her youngest child not being financially eligible for Denali KidCare coverage.

The resulting issues are:

1. Was the Division correct when it counted the Claimant's husband's base housing allowance as part of the household income, which resulted in a denial of her April 6, 2011 application for pregnant woman Denali KidCare coverage?
2. Was the Division correct when it counted the Claimant's husband's base housing allowance as part of the household income, which resulted in a denial of her April 7, 2011 application for Denali KidCare coverage for her youngest child?

FINDINGS OF FACT

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

1. The Claimant is a married woman. (Ex. 2.1) She lives with seven other people: her husband, her five children, and her mother. *Id.* Her husband is full-time military. (Ex. 2.2)
2. The Claimant applied for Denali KidCare benefits for herself, as a pregnant woman, on April 6, 2011. (Exs. 2.1 – 2.9)
3. The Claimant applied for Denali KidCare benefits for her five children on April 7, 2011. (Exs. 3.1 – 3.9) Four of her five children are from previous relationships; they are not her husband's biological or adopted children. (Exs. 3.1, 3.10) Her youngest child is her husband's biological child. *Id.*
4. The Claimant's household's gross monthly household income consists of the following:

Claimant's Social Security disability payment:	\$ 632.00
Husband's military pay:	<u>\$6,941.82</u>
TOTAL	\$7,573.82

(Exs. 2.11, 3.5, 3.9)

5. The Claimant and her family reside on the [REDACTED] military base. (Ex. 3.1) \$2,052.00 of the husband's monthly military pay is for his base housing allowance. (Ex. 3.14) The husband does not receive any of the base housing allowance funds; those funds are deducted from the husband's paycheck and paid directly to the base housing operator. (Claimant testimony; Ex. 3.14)
6. The Claimant's husband pays \$350 per month in child support. (Ex. 3.6)
7. The Division determined that the Claimant's countable household income was \$7,133.82. It arrived at this figure by subtracting \$350 for the Claimant's husband's child support payment and subtracting \$90 for a work deduction from her household's gross monthly income of \$7,573.82. (Exs. 2.0, 2.16, 3.10)

8. The Claimant and her children all have TRICARE health insurance coverage. (Ex. 3.7) In addition, the Claimant also has Medicare Part A health insurance coverage. *Id.*

9. On April 8, 2011, the Division of Public Assistance (Division) sent the Claimant written notice that the Denali KidCare application for her and her youngest child was denied, whereas the application was approved for her other four children. (Exs. 4.0 – 4.2)

10. The Division's April 8, 2011 notice stated the Claimant's pregnant woman Denali KidCare application was denied because her and her husband's combined countable income of \$7,133.82 exceeded the income limit of \$6,863 for an eight person family. (Ex. 4.0)

11. The Division's April 8, 2011 notice stated the Claimant's youngest child's Denali KidCare application was denied because the Claimant's and her husband's combined countable income of \$7,133.82 exceeded the income limit of \$5,285 for a seven person household that had health insurance coverage. (Ex. 4.2)

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, Alcoholic 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).

Denali KidCare is a form of Family Medicaid coverage provided to children under the age of 19, pregnant women, post partum women and newborn children in households that are not financially eligible for regular Family Medicaid coverage. *See Alaska Medical Assistance Manual* §5300.

The Denali KidCare program has slightly different financial eligibility rules for pregnant women and for children. However, they both look at the income based upon an applicant's household size. 7 AAC 100.300(a); 7 AAC 100.310(a). A household is comprised of the minor children and the parents/caretaker relatives with whom the minor children reside. 7 AAC 100.104(a). A grandparent who resides with the adult parents and their children is not a mandatory part of a Denali KidCare household. 7 AAC 100.104(a).

A. Pregnant Women Coverage

Denali Kidcare provides Medicaid coverage for pregnant women, if the applicant's household income (her and her spouse's income) does not exceed 175 percent of the federal poverty guidelines for the household size. 7 AAC 100.300(a) and (b); AS 47.07.020(b)(14). The Denali KidCare program counts the unborn child as a member of the household for the purposes of determining household income eligibility levels for pregnant women coverage. 7 AAC 100.302(b)(4). The 175 percent federal poverty guideline percent figure for a household of eight persons is \$6,863. *Alaska Family Medicaid Eligibility Manual* Section Addendum 1.

When determining Denali KidCare financial eligibility for a pregnant woman, the Division is required to count the income of the woman and her spouse with whom she resides. 7 AAC 100.302(b).

B. Children's Coverage

Denali KidCare provides Medicaid coverage for children, who are covered by health insurance, if the household income does not exceed "150 percent of the federal poverty guidelines for" the household size. 7 AAC 100.312(a)(1). Denali KidCare coverage for children does not count an unborn child as being part of the household. 7 AAC 100.312(b). The 150 percent federal poverty guideline figure for a household of seven is \$5,285. *Alaska Family Medicaid Eligibility Manual Addendum 1*.

A child is considered insured for the purposes of determining Denali KidCare eligibility if the child has individual, governmental, or private group health insurance coverage. 7 AAC 100.314(a). Both Medicare and TRICARE are explicitly listed as being health insurance for Denali KidCare purposes. 7 AAC 100.314(a)(4) and (6).

When determining financial eligibility for children, the Division is required to count the income of the parents with whom they reside. 7 AAC 100.312(b). However, the Division will not count the income of a stepparent (someone who is not the biological or adoptive parent of a child), if that income would make the children not eligible for Denali KidCare coverage. 7 AAC 100.312(c).

C. Income Deductions – Common to Both Pregnant Women and Children's Coverage

For the purposes of determining financial eligibility under Denali KidCare for both pregnant women and children's coverage, there is a \$90.00 deduction "from the total gross monthly earned income of each individual included in the household who is employed and has not received Medicaid benefits in the state in any of the four months immediately preceding that individual's current eligibility for assistance under this chapter." 7 AAC 100.184(a)(1); 7 AAC 100.300(a); 7 AAC 100.310(a). In addition, a household member who pays child support is entitled to a deduction for those child support payments. *Id.* There is no deduction for rental payments. *Id.*

A base housing allowance is considered "[i]n-kind earned income" and is counted as income for the purposes of determining financial eligibility for Denali Kid Care. 7 AAC 100.158(e)(2); 7 AAC 100.300(a) (pregnant women coverage); 7 AAC 100.310(a) (childrens coverage). The applicable regulations do not contain a deduction or an exclusion from income for base housing allowances when determining Denali KidCare financial eligibility. 7 AAC 100.160; 7 AAC 100.184; 7 AAC 100.300(a) (pregnant women coverage); 7 AAC 100.310(a) (childrens coverage).

ANALYSIS

There are two issues in this case, each of which will be discussed below:

1. Was the Division correct when it counted the Claimant's husband's base housing allowance as part of the household income, which resulted in a denial of her April 6, 2011 application for pregnant woman Denali KidCare coverage?
2. Was the Division correct when it counted the Claimant's husband's base housing allowance as part of the household income, which resulted in a denial of her April 7, 2011 application for Denali KidCare coverage for her youngest child?

This case involves the denial of an application for benefits. Because the Claimant was an applicant for benefits, she is the party seeking to change the status quo. The Claimant therefore has the burden of proof, by a preponderance of the evidence.

There are no disputed factual issues in this case. The undisputed facts, which are common to both issues, are as follows:

- a. The Claimant's household receives gross monthly income of \$7,573.82. *See* Finding of Fact 4 above.
 - b. \$2,052 of the household's gross monthly income is the husband's base housing allowance. *See* Finding of Fact 5 above.
 - c. The Division allowed the Claimant two deductions from the household income of \$7,573.82: \$350 for the Claimant's husband's child support payment and a \$90 work deduction. The result was \$7,133.82. *See* Finding of Fact 7 above.
 - d. The Claimant has a total of eight persons in her household: herself, her husband, her five children, and her mother. *See* Finding of Fact 1 above. She was pregnant at all time relevant to this case. *See* Finding of Fact 2 above.
1. Was the Division correct when it counted the Claimant's husband's base housing allowance as part of the household income, which resulted in the denial of her April 6, 2011 application for pregnant woman Denali KidCare coverage?

The Division denied the Claimant's application for pregnant woman Denali KidCare coverage because her and her husband's combined countable income of \$7,133.82 exceeded the income limit of \$6,863 for an eight person family. *See* Finding of Fact 10 above.

The Claimant's household size of eight persons is arrived at because the Denali KidCare pregnant woman coverage category counts the unborn child as a household member. 7 AAC 100.302(b)(4). However, the Denali KidCare program does not count the Claimant's mother, the grandmother of the children in the home, as a household member. 7 AAC 100.104(a). As a result, the Claimant's household, for Denali KidCare pregnant woman coverage purposes, has 8 members: the Claimant, the unborn child, the husband, and the five children.

The Claimant argued that the Division should have not counted her husband's base housing allowance (\$2,052) as part of the household income when it determined her financial eligibility for Denali KidCare pregnant woman coverage. If the Division had not counted the base housing allowance as part of the household income, this would have resulted in a decrease in the countable income to \$5,081.82 (\$7,133.82 - \$2,025 = \$5,081.82), and the Claimant would have been eligible for Denali KidCare pregnant woman coverage.¹

The Denali KidCare regulations regarding financial eligibility are clear. The applicable regulations explicitly count base housing allowances as in-kind income. 7 AAC 100.158(e)(2); 7 AAC 100.300(a). The applicable regulations do not contain a deduction or an exclusion from income for base housing allowances when determining Denali KidCare financial eligibility. 7 AAC 100.160; 7 AAC 100.184; 7 AAC 100.300(a). As a matter of law, the Claimant's argument fails and the Division was correct to count the base housing allowance as part of the Claimant's countable household income.

Because the Division was correct to count the base housing allowance as part of the Claimant's countable household income, the Claimant's monthly countable household income was \$7,133.82. This amount exceeded the Denali KidCare program's monthly countable household income limit of \$6,863 for a pregnant woman with an eight person household. The Division was therefore correct when it denied the Claimant's April 6, 2011 application for pregnant woman Denali KidCare coverage. *See Alaska Family Medicaid Eligibility Manual Section Addendum 1.*

2. Was the Division correct when it counted the Claimant's husband's base housing allowance as part of the household income, which resulted in the denial of her April 7, 2011 application for Denali KidCare coverage for her youngest child?

The Division denied the Claimant's application for Denali KidCare coverage for her youngest child because her household income exceeded the income limit of \$5,285 for her seven person household that had health insurance coverage. *See Finding of Fact 11 above.*

The Claimant's household size of seven persons is arrived at because the Denali KidCare children's coverage category does not include an unborn child as a household member. 7 AAC 100.312(b). In addition, the Denali KidCare program does not count the Claimant's mother, the grandmother of the children in the home, as a household member. 7 AAC 100.104(a). As a result, the Claimant's household, for Denali KidCare children's coverage purposes, has 7 members: the Claimant, the husband, and the five children.

The Claimant argued that the Division should have not counted her husband's base housing allowance (\$2,052) as part of the household income when it determined her financial eligibility for Denali KidCare pregnant woman coverage. If the Division had not counted the base housing allowance as part of the household income, this would have resulted in a decrease in the countable income to \$5,081.82

¹ As set out in the *Principles of Law* section above, the financial eligibility cutoff point for the Claimant's Denali Kidcare eligibility, for an eight person household under the pregnant woman category, was \$6,863. *Alaska Family Medicaid Eligibility Manual Section Addendum 1.*

(\$7,133.82 - \$2,025 = \$5,081.82), and the Claimant's youngest son would have been eligible for Denali KidCare children's coverage.²

The Denali KidCare regulations regarding financial eligibility are clear. The applicable regulations explicitly count base housing allowances as in-kind income. 7 AAC 100.158(e)(2); 7 AAC 100.310(a). The applicable regulations do not contain a deduction or an exclusion from income for base housing allowances when determining Denali KidCare financial eligibility. 7 AAC 100.160; 7 AAC 100.184; 7 AAC 100.310(a). As a matter of law, the Claimant's argument fails and the Division was correct to count the base housing allowance as part of the Claimant's countable household income.

Because the Division was correct to count the base housing allowance as part of the Claimant's countable household income, the Claimant's monthly countable household income was \$7,133.82. This amount exceeded the Denali KidCare program's monthly countable household income limit of \$5,285 for a seven person household with insurance coverage. The Division was therefore correct when it denied the Claimant's April 7, 2011 application for Denali KidCare coverage for her youngest child. *See Alaska Family Medicaid Eligibility Manual Section Addendum 1.*³

CONCLUSIONS OF LAW

1. The Division was required, pursuant to 7 AAC 100.300(a), to count the Claimant's husband's base housing allowance of \$2,052 as part of her countable monthly household income when determining if the Claimant was financially eligible for Denali KidCare pregnant woman coverage.

2. As a result of counting the Claimant's husband's base housing allowance as part of the Claimant's monthly household income, the Claimant was not financially eligible for Denali KidCare pregnant woman coverage. This was because her household's monthly countable income was \$7,133.82, which exceeded the \$6,863 monthly countable income limit for her eight person household (inclusive of the unborn child).

3. The Division was required, pursuant to 7 AAC 100.310(a), to count the Claimant's husband's base housing allowance of \$2,052 as part of her countable monthly household income when determining if the Claimant's youngest child was financially eligible for Denali KidCare children's coverage.

² As set out in the *Principles of Law* section above, the financial eligibility cutoff point for the Claimant's Denali Kidcare eligibility, for a seven person household under the children's category for children with health insurance, was \$5,285. *Alaska Family Medicaid Eligibility Manual Addendum 1.*

³ It may seem inconsistent that the Division approved the Claimant's April 7, 2011 Denali KidCare application for her other four children while denying the application for her youngest child. The reason this occurred is because the Claimant's other four children are not the biological or adopted children of the Claimant's husband. *See Finding of Fact 3* above. As a result, the Division did not count the husband's income in determining whether the other four children were financially eligible for Denali KidCare. *See 7 AAC 100.312(c).* In other words, the other four children were financially eligible for Denali KidCare because the only household income that was counted for their application was the Claimant's monthly Social Security disability income of \$632, instead of the Claimant and her husband's combined income.

