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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-259  
 )  
 Claimant. ) Division Case No. [REDACTED]

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

Ms. [REDACTED] (Claimant) re-applied for Denali KidCare benefits (Program) for her four children on June 2, 2011.<sup>1</sup> (Ex. 2) On June 16, 2011, the Division of Public Assistance (Division) sent Claimant two notices concerning her application: one notice denied Program benefits to three of her children and the second notice approved benefits for one child. (Ex.4.0-4.1)

Claimant requested a Fair Hearing on July 21, 2011. (Ex. 5.0) This Office has jurisdiction pursuant to 7 AAC 49.010 and .020.

The Fair Hearing was held on August 18, 2011. Claimant appeared telephonically and represented herself. Ms. [REDACTED], Public Assistance Analyst with the Division, attended in person, represented the Division and testified on its behalf.

**ISSUE**

On June 15, 2011, was the Division correct to not reduce Claimant’s household’s gross income by the amount of the employer’s mandatory deductions from income, when it calculated the household’s net monthly countable<sup>2</sup> income for purposes of determining eligibility for Denali KidCare benefits?

<sup>1</sup> Claimant signed her application on May 25, 2011 and the Division received it on June 2, 2011. (Ex. 2.0-2.2)

<sup>2</sup> “Countable” income is an adjusted gross income amount, not necessarily a “net” income amount, which serves as the basis for the further calculation of eligibility for benefits. It is the “total monthly income less all applicable deductions and disregards from income under 7 AAC 100.184 and 7 AAC 100.186.” 7 AAC 100.180 and 7 AAC 100.199(1).

## FINDINGS OF FACT

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

1. Claimant is a member of a six person household, comprised of herself, her husband and their three children, and Claimant's one other child. (Exs. 2.0-2.7) The household's income and Blue Cross insurance is provided wholly by Claimant's husband, who works for the State of Alaska. (Exs. 2.2-2.4; 3.1; Claimant's testimony) The State does not permit Claimant's spouse to opt out of the mandatory deductions from his gross pay, e.g., Supplemental Benefits System, Public Employees Retirement System. (Claimant's testimony) If the State permitted opting out of the mandatory deductions, Claimant's household would opt out in order to increase the household's net income. (Claimant's testimony)

2. Claimant applied to renew Denali KidCare (Program) benefits for her four children on June 2, 2011. (Exs. 1.0; 2.0-2.7) The Division treated her application as a renewal application. (Exs. 4.0, 4.1) Claimant's application stated her husband paid \$699 of child support monthly and Claimant supplied a copy of the court Order requiring the \$699 payment. (Exs. 2.0, 2.5-2.7) Claimant supplied her husband's 2 payroll statements for April 2011 in support of her application. (Exs. 2.3, 2.4)

3. On June 15, 2011:

a) The Division's Eligibility Technician calculated that the Claimant's household's gross monthly income was \$5,788.19. (Exs. 3.0; 3.2) The Eligibility Technician used Claimant's husband's 2 payroll statements, issued on April 12, 2011 and April 26, 2011, to obtain income amounts because he is paid twice monthly. (Exs. 2.3, 2.4; Hearing Representative's testimony) These payroll statements were submitted with Claimant's application and showed no deduction for child support. (Exs. 2.3, 2.4) The April 12, 2011 payroll statement included "RG Holiday" pay of \$227.83 and "Holidy wrk" pay of \$362.76. (Ex. 2.3) Claimant did not dispute the determination the household's gross monthly income was \$5,788.19. (Claimant's testimony)

b) From the husband's gross monthly income of \$5,788.19, the Eligibility Technician deducted \$699 of child support the husband was ordered to pay according to the court order submitted with the application. (Exs. 2.0; 2.6; 3.2; Hearing Representative's testimony) The Eligibility Technician further deducted an amount of \$90 as a standard deduction from work income. (Ex. 3.0, 3.2) The result was a household net monthly countable income of \$4,999.19, applicable to calculate eligibility for Program benefits. (Ex. 3.0, 3.2; Hearing Representative's testimony)

c) The Division's Eligibility Technician determined that Claimant's spouse's income was applicable to their three children. (Ex. 3.0) Claimant did not dispute the attribution of her husband's income to their three children. The Division's Eligibility Technician also determined that because the household's net monthly countable income of \$4,999.19 exceeded the Program's countable income limit of \$4,688.00, applicable to household of six people with insurance, the three children were not eligible for Program benefits. (Exs. 3.0; 3.2, 4.0)

d) The Eligibility Technician determined that Claimant's fourth child was eligible for Program benefits because Claimant's spouse was not her father and therefore his income was not included in this child's eligibility determination. (Exs. 3.0; 4.1) This determination was not disputed by the

parties. On June 16, 2011, the Division notified Claimant this child, determined eligible for Program benefits, would be covered “through June 30, 2012.”<sup>3</sup> (Ex. 4.1)

4. On June 16, 2011, the Division notified Claimant of its determination regarding Claimant’s three children for whom benefits had been denied. (Ex. 4.0) The notice informed Claimant her Denali KidCare case had been closed for the remaining three children. This notice also explained the calculations underlying the determination that the household’s income exceeded the income eligibility limit for Denali KidCare benefits for the three children. (Ex. 4.0)

5. During the hearing, Claimant supplied a payroll statement for pay period June 15, 2011, showing a year to date gross income of \$36,095.61<sup>4</sup> and showing \$485.21 deducted as child support each pay period, for a total child support deduction of \$970.42 monthly. (Ex. 2.4a; Claimant’s testimony) Claimant explained this child support amount started being deducted every pay check beginning some time after she submitted her application on June 2, 2011. (Claimant’s testimony) It was unclear if she had reported this change to the Division, and the Division did not have this information when it made its determination on her application. (Claimant’s testimony)

6. The June 15, 2011 payroll statement showed no pay period income for holiday pay, which is different from the April statements, because Claimant’s husband does not always earn holiday pay. (Claimant’s testimony) Claimant did not supply any payroll statements for the month of May 2011 and requested the June 15, 2011 payroll statement amounts be used to average the household’s income to determine eligibility. (Claimant’s testimony)

### **PRINCIPLES OF LAW**

“Ordinarily the party seeking a change in the status quo has the burden of proof.” *State, Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985). The standard of proof in an administrative proceeding is a “preponderance of the evidence,” unless otherwise stated. *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Com’n*, 711 P.2d 1170, 1183 (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)

Title XIX of the Social Security Act authorizes federal grants to the states to provide for medical assistance to low income persons or “members of families with dependent children or qualified pregnant women or children” among other persons. 42 C.F.R. § 430.0. Each state decides eligible groups, types and range of services, payment levels for service and administrative and operating procedures 42 C.F.R. § 430.0. Payments for services are made directly by the States to the individuals or entities that furnish the services. 42 C.F.R. § 430.0. The State must specify the income standard for the covered medically needy groups. 42 C.F.R. § 435.814.

Where Medicaid benefits have been received by an individual, the State is required to continue to furnish Medicaid until the individual is “found to be ineligible.” 42 C.F.R. § 435.930.

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<sup>3</sup> Therefore, this decision does not further address this action of the Division.

<sup>4</sup> Because Claimant’s husband is paid twice monthly, there are eleven pay periods accumulated in the gross income amount on the June 15, 2011 pay statement. (Ex. 2.4a; Claimant’s testimony)

Denali KidCare is a form of Family Medicaid benefits provided to children under the age of 19, pregnant women, post-partum women and newborn children in households who are not financially eligible for regular Family Medicaid coverage. *See Alaska Medical Assistance Manual* §5300. Denali KidCare benefits applicable to poverty-level children are determined under the Family Medicaid eligibility requirements. 7 AAC 100.310.

Denali KidCare has specific criteria for financial eligibility. For households with health insurance, Medicaid benefits are provided through the Denali KidCare program if the household income does not exceed “150 percent of the federal poverty guidelines for” Alaska.<sup>5</sup> 7 AAC 100.312(a)(1). The Division is charged with making a “best estimate of 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. 7 AAC 100.168.

When determining financial eligibility for an applicant child, the Division includes the income of the parents and siblings who reside with the child. 7 AAC 100.312(b). Regulation 7 AAC 100.180 governs income eligibility determinations and provides “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.”<sup>6</sup> 7 AAC 100.310(a); 7 AAC 100.180 and 7 AAC 100.199(1). The deduction from income provided by 7 AAC 100.184(a)(2) is not applied when determining eligibility of poverty-level children for Denali KidCare benefits. 7 AAC 100.310(b)(8).

Regulation 7 AAC 100.184 establishes deductions from a household’s countable income allowed when determining eligibility for Denali KidCare:<sup>7</sup>

(1) \$90 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;

and

(3) child support payments made by an individual whose income is considered available to the household.

“If a household’s income exceeds by \$.01 or more either the applicable 185-percent limit or the applicable need standard, the department will either deny the application or suspend or terminate existing Family Medicaid benefits.” 7 AAC 100.180(d)

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<sup>5</sup> This amount is commonly called the “need standard.”

<sup>6</sup> Regulation 7 AAC 100.186 applies income “disregards” when the household includes a parent incapacitated as a result of being determined to be physically or mentally unable to perform gainful activity, as described in 7 AAC 45.235. This regulation is not applicable to this case.

<sup>7</sup> Regulation 7 AAC 100.310(b)(8), applicable to Denali KidCare, provides that the deduction of 7 AAC 100.184(a)(2) does not apply. Regulation 7 AAC 100.184(a)(2) states: “\$150 from the total gross monthly earned income, plus 33 percent of any remaining earned income, of each individual included in the household who is employed and has received Medicaid benefits in the state in any of the four months, including retroactive months under 7 AAC 100.072, immediately preceding that individual’s current eligibility for assistance under this chapter.”

In 2011, the monthly income eligibility limit for a household of six with health insurance coverage is \$4,688. (Ex. 11) See also, *Alaska Family Medicaid Eligibility Manual Addendum 1*.

## ANALYSIS

### Issue

The parties did not dispute the amounts of income or the calculation process applied by the Division in reaching its determination of eligibility.<sup>8</sup> Claimant did not argue the Division was incorrect, Claimant wanted additional deductions applied to reduce her gross income. Claimant explained the cash available to her family is less than the gross income amount reduced by the deduction for child support and the \$90 work deduction. Claimant stated the cash the household has to spend was the gross amount less the employer's mandatory deductions, which reduced the gross by more than the child support and \$90 work deduction allowed by the Eligibility Technician. Claimant asserted that the mandatory deductions from her husband's paycheck should be deducted when determining household income for eligibility purposes, because the balance, after all employer deductions, is what the household has to live on.

Therefore, the issue is, did the Division err because it did not reduce Claimant's household income by the amount of the employer's mandatory deductions from income, when it calculated the household's monthly "countable" income, for purposes of determining eligibility for Denali KidCare benefits on June 15, 2011?

### Burden of Proof

Claimant's application was a renewal application. Federal Medicaid regulation 42 C.F.R. § 435.930 expressly requires that the State must continue to provide Medicaid benefits to an eligible recipient until the recipient is found ineligible. Therefore, the Division has the burden of proving why it did not err when it determined Claimant's household's net monthly countable income resulted in the ineligibility of Claimant's three children.<sup>9</sup>

### Discussion

Claimant argued, in effect,<sup>10</sup> that it was unfair to not deduct the amount of mandatory deductions imposed by her husband's employer from the household's gross monthly income, when determining if the household income exceeded the Denali KidCare Program eligibility income limit.

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<sup>8</sup> During the hearing, Claimant requested the Division use wage information as of June 15, 2011 to average household income, but she did not dispute the amount of income the Division used in its determination.

<sup>9</sup> Claimant did not allege the Division erred in its determination. Instead, Claimant asserted additional deductions should be applied to the household's gross monthly income. This decision addresses Claimant's issue, rather than merely reviewing the Division's actions and result. Claimant is then informed both that the Division's action has been reviewed and is correct and that her issue has been addressed.

<sup>10</sup> Claimant testified that if the household could omit the mandatory deductions, they would have greater net income. This testimony did not actually present an issue because the amount of net income a household has is not considered in a Denali KidCare eligibility determination. Therefore, Claimant's argument is understood in the context that reducing the household's gross income by the employer's mandatory deductions would better represent the actual cash available to the household and therefore better represent their actual usable income.

Alaska regulation 7 AAC 100.180 expressly provides that a household's total monthly income is reduced by only certain deductions from income when the Division determines the "countable" monthly income. Those certain deductions are found at 7 AAC 100.184(1) and (3). 7 AAC 100.310. For the purposes of determining financial eligibility under Denali KidCare, 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(1). Also, "child support payments made by an individual whose income is considered available to the household" are deducted. 7 AAC 100.184(3). The regulation does not provide any other deductions.

Therefore, the Division was correct in not deducting from the household's gross monthly income any of the mandatory deductions from earned income required by Claimant's husband's employer, when the Division determined the household's countable net monthly income for purposes of Denali KidCare eligibility.

Also, neither the Division nor the Hearing Authority can create new law or deviate from the requirements of the law. "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). State of Alaska Fair Hearing regulation 7 AAC 49.170 provides in relevant part that "the role of the hearing authority is limited to the ascertainment of whether the laws, regulations, and policies have been properly applied in the case and whether the computation of the benefit amount, if in dispute, is in accordance with them."

Claimant's concerns with financial changes occurring after submission of the application: holiday pay and child support.

Claimant also mentioned during the hearing that the Division's use of the April payroll statements that she provided in support of her application were not representative of household income because a) they included holiday pay but her husband did not receive holiday pay every month; and b) they did not reflect the actual child support paid in the months subsequent to her application. Claimant testified the \$970.42 was taken out of her husband's pay every month and therefore was the correct amount of child support to deduct from the household's gross income. It was unclear at the hearing if Claimant had provided the information to the Division at any time, or if she was informing the Division for the first time, through the Fair Hearing process.

The Division is charged with making a "best estimate of 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. 7 AAC 100.168. In doing so, the Division is entitled to rely on the information provided by an applicant in support of the application that the Division has at the time it makes its determination. The parties agreed the Division correctly determined Claimant's children's eligibility for Denali KidCare benefits, based on the information it had at the time it made its calculations. However, after the Division's determination, Claimant wanted different financial information to be applied by the Eligibility Technician.

At the hearing, Claimant supplied new information and requested the Division retroactively re-calculate its determination based on that new information. The scope of a Fair Hearing is limited to issues concerning the Division's action(s) about which the Fair Hearing was requested. Succinctly put, the Division cannot be held accountable for information an applicant did not supply in time for its determination.

Therefore, the Division was correct in the amount of child support that it deducted from Claimant's countable monthly income, when it relied on the documentation supplied by Claimant with her application that showed he was obligated to pay \$699 monthly.

Claimant also argued that holiday pay, included in one April payroll statement, over-stated the household's income because her husband does not earn holiday pay every month. At the hearing, Claimant supplied a payroll statement for pay period ending June 15, 2011, which showed no holiday pay that pay period. Claimant suggested that averaging the year to date income amount would be more representative of the household's true income.

The Division was correct to rely on the April payroll statements when making its determination, for the same reasons that applied to Claimant's argument concerning child support. That is, the Division cannot be held accountable for not acting on information Claimant did not supply at the time the Division made the action which is the subject of the Fair Hearing. Moreover, if the Division used the June 15, 2011 payroll statement, the outcome would not have changed.<sup>11</sup>

The Division was correct to make its determination based on the information supplied by Claimant in support of her application.

### **CONCLUSIONS OF LAW**

1. The Division proved by a preponderance of the evidence that it was correct not to reduce Claimant's household income by the amount of the employer's mandatory deductions from her husband's income when it determined eligibility for Denali KidCare for three of Claimant's four children. 7 AAC 100.180.
2. The Division was correct when it reduced Claimant's household's gross monthly income by only the standard work deduction and by child support in the amount Claimant informed the Division was applicable to her household at the time of her application. 7 AAC 100.184(1), (3).

### **DECISION**

On June 15, 2011, the Division was correct to not reduce Claimant's household income by the amount of the employer's mandatory deductions from income, when it calculated the household's monthly "countable" income for purposes of determining eligibility of Claimant's children for Denali KidCare benefits. The Division correctly determined Claimant's three children were not eligible for Denali KidCare benefits because their household income exceeded the eligibility limit for Denali Kid Care.

### **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, the Claimant must send a written request directly to:

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<sup>11</sup> Assuming it were appropriate to do so, averaging the June 15, 2011 year to date gross income total of \$36,095 for eleven pay periods (at 2 pay periods per month), results in monthly gross income of \$6,562 ( $\$36,095 \div 11 = \$3,281/\text{pay period} \times 2 \text{ pay periods per month} = \$6,562/\text{month}$ ). Deducting child support at \$970 and the standard work deduction of \$90, results in gross monthly countable income of \$5,502 ( $\$6,562 - \$970 = \$5,592 - \$90 = \$5,502$ ). Countable monthly income of \$5,502 still exceeds the maximum household monthly income limit of \$4,688 for a household of six persons for the Denali KidCare Program. See monthly income limit of \$4,688 as 150% Federal Poverty Guidelines for a household of six at Exhibit 18.

Director of the Division of Public Assistance  
Department of Health and Social Services  
PO Box 110640  
Juneau, AK 99811-0640

An appeal 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 October 19, 2011.


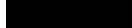
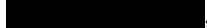
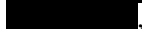
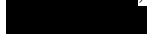
/signed/  
Claire Steffens  
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on October 19, 2011, true and correct copies of the foregoing were sent to:

Claimant – Certified Mail, Return Receipt Requested.

And to the following persons by secure, encrypted email:

 , Fair Hearing Representative  
 , Fair Hearing Representative  
 , Policy & Program Development  
 , Staff Development & Training  
 , Administrative Assistant, Director's Office

/signed/  
J. Albert Levitre, Jr., Law Office Assistant I