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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-263
)
)
 Claimant.) Division Case No [REDACTED]

FAIR HEARING DECISION

STATEMENT OF THE CASE

Mr. [REDACTED] (Claimant) was receiving Adult Public Assistance (APA), and APA related Medicaid benefits as a recipient of Supplemental Security Income (SSI), from about May 1997 continuing on to July 8, 2011. (Hearing Representative’s testimony; Ex. 1; Ex. 11) On July 11, 2011, the Division of Public Assistance (Division) sent Claimant a notice it had closed his Adult Public Assistance (APA) case, and his Medicaid benefits would also stop after July 31, 2011, if he was not receiving Supplemental Security Income. (Ex. 3) This same written notice informed Claimant that if he was “back in pay status by August 15, 2011” and provided proof, the Division could re-open his case. (Ex. 3) Claimant requested a fair hearing on July 20, 2011. (Ex. 4)

This office has jurisdiction pursuant to 7 AAC 49.010 *et. seq.*

A fair hearing was held on September 15, 2011. Claimant attended in person, represented himself and testified on his own behalf. [REDACTED], Public Assistance Analyst representing the Division, (Division’s Hearing Representative) attended the hearing in person, and testified on behalf of the Division. The evidentiary record closed at the end of the hearing. All offered exhibits were admitted.

ISSUES

On July 11, 2011, was the Division correct to determine it should close Claimant’s Adult Public Assistance case because Claimant owned resources valued in excess of the \$2,000 amount allowed for eligibility for Adult Public Assistance benefits?

On July 11, 2011, was the Division correct to determine it should close Claimant’s APA related Medicaid case because the Social Security Administration had determined he did not meet the resource

eligibility limit to qualify for Supplemental Security Income and had terminated Claimant's eligibility for SSI benefits?

FINDINGS OF FACT

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

1. On July 8, 2011, Claimant, a recipient of Supplemental Security Income, had been receiving Adult Public Assistance (APA) and APA related Medicaid benefits since May 1, 1997. (Ex. 1)
2. On July 8, 2011, the Division of Public Assistance (Division) confirmed the Social Security Administration (SSA) stopped Claimant's Supplemental Security Income (SSI) payments because the SSA determined Claimant had more than \$2,000 in resources. (Ex. 2; Ex. 2.3) Claimant did not receive SSI in July 2011. (Ex. 2.2) Claimant appealed the SSA action on July 13, 2011. (Ex. 2.1)
3. On July 11, 2011, the Division notified Claimant he would not receive Adult Public Assistance (APA) after July 31, 2011 because the APA resource limit was \$2,000 and he had countable resources of over \$2,000. (Ex. 3) The notice informed Claimant the Division relied on information from the SSA that his SSI benefits had been stopped because he was over the \$2,000 resource limit, and that he had been placed in "non pay status by SSI for excess resource problems for August 2011." (Ex. 3) The notice further informed Claimant if he could get back in "pay status by August 15, 2011" to "provide proof so we can reopen your APA/Medicaid case." (Ex. 3)
4. On July 28, 2011, the Division issued a corrected notice informing Claimant it had closed his APA case because, as of January 2011, he had \$2,754 of countable resources in his college savings fund. (Ex. 11) The notice also informed Claimant of other details, cited relevant public assistance manual sections, and explained Claimant could re-apply for APA at any time by filing a new application. (Ex. 11) This same notice also informed Claimant again that his APA related Medicaid benefits would stop because the Social Security Administration advised the Division that his Supplemental Security Income (SSI) benefits had stopped. (Ex. 11) The notice further stated Claimant's SSI benefits were stopped because his "countable resources have exceeded" the SSI resource limits, and the Division policies follow the SSI policies. (Ex. 11) Claimant did not get SSI benefits in July 2011. (Ex. 2.2)
5. Claimant testified:
 - a. He had a University of Alaska College Savings Plan, into which he deposited his Alaska Permanent Dividend Fund receipts. This plan was administered by T. Rowe Price and had a balance of over \$2,000 in July 2011.
 - b. On August 1, 2011, Claimant closed this account and transferred the funds to a Wells Fargo bank account. (Ex. A; Ex. B; Claimant's testimony)
 - c. Claimant reduced the Wells Fargo account balance to \$292.65 as of August 8, 2011. (Ex. A)

d. As of September 5, 2011, Claimant spent about \$1,749.97 of those funds.¹ (Ex. F) As of September 1, 2011, Claimant had less than \$2,000 in resources.

PRINCIPLES OF LAW

Burden of Proof and Standard of Proof

“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)

Adult Public Assistance

The State of Alaska provides adult public assistance to needy persons who are eligible. AS 47.25.430 - AS 47.25.615. Financial assistance is given to eligible aged, blind or disabled needy residents. AS 47.25.430(a). Applicants for Adult Public Assistance (APA) must meet the eligibility requirements of the Supplemental Security Income program of Title XVI of the Social Security Act, as amended (42 U.S.C. 1381 - 1383) and the regulations in 20 C.F.R. part 416, and the eligibility requirements of 7 Alaska Administrative Code, (AAC) Chapter 40. 7 AAC 40.030.

A recipient of Adult Public Assistance may lose eligibility for APA benefits if they become not eligible for SSI benefits and are determined not eligible for SSI benefits by the SSA. 7 AAC 40.060(c):

If an applicant is receiving SSI benefits and is determined by the Social Security Administration to be ineligible, except as provided in (d) and (e) of this section, the division will terminate assistance in accordance with 7 AAC 49.060, regardless of whether the applicant files an appeal with the Social Security Administration.

Eligibility for Adult Public Assistance requires, among other factors, “financial need with respect to resources....” 7 AAC 40.090. An individual is not eligible for Adult Public Assistance if the individual has resources valued in excess of \$2,000. 7 AAC 40.230; 7 AAC 40.270(a)(1). An individual’s resources are valued at any time on the first day of the calendar month. 7 AAC 40.270(b). An individual’s resources are any real or personal property the individual owns and can convert to cash to be used for that person’s support and maintenance. 7 AAC 40.260. Therefore, cash in an account is a countable resource.

¹ Exhibit F is dated August 5, 2011 but contains an itemization of Claimant’s expenditures during the month of August 2011 and includes two expenditures for September 1, 2011. Therefore, it is likely and reasonable that the date is inadvertently mistaken and should be September 5, 2011. (Ex. F)

Some resources are excluded from being counted but bank accounts are not among excluded resources. 7 AAC 40.280. Resources that are not excluded from being counted are called “non-excludable” resources. 7 AAC 40.270.

Medicaid

Alaska regulation 7 AAC 100.410 provides that an individual who is eligible for and receiving Supplemental Security Income (SSI) is eligible for Medicaid under 7 AAC 100.002(b)(1). Alaska regulation 7 AAC 100.002(b)(1) applies to individuals with a disability who are receiving SSI. Also, an individual who is eligible for and receiving APA is eligible for Medicaid under 7 AAC 100.002(d)(1), which applies to individuals with a disability who are not receiving SSI but are receiving APA benefits. Thus, an individual who is receiving Adult Public Assistance and Supplemental Security Income can receive Medicaid benefits under either program.

The Medicaid program requires the State of Alaska to administer the Medicaid program in conformity with the specific requirements of “title XIX, the regulations of this Chapter IV, and other applicable official issuances of the Department” of Health and Human Services. 42 C.F.R. § 430.10. In other words, the State of Alaska must follow the regulations and policies of the federal Medicaid program.

Once an individual receives Medicaid benefits, the individual must continue to receive Medicaid until the individual is found to be not eligible for Medicaid benefits. 42 C.F.R. § 435.930.

ANALYSIS

Issues

On July 11, 2011, was the Division correct to determine it should close Claimant’s Adult Public Assistance case effective July 31, 2011 because Claimant owned resources valued in excess of the \$2,000 amount allowed for eligibility for Adult Public Assistance benefits?

On July 11, 2011, was the Division correct to determine it should close Claimant’s APA related Medicaid case because the Social Security Administration had determined he did not meet the resource eligibility limit to qualify for Supplemental Security Income and had terminated Claimant’s eligibility for SSI benefits?

Burden of Proof and Standard of Proof

The Division of Public Assistance has the burden of proving by a preponderance of the evidence that its termination of Claimant’s Adult Public Assistance and Medicaid benefits effective July 31, 2011 was correct because the Division’s action seeks to change the status quo by terminating Claimant’s benefits.

Adult Public Assistance

It is undisputed that Claimant’s University of Alaska College Savings account, managed by T. Rowe Price, had a balance of in excess of \$2,000 in July 2011 and that the Social Security Administration did not issue SSI benefits to Claimant in July 2011 because of this excess resource. Cash in an account is a

resource which is not excluded from being counted for purposes of determining financial eligibility for Adult Public Assistance. 7 AAC 40.260; 7 AAC 40.280.

Therefore, because Claimant's resources exceeded the resource eligibility amount for Adult Public Assistance in July 2011, Claimant was no longer eligible for APA benefits until his resource amount was less than \$2,000. Therefore, the Division was correct to close Claimant's Adult Public Assistance case effective after July 31, 2011.

As of August 1, 2011, Claimant continued to have resources in excess of \$2,000 as a result of his College Savings account. However, Claimant promptly took action to transfer the college savings account funds to an account where he could spend down the funds, which he did. By September 1, 2011, Claimant had less than \$2,000 of resources. Therefore, as of September 1, 2011, Claimant met the eligibility resource limit for Adult Public Assistance.

Medicaid benefits

Claimant was receiving Supplemental Security Income (SSI) and Adult Public Assistance (APA) benefits before July 2011. In July 2011, he did not receive SSI because the SSA determined his resources exceeded the \$2,000 eligibility limit. Therefore, in July 2011, Claimant was not eligible for Medicaid as a recipient of SSI.

The Division informed Claimant it would stop his Medicaid benefits and that he would not get Medicaid benefits in August 2011 because the SSA had stopped giving him Supplemental Security Income benefits. The Division is required to follow the federal Medicaid regulations and policies. 42 C.F.R. § 430.10. Because the Division had been informed by the SSA that Claimant was no longer receiving SSI, the Division was correct to tell Claimant his Medicaid benefits would stop. The Division was correct to inform Claimant of this because once an individual receives Medicaid benefits, the individual must continue to receive Medicaid until the individual is found to be not eligible for Medicaid benefits. 42 C.F.R. § 435.930.

However, Claimant was eligible for Medicaid in July 2011 as a recipient of APA because the Division did not terminate Claimant's APA benefits until July 31, 2011. *See* 7 AAC 100.002(b)(1) and (d)(1), and Principles of Law, hereinabove. The Division stopped Claimant's receipt of Adult Public Assistance benefits effective with the August 2011 benefit month.

In this case, Claimant's resources in July 2011 exceeded the eligibility limit for both the SSI program and the APA program. Claimant's resource amount did not fall below the \$2,000 eligibility limit until September 1, 2011. Therefore, the Division was correct to terminate Claimant's Medicaid benefits effective in August 2011 because Claimant was not eligible for Medicaid under either the SSI or APA program.

CONCLUSIONS OF LAW

On July 11, 2011, the Division correctly applied the Adult Public Assistance resource limit of \$2,000 to determine that Claimant was not eligible to receive Adult Public Assistance benefits effective July 31, 2011. 7 AAC 40.270(a)(1).

On July 11, 2011, the Division correctly terminated Claimant's Medicaid benefits effective July 31, 2011 because Claimant had resources in excess of the amount to be eligible for SSI, and because the Social Security Administration had terminated his SSI benefits.

DECISION

On July 11, 2011, the Division was correct to deny Claimant Adult Public Assistance and Medicaid benefits effective July 31, 2011 because Claimant owned a bank account resource valued at more than \$2,000 and no longer was eligible for SSI or APA.

APPEAL RIGHTS

If for any reason Claimant is not satisfied with this decision, Claimant has the right to appeal by requesting a review by the Director. 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. To appeal, Claimant must send a written request directly to:


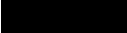
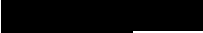
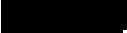

Director of the Division of Public Assistance
Department of Health and Social Services
PO Box 110640
Juneau, AK 99811-0640

DATED this November 9, 2011.

Claire Steffens
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on November 9, 2011 true and correct copies of the foregoing were sent to:
Claimant, Certified Mail, Return Receipt Requested.
and to other listed persons, via secure, encrypted e-mail:

, Hearing Representative
, Hearing Representative
, Chief, Policy & Program Dev.
, Administrative Assistant II
, Staff Development & Training

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