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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-296  
 )  
 Claimant. ) Division Case No. [REDACTED]  
 )  
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**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

[REDACTED] (Claimant) applied for Medicaid benefits on June 24, 2011. (Exs. 2.0 – 2.8) On August 15, 2011, the Division of Public Assistance (Division) sent the Claimant written notice that her Medicaid benefits were approved beginning with the month of August 2011. (Ex.10.0)

On August 19, 2011, the Division received the Claimant’s fair hearing request contesting the start date of August 2011 for her Medicaid benefits. (Exs. 11.1 – 11.3)

This Office has jurisdiction pursuant to 7 AAC 49.010.

The Claimant’s hearing was held on September 13, 2011. The Claimant appeared telephonically; she represented herself and testified on her own behalf. [REDACTED], the Claimant’s daughter, appeared telephonically; she helped represent the Claimant and testified on the Claimant’s behalf. [REDACTED], Public Assistance Analyst with the Division, attended in person; she represented the Division and testified on its behalf.

**STATEMENT OF ISSUES**

Was the Division correct when it, on August 15, 2011, notified the Claimant she was eligible for Medicaid benefits beginning with the month of August 2011, rather than beginning in the months of June or July 2011?

**FINDINGS OF FACT**

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

1. The Claimant applied for Medicaid benefits on June 24, 2011. (Exs. 2.0 – 2.8) She is widowed, currently 64 years old, resides independently, and has stage IV secondary bone cancer. (Exs. 2.0; 11.3)

2. The Claimant's income consists of monthly Social Security retirement (non-disability) payments in the amount of \$1,466.40. (Exs. 5.0 - 5.1)

3. On June 28, 2011, the Division sent the Claimant two written notices informing her that her income was too high to qualify for Medicaid benefits and that she needed to set up a Medicaid Qualifying Income Trust in order to be eligible for Medicaid benefits. (Exs. 4.0 – 4.1) The Division further notified the Claimant that her June 24, 2011 application was being held and that the Division required the following by July 8, 2011 or her application would be denied:

- a. Proof that she had a Medicaid Qualifying Income Trust, including a copy of the trust itself.
- b. A copy of the Trust bank account statement: “[w]e need to see the date it was established and the amount of the monies deposited into the account.”

(Ex. 4.1) The Division's June 28, 2011 notices do not contain any information notifying the Claimant of how much of her monthly income she needed to place in the Trust, nor do they notify the Claimant of the amount of her monthly Medicaid income limit. (Exs. 4.0 – 4.1) These notices also do not inform the Claimant that her Medicaid eligibility would not start until the Trust was funded. *Id.*

4. On July 25, 2011, the Division sent the Claimant notice that the deadline for the requested information was being extended to August 4, 2011. (Ex. 6.2) The Division's July 25, 2011 notice does not contain any information notifying the Claimant of how much of her monthly income she needed to place in the Trust, nor does it notify the Claimant of the amount of her monthly Medicaid income limit. *Id.* This notice also does not inform the Claimant that her Medicaid eligibility would not start until the Trust was funded. *Id.*

5. The Claimant's Trust was drafted by Alaska Legal Services Corporation and then signed by the Claimant on July 21, 2011. (Exs. 7.4 – 7.26) It was registered with the Fairbanks, Alaska Superior Court on July 22, 2011. (Ex. 7.3)

6. The Division received a copy of the Trust document on July 26, 2011. (Ex. 7.0)

7. The Division reviewed the Trust and determined, on July 27, 2011, that it satisfied the requirements for a Medicaid Qualifying Income Trust. (Ex. 7.1)

8. On August 11, 2011, the Claimant's daughter spoke to a Division Eligibility Technician who informed her that she needed to place \$195 into the Trust bank account in order for the Claimant to be Medicaid eligible. (Ex. 8) The Division arrived at that amount by taking the Claimant's monthly

income of \$1,467 (rounded up from \$1,466.40) and subtracting \$1,272,<sup>1</sup> which was the total amount of monthly income the Claimant could have and still be eligible for Medicaid benefits. (Ex. 8; ██████ testimony)

9. The Claimant's daughter deposited \$195 into the Claimant's Trust bank account on August 11, 2011. (Ex. 9.1; Daughter's testimony) On August 12, 2011, she provided the Division with a copy of the bank printout showing the August 11, 2011 deposit. (Ex. 9.1)

10. On August 15, 2011, the Division sent the Claimant notice that she was eligible for Medicaid benefits beginning with the month of August 2011 because she had created her Medicaid Qualifying Income Trust. (Ex. 10.0) That notice further informed her that her monthly income could not exceed \$1,272 which "amount includes any income you receive directly and do not put into the trust plus any money your trustee pays you out of the trust." *Id.*

11. The Claimant requested a fair hearing on August 19, 2011. (Exs. 11.1 – 11.3)

12. On August 23, 2011, the Division sent the Claimant a supplemental notice explaining that her June 24, 2011 Medicaid application had been denied for the months of June and July 2011 because she did not fund her Trust until August 11, 2011. (Ex. 27)

13. The Claimant's daughter was a credible witness. She testified as follows:

- a. The Division Eligibility Technician told her when she submitted her mother's June 24, 2011 Medicaid application that her mother's income was too high to qualify for Medicaid, but that when her mother set up a Medicaid Qualifying Income Trust, that her mother's application would be approved retroactive to June 2011.
- b. She was told by the Division Eligibility Technician that when she supplied the Division with her mother's Trust documents, she would be told how much money she needed to place in the Trust account.
- c. Her husband dropped off the Trust documents with the Division in July 2011. She asked her husband what amount the Division had told him with which to fund the Trust. He replied that he was not informed of the amount.
- d. She was telephoned by a Division Eligibility Technician on August 11, 2011, who told her that she needed to deposit \$585 (\$195 for each of the months of June, July, and August 2011) into the Trust. That same Eligibility Technician then telephoned her approximately one-half hour later – before she had deposited any funds into the Trust, and informed her that she needed to deposit \$195 into the Trust and that Medicaid eligibility for June and July 2011 was denied.

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<sup>1</sup> \$1,252 is the monthly Medicaid income limit for the Claimant. (██████ testimony) In addition, the Claimant is allowed a \$20 monthly income exclusion. *Id.* This comes to a total allowable monthly income of \$1,272 (\$1,252 + \$20 = \$1,272).

## 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).

The Alaska Medicaid program contains a variety of coverage categories. *See* 7 AAC 100.002. Each of these categories have eligibility requirements. These include financial requirements which limit how much monthly income a Medicaid applicant/recipient may make. A single person who is aged or disabled, and who lives independently, may not make more than \$1,252 per month after income exclusions are applied. 7 AAC 100.400(a)(16)-(19); 7 AAC 40.300, 310, 320, 350; *Alaska Adult Public Assistance Manual* Appendix 1. There is a \$20 monthly income exclusion (deduction from income) for a person who makes unearned income. 7 AAC 100.400(a)(18); 7 AAC 40.320(a)(23). Social Security payments are classified as unearned income. 7 AAC 40.300(a)(3).

A Medicaid applicant whose monthly income exceeds the Medicaid program's monthly income limit may financially qualify for Medicaid by creating a Medicaid Qualifying Income Trust. 7 AAC 100.604(a)(1); 7 AAC 100.610.<sup>2</sup> The Medicaid Qualifying Income Trust reduces an applicant's monthly income by the amount of payments made directly into the Trust account. 7 AAC 100.606(a).

A person may argue estoppel to prevent government action if the following conditions are met:

[E]stoppel may apply against the government and in favor of a private party if four elements are present: (1) the governmental body asserts a position by conduct or words; (2) the private party acts in reasonable reliance thereon; (3) the private party suffers resulting prejudice; and (4) the estoppel serves the interest of justice so as to limit public injury.

*Crum v. Stalnakar*, 936 P.2d 1254, 1256 (Alaska, 1997).

## ANALYSIS

The issue in this case is whether the Division was correct when it approved the Claimant for Medicaid benefits beginning with the month of August 2011, which rather than beginning in either June or July 2011. Because this case involves an application for benefits, the Claimant has the burden of proof by a preponderance of the evidence.

The pertinent facts of this case are as follows:

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<sup>2</sup> The specific requirements that a Medicaid Qualifying Income Trust must satisfy are contained in 7 AAC 100.600, 602, 604, and 610.

1. The Claimant applied for Medicaid benefits on June 24, 2011. *See* Finding of Fact 1 above.
2. At the time she applied, her total monthly income was \$1,466.40, which consisted of Social Security payments. *See* Finding of Fact 2 above.
3. Her total monthly income exceeded the applicable monthly Medicaid income limit of \$1,272 (\$1,252 plus a \$20 income exclusion). *See* Finding of Fact 8 above.
4. The Claimant was advised in writing that she could qualify for Medicaid benefits if she reduced her monthly income by creating a Medicaid Qualifying Income Trust. The Claimant's daughter was also verbally advised of the need to create a Medicaid Qualifying Income Trust for her mother. *See* Findings of Fact 3 and 13(a) above.
5. The Claimant's daughter credibly testified that she was told by the Eligibility Technician that when the Trust was created her mother's Medicaid benefits would be effective beginning with the month of June 2011. She was further told by the Eligibility Technician that the Division would inform her of the amount needed to fund the Trust at the time the Division received the Trust documents. *See* Findings of Fact 13(a) and (b) above. It must be noted that the Division presented no evidence disputing this testimony.
6. The Claimant's Trust was signed by the Claimant on July 21, 2011. It was registered with the Court on July 22, 2011. The Division received a copy of the Trust on July 26, 2011 and approved it on July 27, 2011. *See* Findings of Fact 5, 6, and 7 above.
7. The Division did not inform the Claimant of the amount of money that needed to be placed in the Trust to fund it on a monthly basis until August 11, 2011. *See* Finding of Fact 13(d) above.
8. The Claimant's daughter credibly testified that she was initially informed, on August 11, 2011, by the Eligibility Technician that she should place \$585 in the Trust (\$195 for each of the months of June, July, and August 2011), at which point the Claimant's Medicaid benefits would be approved effective with the month of June 2011. That same Eligibility Technician then telephoned her approximately one-half hour later, and informed her that she needed to deposit \$195 into the Trust and that Medicaid eligibility for June and July 2011 was denied. *See* Finding of Fact 13(d) above. It must be noted that the Division presented no evidence disputing this testimony.

The facts are clear that the Claimant's monthly income was \$1,464.60 during each of the months of June and July 2011 because she did not reduce her monthly income during those months by depositing any of the income into a Medicaid Qualifying Trust. She did not reduce her monthly income to the level necessary to qualify for Medicaid benefits until August 11, 2011 when she deposited \$195 into

her Medicaid Qualifying Income Trust. The Division then approved her for Medicaid benefits beginning with the month of August 2011.

Based on the facts, as recited above, a strict application of the Medicaid regulations leads to the conclusion that the Claimant was not eligible for Medicaid benefits during the months of June and July 2011. This is because her monthly income exceeded the Medicaid monthly income limit of \$1,272 (allowing for the \$20 income exclusion) during each of those months. *See Alaska Adult Public Assistance Manual* Appendix 1.

However, the Claimant argued that the Medicaid regulations should not be strictly applied because she relied on the Division's statements to her, which were that when she created and funded the Trust, her Medicaid benefits would be approved beginning with the month of June 2011. Her argument, given the facts recited above, raises an equitable estoppel defense to the strict application of the Medicaid regulations. In order to prevail on this defense, the Claimant must prove each one of four separate elements:

[E]stoppel may apply against the government and in favor of a private party if four elements are present: (1) the governmental body asserts a position by conduct or words; (2) the private party acts in reasonable reliance thereon; (3) the private party suffers resulting prejudice; and (4) the estoppel serves the interest of justice so as to limit public injury.

*Crum v. Stalaker*, 936 P.2d 1254, 1256 (Alaska, 1997). The Claimant does not meet the requirements for equitable estoppel as explained below:

1. The Division advised the Claimant that she would receive Medicaid benefits starting with the month of June 2011 once she created her Trust. This satisfies the first element of the equitable estoppel test, being the assertion of a position by a governmental body.
2. The Claimant acted upon Division's advice. She created the Trust and registered it with the Court. This satisfies the second element of the equitable estoppel test, acting in reasonable reliance upon the government's advice.
3. The Division initially notified the Claimant on August 11, 2011 that she needed to fund the Trust with \$585 (\$195 each for the months of June, July, and August 2011) at which point she would be eligible for Medicaid benefits beginning with the month of June 2011. However, before she funded the Trust, the Division notified the Claimant that she should only fund the Trust with \$195 at which point she would only be eligible for Medicaid benefits beginning with the month of August. This shows that the Claimant did not suffer any prejudice with regard to the Division's erroneous advice about the start date of the Medicaid benefits because she did not fund the Trust with the entire \$585 before being advised of the fact that she should only fund the Trust with \$195.

It is a conceivable argument that the fact that the Claimant did not receive Medicaid benefits for June and July 2011 constitutes the necessary prejudice. However, because the Claimant was

not eligible for these benefits until the Trust was funded, this argument fails. The Claimant cannot claim prejudice by being denied benefits for which she was not eligible. Consequently, the Claimant has not satisfied the third element of the equitable estoppel test, experiencing prejudice as a result of relying upon the government's erroneous advice.

Because the Claimant has not demonstrated the third element of the equitable estoppel test, prejudice arising from following the Division's erroneous advice, the Claimant does not satisfy each of the four elements required to establish equitable estoppel.

Because the Claimant was not financially eligible for Medicaid benefits until August 11, 2011, the date she funded her Medicaid Qualifying Income Trust, and because the Claimant did not satisfy the equitable estoppel test, the Claimant did not meet her burden of proof. She therefore was not eligible for Medicaid benefits until August 11, 2011. The Division was therefore correct when it approved her for Medicaid benefits beginning with the month of August 2011, and denied her Medicaid benefits for the months of June and July 2011.

### **CONCLUSIONS OF LAW**

1. The Claimant had monthly income of \$1,464.60 during each of the months of June and July 2011. She reduced her monthly income to \$1,272 during the month of August 2011 using a Medicaid Qualifying Income Trust, which made her eligible
2. Because the Claimant did not reduce her monthly income to \$1,272 until the month of August 2011, and because she did not satisfy the four part equitable estoppel test, she was not eligible to receive Medicaid benefits until the month of August 2011.
3. The Division was therefore correct when it, on August 15, 2011, notified the Claimant she was eligible for Medicaid benefits beginning with the month of August 2011, rather than beginning in the months of June or July 2011.

### **DECISION**

The Division was correct when it, on August 15, 2011, notified the Claimant she was eligible for Medicaid benefits beginning with the month of August 2011, rather than beginning in the months of June or July 2011.

### **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. 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. To appeal, 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


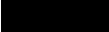
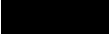
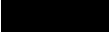

DATED this 15th day of November, 2011.

/Signed/  
Larry Pederson  
Hearing Authority

Certificate of Service

I certify that on this 15th day of November, 2011, true and correct copies of the foregoing were sent to:

Claimant by U.S.P.S First Class Certified Mail, Return Receipt Requested and to the following by secure e-mail:

, Public Assistance Analyst  
, Public Assistance Analyst  
, Policy & Program Development  
, Staff Development & Training  
, Administrative Assistant II

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J. Albert Levitre, Jr.  
Law Office Assistant I