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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. 10-FH-240
)
 Claimant.) DPA Case No. [REDACTED]
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) was a recipient of benefits under the APA-related Medicaid Program (Ex. 1, DPA Hearing Representative’s testimony). On April 28, 2010 the Claimant completed and signed an Eligibility Review Form (Form Gen-72) for the Medicaid Program (Exs. 2.0 – 2.5). The State of Alaska Department of Health and Social Services, Division of Public Assistance (DPA or Division) received the Claimant’s recertification application on April 29, 2010 (Ex. 2.0). On July 16, 2010 the Division mailed to the Claimant a notice stating that her APA-related Medicaid benefits were being terminated after July 31, 2010 because she was over-income for the program (Exs. 7, 8.2). The Claimant prepared and signed a Fair Hearing Request on July 22, 2010 (Ex. 8.3). The Division received the Claimant’s hearing request on July 29, 2010 (Ex. 8.0).

This Office has jurisdiction to resolve this dispute pursuant to 7 AAC 49.010.

The Claimant’s hearing was held as scheduled on August 24, 2010 before Hearing Examiner Jay Durych. The Claimant attended the hearing in person, represented herself, and testified on her own behalf. [REDACTED], a Public Assistance Analyst with the Division, attended the hearing in person and represented and testified on behalf of the Division. The parties’ testimony was received and all exhibits submitted were admitted into evidence. At the end of the hearing the record was closed and the case was submitted for decision.

ISSUE

Was the Division correct to terminate the Claimant’s APA-related Medicaid Program benefits after July 31, 2010 based on the assertion that the Claimant’s countable (non-exempt) monthly income exceeded the APA-related Medicaid Program’s applicable monthly income limit?

SUMMARY OF DECISION

The Claimant's countable monthly income of \$1,786.01 exceeded the APA-related Medicaid Program's applicable maximum monthly income limit of \$1,656.00. Accordingly, the Division was correct when on July 16, 2010 it notified the Claimant that it was terminating her APA-related Medicaid Program benefits after July 31, 2010 because the Claimant's countable (non-exempt) monthly income exceeded the APA-related Medicaid Program's applicable monthly income limit.

FINDINGS OF FACT

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

1. The Claimant's household consists of one person – the Claimant herself (Ex. 1).
2. Prior to July 31, 2010 the Claimant was receiving APA-related Medicaid benefits (Ex. 6.2; DPA Hearing Representative testimony).¹ On April 28, 2010 the Claimant completed and signed an Eligibility Review Form (Form Gen-72) for the Medicaid Program (Exs. 2.0 – 2.5). The Claimant listed her monthly income as consisting of (a) Social Security income from the United States Social Security Administration in the amount of \$1,229.00 per month; and (b) Alaska Senior Benefits Program benefits in the amount of \$125.00 per month (Ex. 2.2). The Claimant also disclosed rental assistance from Alaska Housing Finance Corporation in the amount of \$415.00 per month (Ex. 2.2).
3. On May 24, 2010 the Division became aware of certain retirement benefits being paid to the Claimant by the State of Illinois (Ex. 3.0). The Claimant had just begun receiving these payments in February 2010 (Ex. 5.0) and had forgotten to list them on her Eligibility Review Form.
4. On May 25, 2010 the Division mailed to the Claimant a notice requesting additional financial information (Exs. 4, 5.0). The Division's notice stated in relevant part as follows:

Your Medicaid Review was received in our office on April 29, 2010. We need more information or proof. Please give us the items listed at the bottom of this notice by June 4, 2010 or your case may close.

* * * * *

Information or proof needed: (1) Clarification of deposit made April 19, 2010 in the amount of \$557.01 from the State of Illinois. (a) is this retirement income? Survivor's benefits? VA benefits? Pension, etc. ? (b) When did these benefits begin? (c) Who is the beneficiary for these benefits? (2) Last 3 months bank

¹ Recipients of Supplemental Security Income (SSI), Adult Public Assistance (APA), and persons who are eligible for those programs but who have chosen not to receive cash, are automatically eligible for Medicaid. Other Medicaid eligibility categories do not give automatic Medicaid eligibility, but they do use SSI and APA financial and nonfinancial methodology to determine eligibility. These are known as "APA-related Medicaid" categories. See the State of Alaska's *Aged, Disabled and Long Term Care Medicaid Eligibility Manual* at Section 530.

statements to include balance and transactions. (3) Last 3 months proof of prescription out-of-pocket expense.

5. On July 15, 2010 the Division received additional financial information (i.e. bank statements) from the Claimant (Exs. 5.1 – 6.0).

6. On July 16, 2010 the Division mailed to the Claimant a notice stating that her Medicaid benefits were being terminated, and that they would end on July 31, 2010, “because [the Claimant’s] income is more than the program’s income limit” (Exs. 7, 8.2). The notice further stated in relevant part as follows:

\$1,656,00 is the Medicaid income limit for your household size. \$1,786.01 is the Medicaid countable income for your household.

* * * * *

This action is supported by Family Medicaid manual sections 5007 and 5172, Aged, Disabled and Long Term Care Manual sections 515, 523, and 550-C; 7 AAC 100.070, 7 AAC 100.180, and 7 AAC 100.400.

The income used to make this determination is your Social Security and net State of Illinois D.O.C. pension ($\$1,229.00 + \$557.01 = \$1,786.01$) If you establish a Miller’s Trust by the end of August 2010 . . . you may become eligible for the month of August [Otherwise] your case closes July 31, 2010

7. The current program need standard (maximum income limit) applicable to the Claimant’s Medicaid case is \$1,656.00 (Ex. 11; DPA Hearing Representative’s testimony).

8. The Claimant prepared and signed a Fair Hearing Request on July 22, 2010 (Ex. 8.3). The Division received the Claimant’s hearing request on July 29, 2010 (Ex. 8.0).

9. At the hearing of August 24, 2010 the Claimant credibly testified in relevant part as follows:

a. She is 68 years old. She has end-stage renal failure. She is on the waiting list for a kidney transplant. She carries a beeper and cell phone at all times so that she can respond quickly when a kidney becomes available for her.

b. Each dialysis session is four hours long. She has these dialysis sessions three times per week (i.e. a total of 12 hours of dialysis per week). The cost or fee for dialysis services for half a month is \$23,000.00.

c. She has diabetic neuropathy. She has no feeling in her feet and legs, and very little feeling in her hands. She has also had heart problems and blood pressure problems.

d. She lives alone in her own apartment. She often uses a walker or a wheel chair.

- e. She worked for 17 years in a maximum security psychiatric hospital in [REDACTED]. That is the work that generated her pension of \$557.01 per month.
- f. The only other income that she regularly receives is her monthly check from the Social Security Administration (SSA). The *net* check that she receives each month from the SSA is \$1,229.00.
- g. The Division had sent her a letter recommending that she contact an attorney about setting up a Medicaid Qualifying Trust. She tried diligently to contact an attorney, beginning as soon as she received the Division's letter. However, she still has not received a response from any attorney.
- h. She agrees that the SSA and pension income figures used by the Division are correct. However, she believes that it is unfair for the Division to terminate her Medicaid coverage given her great and undisputed need for expensive medical services.
10. At the hearing of August 24, 2010 the DPA Hearing Representative credibly testified in relevant part as follows:
- a. In an APA-related Medicaid case like this, DPA is required to start with a recipient's *gross* income when determining financial eligibility. In this case, DPA had a *gross* figure for the Claimant's monthly Social Security payment (\$1,229.00), but only had a *net* figure for the Claimant's monthly State of Illinois pension payment (\$557.01). In the absence of a gross figure for the pension payment, DPA used the net figure in calculating the Claimant's total monthly income (\$1,786.01). Had DPA used the proper gross pension payment figure, the Claimant's monthly income would have been even *further* in excess of the Medicaid Program's maximum gross monthly income limit of \$1,656.00.
- b. The Claimant qualified for only one income exclusion - the \$20.00 "unearned income" exclusion or disregard.

PRINCIPLES OF LAW

I. Burden of Proof and Standard of Proof.

This case involves the Division's termination of existing benefits. The party seeking a change in the status quo normally bears the burden of proof.² In this case the Division is attempting to change the status quo or existing state of affairs by terminating pre-existing benefits. Accordingly, the Division bears the burden of proof in this case.

The regulations applicable to this case do not specify any particular standard of proof. Therefore, the "preponderance of the evidence" standard is the standard of proof applicable to this case.³ This

² *State of Alaska Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

standard is met when the evidence, taken as a whole, shows that the facts sought to be proved are more probable than not or more likely than not.⁴

II. The Medicaid Program – In General.

Medicaid is a cooperative federal-state program that is jointly financed with federal and state funds. *Wilder v. Virginia Hospital Association*, 496 U.S. 498, 501, 110 S.Ct. 2510, 110 L.Ed.2d 455 (1990). Medicaid was established by Title XIX of the Social Security Act in 1965 to provide medical assistance to certain low-income needy individuals and families. 42 USC § 1396 et. seq.

On the federal level, the Secretary of the U.S. Department of Health and Human Services (“HHS”) administers the program through the Health Care Financing Administration (“HCFA”). In Alaska, the Department of Health and Social Services administers the Medicaid program in accordance with applicable federal and state laws and regulations.

Because Medicaid is a federal program, many of its requirements are contained in the Code of Federal Regulations (CFRs) at Title 42, Part 435 and Title 45, Part 233. The Medicaid program’s general eligibility requirements are set forth at 42 CFR Sections 435.2 – 435.1102.

The State of Alaska’s statutes implementing the federal Medicaid program are set forth at A.S. 47.07.010 – A.S.47.07.900. The State of Alaska’s regulations implementing the Medicaid program are set forth in the Alaska Administrative Code at Title 7, Chapters 43 and 100.

III. The Medicaid Program – Regulations Concerning Financial Eligibility / Income Limits.

Most Medicaid eligibility categories, other than Family Medicaid, use the Adult Public Assistance Program’s financial eligibility criteria for making Medicaid financial eligibility determinations. See 7 AAC 100.400. That regulation, titled “Applicability of APA Regulations,” provides in relevant part as follows:

- (a) The following APA regulations apply to Medicaid eligibility determinations for the eligibility categories described in 7 AAC 100.002(b), (d), and (e) and 7 AAC 100.400 - 7 AAC 100.426, unless otherwise provided in this chapter (10) 7 AAC 40.230 (Financial Need); (11) 7 AAC 40.240 (Income and Resources of Spouses) (16) 7 AAC 40.300 (Income); (17) 7 AAC 40.310 (Income Eligibility Standards); (18) 7 AAC 40.320 (Income Exclusions); (19) 7 AAC 40.350 (Computation of Income)

³ A party in an administrative proceeding can assume that preponderance of the evidence is the applicable standard of proof unless otherwise stated. *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Commission*, 711 P.2d 1170 (Alaska 1986).

⁴ *Black’s Law Dictionary* at 1064 (West Publishing, 5th Edition, 1979).

7 AAC 40.230, titled "Financial Need," provides in relevant part as follows:

To be eligible for assistance . . . an applicant's total monthly income, after permissible exclusions, may not exceed the amounts specified in 7 AAC 40.310.

7 AAC 40.300 defines "income" for purposes of the APA Program in relevant part as follows:

(a)(1) "income" means any property, money, or service received by an applicant, together with the applicant's spouse . . . which can be used, directly or indirectly to meet the applicant's need for food, clothing, and shelter;

* * * * *

(a)(3) "unearned income" means any income that is not earned, *including income from . . . pensions or retirement payments, disability benefits . . . social security payments . . . assistance payments such as SSI . . . [child] support and alimony . . . and any income considered available to the individual under 7 AAC 40.240. [Emphasis added].*

* * * * *

7 AAC 40.310, titled "Income Eligibility Standards," provides in relevant part as follows:

(a) For an applicant to be eligible for assistance, the applicant's total monthly income, together with that of the applicant's spouse under 7 AAC 40.240, after all exclusions set out in 7 AAC 40.320 have been applied, may not exceed (1) \$1,047 for an eligible individual living independently or residing in an assisted living home . . .

7 AAC 40.320 defines "income exclusions" for purposes of the APA Program in relevant part as follows:

(a) The following income is excluded in determining the total monthly income of an applicant, together with the applicant's spouse under 7 AAC 40.240: . . . (23) the first \$20 per month of income, earned or unearned, other than unearned income based on need.

7 AAC 40.350 states how an applicant's total monthly income is computed for purposes of the APA Program:

The following computations are made to determine total monthly income: (1) the monthly income available to the applicant is identified by source, type, and amount; (2) from the amounts identified are subtracted any amounts which are excluded under 7 AAC 40.320 [regarding income exclusions] . . . (3) the resulting amounts, if any, are added and rounded to the nearest dollar. This amount . . . is the total monthly income.

At the time the Claimant submitted her Eligibility Review Form (in April 2010), if an applicant or recipient lived alone and independently, and had a countable monthly income that exceeded \$1,656.00, then the applicant or recipient was not financially eligible for Adult Public Assistance or APA-related Medicaid. 7 AAC 40.310; *Alaska Adult Public Assistance Manual Addendum 1* (Ex. 11).

ANALYSIS

I. Introduction; Definition of Issues; Burden of Proof.

Initially, the Division *did not dispute* the Claimant's assertion that she has some very serious medical conditions and a correspondingly great need for medical services. However, it is important to note that the Claimant *did not assert*:

1. That the Division's findings as to the *sources or amounts* of the Claimant's income were in any way not correct;
2. That the Division's *mathematical calculations* regarding the Claimant's household's countable monthly income were in any way not correct; or
3. That the Division applied an *incorrect income standard* in making its Medicaid eligibility determination.

Accordingly, there are no disputed factual issues to be decided in this case. Rather, it is only necessary to apply the relevant regulations to the undisputed facts and determine whether the Division correctly applied the governing financial eligibility regulations to the Claimant's case.

II. Was The Division Correct To Terminate The Claimant's APA-Related Medicaid Benefits?

The Division terminated the Claimant's APA-related Medicaid benefits based on the assertion that the Claimant's household's countable monthly income exceeded the applicable APA-related Medicaid program limit (Ex. 7). To determine whether this decision was correct, the Claimant's household's monthly income must be analyzed according to the applicable regulations.

Most Medicaid eligibility categories other than Family Medicaid (and specifically APA-related Medicaid) use the APA financial eligibility criteria (set forth in the Principles of Law, above) for making Medicaid financial eligibility determinations. See 7 AAC 100.400. Thus, if a person is not financially eligible for APA, the person is likewise not eligible for APA-related Medicaid.

The amount of the Claimant's household's income is not in dispute. At the time of the Division's eligibility determination, the Claimant's countable monthly income consisted of (a) Social Security income from the United States Social Security Administration in the amount of \$1,229.00 per month; and (b) retirement / pension benefits from the State of Illinois in the amount of \$557.01 per month. See Findings of Fact at Paragraphs 2, 4, 6, 9(e), and 10(a), above.

The first step in calculating a household's countable monthly income is to add-up the individual sources of income. This results in \$1,229.00 (Social Security) + \$557.01 (pension) = \$1,786.01 total.

The Adult Public Assistance Program's list of allowable income exclusions (deductions from income), (which is applied in APA-related Medicaid cases), is set forth in 7 AAC 40.320 and 7 AAC 40.330. The only deduction available based on the facts of this case is a general deduction of \$20.00 under 7 AAC 40.320(a)(23) for "the first \$20 per month of income, earned or unearned, other than unearned income based on need." This reduces the Claimant's countable monthly household income to \$1,766.01.

At the time the Claimant submitted her Eligibility Review Form in April 2010, if an applicant or recipient lived alone and independently, and had a countable monthly income that exceeded \$1,656.00, then the applicant or recipient was not financially eligible for Adult Public Assistance (or APA-related Medicaid). 7 AAC 40.310; *Alaska Adult Public Assistance Manual Addendum 1* (Ex. 11). In this case, according to the Claimant's own figures, her countable monthly income, after applicable exemptions / deductions, was at least \$1,766.01. This is approximately \$110.00 over the APA-related Medicaid Program's applicable monthly income limit of \$1,656.00.

In summary, the Division carried its burden and proved, by a preponderance of the evidence, that the Claimant's countable monthly income after applicable deductions / exemptions (\$1,766.01) exceeded the APA-related Medicaid Program's applicable monthly income limit (\$1,656.00). Accordingly, the Division was correct when on July 16, 2010 it notified the Claimant that it was terminating her APA-related Medicaid benefits, due to excess household income, after July 31, 2010.

CONCLUSIONS OF LAW

1. The Division carried its burden and proved, by a preponderance of the evidence, that the Claimant was no longer eligible for APA-related Medicaid Program benefits after July 31, 2010 because her household's countable monthly income exceeded the APA-related Medicaid Program's applicable household monthly income limit of \$1,656.00.

2. The Division was therefore correct when on July 16, 2010 it notified the Claimant that it was terminating her APA-related Medicaid benefits, due to excess household income, after July 31, 2010.

DECISION

The Division was correct when on July 16, 2010 it notified the Claimant that it was terminating her APA-related Medicaid benefits, due to excess household income, after July 31, 2010.

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, 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

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.

DATED this 25th day of October, 2010.

(signed)

Jay Durych
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 25th day of October 2010 true and correct copies of the foregoing document were sent to the Claimant via U.S.P.S. Mail, and to the remainder of the service list by e-mail, as follows:

Claimant – Certified Mail, Return Receipt Requested
[REDACTED], DPA Hearing Representative

[REDACTED], Director, Division of Public Assistance
[REDACTED], Policy & Program Development
[REDACTED], Staff Development & Training
[REDACTED], Chief of Field Services
[REDACTED], Administrative Assistant II
[REDACTED], Eligibility Technician I

(signed)

Jay Durych
Hearing Authority