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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-270
)
 Claimant.) Division Case No. [REDACTED]
)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) submitted a recertification application for Denali KidCare Medicaid (Denali KidCare) benefits on May 3, 2010. (Ex. 2). On June 7, 2010, the Division of Public Assistance (Division) sent Claimant notice it was closing Claimant's case because he failed to provide all the necessary documentation. (Ex. 8) After Claimant provided additional documentation, the Division sent Claimant notice it was denying his application because of excess income. (Ex. 11). On July 21, 2010, Claimant requested a fair hearing. (Ex. 12.1)

This office has jurisdiction pursuant to 7 AAC 49.010.

The Division scheduled a hearing for September 8, 2010. This Office held the hearing on that date. The Claimant attended the hearing telephonically, and testified on his own behalf. [REDACTED] a friend of Claimant, appeared telephonically, represented Claimant and testified on his behalf. [REDACTED] of the accounting firm [REDACTED] appeared telephonically and testified on behalf of the Claimant. [REDACTED] Public Assistance Analyst with the Division, attended the hearing in person, representing and testifying on behalf of the Division.

ISSUE

Claimant's wife is shareholder in an S-corporation¹ which operates a restaurant and hotel. The restaurant operates at a loss; the hotel is profitable.

¹ During the hearing, the parties and witnesses referred to a business Claimant's wife was involved in as a "partnership." A review of the tax documents after the hearing indicates the business was actually an S-corporation. (Ex. 12.3-12.22) Because an S-corporation receives the same tax treatment as does an unincorporated partnership, the exact form of business entity utilized is not determinative of the income issue in this case.

The Division considers the restaurant and hotel to be separate businesses. It wants to only include the income from the hotel in determining eligibility for Denali KidCare. It does not believe that income should be offset by the loss from the restaurant. If there is no offset, Claimant is over the income limit for Denali KidCare.

Claimant claims the restaurant and hotel operate as one business. He wants the loss from the restaurant to offset the profit from the hotel. If there is an offset, Claimant is not over income.

The issue is:

Was the Division correct to deny Claimant's May 3, 2010 application for Denali KidCare benefits because income from an S-corporation attributed to Claimant's wife caused the family to have too much income to qualify?

The parties do not dispute that if the profits from the hotel are not offset by the losses from the restaurant, Claimant's income exceeds the limit for the Denali KidCare program.

FINDINGS OF FACT

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

1. Claimant signed an application for Denali KidCare Medicaid benefits on April 29, 2010 and submitted it to the Division on May 3, 2010. The household consisted of Claimant, his wife, and four children. (Ex. 2.0- 2.3)
2. The Division sent Claimant notice on June 7, 2010, denying his application. The notice stated the denial was because he failed to provide all the proper documentation. (Ex. 8).
3. On June 11, 2010, Claimant submitted further information to the Division. (Ex. 9 – 9.3)
4. On July 8, 2010, the Division sent Claimant a notice denying his application because his income exceeded the limit for the program. (Ex. 11)
5. The parties do not dispute that Claimant has an income of \$2,000.00 from working. (Testimony at hearing)
6. Claimant's wife is a 50% shareholder in an S-corporation.² (Ex. 12.3 – 12.22) That S-corporation operates a hotel and a restaurant which is attached to the hotel. The hotel is profitable, but the restaurant operates at a loss. (Testimony of all parties)
7. The restaurant and hotel have the same tax identification number, that of the S-corporation. (Ex. 5.0-9.3; 12.3– 12.22 & 35.0-35.15)

² The federal tax forms originally listed Claimant as a 50% owner in the S-corporation and his wife as 50% owner. (Ex. 5.3) The forms were later amended to list Claimant's wife as a 50% owner and another person as 50 % owner. (ex. 12.8) The Division did not question or object to this change in ownership.

8. The S-corporation's 2009 1120S federal tax forms include both the hotel and restaurant. (Ex. 12.3 – 12.22) The tax forms demonstrate the restaurant and hotel expenses are combined for the day-to-day operation and then separated for tax purposes. (Ex. 12.3 – 12.22) The tax return reflects a loss of \$19,304.00 for the S-corporation. However, on the different schedules the income from the restaurant and hotel are separated. (Ex. 12.3 – 12.22) This separation is because income from the hotel is considered rental income and income from the restaurant is considered business income. (Ex. 12.3.-12.22; testimony of Sandford)

9. Once the S-corporation tax forms are completed, a federal tax form schedule K-1 is completed. This form is titled "Shareholder's Share of Income, Deductions, Credits, etc." (██████ testimony) This form is completed for each shareholder, and provides the percentage of ownership that particular shareholder has in the S-corporation. The 2009 form for Claimant's wife lists the S-corporation to have a loss of \$58,761.00 from ordinary business income, and an income of \$49,109.00 from real estate income. This reflects half of the loss and profit, which is her share of the S-corporation. (Ex. 12.9)

PRINCIPLES OF LAW

"Ordinarily the party seeking a change in the status quo has the burden of proof." *State, Alcohol 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)

Congress enacted the State Children's Health Insurance Program (SCHIP) as part of the Balanced Budget Act of 1997 (Public Law 105-33, 111 Stat. 251).³ Alaska's Denali KidCare Program constitutes Alaska's implementation of this federal program. Its regulations are located at 7 AAC 100.300 – 7 AAC 100.316.

The federal regulations implementing the State Children's Health Insurance Program (42 CFR Sections 457.1 – 457.1190) do not include any substantive provisions regarding financial eligibility, leaving that to the individual states. See 42 CFR 457.320(a). Accordingly, financial eligibility for Alaska's Denali KidCare Program is determined pursuant to Alaska's Family Medicaid regulations (7 AAC 100.100 - 7 AAC 100.199).

7 AAC 100.312 provides in relevant part as follows:

(a) To be eligible under one of the poverty-level eligibility categories listed in 7 AAC 100.310(a) , a child must have monthly household income that does not

³ The law was codified under Title XXI of the Social Security Act at 42 U.S.C. §§ 1397aa, et seq., and at 42 C.F.R. § 457 *et seq.* The purpose of the law was to "enable [states] to initiate and expand the provision of child health assistance to uninsured low-income children in an effective and efficient manner." 42 U.S.C. § 1397.

exceed (1) 150 percent of the federal poverty guidelines for this state, adopted by reference under 7 AAC 100.980, for the size of the child's household; or (2) the appropriate income level in AS 47.07.020 (b)(13)

7 AAC 100.158, titled "Types of Income," provides in relevant part as follows:

(a) For the purpose of determining Family Medicaid eligibility, the department will review all household income that is not exempt income under 7 AAC 100.160 and 7 AAC 100.162 to determine if that income is earned income, self-employment income, or unearned income.

The Alaska Medicaid Manual, which governs the administration of the Denali KidCare program states the following in § 5164-8 B regarding partnerships and S-corporations:

An individual's countable income from these enterprises is determined by subtracting the total allowable costs of doing business from the total business receipts, and dividing the amount by each partner's share. The share of income from a partnership is countable even if it is not distributed. . . .

Income from an S-corporation is taxed at the individual level and is treated like self-employment income from a partnership. The income is passed through to the shareholders based on each shareholder's pro rata share.

The S-corporation must file a Form 1120-S, Income Tax Return for an S-Corporation including Schedule K-1 Shareholder's Share of Income. Unless the corporation is a new business, each shareholder should have a copy of these forms for reporting their share of the income.

ANALYSIS

The issue in this case is whether the Division was correct to deny Claimant's May 3, 2010 application for Denali KidCare benefits because income from an S-corporation attributed to Claimant's wife caused the family to have too much income to qualify.

Claimant is asking for a continuation of benefits, by filing a recertification application. Therefore the Division is the party seeking to change the status quo, and has the burden of proof by a preponderance of the evidence.

When determining the countable income from S-corporations, the Division is to subtract the costs of doing business from the receipts. Alaska Medicaid Manual § 5164-8 B. The hotel and restaurant have the same tax identification number, that of the S-corporation. (Finding of Fact # 7 & Ex. 2.3 – 12.22) The S-corporation tax forms indicate it subtracted the costs from the receipts. (Ex. 12.3 – 12.22) This process was done after filing the appropriate schedules for the restaurant and hotel. The partnership ultimately operated at a loss of \$19,304.00. (Ex. 5.12) This \$19,304.00 is the S-corporation's countable net loss.

This loss of \$19,304.00 was a loss to the S-corporation. The K-1 IRS form indicates Claimant's wife's share in the S-corporation was half. (Ex. 12.9) Therefore, her loss was half of \$19,304.00 or \$9,652.00.

The parties do not dispute that if the losses from the restaurant are offset by the profits from the hotel, Claimant's household is not over the income limit for purposes of qualifying for the Denali KidCare program. Because the Claimant's household was not over the income limit, it qualifies for the Denali KidCare program.

CONCLUSIONS OF LAW

The Division failed to meet its burden of proof and did not prove by a preponderance of the evidence that Claimant's wife's income from the S-corporation should not be offset by the S-corporation losses. The Division therefore erred when it denied Claimant's May 3, 2010 application for Denali KidCare.

DECISION

The Division erred when it denied Claimant's May 3, 2010 recertification application for Denali KidCare Medicaid benefits.

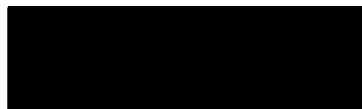
APPEAL RIGHTS

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:

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 this 25th day of October, 2010.



Patricia Huna
Hearing Authority


CERTIFICATE OF SERVICE

I certify that on this 25th day of October 2010, true and correct copies of the foregoing were sent to:

Claimant – Certified Mail, Return Receipt Requested.

A copy sent via e-mail to the following:

[REDACTED] Fair Hearing Representative
[REDACTED] DPA Director
[REDACTED] DPA Director's Office
[REDACTED] DPA Director's Office
[REDACTED] Chief of Field Services
[REDACTED] Policy & Program Development
[REDACTED] Staff Development & Training

[REDACTED] 
J. Albert Levitre, Jr.
Law Office Assistant I