

Office of Hearings and Appeals

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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-272
)
 Claimant.) Division Case No. [REDACTED]

FAIR HEARING DECISION

STATEMENT OF THE CASE

Ms. [REDACTED] (Claimant) applied for Medicaid benefits from the Home and Community-Based Services Waiver program (hereinafter Choice Waiver) on June 30, 2010. (Exs. 2–2.7) On July 28, 2010, the Division of Public Assistance (Division) sent Claimant written notice her application was denied. (Ex. 6; Ex. 8.2) The Claimant requested a fair hearing on August 1, 2010. (Ex. 8-8.1)

This office has jurisdiction pursuant to 7 AAC 49.010 and .020.

Claimant requested a hearing which was held on September 7, 2010. During the hearing, Claimant authorized her daughter, [REDACTED], who is her power of attorney, to represent her and to testify on her behalf. Both Claimant and her daughter appeared telephonically and Claimant’s daughter testified on Claimant’s behalf. [REDACTED], Public Assistance Analyst with the Division, attended in person; he represented the Division and testified on its behalf.

STATEMENT OF ISSUES

The Division argues Claimant’s equity in a home not Claimant’s principal residence is a resource that makes her ineligible for the Choice Waiver program. Claimant argues her hardship circumstances warrants relieving her from the resource eligibility limit for the Choice Waiver program.

The issue in this case is whether the Division was correct when it denied the Claimant’s June 30, 2010 application for receipt of long-term care Medicaid benefits from the Home and Community-Based Services “Choice Waiver” program, because Claimant’s ownership interest in her Alabama home exceeds the \$2,000 limit on resources permitted for eligibility.

FINDINGS OF FACT

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

1. The Claimant's application for the Choice Waiver program was received by the Division on June 30, 2010. (Ex. 2)
2. On July 28, 2010, the Division sent Claimant written notice it had denied her application because she had resources valued in excess of the \$2,000 permitted for eligibility under the Choice Waiver program. (Ex. 6; Ex. 8.2) The Division informed Claimant it determined Claimant had resources which counted toward eligibility consisting of \$41,500 of equity value (fair market value minus outstanding loan) in her house in Alabama. (Ex. 6; Ex. 8.2) The division also informed Claimant her \$41,500 equity value exceeded the \$2,000 resource limit for Medicaid. (Ex. 6; Ex. 8.2)
3. Claimant's principal residence is in Alaska at her daughter's home. (Claimant's daughter's testimony)
4. On August 1, 2010, Claimant requested a hearing. (Ex. 8-8.1) During the hearing, Claimant's daughter testified the Alabama house could not be sold without a substantial loss of equity and that Claimant had spent her life's savings to partly pay the home's purchase price. Claimant's daughter also testified that not receiving public assistance would result in undue hardship and therefore the resource eligibility limit should be waived. (Claimant's daughter's testimony)

PRINCIPLES OF LAW

I. Burden of Proof

"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).

II. Standard of Proof

The regulations applicable to this case do not specify any particular standard of proof. A preponderance of the evidence is the normal standard of proof in an administrative proceeding. *Amerada Hess Pipeline v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986). Therefore, the standard of proof is the preponderance of the evidence.

"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).

III. Medicaid Choice Waiver Program

The Home and Community-Based Services Medicaid¹ Waiver Program, also called Choice Waiver, assists recipients with long term care needs. Therefore, regulations 7 AAC 100.500-.519 pertaining to this Medicaid based program apply. Regulation 7 AAC 100.500, "Long-term care Medicaid related to

¹ Although Medicaid is an entitlement program created by federal mandate, its programs and provisions are administered by the states. *See*, AS 47.07; 7 AAC 100.002 and 42 U.S.C. 1396-1396(p).

APA,”² provides that eligibility for the Choice Waiver program is determined in accordance with the provisions governing eligibility for Adult Public Assistance.

Furthermore, regulation 7 AAC 100.502(a) expressly provides that to be financially eligible to receive “home and community-based waiver services, an applicant or recipient may not ... (2) have nonexcluded [sic] resources that exceed the limits applicable under 7 AAC 100.400(14)....” Regulation 7 AAC 100.400(14) incorporates by reference, and applies, Adult Public Assistance regulation 7 AAC 40.270.

IV. Adult Public Assistance Financial Eligibility Regulations Apply to Choice Waiver

Adult Public Assistance regulation 7 AAC 40.270(a) states that to be eligible for assistance, an applicant ... must have “non-excludable resources which do not exceed (1) \$2,000 for an individual” The term “resources” is defined in Adult Public Assistance regulation 7 AAC 40.260 as meaning “*any real or personal property that an applicant ... owns and can convert to cash to be used for his or her support or maintenance.*” (Emphasis supplied.)

Adult Public Assistance regulation 7 AAC 40.280 identifies resources which are excludable for purposes of determining eligibility for Adult Public Assistance, and by reference of 7 AAC 100.502, for determining eligibility for Choice Waiver benefits. Subsection (a)(1) provides the home of an applicant “*if used as his principal place of residence....*” is excludable. 7 AAC 40.280(a)(1) (Emphasis supplied).

V. Alaska Law Restricts Public Assistance to Financially Needy Alaskans

AS 47.25.430 provides for financial assistance to be given to aged, blind or disabled needy residents, so far as practicable under appropriations made by law and depending on their financial need. *See also*, AS 47.25.590(b). AS 47.25.460 charges the department with investigating the income and resources of an applicant, initially and periodically, to determine if the applicant’s or recipient’s financial circumstances require a reduction or termination of benefits based on reduced need. AS 47.25.460(b).

Regulation 7 AAC 40.020 makes clear that Adult Public Assistance Regulations at 7 AAC .020 -.900 apply to the programs established under AS 47.25. Regulation 7 AAC 40.090 states that eligibility for adult public assistance is based on citizenship, residence, age, disability and “(7) financial need with respect to resources; and (8) financial need with respect to income.”

ANALYSIS

Issue

This case concerns whether or not the Division was correct to deny the Claimant’s June 30, 2010 application for Home and Community Based Services, aka Choice Waiver, Medicaid benefits because Claimant’s equity interest in her Alabama home exceeds the \$2,000 limit on resources permitted for eligibility in the Choice Waiver program.

² “APA” means Adult Public Assistance.
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Claimant must prove she is eligible for the benefits she seeks by providing a preponderance of the evidence which show the facts asserted are probably true.

Undisputed Facts Supporting the Decision

The parties agree Claimant owns a house in Alabama in which Claimant's equity is greater than \$2,000. The parties agree Claimant is not living in the house in Alabama and is a resident of Alaska. There are no disputed issues of fact and hence the case is one purely of legal interpretation.

Claimant's Equity in her Alabama Home is a Resource

The Division valued Claimant's equity in her home in Alabama as \$41,500, which is considerably more than \$2,000. To qualify for the Choice Waiver program, an applicant cannot own resources valued at more than \$2,000. 7 AAC 100.502(a); 7 AAC 100.400(14); 7 AAC 40.270(a). A home is included in the assets considered a "resource." 7 AAC 40.260. Therefore, Claimant's home is a resource which exceeds the resource limitation for the Choice Waiver program. 7 AAC 100.502.

However, some resources are excluded from being counted in the resource limit. 7 AAC 40.280. A home which is not used as a principal place of residence is not excluded, whereas one that is used as the applicant's principal residence is excluded. 7 AAC 40.280(a)(1). Claimant does not live in her Alabama home. Therefore, Claimant's Alabama home is not excluded from the resources which are counted for purposes of determining eligibility. 7 AAC 40.270.

In order to prevail in this case, the Claimant needed to prove, by a preponderance of the evidence, either that the value of her equity in her Alabama home, a resource, did not exceed \$2,000 or, if it did, that her equity exceeding \$2,000 was excluded from being counted towards the eligibility limit. Claimant did not meet her burden of proof. Claimant did not show she was eligible to receive the Choice Waiver program benefits. Therefore, the Division was correct when it denied the Claimant's application for Choice Waiver benefits because Claimant's equity interest in her Alabama home exceeds the \$2,000 limit on resources permitted to applicants for the Choice Waiver program.

Claimant seeks to avoid this outcome by claiming it results in hardship under her circumstances. However, the Choice Waiver Medicaid based program is one available to needy persons who lack even \$2,000 of resources. *See*, AS 47.25.430(a); AS 47.25.590(b) and 7 AAC 40.090. Here, Claimant has resources valued well above the \$2,000 limit. The Choice Waiver program is expressly designed to help recipients in need who have resources below the \$2,000 limit: it does not permit flexing the eligibility requirements for applicants whose needs do not meet the criteria. There is no law or regulation on which basis Claimant can avoid the outcome of owning a non-excluded resource whose value exceeds \$2,000.

CONCLUSIONS OF LAW

1. Claimant was required to prove she did not own resources valued in excess of \$2,000 as a condition of eligibility for the Medicaid Choice Waiver program. 7 AAC 40.270; 7 AAC 100.502.
2. Claimant did not meet her burden of proof: Claimant did not prove her ownership interest in her Alabama home was valued at less than \$2,000. Claimant did not prove her Alabama home

was her principal residence and therefore her equity value in it excludable from being counted as a resource. Claimant did not provide any law or regulation on which basis the resource eligibility criteria could be avoided on grounds of hardship.

3. The Division was therefore correct when it denied Claimant's June 30, 2010 application for the Choice Waiver program because Claimant's resources exceeded the \$2,000 maximum resource value permitted for eligibility.

DECISION

The Division was correct to deny the Claimant's June 30, 2010 application for long-term care Medicaid benefits from the Home and Community-Based Services Waiver program, aka Choice Waiver, because Claimant owned resources valued in excess of \$2,000.

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 November 4, 2010.

/signed/

Claire Steffens
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this November 4, 2010, true and correct copies of the foregoing were sent to:

Claimant by U.S.P.S., Certified Mail
and to the following by e-mail:

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

/signed/

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