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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-329
)
 Claimant.) Division Case No. [REDACTED]
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED]'s (Claimant) minor child was receiving Medicaid benefits under the Denali KidCare program (Denali KidCare) in August 2010. (Ex. 1) The Claimant applied to renew her child's Denali KidCare benefits on August 10, 2010. (Exs. 2.0 – 2.2) On September 1, 2010, the Division of Public Assistance (Division) sent the Claimant notice her Denali KidCare renewal application was denied because her household income exceeded the Denali KidCare program's income limit. (Ex.5)

The Claimant requested a fair hearing on September 28, 2010. (Ex. 6.1) This Office has jurisdiction pursuant to 7 AAC 49.010.

The Claimant's hearing was held on October 26 and November 23, 2010. The Claimant appeared telephonically and represented herself. [REDACTED], Public Assistance Analyst with the Division, attended in person; he represented and testified on behalf of the Division.

ISSUE

Was the Division correct to deny the Claimant's August 10, 2010 Denali KidCare renewal application, on September 1, 2010, because her household income allegedly exceeded the Denali KidCare program's income limit?

FINDINGS OF FACT

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

1. The Claimant has a three person household, which is comprised of herself, one adult daughter, and one minor child. (Ex. 1) The Claimant's minor child has health insurance coverage. However, the health insurance has a \$6,000.00 deductible. (Claimant testimony)
2. The Claimant was receiving Medicaid coverage for her minor child under the Denali KidCare program (Denali KidCare) in August 2010. (Ex. 1) She applied to renew her child's Denali KidCare benefits on August 10, 2010. (Exs. 2.0 – 2.2)
3. The Claimant is employed. She is paid every two weeks. Her gross biweekly income, as reflected in her paychecks dated July 2, 2010, July 16, 2010, and July 30, 2010, was \$1,328.53.¹ (Exs. 3.1. – 3.3) The Division's Eligibility Technician calculated that the Claimant's gross monthly income was \$2,856.33.² (Ex. 3)
4. The Claimant's adult daughter works part time. She is paid every two weeks. Her July 23, 2010 gross biweekly income was \$135.46. (Ex. 3.4) Her August 6, 2010 gross biweekly income was \$46.00. (Ex. 3.4) The Division's Eligibility Technician calculated that her gross monthly income was \$195.06.³ (Ex. 3)
5. The Division's Eligibility Technician then deducted \$180.00 (work deduction) from the combined total gross monthly income of both the Claimant and her adult daughter ($\$2,856.33 + \$195.06 = \$3,051.39$) to arrive at the household's countable monthly income of \$2,871.39. (Ex. 3)
6. On August 31, 2010, the Division's Eligibility Technician determined that the Claimant's minor daughter was not financially eligible for Denali KidCare benefits because her household's monthly countable income of \$2,871.39 was greater than the Denali KidCare program's countable income limit, for a household of three people with insurance, of \$2,862.00. (Exs. 3)

¹ The Claimant's July 2, 2010 paycheck was actually \$1,328.54. (Ex. 3.1)

² The Eligibility Technician arrived at this amount by taking the Claimant's three biweekly paychecks, averaging them to arrive at an average biweekly gross income of \$1,328.53 and multiplying that amount by a 2.15 biweekly income multiplier (to account for the fact that a month, with the exception of February, contains more than two 14 day pay periods). (Ex. 3) See 7 AAC 100.168(d) (use of 2.15 multiplier for biweekly income).

³ The Eligibility Technician arrived at this amount by taking the Claimant's adult daughter's two biweekly paychecks, averaging them to arrive at an average biweekly gross income of \$90.73 and multiplying that amount by a 2.15 biweekly income multiplier (to account for the fact that a month, with the exception of February, contains more than two 14 day pay periods). (Ex. 3) See 7 AAC 100.168(d) (use of 2.15 multiplier for biweekly income).

7. The Division's Eligibility Technician then looked at whether the Claimant's household would qualify for Denali KidCare benefits if it excluded the adult daughter's income and needs (i.e. based financial eligibility on a two person household) and determined that the household income was still greater than allowed by the Denali KidCare program.⁴ (Exs. 3, 5)

8. The Division sent the Claimant written notice on September 1, 2010 that her August 10, 2010 Denali KidCare renewal application was denied because her household's monthly countable income of \$2,871.39 exceeded Denali KidCare's income limit of \$2,862 for a three person household. (Ex. 5) That same notice also informed the Claimant that the Division had also looked at whether the household qualified if the adult daughter's income and needs were excluded from the household, and found the household not eligible. *Id.*

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, Alcohol 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 agency must – . . . (b) Continue to furnish Medicaid regularly to all eligible individuals until they are found to be ineligible." 42 CFR 435.930.

Denali KidCare is a form of Family Medicaid coverage provided to children under the age of 19, pregnant women, post partum women and newborn children in households that are not financially eligible for regular Family Medicaid coverage. *See Alaska Medical Assistance Manual* §5300.

Denali KidCare has its own financial eligibility criteria. For households with health insurance, Denali KidCare provides Medicaid coverage if the household income does not exceed "150 percent of the federal poverty guidelines for" Alaska. 7 AAC 100.312(a)(1).

When determining financial eligibility for an applicant child, the Division is count the income of the parents and siblings who reside with the child. 7 AAC 100.312(b). "If the income of a sibling causes the applicant child's household to exceed the [Denali KidCare] income limit, the financial needs and income of the sibling will be excluded and the applicant child's eligibility redetermined." 7 AAC 100.312(d).

⁴ Neither the Eligibility Technician's notes (Ex. 3) nor her September 1, 2010 notice (Ex. 5) sent the Claimant contain the actual computations supporting her conclusion that the Claimant was not eligible for Denali KidCare benefits based on the financial eligibility requirements for a two person household.

The monthly income eligibility limit for a household of two with health insurance coverage is \$2,277. *Alaska Family Medicaid Eligibility Manual Addendum 1*. The monthly income eligibility limit for a household of three with health insurance coverage is \$2,862. *Alaska Family Medicaid Eligibility Manual Addendum 1*.

For the purposes of determining financial eligibility under Denali KidCare, there is a \$90.00 deduction “from the total gross monthly earned income of each individual included in the household who is employed and has not received Medicaid benefits in the state in any of the four months immediately preceding that individual’s current eligibility for assistance under this chapter.” 7 AAC 100.184(a)(1); 7 AAC 100.310(a) and (b)(8).

A child is considered insured for the purposes of determining Denali KidCare eligibility if the child has individual, governmental, or private group health insurance coverage. 7 AAC 100.314(a).⁵ A child is considered insured if she has health insurance, as defined in 7 AAC 100.314(a), “regardless of whether the health plan requires cost-sharing of any amount or does not cover a particular illness or procedure the child needs.” 7 AAC 100.314(c).

ANALYSIS

The issue in this case is whether the Division was correct when it denied the Claimant’s August 10, 2010 Denali KidCare renewal application because the household made too much money to qualify for the Denali KidCare program. Because the Claimant’s household had previously been approved for Denali KidCare benefits and because the Medicaid program, pursuant to 42 CFR 435.930(b), presumes that Medicaid recipients remain eligible “until they are found to be ineligible,” the Division is the party seeking to change the status quo. The Division therefore has the burden of proof by a preponderance of the evidence to demonstrate that the Claimant is no longer eligible for Denali KidCare coverage for her minor child.

The Claimant’s only argument was that her very high (\$6,000) deductible for her health insurance needed to be taken into account when determining her eligibility for Denali KidCare benefits. However, the Denali KidCare regulations specifically do not allow high deductibles to be taken into account when determining Denali KidCare financial eligibility: a child, with health insurance coverage is regarded as insured “regardless of whether the health plan requires cost-sharing of any amount or does not cover a particular illness or procedure the child needs.” 7 AAC 100.314(c). As a result, the fact the Claimant has a high health insurance deductible is not a factor that can be taken into account when determining Denali KidCare eligibility.

It is therefore necessary to determine whether the Division was correct when it determined that the Claimant was not financially eligible for Denali KidCare benefits. Because the Claimant has health insurance coverage for her child, in order for the

⁵ There are other applicable insurance categories contained in the regulation 7 AAC 100.314(a): Medicare, Medicaid, Tricare, a state high-risk insurance pool, a state or local government health plan, and a Peace Corp Volunteer health benefit plan.

Claimant to be eligible for Denali KidCare coverage for her minor child, her household income for a three person household, after deductions, must be less than \$2,862. *Alaska Family Medicaid Eligibility Manual Addendum*.

The Claimant's total gross monthly household income, which is comprised of her earned income and her adult daughter's earned income, was \$3,051.39 (\$2,856.33 + \$195.06). *See Finding of Fact 5* above. The Denali KidCare program only allows one deduction from earned income. That deduction is \$90 from the earned income of each employed person in the household. 7 AAC 100.184(a)(1); 7 AAC 100.310(a) and (b)(8). Because there were two employed persons in the household, the Claimant was entitled to a total deduction of \$180 (\$90 for each employed person) from her household's gross monthly income. Deducting \$180 from the \$3,051.39 gross monthly household income results in countable monthly income of \$2,871.39. This amount exceeds the Denali KidCare's income limit of \$2,862 for a three person household with health insurance coverage. The Claimant was therefore not eligible to receive Denali KidCare coverage for her minor child based upon the income in her three person household.

The Division's financial eligibility determination, as described above, was based on the income of both the Claimant and her adult daughter, the minor child's sibling. When there are siblings to the minor child in the household, and the sibling's income causes the Claimant's household to exceed the Denali KidCare program's income limits, Alaska Medicaid regulation 7 AAC 100.312(d) requires the Division to exclude "the financial needs and income of the sibling" and redetermine "the applicant child's eligibility." In this case this means that the Division was required to reexamine the Claimant's financial eligibility for a household of two, based solely upon the Claimant's income. The Eligibility Technician performed that analysis and determined the Claimant's household still did not financially qualify for Denali KidCare. *See Finding of Fact 7* above.

An examination of the facts of the case demonstrate that the Division Eligibility Technician was correct when she determined that when the adult daughter's income and needs were excluded, the Claimant still did not financially qualify for Denali KidCare. The Claimant's gross monthly income, not including her adult daughter's income, was \$2,856.33. *See Finding of Fact 3* above. When the earned income deduction of \$90, allowed by 7 AAC 100.184(a)(1), is subtracted, the Claimant's countable monthly income is \$2,766.33. This is greater than the monthly income eligibility limit of \$2,277 for a household of two with health insurance coverage. *Alaska Family Medicaid Eligibility Manual Addendum 1*.

In summary, the Claimant's countable monthly household income, regardless of whether the household was treated as a three person household or a two person household (i.e. the adult daughter's income and needs were not counted), was greater than the Denali KidCare program's monthly countable income limit for a household with health insurance. The Division met its burden of proof by a preponderance of the evidence and properly determined that the Claimant's household was not financially eligible for continued Denali KidCare benefits. The Division was therefore correct when it denied the Claimant's August 10, 2010 Denali KidCare renewal application.

CONCLUSIONS OF LAW

1. The fact that the Claimant has a high health insurance deductible (\$6,000) is not a factor that can be taken into account when determining her household's financial eligibility for Denali KidCare benefits. *See* 7 AAC 100.314(c).
2. The Division had the burden of proof by a preponderance of the evidence in this case. It satisfied its burden of proof and demonstrated that the Claimant's household was not financially eligible for Denali KidCare benefits, regardless of whether the household was treated as a three person household or a two person household (i.e. the adult daughter's income and needs were not counted), as of the date of the Claimant's renewal application, August 10, 2010.
3. The Division was therefore correct when it, on September 1, 2010, denied the Claimant's August 10, 2010 Denali KidCare renewal application.

DECISION

The Division was correct when it, on September 1, 2010, denied the Claimant's August 10, 2010 Denali KidCare renewal application.

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 24th day of January 2011.

/Signed/
Larry Pederson
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 24th day of January 2011, true and correct copies of the foregoing were sent to:

Claimant – Certified Mail, Return Receipt Requested.

[REDACTED], Fair Hearing Representative – email
[REDACTED], Fair Hearing Representative - email
[REDACTED], Director's Office - email
[REDACTED], Policy & Program Development - email
[REDACTED], Policy & Program Development - email
[REDACTED], Staff Development & Training – email

J. Albert Levitre, Jr.
Law Office Assistant I