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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-348  
 )  
 Claimant. ) Division Case No. [REDACTED]  
 )  
 \_\_\_\_\_ )

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

[REDACTED] (Claimant) applied for Medicaid benefits<sup>1</sup> on August 23, 2010. (Exs. 2 – 2.9) On September 23, 2010, the Division of Public Assistance (Division) sent the Claimant written notice she was approved for Medicaid benefits for only one month, October 2010. (Ex. 12) However, the September 23, 2010 notice only contained Medicaid coupons for the month of August 2010. (Claimant testimony) The Claimant requested a fair hearing on October 11, 2010.<sup>2</sup> (Ex. 13)

This Office has jurisdiction pursuant to 7 AAC 49.010.

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<sup>1</sup> The Claimant also applied for other public assistance benefits, however, those other benefits are not at issue in this case. In addition, only the Claimant’s eligibility for Medicaid, not that of her children, is an issue in this case.

<sup>2</sup> After the Claimant requested her fair hearing on October 11, 2010, the Division sent the Claimant 2 corrective notices:

- a. On October 22, 2010, the Division sent the Claimant a written notice that her August 23, 2010 Medicaid application was approved only for the month of August 2010, because her “unemployment benefits of \$1556 per month put[s] [her] household ov (sic) the net income limit of \$1464 for a household of three.” (Ex. 14)
- b. On October 26, 2010, the Division sent the Claimant a written notice that her August 23, 2010 Medicaid application was approved only for the month of August 2010, because her income of \$1,897.83, consisting of her “combined income from unemployment, self employment and child support exceeds the income limit for this program after August 2010.” (Ex. 38)

The Claimant's hearing was held on November 9, 2010. The Claimant attended the hearing in person; she represented herself and testified on her own behalf. [REDACTED] Public Assistance Analyst with the Division, attended the hearing in person, testified on the Division's behalf and represented the Division.

### **ISSUES**

The Division argued that the Claimant's monthly income caused her to exceed the Medicaid program's income limits except for one month, the month of her application – August 2010. As a result, the Division's position was that the Claimant was only entitled to receive Medicaid benefits for the month of August 2010.

The Claimant requested that the Division's calculations of her monthly income be reviewed. In addition, she argued that she was entitled to receive a substitute month of Medicaid benefits because the Division (a) did not process her August 23, 2010 Medicaid application and notify her of its decision on that application until more than 30 days after the date of her application and (b) did not notify her of her Medicaid approval for the month of August 2010 until after the month of August 2010 was past.

The resulting issues are:

1. Was the Division correct to approve the Claimant's August 23, 2010 Medicaid application for one month only, the month of August 2010, due to her monthly income?
2. Was the Claimant entitled to receive a substitute month of Medicaid benefits because:
  - (a) The Division did not process her August 23, 2010 Medicaid application and notify her of its decision on that application until September 23, 2010, which was more than 30 days after the date of her application?
  - (b) The Division did not notify her of her Medicaid approval for the month of August 2010 until September 23, 2010, which was after her August 2010 Medicaid benefits had expired?

### **FINDINGS OF FACT**

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

1. The Claimant applied for Medicaid benefits August 23, 2010. (Exs. 2 – 2.9) Her household consists of herself and her two minor children. (Ex. 2.1)
2. The Claimant was unemployed at the time of her application. (Ex. 2.2) She had recently lost her job. (Ex. 2.2; Claimant testimony)
3. On August 26, 2010, the Division sent the Claimant written notice it required additional information to process her August 23, 2010 Medicaid application. (Ex. 5) The Claimant complied with the information request by September 3, 2010. (Ex. 7)

4. The Claimant routinely receives child support of \$330.08 per month through the Alaska Child Support Services Division. (Ex. 10; Claimant testimony) The Claimant intermittently receives \$49.00 per month in child support directly from the parent of one of her children. However, she has not received that money since August 2010. (Claimant testimony)

5. The Claimant's income in the month of August 2010 consisted of the following:

- a. Child support income of \$379.08. (Exs. 9, 10) \$49.00 of that amount was paid directly to her by the parent of one of her children. (Ex. 9) The Claimant received the remaining \$330.08 from the Alaska Child Support Services Division. (Ex. 10)
- b. Unemployment income of \$362.00. (Ex. 8.1)

6. The Claimant was supposed to receive \$362.00 in weekly unemployment benefits during each week of the month of September 2010. (Ex. 8.1) However, because she informed the Unemployment Office that she had earned \$315.00 in self-employment income during September 2010, which was not expected to recur, one of her September 2010 weekly unemployment payments was reduced from \$362.00 to \$164.00. (Ex. 8.1; Claimant testimony)

7. The Claimant, as stated above, earned self-employment income of \$315.00 in September 2010. She was not actually paid that self-employment income until October 2010. (Claimant testimony)

8. On September 22, 2010, the Eligibility Technician processing the Claimant's August 23, 2010 Medicaid application determined the following:

- a. The Claimant was eligible for Medicaid benefits only for the month of August 2010. (Ex. 8)
- b. The Claimant was not financially eligible to receive Medicaid benefits for the month of September 2010, based upon the Claimant's unemployment and self-employment income alone, i.e. not including child support income of at least \$330.08. *Id.* The Eligibility Technician arrived at this conclusion by calculating the Claimant's September income consisted of \$1,343.75 in unemployment benefits<sup>3</sup> and \$315.00 in self-employment income. *Id.* The total of these two incomes (unemployment and self-employment) is \$1,658.75. The Eligibility Technician's calculations did not provide for any income deductions. *Id.*
- c. The Claimant was not financially eligible to receive Medicaid benefits for the months following September 2010, based upon the Claimant's unemployment income alone (i.e. not including child support income of at least \$330.08). *Id.* The Eligibility Technician arrived at this conclusion by calculating the Claimant's

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<sup>3</sup> The Eligibility Technician arrived at this amount by taking the three weekly unemployment payments of \$362.00 and the one weekly unemployment payment of \$164.00, averaging them to arrive at an average weekly payment of \$312.50 and multiplying them by a 4.3 weekly income multiplier (to account for the fact that a month, with the exception of February, contains more than four seven day pay periods). (Ex. 8) *See* 7 AAC 100.168(d) (use of 4.3 multiplier for weekly income).

expected monthly unemployment income for October 2010 onward was \$1,556.60.<sup>4</sup> *Id.* The Eligibility Technician’s calculations did not provide for any income deductions. *Id.*

9. The Division issued the Claimant written notice on September 23, 2010, she was approved for Medicaid benefits for only one month, October 2010 because her “unemployment benefits of \$1,556 per month puts your household over the net income limit of \$1,464 for a household of three.” (Ex. 12) However, that notice included Medicaid coupons for August 2010. (Claimant testimony)

10. The Claimant has not incurred any medical expenses because she was concerned that she would not be able to pay those expenses if her application was not approved. (Claimant testimony)

### **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).

Family Medicaid is the category of Medicaid coverage for families with minor children. 7 AAC 100.100. A Family Medicaid household consists of the dependent children in the household and the parent or parents or other caregivers that reside with them. 7 AAC 100.104.

The Family Medicaid program has financial eligibility requirements. In order for a household of three people to qualify for Family Medicaid, among other criteria, the household’s monthly countable income cannot exceed \$1,464. 7 AAC 100.180(b); 7 AAC 100.190(a)(1); *Alaska Family Medicaid Eligibility Manual Addendum 2*.

The household countable income is calculated by totaling the household’s gross non-exempt income, including earned income, self employment-income, and unearned income, and then subtracting allowable deductions. 7 AAC 100.180(b). Income consists of earned income (wages), self-employment income, and unearned income; unearned income is income other than wages or self-employment income, such as child support payments. 7 AAC 100.158.

A parent receiving child support income is allowed a monthly exemption of \$50.00 from that child support income, i.e. countable child support consists of the actual child support received minus \$50.00. 7 AAC 100.166(b). An applicant or recipient who has not received Medicaid

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<sup>4</sup> The Eligibility Technician arrived at this amount by taking the October 2010 weekly unemployment payments of \$362.00 and multiplying them by a 4.3 weekly income multiplier (to account for the fact that a month, with the exception of February, contains more than four seven day pay periods). (Ex. 8) *See* 7 AAC 100.168(d) (use of 4.3 multiplier for weekly income).

benefits during the 4 months immediately preceding her current eligibility is allowed a \$90.00 monthly deduction from her earned income. 7 AAC 100.184(1).

The Division is required to either approve or deny a Medicaid application or request “additional information or documentation if necessary to determine eligibility” “[n]o later than 30 days after an application is received.” 7 AAC 100.018(a).

The Division determines financial eligibility for Medicaid benefits “on a monthly basis.” 7 AAC 100.152. In determining financial eligibility, the Division is required to “make a best estimate of the prospective income for a household by using the actual income received or anticipated to be received in the month for which the determination is being made.” 7 AAC 100.168(a).

### ANALYSIS

This case involves an application for benefits. The Claimant, by applying for Medicaid benefits, is the party seeking to change the status quo. She therefore has the burden of proof by a preponderance of the evidence. The relevant facts in this case are not disputed. They are as follows:

1. The Claimant’s monthly income in August 2010 consisted of child support of \$379.08 and unemployment benefits of \$362.00. *See* Finding of Fact 5 above. She was financially eligible for Medicaid benefits during the month of August 2010. *See* Finding of Fact 8(a) above.
2. The Claimant’s monthly income in September 2010 consisted of child support of \$330.08 and unemployment income of \$1,343.75. *See* Findings of Fact 4, 6, and 8(b) above.
3. The Claimant’s monthly income in October 2010 consisted of child support of \$330.08, unemployment income of \$1,556.60, and self-employment income (derived from work performed in September 2010) of \$315.00. *See* Findings of Fact 4, 6, and 8(c) above.
4. The Claimant applied for Medicaid benefits on August 23, 2010. The Division sent her notice on August 26, 2010 that it required additional information. She provided that information by September 3, 2010. On September 23, 2010, the Division sent the Claimant notice she was approved for Medicaid benefits for the month of October 2010 only. However, that notice included Medicaid coupons only for the month of August 2010. *See* Findings of Fact 1, 3, and 9 above.
5. The Claimant has not incurred any medical expenses because she was concerned that she would not be able to pay those expenses if her application was not approved. *See* Finding of Fact 10 above.

The Claimant presented the following issues in this case:

1. Was the Division correct to approve the Claimant’s August 23, 2010 Medicaid application for one month only, the month of August 2010, due to her monthly income?

2. Was the Claimant entitled to receive a substitute month of Medicaid benefits because:
  - (a) The Division did not process her August 23, 2010 Medicaid application and notify her of its decision on that application until September 23, 2010, which was more than 30 days after the date of her application?
  - (b) The Division did not notify her of her Medicaid approval for the month of August 2010 until September 23, 2010, which was after her August 2010 Medicaid benefits had expired?

1. Income Eligibility

The Claimant has two minor children in her home. She was therefore potentially eligible for Medicaid coverage under the Family Medicaid category. 7 AAC 100.100.

The Family Medicaid program has financial eligibility requirements. In order for a household of three people, the Claimant and her two minor children, to qualify for Family Medicaid, among other criteria, the household's monthly countable income cannot exceed \$1,464. 7 AAC 100.180(b); 7 AAC 100.190(a)(1); *Alaska Family Medicaid Eligibility Manual Addendum 2*.

It is undisputed that the Claimant was financially eligible for Family Medicaid benefits for the month of August 2010. The question that arises is whether she was financially eligible for Medicaid benefits in the succeeding months, i.e. was the Claimant's household's countable monthly income is greater than \$1,464.00 for the months after August 2010? In arriving at the Claimant's countable monthly income, her self-employment income, unemployment income and child support income are totaled. 7 AAC 100.180(b). The Claimant is entitled to receive a \$50.00 deduction from her child support income and a \$90.00 deduction from her earned (self-employment) income. 7 AAC 100.166(b); 7 AAC 100.184(1).

Applying the Family Medicaid income eligibility rules, the Claimant's household's countable monthly income for September 2010 was:

Unemployment:	\$1,343.75
Child Support:	\$ 330.08
Child Support Deduction:	<u>&lt;\$ 50.00 &gt;</u>
Countable Monthly Income:	\$1,623.83

Applying the Family Medicaid income eligibility rules, the Claimant's household's countable monthly income for October 2010 was:

Unemployment:	\$1,556.60
Child Support:	\$ 330.08
Child Support Deduction:	<u>&lt;\$ 50.00 &gt;</u>

Self-Employment:	\$ 315.00 <sup>5</sup>
Earned Income Deduction:	<\$ 90.00>
Countable Monthly Income:	\$2,061.68

The Claimant's countable income figures for September 2010 (\$1,623.83) and October 2010 (\$2,061.68) exceeded the Family Medicaid program's monthly countable income limit of \$1,464.00. While the Division's September 23, 2010 limited approval notice incorrectly states that the Claimant's countable monthly income was only \$1,556.00, as compared to the countable monthly income as calculated in this Decision, that notice correctly apprised the Claimant she exceeded the Family Medicaid program's countable monthly income limits for September 2010 forward. As a matter of law, the Claimant was therefore not financially eligible to receive Medicaid benefits during either September or October 2010. As a result, the Division was correct when it approved the Claimant for Medicaid benefits for the month of her application, August 2010, and denied her Medicaid benefits thereafter.

2. Substitute Month of Medicaid Benefits

a. 30 Day Processing Timeline

The Claimant argued that the Division did not process her application within the 30 day time limit imposed by the applicable regulation, 7 AAC 100.018(a). She submits, as a consequence, that she should receive a substitute month of Medicaid benefits, since the timing of the Division's limited approval notice (September 23, 2010), made it not possible for her to avail herself of her Medicaid benefits during the approved month of August 2010.

The Claimant's argument fails for two separate reasons. First, the Division's action was timely. The Division is allowed 30 days to process an application, or to request additional information needed to process the application. 7 AAC 100.018(a). The Claimant's application was filed on August 23, 2010. The Division acted promptly in this case by requesting additional information from the Claimant on August 26, 2010, 3 days after the application was received. The Claimant provided that information on September 3, 2010. The Division's limited approval notice was then sent on September 23, 2010. This was 31 days after August 23, 2010, the date the Division received the Claimant's Medicaid application. Given that there was an 8 day break in the application processing (from August 26, 2010 to September 3, 2010) due to the Division's request for additional information, the Division's action was timely and within the 30 day application time allowed for processing a Medicaid application.

Second, the Medicaid regulations are clear that financial eligibility for Medicaid benefits is determined on a monthly basis. *See* 7 AAC 100.152 and 7 AAC 100.168(a). In other words, an applicant is only entitled to receive benefits for those months in which she is financially eligible. This means that an applicant is not allowed to receive benefits in a month for which she is not

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<sup>5</sup> The Division counted the Claimant's self-employment income as part of her September 2010 income. *See* Finding of Fact 8(b) above. However, the Claimant testified she was not actually paid for her self-employment until October, 2010. *See* Finding of Fact 7 above. This Decision, in accordance with the Claimant's testimony, counts the \$315.00 in self-employment as having been received in October 2010, not September 2010.

financially eligible. As a matter of law, the Claimant was only financially eligible for Medicaid benefits in August. Even though the Claimant did not use any Medicaid benefits during that month, she is not allowed to utilize her unused month of authorized Medicaid benefits (August 2010) during a different month in which she is not financially eligible for Medicaid benefits.

It must be noted that if the Claimant had incurred medical expenses in August 2010, she could have used her Medicaid benefits to pay for them. The Claimant was understandably and reasonably cautious; she chose not to incur medical expenses in August 2010, because she did not wish to incur personal liability for medical expenses in the event her Medicaid benefits were not approved. However, that was her choice, which cannot be attributed to the Division.

b. Approval After The Expiration of the Authorized Month

The Claimant also argued that she was entitled to receive a substitute month of Medicaid benefits because the Division did not notify her of her Medicaid approval for the month of August 2010 until after the month of August 2010 was past.

The Division sent the Claimant notice on September 23, 2010 that she was approved to receive Medicaid benefits for **October 2010**. That notice was clearly defective since, as explained above, the Claimant was only financially eligible for August 2010 Medicaid benefits. It was also confusing given that the Claimant was sent Medicaid coupons for August 2010, not October 2010. However, since the Claimant did not incur medical expenses relying upon the Division's incorrect notice, she has not been harmed and the defective nature of the notice need not be addressed further.

As explained above, the Claimant was only entitled to receive Medicaid benefits for the month of August 2010 based upon her income. Because financial eligibility for Medicaid benefits is determined on a monthly basis, an applicant is only entitled to receive Medicaid benefits for those months in which she is financially eligible. *See* 7 AAC 100.152 and 7 AAC 100.168(a). Regardless of the fact that she did not receive notice of her approval for August 2010 benefits until September 23, 2010, after her August 2010 benefits had expired, her Medicaid benefits were not transferrable to another month.

**CONCLUSIONS OF LAW**

1. The Claimant was financially eligible to receive Family Medicaid benefits for only the month of August 2010. Her countable monthly income for September 2010 and following months made her not eligible for Family Medicaid benefits after August 2010.
2. The Claimant was not entitled to a "substitute" month of Medicaid benefits, in place of the authorized month of August 2010, because:
  - a. The Division processed her August 23, 2010 Medicaid application in a timely manner; and





CERTIFICATE OF SERVICE

I certify that on this 10th 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], Acting Director  
[REDACTED], Director's Office - email  
[REDACTED], Policy & Program Development - email  
[REDACTED], Policy & Program Development - email  
[REDACTED], Staff Development & Training – email

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J. Albert Levitre, Jr.  
Law Office Assistant I