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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. 11-FH-004
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) applied for Food Stamp, Medicaid, and Chronic and Acute Medical Assistance (CAMA) benefits on December 9, 2010. (Exs. 2.0 – 2.9) On December 13, 2010, the Division of Public Assistance (Division) sent the Claimant written notice that her December 9, 2010 application for Food Stamp and Medicaid benefits was denied. (Exs. 4.0 – 4.1) The Claimant requested a Fair Hearing on January 5, 2011. (Ex. 5.2)

On January 20, 2011, the Division sent the Claimant written notice that her December 9, 2010 application for CAMA benefits was also denied. (Ex. 6.6, [REDACTED] testimony)

This Office has jurisdiction pursuant to 7 AAC 49.010.

A hearing was held on the denial of all three benefit programs: Food Stamps, Medicaid, and CAMA. The hearing was scheduled to begin on February 1, 2011. Neither the Claimant nor her authorized representative was available for the February 1, 2011 hearing. The hearing was rescheduled for March 15, 2011.

The Claimant attended the March 15, 2011 hearing telephonically. She did not testify. [REDACTED] is the Claimant's daughter and her authorized representative. She attended the March 15, 2011 hearing telephonically; she represented the Claimant and testified on her behalf. [REDACTED], Public Assistance Analyst with the Division, attended in person on both February 1, 2011 and March 15, 2011; she represented the Division and testified on its behalf.

STATEMENT OF ISSUES

1. Was the Division correct when it, on December 13, 2010, notified the Claimant her December 9, 2010 application for Medicaid benefits was denied?
2. Was the Division correct when it, on December 13, 2010, notified the Claimant her December 9, 2010 application for Food Stamp benefits was denied?
3. Was the Division correct when it, on January 20, 2011, notified the Claimant her December 9, 2010 application for CAMA benefits was denied?

FINDINGS OF FACT

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

1. The Claimant and her husband are from ██████████, an eastern European country. (Ex. 5.7) They are not United States citizens. (Ex. 2.1) They entered the United States for the first time on August 28, 2010. (Ex. 2.1, ██████████ testimony)
2. The Claimant resides with her husband, her daughter, her son-in-law, and her grandchild in Alaska. (Exs. 2.0 – 2.1)
3. The Claimant applied to receive Food Stamp, Medicaid, and CAMA benefits on December 9, 2010. (Exs. 2.0 – 2.9)
4. At the time of the Claimant's December 9, 2010 application, the Claimant's son-in-law, with whom the Claimant resides, was the only source of income for the household. (Ex. 2.3; ██████████ testimony) The son-in-law received \$394 weekly in gross unemployment payments. (Ex. 6.4) Of that amount, he actually receives approximately \$700 every two weeks. (██████████ testimony)
5. The Claimant's December 9, 2010 application stated that her son-in-law owned a 2004 travel trailer with equity of \$11,500, an all terrain vehicle with equity of \$4,500, and that her daughter owned a savings account with a balance of \$1,500. (Ex. 2.4) The application indicates the travel trailer is used for work and the all terrain vehicle is used for "snow removal, firewood, hunting." *Id.* The Claimant's daughter explained, at hearing, that her husband used the travel trailer and the all terrain vehicle for his seasonal work as housing and transportation while in the field. (██████████ testimony)
6. The Claimant has several chronic medical conditions that require treatment. (Ex. 5.5; ██████████ testimony)
7. On December 13, 2010, the Division sent the Claimant written notice her December 9, 2010 application for Medicaid benefits was denied. (Ex. 4.0) That notice explained that the Claimant's application was denied because she had "not been living in the US for 5 years as qualified aliens, refugees or asylees." *Id.*

8. On December 13, 2010, the Division sent the Claimant written notice that her December 9, 2010 application for Food Stamp benefits was denied. (Ex. 4.1) That notice explained that the Claimant's application was "denied because you are not a United States citizen or an eligible alien." *Id.*

9. On January 20, 2011, the Division sent the Claimant notice her December 9, 2010 application for CAMA benefits was denied. (Ex. 6.6) That notice explained that because the Claimant lived with her daughter and son-in-law, their resources and income were required to be considered in determining the Claimant's eligibility for the CAMA program. *Id.* The notice explained the Claimant was not financially eligible for CAMA benefits because the son-in-law's monthly unemployment income of \$1,694.20 per month exceeded the CAMA program's \$700 monthly income limit for a household of 5 persons, and because the family's resources (all terrain vehicle valued at \$4,500 and savings account valued at \$800) exceeded the CAMA program's resource limit of \$500. *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).

A. Medicaid

The Medicaid program contains numerous eligibility categories. *See* 7 AAC 100.102. Each of these categories has slightly different eligibility criteria. One eligibility factor, common to all forms of Medicaid, with the exception of certain explicitly listed exceptions, is that the Medicaid applicant must be a United States citizen, a North American Indian (as explained in the regulation), or "a qualified alien as defined in 8 U.S.C. 1641." 7 AAC 100.050; 7 AAC 100.052(b)(1).

In addition to the above requirements, a qualified alien, who entered the United States on or after August 22, 1996, is subject to what is referred to as the "five-year bar", i.e. she "is not eligible for Medicaid for a period of five years beginning on the date the alien physically entered into the United States." 7 AAC 100.056(a).

8 U.S.C. 1641(b)(1) defines a qualified alien as "an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act."

The exceptions to the five-year bar for Medicaid benefits for qualified aliens are contained in 7 AAC 100.056 and 7 AAC 100.058. Those exceptions are refugees who are granted asylum, a US armed forces veteran or active duty personnel, a member of a Hmong or Highland Lao tribe, an immediate family member of the US armed forces veteran or active duty person, an immediate family member of a Hmong of Highland Lao tribe, or a victim of trafficking in persons and his/her family members. 7 AAC 100.058.

The five-year bar does not allow for an exception based on medical need. *See* 7 AAC 100.056 and 7 AAC 100.058.

B. Food Stamps

The Food Stamp program, like the Medicaid program, restricts eligibility for Food Stamp benefits to individuals who are United States citizens or qualified aliens. 7 CFR 273.4(a). A qualified alien, who entered the country on or after August 22, 1996, is not eligible to receive Food Stamp benefits for a period of five years after the date he or she physically entered the United States. 7 CFR 273.4(a)(2); 62 FR 61344.

There are a number of exceptions to the United States citizenship requirement and the five year exclusion requirement for qualified aliens contained in the Food Stamp regulations. The exceptions are refugees who are granted asylum, a US armed forces veteran or active duty personnel, a member of a Hmong or Highland Lao tribe, an immediate family member of the US armed forces veteran or active duty person, an immediate family member of a Hmong of Highland Lao tribe, American Indians born in Canada (as specifically described in the Food Stamp regulation), Cuban and Haitian entrants, battered/abused aliens, aliens that are paroled into the United States, aliens who are subject to withheld deportation proceedings (as specifically described in the Food Stamp regulation), aliens granted conditional entry to the United States (as specifically described in the Food Stamp regulation), and Amerasians. 7 CFR 273.4(A)(5)(i) and (ii).

The Food Stamp program's five year exclusion requirement for qualified aliens does not allow for an exception based on financial need. *See* 7 CFR 273.4(A)(5)(i) and (ii).

C. CAMA

The CAMA program provides individuals, who are not eligible for Medicaid, with limited medical care for specified medical conditions. 7 AAC 48.500, 7 AAC 48.525(b), 7 AAC 48.550 – 560. Unlike the Medicaid and Food Stamp programs, the CAMA program provides coverage to Alaska residents who are legally admitted aliens, regardless of how long they have been residing in the United States. 7 AAC 48.525(a)(5) and (6).

The CAMA program has strict financial guidelines, which apply regardless of medical need. For the purpose of determining an applicant's financial eligibility, the CAMA program counts the income and assets of the applicant, and those of the applicant's "spouse, child, parent, grandparent, grandchild, or sibling" with whom the applicant resides. 7 AAC 48.530(a). The *Alaska CAMA Manual* interprets this provision as "NOT includ [ing] a stepparent, stepchild, in-law, cousin, or companion not legally married to the applicant." *Alaska CAMA Manual* Section 930-2. (emphasis in original)

The CAMA program's financial eligibility guidelines require that a 5 person household may not make more than \$700 per month net income. 7 AAC 48.540; 7 AAC 47.150(b); 7 AAC 47.155. In addition, the household may not own more than \$500 in countable resources, such as cash, savings, or real or personal property. 7 AAC 47.160(a) and (c). A person's home, one automobile, and property necessary for employment are not counted as assets. 7 AAC 47.160(c)(2)(A),(D), and (E).

ANALYSIS

There are three issues in this case, each of which is addressed separately below, as follows:

1. Was the Division correct when it, on December 13, 2010, notified the Claimant her December 9, 2010 application for Medicaid benefits was denied?
2. Was the Division correct when it, on December 13, 2010, notified the Claimant her December 9, 2010 application for Food Stamp benefits was denied?
3. Was the Division correct when it, on January 20, 2011, notified the Claimant her December 9, 2010 application for CAMA benefits was denied?

Each of the above issues involves an application for benefits. As an applicant, the Claimant is seeking to change the status quo. She therefore has the burden of proof, by a preponderance of the evidence, with regard to each of the above issues.

- 1. Was the Division correct when it, on December 13, 2010, notified the Claimant her December 9, 2010 application for Medicaid benefits was denied?**

It is undisputed that the Claimant is a [REDACTED] national who has only been in the United States since August 28, 2010. *See* Finding of Fact 1 above. She is not a United States citizen, nor an American Indian. *Id.* Because the Claimant is an alien, not an American Indian, and it has been less than five years since the Claimant entered the United States, the five-year bar applies to her. *See* 7 AAC 100.056(a).

There are exceptions to the five-year bar, which are contained in regulation 7 AAC 100.058. A review of those exceptions reveals that the Claimant does not meet them. She is a [REDACTED] national, i.e. not a Hmong or a Highland Lao tribal member. She has not claimed that she is here as a refugee granted asylum, nor a victim of trafficking, an armed forces member, or that a member of her immediate family is an armed forces member. *See* 7 AAC 100.058 for a list of applicable exceptions. The Claimant had the burden of proof to establish that she falls within one of the enumerated exceptions to the five-year bar. She did not claim that she fell within any of those exceptions, let alone prove it.

Because the Claimant is an alien, who entered the United States less than five years ago, and because she does not fall within any of the exceptions to the five-year bar contained in 7 AAC 100.058, she is not eligible for Medicaid benefits, regardless of her medical condition. The Division was therefore correct when it, on December 13, 2010, denied the Claimant's December 9, 2010 application for Medicaid benefits.

- 2. Was the Division correct when it, on December 13, 2010, notified the Claimant her December 9, 2010 application for Food Stamp benefits was denied?**

The Food Stamp program, like the Medicaid program, does not allow an alien to receive Food Stamp benefits unless it has been five years since the date he or she physically entered the United States. 7 CFR 273.4(a)(2); 62 FR 61344. Because the Claimant is an alien, and it has been less than five years since the Claimant's August 28, 2010 date of entry, the five-year Food Stamp eligibility exclusion applies to her. 7 CFR 273.4(a)(2).

There are exceptions to the five-year Food Stamp eligibility exclusion rule. These are contained in federal Food Stamp regulation 7 CFR 273.4(A)(5)(i) and (ii). A review of those exceptions reveals that the Claimant does not meet them. She is a [REDACTED] national, i.e. not an American Indian born in Canada, not a Hmong or a Highland Lao tribal member, nor is she Cuban, Haitian, or Amerasian. She has not claimed that she is here as a refugee granted asylum, nor a victim of trafficking, an armed forces member, or that a member of her immediate family is an armed forces member. She has not claimed that she is a battered/abused alien, an alien that is paroled into the United States, an alien who is subject to withheld deportation proceedings (as specifically described in the Food Stamp regulation), or an alien granted conditional entry to the United States (as specifically described in the Food Stamp regulation). See 7 CFR 273.4(A)(5)(i) and (ii) for the list of exceptions. The Claimant had the burden of proof to establish that she falls within one of the enumerated exceptions to the five-year bar. She did not claim that she fell within any of those exceptions, let alone prove it.

Because the Claimant is an alien, who entered the United States less than five years ago, and because she does not fall within any of the exceptions to the Food Stamp program's five-year eligibility exclusion rule contained in 7 CFR 273.4(A)(5)(i) and (ii), she is not eligible for Food Stamp benefits, regardless of financial need. The Division was therefore correct when it, on December 13, 2010, denied the Claimant's December 9, 2010 application for Food Stamp benefits.

3. Was the Division correct when it, on January 20, 2011, notified the Claimant her December 9, 2010 application for CAMA benefits was denied?

The Division denied the Claimant's December 9, 2010 application for CAMA benefits on purely financial grounds. See Finding of Fact 9 above. The Division's reasons for denial were that the Claimant was not financially eligible for CAMA benefits. The specific reasons were that the son-in-law's monthly unemployment income of \$1,694.20 per month exceeded the CAMA program's \$700 monthly income limit for a household of 5 persons, and that the family's resources (all terrain vehicle valued at \$4,500 and savings account valued at \$800) exceeded the CAMA program's resource limit of \$500. *Id.*

a. Son-In-Law's Income.

The CAMA program, as stated in Alaska regulation 7 AAC 48.530(a), determines an applicant's financial eligibility for CAMA benefits by counting the income and resources of the applicant's "spouse, child, parent, grandparent, grandchild, or sibling" with whom the applicant resides. The regulation, 7 AAC 48.530(a), does not refer to an in-law's income or resources. The *Alaska CAMA Manual*, consistent with the regulation, specifically states that the CAMA program does not count an in-law's income or resources; an applicant's income and resources do "NOT include [those of] a

stepparent, stepchild, in-law, cousin, or companion not legally married to the applicant.” *Alaska CAMA Manual* Section 930-2. (emphasis in original)

The Division, therefore, should not have counted the son-in-law’s income when it determined whether the Claimant was financially eligible for the CAMA program. That was the Claimant’s household’s only income. Without counting the son-in-law’s income, the Claimant’s household had zero income. It was therefore under the CAMA program’s monthly income limit of \$700 for the Claimant’s five person household. *See* 7 AAC 48.540; 7 AAC 47.150(b); 7 AAC 47.155. The Division was therefore not correct when it denied the Claimant’s December 9, 2010 CAMA application based on the son-in-law’s income.

b. Resources.

The Claimant’s December 9, 2010 CAMA application was denied, not only based upon the son-law’s income, but upon the household’s resources. The identified resources were an all terrain vehicle valued at \$4,500 and \$800 contained in a savings account. *See* Finding of Fact 9 above.

The Claimant’s application stated the all terrain vehicle was owned by the son-in-law. *See* Finding of Fact 5 above. There was no evidence presented showing the Claimant’s daughter was a joint owner of the all terrain vehicle. In addition, the Claimant’s daughter testified that her husband used the all terrain vehicle for his seasonal work. The uncontradicted fact that the all terrain vehicle was owned solely by the son-in-law makes it not a countable resource for CAMA eligibility purposes. *See* 7 AAC 48.530(a) and *Alaska CAMA Manual* Section 930-2. Further, because the all terrain vehicle was used for employment purposes, it was not countable as a resource for CAMA eligibility purposes. *See* 7 AAC 47.160(c)(2)(D). Due to both of these independent reasons, the Division should not have counted the all terrain vehicle as a resource for the purposes of determining the Claimant’s financial eligibility for CAMA benefits.¹

The Claimant’s December 9, 2010 CAMA application stated her daughter owned a savings account with a balance of \$1,500. *Id.* The Division determined the savings account balance of \$800 was a countable resource that made the Claimant not eligible for CAMA benefits.² *See* Finding of Fact 9 above. The Claimant did not present any evidence contesting or otherwise disputing the Division’s factual assertion that her daughter owned a savings account with a balance of \$800.

The savings account was a countable resource for the purposes of determining CAMA eligibility because it was owned by the Claimant’s daughter, with whom the Claimant resides. 7 AAC 48.530(a). An individual who has more than \$500 in countable resources is not financially eligible for CAMA benefits. 7 AAC 47.160(a) and (c). Because the Claimant’s daughter’s savings account had a balance of \$800, i.e. in excess of \$500, the Claimant was not financially eligible to receive CAMA benefits.

¹ The Division cannot be faulted for not considering the employment exception for the all terrain vehicle. The Claimant’s application did not disclose the fact the all terrain vehicle was used for work purposes. (Ex. 2.4)

² The record does not contain any information indicating why the Division used the figure of \$800 rather than the figure of \$1,500 provided on the December 9, 2010 CAMA application.

In summary, the Claimant had the burden of proof by a preponderance of the evidence to demonstrate she was financially eligible for CAMA benefits. She did not meet her burden of proof. Although the Division was not correct to find her financially ineligible based on her son-in-law's income and all terrain vehicle, the Claimant was not eligible for CAMA benefits because of her daughter's savings account balance, which was worth more than \$500.

CONCLUSIONS OF LAW

1. The Claimant was not eligible to receive Medicaid benefits, as of her December 9, 2010 application, because she was an alien, and it had been less than five years since she entered the United States on August 28, 2010.
2. The Claimant was not eligible to receive Food Stamp benefits, as of her December 9, 2010 application, because she was an alien, and it had been less than five years since she entered the United States on August 28, 2010.
3. The Claimant was not financially eligible to receive CAMA benefits, as of her December 9, 2010 application, because her daughter, with whom she resided, owned a savings account with a balance of over the \$500 CAMA resource limit.

DECISION

1. The Division was correct when it, on December 13, 2010, notified the Claimant her December 9, 2010 application for Medicaid benefits was denied.
2. The Division was correct when it, on December 13, 2010, notified the Claimant her December 9, 2010 application for Food Stamp benefits was denied.
3. The Division was correct when it, on January 20, 2011, notified the Claimant her December 9, 2010 application for CAMA benefits was denied.

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. 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. To appeal, 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

