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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-56
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) applied for Denali KidCare Medicaid (Denali KidCare) benefits on January 11, 2011. (Exs. 2.0 – 2.8) On January 13, 2011, the Division of Public Assistance (Division) sent the Claimant written notice that her January 11, 2011 application for Denali KidCare benefits was denied. (Exs. 4.0 – 4.1) The Claimant requested a Fair Hearing on January 31, 2011. (Ex. 5)

This Office has jurisdiction pursuant to 7 AAC 49.010.

The Claimant's hearing was held on April 19, 2011. The Claimant attended the hearing in person; she represented herself and testified on her own behalf. [REDACTED] also attended the hearing in person; she assisted the Claimant in her representation. [REDACTED], Public Assistance Analyst with the Division, attended the hearing in person; he represented the Division and testified on its behalf.

STATEMENT OF ISSUES

Was the Division correct when it, on January 13, 2011, denied the Claimant's January 11, 2011 application for Denali KidCare benefits?

FINDINGS OF FACT

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

1. The Claimant is not a United States citizen. (Ex. 2) She is a [REDACTED] citizen, and her country of origin is [REDACTED]. (Claimant testimony; Ex. 2) While she has spent time in Alaska every year since 2004, she did not become a legal permanent resident of the United States until July 1, 2010. (Claimant testimony; Ex. 3.2 – 3.3)

2. The Claimant resides with her husband, who is a United States citizen, and their minor daughter. (Ex. 2.1) The Claimant is pregnant with a due date of [REDACTED]. (Ex. 2.6)
3. The Claimant applied to receive Denali KidCare benefits on January 11, 2011. (Exs. 2 – 2.8)
4. The Claimant’s minor daughter was approved to receive Denali KidCare benefits. (Ex. 1)
5. The Claimant herself was not approved to receive Denali KidCare benefits. (Ex. 4) The Claimant was sent notice on January 13, 2011 that her application was denied. (Exs. 4 – 4.1) The Division’s denial notice explained that she was not eligible for Denali KidCare pregnant woman coverage because she is not a United States citizen and she has been in the United States less than 5 years. *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 Medicaid program contains numerous eligibility categories. *See* 7 AAC 100.102. One of these categories is what is referred to as Denali KidCare. *See* 7 AAC 100.002(a)(4)(b) and 7 AAC 100.300 – 306. There is no coverage category for an unborn child. *See* 7 AAC 100.002. Pregnant women, however, are provided Medicaid coverage under the Denali KidCare category. 7 AAC 100.300 – 306. In order for a pregnant woman to be eligible for Denali KidCare coverage, she 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); 7 AAC.300(a).

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). This requirement also applies to applicants for Denali KidCare Pregnant Women coverage. 7 AAC 300(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 or Highland Lao tribe, or a victim of trafficking in persons and his/her family members. 7 AAC 100.058.

“Administrative agencies do not have jurisdiction to decide issues of constitutional law.” *Alaska Public Interest Research Group v. State*, 167 P.3d 27, 36 (Alaska 2007)

“Administrative agencies are bound by their regulations just as the public is bound by them.” *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010).

State of Alaska Fair Hearing regulation 7 AAC 49.170 provides that “the role of the hearing authority is limited to the ascertainment of whether the laws, regulations, and policies have been properly applied in the case and whether the computation of the benefit amount, if in dispute, is in accordance with them.”

ANALYSIS

The issue in this case is whether the Division was correct when it, on January 13, 2011, denied the Claimant’s January 11, 2011 application for Denali KidCare (Medicaid) 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.

It is undisputed that the Claimant is originally from [REDACTED]; she has only been a permanent legal United States resident since July 1, 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 permanently entered the United States, the five-year bar applies to her and she is not eligible to receive Denali KidCare (Medicaid) benefits. *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 of eastern European origin, 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. There is no exception provided for someone who is married to a United States citizen, unless the spouse is an armed forces veteran or 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 permanently 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 Denali KidCare (Medicaid) benefits.

The Claimant raised several arguments to avoid application of the five-year bar in her case. Her first argument was that the “durational residency requirement causes adversity that significantly outweighs the intent of the state’s purpose in imposing them.” (Ex. 5) This is a challenge to the regulation on

hardship grounds. However, the Denali KidCare regulations do not contain a hardship exception. This Office is required to adhere to and apply the applicable regulations. “Administrative agencies are bound by their regulations just as the public is bound by them.” *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010). *Also see* 7 AAC 49.170. This argument fails because this Office does not have jurisdiction to address the issue.

The Claimant’s second argument is that the five-year bar is unconstitutional under equal protection grounds (Alaska Constitution, Article I, Section 1) and national origin discrimination (Alaska Constitution, Article I, Section 3). (Ex. 5) This is a constitutional challenge to the regulations, which lies outside the jurisdiction of this Office. “Administrative agencies do not have jurisdiction to decide issues of constitutional law.” *Alaska Public Interest Research Group v. State*, 167 P.3d 27, 36 (Alaska 2007) This argument fails because this Office does not have jurisdiction to address the issue.

The Claimant’s third argument is that her unborn child is a United States citizen, and should qualify on her/his own. (Ex. 5) This argument fails because there is no category of Medicaid coverage for an unborn child. *See* 7 AAC 100.002. This Office does not have the authority to create new categories of Medicaid coverage, only to apply them. “[T]he role of the hearing authority is limited to the ascertainment of whether the laws, regulations, and policies have been properly applied in the case and whether the computation of the benefit amount, if in dispute, is in accordance with them.” 7 AAC 49.170. This argument fails because this Office does not have jurisdiction to address the issue.

The Claimant’s fourth argument is that the regulations discriminate against the Claimant based upon her national origin. (Ex. 5) As noted above, this Office does not have jurisdiction to overturn or ignore regulations or to entertain constitutional arguments. *Alaska Public Interest Research Group v. State*, 167 P.3d 27, 36 (Alaska 2007); *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010); 7 AAC 49.170. As a result, this argument also fails.

The Claimant raised a final argument at hearing, stating that due to the recent federal healthcare law changes, that the State of Alaska was not required to follow federal Medicaid rules limiting Medicaid eligibility for aliens. This argument fails, because this Decision is based solely on Alaska Medicaid regulations, not the federal Medicaid regulations.

In summary, the Claimant is an alien who has only been a permanent resident of the United States since July 1, 2010, i.e. for less than 5 years. She does not fall within any of the recognized exceptions to the Medicaid regulation that bar a qualified alien, who has been in the United States for less than 5 years, from receiving Medicaid benefits. 7 AAC 100.056(a) and 7 AAC 100.058. As a result, she is not eligible for Denali KidCare Pregnant Women Medicaid coverage.

The Claimant’s objections to the Medicaid regulations are noted for the record. However, this Office does not have jurisdiction to consider those objections.

The Division was therefore correct when it, on January 13, 2011, denied the Claimant’s January 11, 2011 application for Denali KidCare Medicaid benefits.

CONCLUSIONS OF LAW

1. The Claimant did not meet her burden of proof and demonstrate that she was eligible to receive Denali KidCare Medicaid benefits, as of her January 11, 2011 application; she was an alien, and it had been less than five years since she permanently entered the United States on July 1, 2010. 7 AAC 100.056(a).
2. This Office lacks jurisdiction to entertain the Claimant's challenges to the Medicaid regulation, 7 AAC 100.056(a), which states that a qualified alien, who has been in the United States for less than 5 years, is not eligible to receive Medicaid benefits.

DECISION

The Division was correct when it, on January 13, 2011, denied the Claimant's January 11, 2011 application for Denali KidCare 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. 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

DATED this 6th day of June, 2011.

/Signed/
Larry Pederson
Hearing Authority

Certificate of Service

I certify that on this 6th day of June, 2011, true and correct copies of the foregoing were sent to:

Claimant by U.S.P.S First Class Certified Mail, Return Receipt Requested and to the following by secure e-mail:

[REDACTED], Public Assistance Analyst
[REDACTED], Public Assistance Analyst
[REDACTED], Policy & Program Development
[REDACTED], Staff Development & Training
[REDACTED], Administrative Assistant II
[REDACTED], Eligibility Technician I

J. Albert Levitre, Jr.
Law Office Assistant I