

Office of Hearings and Appeals
3601 C Street, Suite 1322
P. O. Box 240249
Anchorage, AK 99524-0249
Phone: (907)-334-2239
Fax: (907)-334-2285

**STATE OF ALASKA
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
OFFICE OF HEARINGS AND APPEALS**

In the Matter of)
)
 [REDACTED],) OHA Case No. 11-FH-114
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) applied for retroactive Medicaid benefits for the months of November and December 2010 on February 28, 2011. (Exs. 2.0, 2.7) On March 9, 2011, the Division of Public Assistance (Division) sent the Claimant notice that her request for retroactive Medicaid benefits for the months of November and December 2010 was denied. (Ex. 5.1) The Claimant requested a Fair Hearing on March 15, 2011. (Exs. 6.0 – 6.1)

This Office has jurisdiction pursuant to 7 AAC 49.010.

The Claimant's hearing was held on May 17 and June 22, 2011. The Claimant appeared telephonically on May 17, 2011 and in-person on June 22, 2011. The Claimant testified on her own behalf. [REDACTED], the Claimant's mother, appeared telephonically on May 17, 2011 and in-person on June 22, 2011. Ms. [REDACTED] assisted the Claimant in her representation and testified on the Claimant's behalf. [REDACTED], Public Assistance Analyst with the Division, appeared in person; she represented the Division and testified on its behalf.

STATEMENT OF ISSUES

Was the Division correct when it sent the Claimant notice, on March 9, 2011, that her February 28, 2011 application for retroactive Medicaid benefits for the months of November and December 2010 was denied, because she allegedly owned countable resources worth more than \$2,000?

FINDINGS OF FACT

1. The Claimant is less than 60 years old. (Ex. 2.2) She had a minor child who resides with her. *Id.* She applied for Medicaid benefits on February 28, 2011. (Exs. 2.0 – 2.11) The Claimant's

application requested that she receive retroactive Medicaid benefits for the months of November 2010, December 2010, and January 2011. (Ex. 2.7)

2. On March 9, 2011, the Division sent the Claimant notice that she was approved for retroactive Medicaid benefits for the month of January 2011. (Ex. 5.0) Family Medicaid is the specific Medicaid coverage category for which she was approved. (Ex. 1)

3. On March 9, 2011, the Division sent the Claimant notice that she was not approved for retroactive Medicaid benefits for the months of November and December 2010. (Ex. 5.1) The Division's March 9, 2011 notice explained that the reason the Claimant's retroactive Medicaid coverage was denied for those months was because "you were over the resources limit of \$2000.00 each month . . . The resources we looked at was the balances in your Northrim and FNB accounts. The Northrim Accounts alone were over \$2000.00 each month." *Id.*

4. The Claimant was the sole owner of bank accounts at Northrim Bank and First National Bank of Alaska. (Exs. 4.1 – 4.7) The balances in these bank accounts on November 1, 2010 and December 1, 2010 were as follows:

<u>Bank Acct</u>	<u>Nov. 1, 2010</u>	<u>Dec. 1, 2010</u>
Northrim	\$2,740.40	\$2,261.67
First National	<u>\$3,927.54</u>	<u>\$3,193.06</u>
TOTALS	\$6,667.94	\$5,454.73

(Exs. 4.1 – 4.7)

5. The Claimant had received a \$3,000 check from her father to help pay for dental work for the Claimant's daughter. (██████ testimony) This was a portion of the funds in the bank accounts. *Id.* In addition, the Claimant fell ill, was hospitalized, and was not able to manage her finances. *Id.* A friend of the Claimant's was being paid to manage the Claimant's finances, pay her bills etc., and did not. *Id.* If the Claimant's bills had been paid when they were supposed to have been, the Claimant's bank balances would have been less than the Medicaid limits. (Claimant's testimony; ██████ 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, Alcoholic 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 coverage categories, each with their own eligibility requirements. *See* 7 AAC 100.002. Family Medicaid is the Medicaid coverage category for a person, under the age of 65 years old, who resides in her own home with a minor child, when the applicant is not receiving Supplemental Security Income benefits or Adult Public Assistance benefits. 7 AAC 100.102(a)(1) and 7 AAC 100.100. *See* 7 AAC 100.002 for the complete list of Medicaid coverage categories.

Family Medicaid has a financial resource requirement that an applicant, who is less than 60 years old, may not own more than \$2,000 in countable resources. 7 AAC 100.130(a). Funds that are held in a bank account which is solely owned by an applicant are countable resources. *See* 7 AAC 100.138 for a list of exempt (non-countable) resources.

The Medicaid program determines eligibility for retroactive Medicaid coverage “separately for each retroactive month in which the applicant seeks coverage.” 7 AAC 100.072(c). The value of countable resources is determined on the first day of each month. *Alaska Family Medicaid Manual* Section 5150-6B.

“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

There is one issue in this case: whether the Division was correct when it sent the Claimant notice, on March 9, 2011, that her February 28, 2011 application for retroactive Medicaid benefits for the months of November and December 2010 was denied, because she allegedly owned countable resources worth more than \$2,000.

The Claimant has the burden of proof, by a preponderance of the evidence, with regard to this case because she, as the applicant for benefits, was the party requesting a change in the status quo.

The facts show the Claimant had funds worth in excess of \$2,000 in her solely owned bank accounts on November 1, 2010 and December 1, 2010. *See* Finding of Fact 4 above. Because her bank accounts were owned solely by her, the funds were countable resources. As a result, the Claimant exceeded the Medicaid resource limit for her particular Medicaid coverage category (Family Medicaid applicant under 60 years of age), on the first day of November 2010 and the first day of December 2010. 7 AAC 100.072(c) and 7 AAC 100.130(a). The Medicaid program values resources on the first day of each month. *Alaska Family Medicaid Manual* Section 5150-6B.

This means the Claimant was not eligible for Medicaid coverage in each of the months of November and December 2010 because she owned countable resources worth over \$2,000 on the first day of each of those months.

The Claimant presented evidence that her bank accounts exceeded the \$2,000 resource limit during each of the months of November and December 2010 due to reasons beyond her control. Specifically, she was unable to manage her affairs due to illness, and the person who was supposed to handle her financial affairs failed to do so. *See* Finding of Fact 5. Additionally, there was testimony that \$3,000 of the Claimant's funds were given to her to provide dental care for her daughter. *Id.* However, the Claimant's accounts were solely owned by her and accessible by her. They were countable resources, and the fact that they were not properly managed, due to no fault on the Claimant's part, does not make them exempt from being counted as resources.¹

It must be noted that even if the \$3,000, which Ms. ██████ testified was given to the Claimant for her daughter's dental care, is not counted as a resource, the Claimant would still have exceeded the \$2,000 resource limit for the months of November and December 2010. This is because the Claimant's total bank account balances on November 1, 2010 and December 1, 2010 were \$6,667.94 and \$5,454.73, respectively. *See* Finding of Fact 4 above. Subtracting \$3,000 from each of these totals still results in funds of more than \$2,000 (\$3,667.94 on November 1, 2010, and \$2,454.73 on December 1, 2010).

The Claimant therefore did not meet her burden of proof by a preponderance of the evidence to demonstrate that she was financially eligible for Medicaid benefits for the months of November and December 2010. Consequently, the Division was correct when it sent the Claimant notice, on March 9, 2011, that her February 28, 2011 application for retroactive Medicaid benefits for the months of November and December 2010 was denied.

CONCLUSIONS OF LAW

1. The Claimant was the owner of countable resources on both November 1, 2010 and December 1, 2010, which were worth over \$2,000. As a result, she was not financially eligible to receive Medicaid benefits during each of those months, pursuant to 7 AAC 100.072(c) and 7 AAC 100.130(a).

DECISION

The Division was correct when it sent the Claimant notice, on March 9, 2011, that her February 28, 2011 application for retroactive Medicaid benefits for the months of November and December 2010 was denied.

¹ The applicable regulation regarding countable resources, 7 AAC 100.138, does not contain a hardship exception. This Office does not have the discretion to relax the Medicaid program's eligibility requirements. "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* State of Alaska Fair Hearing regulation 7 AAC 49.170

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 12th day of August 2011.

/Signed/
Larry Pederson
Hearing Authority

Certificate of Service

I certify that on this 12th day of August, 2011, true and correct copies of the foregoing were sent to:

Claimant by Certified Mail, Return Receipt Requested
[REDACTED] (courtesy copy), by USPS First Class Mail

and to other listed persons by 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

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