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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-149
	)	
Claimant.	)	Division Case No. [redacted]

FAIR HEARING DECISION

STATEMENT OF THE CASE

Mr. [redacted] (Claimant) was receiving regular Medicaid benefits in September 2010. (Ex. 1) In September 2010, Claimant applied for Home and Community-Based Waiver, Older Alaskans (HCBW-OA) Medicaid benefits. (Claimant's caregivers' testimony) On April 6, 2011, the Division of Senior and Disabilities Services determined that he had resources in excess of $2,000 in the months of February, March and April 2011 and therefore was not eligible for Home and Community-Based Waiver, Older Alaskans (HCBW-OA) Medicaid benefits those three months. (Exs. 4.0-4.5; Ex. 7) Consequently, Claimant was not issued HCBW-OA Medicaid benefits during the months of February, March and April 2011. (Division's Hearing Representative's testimony) On April 8, 2011, Claimant requested a fair hearing, seeking an exception to the resource limit on grounds of good cause. (Exs.6.0-6.1; Claimant's testimony)

This office has jurisdiction pursuant to 7 AAC 49.010.

A Fair Hearing was held on May 12, 2011. Claimant attended both days of the hearing solely through his representatives consisting of his daughter, who is Claimant's alternate power of attorney, and through representatives of [redacted], Mr. [redacted], Claimant's care coordinator and Mr. [redacted], Supervisor of Claimant's care coordinator (hereinafter Claimant's caregivers). Claimant's representatives/caregivers appeared in person and testified on Claimant's behalf. Ms. [redacted], Public Assistance Analyst with the Division, attended the hearing in person, and testified on behalf of the Division. The evidentiary record closed on May 12, 2011 at the end of the hearing. All offered exhibits were admitted.

ISSUE

On April 18, 2011, was the Division correct to deny Claimant the receipt of Home and Community-Based Waiver, Older Alaskans Medicaid benefits during February, March, and April 2011 because he had resources exceeding $2,000 in each of those months?

FINDINGS OF FACT

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

1. Claimant[1] was living in his own home and managing his own affairs before September 2010. (Ex. 2.0) Claimant's daughters were named his power of attorney and alternate power of attorney in May 2010. (Hearing Representative's testimony; [redacted] testimony) Claimant was receiving regular Medicaid benefits before September 2010. (Ex. 1)

2. On September 21, 2010, Claimant moved from his home to an Assisted Living Facility. (Ex. A; testimony of Claimant's caregivers) About the same time, conduct of his affairs was undertaken by his alternate power of attorney, his daughter, and the [redacted]. ([redacted] testimony; [redacted] testimony). Claimant's caregivers had difficulty managing Claimant's financial affairs. ([redacted] testimony) Claimant's alternate power of attorney would take Claimant to the bank periodically to obtain money for his needs. Getting Claimant to the bank was very difficult. Eventually, Claimant's alternate power of attorney was added as a signer on Claimant's bank account. ([redacted] testimony)

3. On September 17, 2010, the Division of Senior & Disabilities Services, General Relief section, had notified Claimant that his "net monthly income available" was $443.00. (Ex. A) Claimant's caregivers paid the assisted living home the (pro-rated) amount of $443 as his "cost of care" amount due the home during the months of September 2010 through February 2011. (Ex. B) Claimant's caregivers did not know that Claimant's "net monthly income" was actually $1,152.00. ([redacted] testimony; Ex. C)

4. On September 30, 2010, the Division received a report of the change in Claimant's living circumstances. (Ex. 2) Claimant's caregivers had applied to change from Claimant's regular Medicaid benefits to Home and Community Based Waiver – Older Alaskan's (HCBW-OA)Medicaid benefits. ([redacted] testimony)

5. On December 9, 2010, the Division of Senior and Disabilities Services notified Claimant he had been determined medically eligible for HCBW-OA Medicaid benefits because he met the Medicaid Level of Care requirements for that program. (Ex. 3.1)

6. On April 6, 2011, Claimant was determined financially eligible for the Medicaid waiver program. (Ex. 4.5) The Division determined Claimant was eligible for HCBW-OA Medicaid benefits in December 2010 and January 2011 but not thereafter because he had accumulated excess resources to qualify after January 2011. (Ex. 4.0) Based on Claimant's bank statements, the Division determined Claimant's resources exceeded $2,000 in each of the months of

[1] Claimant did not appear or testify at the hearing. In this decision, all references to Claimant includes attribution of testimony made by Claimant's caregivers.

February, March and April 2011. (Ex. 4.0-4.4; Ex. 4.5; see also Ex. 7.2) Claimant's bank account balance was as follows:

February 2011	$ 3,333.65	(Ex. 4.2)
March 2011	$ 2,696.87	(Ex. 4.1)
April 2011[2]	$ 2,696.87	(Ex. 4.1)

7. On April 7, 2011, the Division sent Claimant a notice informing him he was "currently over the resource limit for Medicaid" and was required to "spend down all funds above the $2,000 in [his] account to remain eligible for the Medicaid Program." (Ex. 5.0) This same written notice informed Claimant he needed to provide proof of the "spend down" by April 18, 2011 or his case would be closed. (Ex. 5.0)

8. On April 18, 2011, the Division notified Claimant he had been approved for Medicaid (Home and Community-Based Waiver, Older Alaskans) benefits effective December 7, 2010. (Ex. 7.0) This April 18, 2011 notice also informed Claimant he would get benefits in December 2010 and January 2011 but that his resources exceeded the eligibility limit from February 2011onward. (Ex. 7.0)

9. As of April 18, 2011, Claimant had not provided proof his bank account had been spent down to $2,000 or below. (Ex. 8) Claimant's case was closed. (Ex. 8) However, at the time of the hearing the parties stipulated that Claimant's case had been re-opened and he was receiving Medicaid benefits,[3] therefore there was no dispute about the closure at the hearing. (Division's Hearing Representative's testimony; Claimant's caregivers' testimony)

10. Claimant requested a fair hearing on April 8, 2011. (Exs. 6.0, 6.1) Claimant sought review of the Division's decision that he was not eligible for Home and Community-Based Waiver (HCBW) Medicaid benefits in February, March, and April 2011. (Claimant's caregivers' testimony)

11. Claimant does not dispute the Division's determinations. (Claimant's caregivers' testimonies) Claimant agrees his bank account was not spent down sufficiently in the months of February, March and April 2011 to be below $2,000 in any of these three months. (Exs. 7.0, 7.2) Claimant asserts he should receive HCBW-OA benefits for those three months because the balance in his bank account accumulated as a result of reasons beyond his control, and were the direct result of the Division's mistaken notification that Claimant's "net monthly income available" was $443.00. (Ex. 6.2) Claimant asserts it is unfair he was denied HCBW-OA benefits for these months due to these reasons. (Claimant's caregivers' testimony)

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[2] The April 2011 balance in Claimant's bank account was carried forward from March 24, 2011. (Ex. 4.1) Claimant did not dispute this amount and did not provide a bank statement verifying the monies were spent down as of April 7, 2011. (Ex. 9.1)

[3] Claimant continued to receive his regular Medicaid benefits during the transition to HCBW-OA program benefits. (Division's Hearing Representative's testimony)

PRINCIPLES OF LAW

Burden of Proof and Standard of Proof

"Ordinarily the party seeking a change in the status quo has the burden of proof." *State, Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985). The standard of proof in an administrative proceeding is a "preponderance of the evidence," unless otherwise stated. *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Com'n*, 711 P.2d 1170, 1183 (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)

Medicaid for Older Alaskans

The State of Alaska provides medical assistance to needy persons who are eligible. AS 47.07.010; AS 47.07.020. It does this, in part, by participating in the national medical assistance program provided by 42 U.S.C. 1396 – 1396p, (Title XIX of the Social Security Act), which provides grants to states for medical assistance programs, including Medicaid. The Alaska Older Alaskans program is administered under Home and Community Based Waiver Services and is a Medicaid benefit program. 7 AAC 40.090, .120; 7 AAC 100.002, .400.

To be eligible for Medicaid benefits as a recipient of the Older Alaskans Home and Community Based Waiver Services, the value of a single applicant's non-excludable resources may not exceed $2,000. 7 AAC 40. 270(a). An individual's resources are valued at any time on the first day of each calendar month. 7 AAC 40.270(b). An individual's resources are any real or personal property the individual owns and can convert to cash to be used for that person's support and maintenance. 7 AAC 40.260.

Some resources are excluded from being counted but bank accounts are not among excluded resources. 7 AAC 40.280. Resources that are not excluded from being counted are called "non-excludable" resources. 7 AAC 40.270.

After establishing initial Medicaid eligibility, the department will determine if a recipient must pay a portion of the cost of the recipient's long-term care services (referred to as the "cost of care" amount). Alaska regulation 7 AAC 100.550(a). This post-eligibility requirement, and others found at 7 AAC 100.550 – 100.579, apply to an individual who is receiving home and community-based waiver services and who is determined eligible for Medicaid. Alaska regulation 7 AAC 100.550(b)(2).

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

Alaska Fair Hearing regulation 7 AAC 49.170, provides, in relevant part:

> Except as otherwise specified in applicable federal regulations … 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

Issue

On April 18, 2011, was the Division correct to deny Claimant the receipt of Home and Community-Based Waiver, Older Alaskans Medicaid benefits during February, March, and April 2011 because he had resources exceeding $2,000 in each of those months?

Burden of Proof and Standard of Proof

Claimant has the burden of proof by a preponderance of the evidence because he is applying for benefits and therefore changing the status quo.

Facts

All of the material facts in this case are undisputed. Resolution of the issue is a matter of applying these undisputed facts to the relevant law.

Claimant was a recipient of Medicaid benefits and managing his financial affairs until September 2010. On September 21, 2010, he moved into an assisted living residence and his financial affairs were undertaken by his assistant power of attorney (a daughter) and the [redacted]

The Division of Senior and Disabilities Services advised Claimant on September 17, 2010 that his net income was $443. Claimant's caregivers conducted his financial affairs believing $443 was Claimant's accurate, disposable income and paid his bills, including paying the cost of care for his assisted living, based on $443 income. However, Claimant's actual income was $1,152 monthly. Therefore, Claimant's income was not spent sufficiently so as to prevent an increase in the balance of his bank account. By February 2011, Claimant's bank account balance had reached $3,333 and in March and April 2011 it was $2,696.

To be eligible for Medicaid benefits, an individual applicant cannot have resources whose total value is $2,000 or more. The parties do not dispute that Claimant's bank account is a resource for purposes of Medicaid eligibility and do not dispute that Medicaid eligibility is denied to applicants who have resources in excess of $2,000 in any month. The parties stipulated that Claimant had funds in excess of $2,000 in February 2011, March 2011 and April 2011. Therefore, in February, March and April 2011, Claimant did not meet the resource eligibility requirements to qualify for Medicaid.

Claimant's undisputed testimonial proof was that he exceeded the resource limit in these months because his caregivers were unaware of his true income ($1,152) and they relied on the State's report that his net monthly income was $443. This report was provided to Claimant by the Division on or about September 17, 2010, immediately preceding his change of residence to an

assisted living home. Claimant believes it is unfair to penalize him for his caregivers' reliance on the Division's mistake as to his correct monthly net income.

Subsequent to May 2010, Claimant's Caregivers Had the Ability to Learn Claimant's True Income.

It is undisputed Claimant's caregivers relied on the Division's notice that Claimant's net income was $443 monthly. However, Claimant's daughter became an alternate power of attorney in May 2010. From that time forward, Claimant's daughter could have obtained information concerning Claimant's true income. Additionally, after Claimant began residing in the assisted living home and Claimant's alternate power of attorney and [redacted] caregivers became involved managing Claimant's affairs, it would have been a routine matter to examine Claimant's bank statements and learn his balance was increasing substantially. Even when Claimant's alternate power of attorney was taking Claimant to the bank, she could have obtained the bank account balance. Therefore, it is clear that the caregivers' reliance on the mistaken income amount provided by the Division was not the sole reason that Claimant's bank account balance grew to exceed $2,000 in February, March and April 2011.

There is No Exemption from the Eligibility Resource Limit

Notwithstanding, Claimant's arguments are understandable. However, the Medicaid Program is a federal program administered pursuant to specific laws and regulations which cannot be changed, absent legislation or rule-making, or disregarded. 7 AAC 40.020 *et. seq.*; 7 AAC 100.400 *et. seq.* The administration of the federal Medicaid program by the State of Alaska requires the State to abide by and implement the federal laws and regulations. The eligibility resource limit of a maximum of $2,000 for a single person is a fundamental pre-requisite that all applicants for Medicaid must not exceed as of the first day of each month to qualify for Medicaid benefits. 7 AAC 40.270(a),(b). There is no regulation providing for a hardship or good cause exception or other means to "flex" the resource limit.

The Division does not have the authority to create an exception to the law concerning Medicaid and is required to implement the law as it exists. "Administrative agencies are bound by their regulations just as the public is bound to them." *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868-869 (Alaska 2010).

The Office of Hearings and Appeals Does Not have the Power to Make Exceptions.

The authority of the Office of Hearings and Appeals is limited to the scope identified in 7 AAC 49.170. Regulation 7 AAC 49.170 provides, in relevant part:

> Except as otherwise specified in applicable federal regulations … 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.

Therefore, the Office of Hearing and Appeals has no authority to deviate from its application of the facts to the statutes and regulations governing the administration of the Medicaid Program, and has no authority to create exemptions from the requirements of the law for any reason(s).

Claimant did not meet his burden of proving the Division was incorrect in denying him Medicaid benefits in February, March and April 2011 because Claimant had resources in excess of $2,000 during each of those months.

CONCLUSIONS OF LAW

1. Claimant did not meet his burden of proving by a preponderance of the evidence that he did not have resources valued in excess of $2,000 on February 1, 2011, March 1, 2011 and April 1, 2011, as required, to be eligible for Home and Community-Based Waiver – Older Alaskans Program Medicaid benefits during those months. 7 AAC 40.270(b).

2. On April 18, 2011, the Division correctly applied the Medicaid resource limit of $2,000 to determine that Claimant was not eligible for Home and Community-Based Waiver – Older Alaskans Program Medicaid benefits to receive Medicaid benefits in February, March and April 2011.

3. There is no regulation allowing an exception from the $2,000 resource limit for Medicaid eligibility, including no exception for hardship or good cause.

DECISION

On April 18, 2011, the Division was correct to deny Claimant Home and Community-Based Waiver, Older Alaskans Medicaid benefits for February, March, and April 2011 because Claimant owned a bank account resource valued at more than $2,000 in each of those months.

APPEAL RIGHTS

If for any reason Claimant is not satisfied with this decision, Claimant has the right to appeal by requesting a review by the Director. 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. To appeal, 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

DATED this July 5, 2011.

/signed/
Claire Steffens
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on July 5, 2011 true and correct copies of the foregoing were sent to:
Claimant, Certified Mail, Return Receipt Requested.

and to other listed persons (via e-mail), as follows:

[redacted], Hearing Representative
[redacted], Hearing Representative
[redacted], Chief, Policy & Program Dev.
[redacted], Administrative Assistant II
[redacted], Eligibility Technician I
[redacted], Staff Development & Training

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