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

In the Matter of

██████████,

Claimant.

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OHA Case No. 11-FH-187  
Division Case No. ██████████

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

Mr. ██████████ (Claimant) was a recipient of the Medicaid Home and Community Based Waiver Services Program (Program) benefits at all times relevant to this case. (Ex. 1) On March 10, 2011, Claimant submitted an application seeking recertification of his eligibility for benefits. (Ex. 2-2.8) On April 14, 2011 the Division sent notices to Claimant informing him he continued to be eligible for benefits and that his “cost of care” obligation had increased from zero to \$631.04. (Exs. 4-4.3) (Ex. 3.0-3.1) Claimant requested a fair hearing on May 6, 2011. (Ex. 6-6.4)

This office has jurisdiction pursuant to 7 AAC 49.010.

A hearing was held on each of June 21, 2011, August 25, 2011, and September 8, 2011. Claimant attended the hearing telephonically, represented himself, and testified on his own behalf. Claimant’s Care Coordinator, Ms. ██████████, also appeared telephonically and testified on behalf of Claimant on June 21, 2011. Ms. ██████████, Public Assistance Analyst with the Division, attended the hearing in person, and testified on behalf of the Division as the Division’s Hearing Representative. The evidentiary record was closed at the end of the hearing; all offered exhibits were admitted.

**ISSUE**

On April 14, 2011, was the Division correct to increase the amount of Claimant’s liability for cost of care for receiving Medicaid Home and Community Based Waiver benefits because his 20 year old son was no longer eligible for the dependent family member allowance?<sup>1</sup>

<sup>1</sup> The Division’s calculation of the increase in Claimant’s cost of care also factored in a reduction in Claimant’s monthly insurance premium from \$462.82 to \$112.00. (Hearing Representative’s testimony) The insurance premium allowance deduction provided by 7 AAC 100.564 is the cost of Medicare and other health insurance premiums paid by the recipient and not reimbursed by Medicaid. The cost of health insurance premiums also may be deducted from a recipient’s total

## FINDINGS OF FACT

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

1. At all times relevant to this case, Claimant was a recipient of Medicaid Home and Community Based Waiver benefits as a disabled person.<sup>2</sup> (Ex. 1; Ex. 3.0; Hearing Representative's testimony) Claimant has two sons; one is seventeen years old and lives with Claimant and the other is 20 years old, and lives away from Claimant's home when he attends college. (Claimant's testimony) Claimant's oldest son has been attending college in [REDACTED] for the past two years. (Claimant's testimony; *see* Ex. 2.0)

2. On March 10, 2011, Claimant applied for recertification of his eligibility for these benefits. (Ex. 1; Ex. 2.0-2.8; Hearing Representative's testimony) Claimant listed two sons as member of his household: one son 20 years old and the other son 17 years old.<sup>3</sup> (Ex. 2.0)

3. On April 13, 2011 the Division's Eligibility Technician determined Claimant was eligible for continued benefits. (Ex. 3.0) In addition, the Eligibility Technician determined that in previous years a deduction erroneously was allowed for his 20 year old son, who is out of the household attending post-secondary school. (Ex. 3.0) The Eligibility Technician also noted that a "policy clarification on file states that once a child reaches 18 they are no longer considered a dependent when considering [cost of care] deductions." (Ex. 3.0)

4. On April 14, 2011, the Division sent a written notice informing Claimant his application for continued eligibility for Medicaid benefits had been approved. (Ex. 4.1)

5. On April 14, 2011, the Division sent a written notice informing Claimant of its calculations in determining his cost of care contribution. (Ex. 4.2) The notice stated, in relevant part, "[w]hile you are receiving Medicaid home and community-based waiver services you are required to pay a portion of your monthly income toward your cost of care. ... Beginning May 2011, your monthly cost of care amount is \$631.04." ... Policy changes have occurred and we are no longer allowing as large of a deduction for dependents in your household. Because of this you are now obligated to pay a cost of care. This amount will change again when [your 17 year old son] turns 18. ..." (Ex. 4.3) The notice cited 7 AAC 100.554 and Aged, Disabled and Long Term Care Medicaid Manual section 570. (Ex. 4.3)

6. On April 26, 2011, Claimant spoke with an Eligibility Technician regarding his new cost of care obligation. (Ex. 5) The case note of that conference states: "he does not understand the change that disallowed a cost of care deduction for his 20 [year old] child. Policy clarification on file verifies this change was correct. This deduction applies to minor children only." (Ex. 5)

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monthly income when determining the recipient's cost of care. 7 AAC 100.564(c)(4). Recipient's change in insurance premium is not at issue in this case. Also not at issue are the income amounts or other deductions from Claimant's total monthly income, such as Social Security Disability Insurance, State of Alaska Retirement benefit, child support, the personal needs deduction and the dependent family member allowance for Claimant's 17 year old son. The sole issue is if the Division is correct in not allowing Claimant a dependent family member allowance deduction for his 20 year old son.

<sup>2</sup> Claimant is determined 100 percent disabled. (Claimant's testimony)

<sup>3</sup> Claimant's youngest son became 18 years old on July 8, 2011. (Ex. 2.0)

7. On May 6, 2011, Claimant requested a fair hearing because he believes his eldest son should be included as a cost of care dependent allowance.

8. At the hearing, Claimant testified:

a. Claimant incurs substantial expenses as support for each of his sons, who are totally dependent on him. Claimant provided numerous exhibits supporting this statement, including showing he pays for their vehicles, vehicular insurance, college expenses, \$100 per month spending money, medical expenses, airfare for visits home from college, health club dues, cellular telephones, digital television and wireless services (which are provided at Claimant's home). (Ex. A, pp. 1, 4, 12, 15-22, 24-27; Ex. B, pp. 5-7; Ex. C, pp. 5-10, 13-14, 16-17) Claimant provided documents showing he paid for his youngest son's expenses at high school (Ex. B, p. 4)

b. Claimant's income tax returns shows he claimed both sons as his dependents in 2008 and 2009 (Ex. A, pp. 3, 5) Claimant is entitled to claim both sons as dependents for federal internal revenue purposes until each is 24 years old, so long as they are full time students as provided by federal law. (Ex. A, p. 2)

c. Claimant provided proof of a \$9,626.00 Federal Family Education Loan incurred April 18, 2011 for which he is personally obligated. (Ex. A, pp. 6, 8) This loan requires 118 payments, the last of which is due March 22, 2021. (Ex. A, p. 8)

d. Claimant provided proof of a personal loan of \$6,000 undertaken on April 2, 2011 from a family member living at his mailing address for which he is to pay \$250 per month from May 1, 2011 until paid in full on April 1, 2013. (Ex. A, pp. 9-11) Claimant provided proof he purchased a vehicle from this same family member for \$6,000 on April 2, 2011. (Ex. A, pp. 13-14) Claimant provided proof his youngest son is the driver of the vehicle and Claimant pays the costs of insurance for it. (Ex. A, p. 25-26)

e. Claimant relied on the Division's prior determinations that his 20 year old son was allowed as a dependent allowance when it calculated his cost of care after his son exceeded 18 years of age. Claimant's son became 18 years of age on February 18, 2009. (Ex. 2.0)

f. Claimant contractually obligated himself to "personal and other loans" of about Fifteen to Twenty Thousand Dollars (\$15,000-\$20,000) to support his 20 year old son while he attends college. (Claimant's testimony) One loan is to be repaid over the ten years after the loan was made. The other loan is to be repaid within ten years after the son graduates from college or within one year after he quits college, if he does not graduate. (Claimant's testimony) Claimant did not provide proof of education loans totaling \$20,000 but did provide proof of two loans, one education loan and one for purchase of a vehicle.

g. Claimant believes the State was following federal law and based his financial decisions on his understanding that his sons would continue to be considered dependents by the State as long as they were considered dependents under federal law. Claimant believes the State changed its policy and abandoned federal law resulting in his loss of the dependent allowance when his son became 18 years old.

h. Claimant is determined completely physically disabled and his income is derived from unearned sources which are fixed, such as retirement and social security. Claimant has no ability to generate additional income because “no one wants to hire someone with MS” who cannot walk. Claimant likely will face bankruptcy because he cannot pay \$631.04 per month.

i. In July 2011, Claimant’s sons’ mother passed away and the payment of child support and the disability payments derived through her ceased. In addition, on July 8, 2011, Claimant’s youngest son became 18 years old. Therefore, Claimant’s financial circumstances substantially changed in July 2011 and the Division’s determination of his cost of care in April 2011 will no longer be applicable as of July 2011.<sup>4</sup>

## 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, Alcoholic 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 Home and Community Based Waiver Program

Medicaid was established by Congress in 1965 by Title XIX of the Social Security Act to assist qualifying low income individuals and families to obtain medical assistance by providing financial payment for certain medically related needs. 42 USC § 1396 *et. seq.* Regulations concerning Medicaid are found in the Code of Federal Regulations (C.F.R.) at Title 42, Part 435 and Title 45, Part 233. The Medicaid Program’s general eligibility requirements are in regulations 42 C.F.R. §§ 435.2 – 435.1102.

The federal Medicaid regulation pertaining to the determination of a recipient’s cost of care is found at 42 C.F.R. § 435.726. It provides, in relevant part:

42 C.F.R. § 435.726 Post-eligibility treatment of income of individuals receiving home and community-based services furnished under a waiver: Application of patient income to the cost of care.

(a) The agency must reduce its payment for home and community-based services provided to an individual specified in paragraph (b) of this section, by the amount that remains

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<sup>4</sup> During the hearing on August 25, 2011, Claimant was made aware that he was required to notify the Division of these changes in circumstances in order to effectuate a change in his cost of care liability determination and that reporting it to the Hearing Authority during the hearing did not constitute a report of change to the Division. Claimant stated that he had notified [REDACTED], DPA Eligibility Technician on September 7, 2011. (Claimant’s testimony)

after deducting the amounts specified in paragraph (c) of this section from the individual's income.

(b) This section applies to individuals who are eligible for Medicaid under § 435.217 and are receiving home and community-based services furnished under a waiver of Medicaid requirements specified in part 441, subpart G or H of this subchapter.

(c) In reducing its payment for home and community-based services, the agency must deduct the following amounts, in the following order, from the individual's total income (including amounts disregarded in determining eligibility):

(1) An amount for the maintenance needs of the individual that the State may set at any level, as long as the following conditions are met:

(i) The deduction amount is based on a reasonable assessment of need.

(ii) The State establishes a maximum deduction amount that will not be exceeded for any individual under the waiver.

...

(3) For an individual with a family at home, an additional amount for the maintenance needs of the family. This amount must—

(i) Be based on a reasonable assessment of their financial need;

(ii) Be adjusted for the number of family members living in the home; and

(iii) Not exceed the higher of the need standard for a family of the same size used to determine eligibility under the State's AFDC plan or the medically needy income standard established under § 435.811 for a family of the same size.

(4) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including—

(i) Medicare and other health insurance premiums, deductibles, or coinsurance charges; and

(ii) Necessary medical or remedial care recognized under State law but not covered under the State's Medicaid plan, subject to reasonable limits the agency may establish on amounts of these expenses.

The State of Alaska, through the Department of Health and Social Services (DHSS), 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. Alaska regulations implementing the federal Medicaid programs are found at 7 Alaska Administrative Code Chapters 43 and 100, et. seq. (7 AAC 43 and 7 AAC 100-150).

“It is the public policy of the state to cooperate and coordinate with the United States government and its agencies in providing for and administering federal and state laws for adult public assistance and the other assistance that is provided for or extended to the people of the state.” AS 47.05.050

“A person with a disability ... shall pay or contribute to the payment of the charges for the care or treatment in accordance with the fee schedule adopted under AS 44.29.022.” AS 47.80.150(a). Recipients of Medicaid Home and Community Based Waiver benefits under 7 AAC 100.002(d)(8) must pay a portion of their cost of care based on their income. 7 AAC 100.550(a) and (b)(2).

A recipient’s cost of care monthly liability is determined by deducting from the recipient’s total monthly income the applicable disregards and allowances, up to the entire unreimbursed (by Medicaid) amount of medical assistance paid by the department on behalf of the recipient. 7 AAC 100.554(a).

In determining the cost of care liability to be paid by a recipient, certain deductions are allowed. 7 AAC 100.554(c). The deductions allowed are:<sup>5</sup>

1. a personal needs allowance;
2. a community spouse allowance;
3. a dependent family member allowance;
4. a health insurance premium allowance;
5. an unpaid medical expense allowance;
6. a home maintenance allowance.

#### 7 AAC 100.562. Dependent family member allowance

(a) The dependent family member allowance is the amount of the recipient's income that, when combined with the dependent family member's own income, will bring the dependent family member's total gross income as close as possible to the maximum dependent family member allowance authorized under 42 U.S.C. 1396r-5(d)(1)(C) without exceeding that allowance. If the dependent family member is living with an individual other than the community spouse, the dependent family member allowance is determined by deducting the dependent family member's income from the Family Medicaid qualifying income standards under 7 AAC 100.190(a) (2).

(b) The dependent family member allowance may be increased by a court order or by a hearing authority's decision under 7 AAC 49 that a greater monthly amount is needed based on extreme financial duress of the dependent family member.

(c) In this section "dependent family member" means a dependent child, as defined in 7 AAC 100.579, dependent parent, or dependent sibling of the long-term care recipient.

#### 7 AAC 100.570. Retroactive cost-of-care adjustments

At any time, the department may make a retroactive adjustment to a recipient's cost-of-care liability to compensate for a previously understated or overstated cost-of-care determination. If retroactive adjustment results in a larger liability for the recipient, the department will notify the recipient of the amount of the adjustment before making the adjustment.

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<sup>5</sup> The deductions pertinent to Claimant are the personal needs allowance, dependent family member allowance and health insurance premium allowance. (Ex. 4.3) Claimant challenged the Division’s deduction of the dependent family member allowance only for his youngest son and not for his 20 year old son.

## 7 AAC 100.579. Definitions related to post-eligibility benefits

In 7 AAC 100.550 - 7 AAC 100.579, unless the context requires otherwise,

(2) "dependent child" means the minor child of the recipient who lives with the community spouse and who may be claimed by either spouse as a dependent for income tax purposes;

### Aged, Disabled and Long Term Care Medicaid Manual

#### A. Manual Section 570. Post Eligibility And Cost-Of-Care

After being determined eligible for Medicaid, some individuals who are institutionalized, or who is receiving home and community-based waiver services may be required to contribute a portion of their income toward the cost-of-care they receive. The post eligibility process involves determining the exact amount a recipient is obligated to pay to the medical institution, nursing home, or home and community-based waiver services provider. The provider is responsible for collecting from the recipient that recipient's share of the cost-of-care. Medicaid reduces its payment to a medical institution or nursing home by the amount of the recipient's cost-of-care liability.

#### B. Manual Section 570 A. Definitions

Dependent Children: A couples' minor children who live with a community spouse and who may be claimed as a dependent by either member of a couple for income tax purposes.

#### C. Manual Section 570 E. Allowable Deductions for Cost of Care Determinations

Family Member Allowance: A dependent child, dependent parent, or dependent sibling of either an institutionalized or Home and Community Based waiver recipient is entitled to a dependent allowance. The dependent allowance is the amount deducted from the recipient's income that, when combined with the dependent's own income, (i.e., SSA, SSI, etc.) can raise the dependent's total gross income....

### When a Minor Child Reaches the Age of Majority

"A person is considered to have arrived at majority at the age of 18, and thereafter has control of the person's own actions and business and has all the rights and is subject to all the liabilities of citizens of full age, except as otherwise provided by statute." AS 25.20.010

### Equitable Estoppel

When an individual seeks to estop a government from changing an action it has taken, the individual must prove four elements: (1) the government asserted a position by conduct or words; (2) the individual acted in reasonable reliance thereon; (3) the individual suffers resulting prejudice; and (4) the estoppel is necessary to serve the interest of justice and limit public injury. *Crum v. Stalnaker*, 936 P.2d 1254, 1256 (Alaska 1997) *Wassink v. Hawkins*, 763 P.2d 971, 975 (Alaska 1988).

The individual must have a reasonable basis to rely on the position of the government:

Often, even where reliance has been foreseeable, reasonable, and substantial, the interest of justice may not be served by the application of estoppel because the public interest would be significantly prejudiced. However, this is not true in every case. When the public will not be significantly prejudiced, and the other elements of the theory are present, the majority rule which forecloses the use of estoppel causes arbitrary and unjust results. *Municipality of Anchorage v. Schneider* 685 P.2d 94, 97 (Alaska 1984)

## ANALYSIS

### I. Issue

On April 13, 2011, was the Division correct to determine Claimant was not entitled to a dependent allowance for his 20 year old son, when it calculated Claimant's cost of care contribution for his Medicaid benefits?

### II. Burden of Proof and Standard of Proof

The Division has the burden of proof by a preponderance of the evidence because it is changing Claimant's cost of care amount and therefore seeking to change the status quo.

### III. Undisputed Facts

On March 10, 2011, Claimant applied to recertify his eligibility for Medicaid Home and Community Based Waiver benefits. His application was approved but his cost of care liability was changed from zero dollars per month to \$631.04 per month. This change in his cost of care liability was due to a decrease in his health insurance premium and the fact the Division no longer included a deduction from his total monthly income for his 20 year old son as a dependent family member allowance. The Division had allowed the deduction for his 20 year old son since 2009 (when his son became 18 years old) but corrected its alleged error when it considered his recertification application.

On April 14, 2011, when the Division notified him that his cost of care obligation would change from zero dollars to \$631.04, Claimant had two sons, one of whom was 20 years old and not living at home when he is at college. The other son, age 17, was living with Claimant and the Division did factor in a dependent family member allowance for this son when calculating Claimant's cost of care liability.

Claimant receives Medicaid Home and Community Based Waiver benefits and is obligated to pay a cost of care amount. The basis for the change in Claimant's cost of care was the reduction in his health insurance premium amount and the determination by the Division that he was eligible for only one dependent family member allowance for his under 18 year old son, instead of two dependent family member allowances. Claimant does not dispute the adjustment resulting from his health insurance premium amount.



#### IV. The Parties' Arguments

The Division argues it found it had made an error in allowing a dependent family member allowance for Claimant's oldest son, because the allowance should have been discontinued after the son reached 18 years of age, and it correctly stopped reducing Claimant's total monthly income by the dependent family member allowance for this son.

Claimant argues the Division should continue to allow him the dependent family member allowance for his oldest son because a) his son is completely dependent on him for support; b) the federal internal revenue code considers the son a dependent until he reaches age 24 as long as he is a full time student; c) Claimant incurred loan obligations in reliance on the Division's previous determination that included the family member allowance deduction for his 20 year old son; d) Claimant has honestly completed all the forms required of him by the State; it is not his fault that the Division made a mistake, and he should not have to bear the consequences of their error.

Claimant argued it is a hardship for him to pay \$631.04 monthly towards his cost of care because he is contractually obligated to make payments on loans he obtained to pay for his son's needs. Claimant also argued that, subsequent to the Division's April 14, 2011 notification to him of his cost of care obligation, circumstances have changed causing his income to decrease substantially, in particular due to termination of receipt of SSDI and child support for his sons.

Claimant requested a one or two year period when he would still be allowed a dependent family member allowance for his 20 year old son so that he can re-structure the debt he has incurred in reliance on the Division's past practice of allowing that son as a dependent family member deduction. In addition, Claimant requested a one year period during which his youngest son would continue to be counted as a dependent family member deduction.

#### V. The Regulations Do Not Provide Claimant with A Dependent Family Member Allowance For His Oldest Son

It is undisputed that Claimant must pay a cost of care amount to contribute towards the cost of Medicaid Home and Community Based Waiver benefits he receives. 7 AAC 100.550-554.

Alaska regulation 7 AAC 100.554(c)(3) provides a dependent family member allowance is deducted from a recipient's total monthly income when determining the cost of care liability for a recipient of Medicaid Home and Community Based Waiver benefits. The definition of dependent child means a minor child of the recipient who lives with the community spouse. In Alaska, a child is no longer a minor child after the age of 18 years. In this case, there is no dispute Claimant's oldest son is not a minor and does not live with his father for most of the year while he attends college out of state. Therefore, Claimant's oldest son does not qualify for the dependent family member allowance.

The Division has met its burden of proving by a preponderance of the evidence it correctly did not deduct a dependent family member allowance for Claimant's oldest son when it calculated Claimant's cost of care liability on April 14, 2011.

## VI. Estoppel.

Claimant asserts he relied on the Division's past practice of allowing his oldest son to be included for purposes of a dependent family member deduction when he incurred debts to pay for his son's college education and other financial needs as his financial dependent. Thus, Claimant argues the Division should be estopped from not allowing him the dependent family member deduction for his oldest son. Claimant argues the estoppel should be effective for a two year period so that he can re-structure his financial affairs.

A review of the evidence discloses that Claimant did not provide documentary evidence that he had incurred loan obligations of Fifteen to Twenty Thousand dollars on behalf of his eldest son, although he provided testimonial evidence of this debt. The evidence does prove that Claimant incurred debt of about \$6,000 to purchase a vehicle for his youngest son. The evidence does prove that Claimant did incur substantial debt of \$9,626.00 as a Federal Family Education Loan on April 18, 2011. Claimant did prove that he has substantial expenses in relation to supporting his two sons and would suffer financial hardship if he had to pay \$631.04 as his monthly cost of care liability.

When an individual seeks to estop a government from changing an action it has taken, the individual must prove four elements: (1) the government asserted a position by conduct or words; (2) the individual acted in reasonable reliance thereon; (3) the individual suffers resulting prejudice; and (4) the estoppel is necessary to serve the interest of justice and limit public injury. *Crum v. Stalnaker*, 936 P.2d 1254, 1256 (Alaska 1997) *Wassink v. Hawkins*, 763 P.2d 971, 975 (Alaska 1988).

The individual must have a reasonable basis to rely on the position of the government:

Often, even where reliance has been foreseeable, reasonable, and substantial, the interest of justice may not be served by the application of estoppel because the public interest would be significantly prejudiced. However, this is not true in every case. When the public will not be significantly prejudiced, and the other elements of the theory are present, the majority rule which forecloses the use of estoppel causes arbitrary and unjust results. *Municipality of Anchorage v. Schneider* 685 P.2d 94, 97 (Alaska 1984)

It is undisputed the Division calculated Claimant's cost of care liability from February 18, 2009 to April 13, 2011 by allowing Claimant a dependent family member allowance for his oldest son who was no longer a minor child living at home. Claimant has proved the first required element for estoppel.

Claimant also proved that he incurred debt in reliance on the past practice of the Division to include the dependent family member allowance for his over-18 year old, away-from-home son when calculating his cost of care liability. Although the Federal Family Education Loan was made effective on April 18, 2011, Claimant necessarily had applied for and completed the paperwork for the loan at a date prior to April 18, or April 14, 2011 in order to have the loan concluded by April 18, 2011. Therefore, Claimant's argument that he relied on the Division's prior practice of according him the dependent family member allowance when he contractually obligated himself to financial debt is persuasive. Claimant proved he acted in reasonable reliance on the Division's erroneous deduction and has met the second element of estoppel.

The third element of estoppel against the government is that the individual suffers resulting prejudice. Claimant is determined completely physically disabled and his income is derived from unearned sources which are fixed. Claimant's testimony that he has no ability to generate additional income because "no one wants to hire someone with MS" who cannot walk, is undisputed, as is his testimony he likely will face bankruptcy because he cannot pay \$631.04 per month. Claimant has proved the expenses of caring for his two sons are substantial and that he cannot meet those expenses without incurring substantial debt. Claimant has proved he will suffer extreme financial hardship if he is deprived of the dependent family member allowance for two years. Therefore, Claimant has proved he will suffer prejudice if the Division is not estopped from changing its prior course of conduct that allowed him a dependent family member allowance for his oldest son. Claimant has proved the third element of estoppel.

Finally, Claimant must prove that estoppel is necessary to serve the interest of justice and limit public injury. Because the government is presumed to act in the public's interest, the majority rule is that the government cannot be estopped from acting to an individual's detriment. *Municipality of Anchorage v. Schneider* 685 P.2d 94, 97 (Alaska 1984) However, the majority rule does not prevail in all cases. *Id.* In this case, it would work a manifest injustice to a member of the public, i.e., Claimant, if the Division were not estopped from disallowing the dependent family member deduction from Claimant's total monthly income. Claimant proved the injury to other members of the public would be limited because Claimant's son will no longer be Claimant's dependent after he graduates in two years or stops attending college. Moreover, the interest of justice would be served by holding the Division accountable for its error on which Claimant relied and which occurred through no fault of Claimant. Therefore, Claimant has proved the fourth element required to prove estoppel against the Division.

### **CONCLUSIONS OF LAW**

1. The Division proved by a preponderance of the evidence that it correctly followed its regulations when it did not allow Claimant a dependent family member allowance in calculating his cost of care liability on April 14, 2011. 7 AAC 100.554.

2. Claimant proved by a preponderance of the evidence that the Division should be estopped from not allowing him a dependent family member deduction from his total monthly income when calculating his cost of care liability for a period of two years beginning April 14, 2011. *Crum v. Stalnaker*, 936 P.2d 1254, 1256 (Alaska 1997) *Wassink v. Hawkins*, 763 P.2d 971, 975 (Alaska 1988). Claimant proved the four elements required to prove estoppel against the Division as follows:

a. Claimant reasonably relied on the Division's conduct, i.e., inclusion of the dependent family member allowance for his oldest son after the son had become 18 years of age and left Claimant's home, when it calculated his cost of care liability subsequent to February 18, 2009.

b. Claimant reasonably relied on the Division's conduct by continuing to claim his oldest son was a dependent and by incurring financial debt based on the Division's allowing him a dependent family member allowance.

c. Claimant incurred contractual financial debt obligations in reliance on the Division's conduct.

d. Claimant proved estoppel is necessary to serve the interest of justice and limit public injury.

### **DECISION**

On April 14, 2011, the Division was correct to not deduct from Claimant's total monthly income a dependent family member allowance for his oldest son when it calculated his cost of care liability. However, the Division is estopped from not deducting a dependent family member allowance for Claimant's oldest son, beginning April 14, 2011.

### **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: October 27, 2011.

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Claire Steffens  
Hearing Authority

### **CERTIFICATE OF SERVICE**

I certify that on October 27, 2011 true and correct copies of the foregoing were sent to:  
Claimant, Certified Mail, Return Receipt Requested.  
and to other listed persons (via secure, encrypted 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

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