Office of Hearings and Appeals
3601 C Street, Suite 1322
P. O. Box 240249
Anchorage, AK 99524-0249
Telephone: (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-386
	)	
Claimant.	)	Division Case No. [redacted]

FAIR HEARING DECISION

STATEMENT OF THE CASE

Mr. [redacted] (Claimant) was a recipient of Medicaid benefits until he was hospitalized.[1] (Office of Public Advocacy, Public Guardian) After Claimant was released from the hospital, he applied for Medicaid benefits on August 8, 2011. (Ex. 2-2.2.9) The Division initially denied the August 8, 2011 application because Claimant had monetary resources in excess of the $2,000 Medicaid resource eligibility limit. (Ex. 5) Claimant's Public Guardian then placed his monetary resources into a Medicaid qualifying trust, which was approved by the Division on August 25, 2011. (Ex. 6; Ex. 8-8.2) The Division then determined Claimant was eligible for Medicaid benefits beginning September 2011 but was not eligible for retroactive Medicaid benefits. (Ex. 7-7.1)

On August 30, 2011, Claimant, through the Public Guardian, submitted another application. (Ex. 9; Ex. 9.1-9.10) This application specifically requested retroactive Medicaid benefits for July and August 2011. (Ex. 9.1, 9.6) On September 1, 2011, the Division denied this application for retroactive Medicaid benefits because Claimant had resources in excess of $2,000 on July 1, 2011 and August 1, 2011. (Exs. 10.1-10.2; Ex. 11)

On September 16, 2011, Claimant requested a fair hearing, seeking an exception to the resource limit on grounds of good cause. (Ex. 11.1; Claimant's testimony) This office has jurisdiction pursuant to 7 AAC 49.010.

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[1] Claimant's receipt of Medicaid benefits results from his participation in the Home and Community Based Services (HCBW), Alaskans Living Independently (ALI) Waiver program. (Ex. 2) The ALI program consists of programs formerly called Older Alaskans and Adults with Physical Disabilities.

A Fair Hearing was held on January 26, 2012. Claimant attended exclusively through his public guardian, Mr. Jonathan Hughes, Public Guardian with the Office of Public Advocacy (Public Guardian), who participated in person and testified on behalf of Claimant. Claimant was assisted by the Office of Public Advocacy Benefits Specialist, [redacted], who appeared in person and testified on Claimant's behalf (Benefits Specialist). Mr. [redacted], Public Assistance Analyst with the Division, attended the hearing in person, and testified on behalf of the Division. The evidentiary record closed on January 26, 2011. All offered exhibits were admitted as evidence.

ISSUE

Did the Division of Public Assistance err when it denied Claimant's application for retroactive Medicaid benefits for July and August 2011?

FINDINGS OF FACT

The following facts are established by a preponderance of the evidence based on testimony from the Office of Public Advocacy Public Guardian and its Benefits Specialist, and are supported by the exhibits cited. The parties agreed with, or did not dispute, all of the facts material to the decision in this case.

1. Claimant[2] is a mentally and physically disabled person who has been a ward of the Public Guardian/Office of Public Advocacy (OPA or Public Guardian) for about five years immediately prior to the time of this case. Claimant receives income from the Permanent Dividend Fund (PFD).[3]

2. Several months before July 2011, Claimant was admitted to Alaska Psychiatric Institute (API). (Public Guardian's testimony) Due to the length of time he was at API, his eligibility for Medicaid benefits terminated. (*Id.*) Claimant was discharged from API about mid-July 2011. (*Id.*)

3. On August 8, 2011, the Division received Claimant's application for Medicaid eligibility under the Adult Public Assistance Home and Community–Based Services Alaskans Living Independently Waiver program. (Ex. 2.0-2.9) The application also requested retroactive Medicaid benefits for the month of July 2011. (Ex. 2.5)

4. The application disclosed Claimant had two monetary accounts managed by OPA. (Ex. 2.2) The August 8, 2011 application disclosed one account had a balance of $2,614.62 and the other had a balance of $4,126.71. (Ex. 2.2)

5. The "posted transactions journal" page supplied in support of the application confirmed that Claimant's balance of funds in account 103763 was $4,280.59 on June 30, 2011 and

[2] Claimant did not appear or testify at the hearing. In this decision, all references to Claimant include attribution of testimony made by Claimant's Office of Public Advocacy (OPA) representatives.

[3] Claimant also receives income as a (Social Security) Title II recipient as well as from Native Corporation stock dividends. The Title II funds and the Native Corporation stock dividends are not at issue in this case.

$4,205.50 on July 6, 2011. (Ex. 2.8) The "posted transactions journal" page supplied with the application confirmed that Claimant's balance of funds in account 103046 was $4,702.71 on June 30, 2011 and $5,281.31 on July 5, 2011. (Ex. 2.9) The parties agree each account balance exceeded $2,000 on the first day of July 2011.

6. The "posted transactions journal" showed Claimant's balance of funds in account 103763 was $4,126.71 on July 26, 2011 and $4,944.52 on August 15, 2011. (Ex. 9.10) The "posted transactions journal" confirmed that Claimant's balance of funds in account 103046 was $5,274.01 on July 22, 2011 and $5,328.61 on August 2, 2011. (Ex. 2.9) The parties agree each account balance exceeded $2,000 on the first day of August 2011.

7. At some point, the OPA computerized database for Claimant's accounts lost the identifying descriptive language for each account. (Ex. 17.2; Public Guardian's testimony) The Public Guardian believed the balance in Claimant's OPA accounts reflected Medicaid approved irrevocable asset trust balances when he submitted the August 8, 2011 application. (Public Guardian's testimony) However, he later learned this was an incorrect belief, because OPA's descriptive language did not adequately describe Claimant's accounts. (Ex. 17.2; Public Guardian's testimony) The Public Guardian immediately sought to establish a Medicaid approved trust for Claimant's funds in OPA account 103763.[4]

8. On August 9, 2011, the Division of Public Assistance (Division) was unable to confirm Claimant's monies were in a Medicaid approved trust. (Ex. 3-3.2)

9. On or about August 23, 2011, the Division of Public Assistance (Division) determined that the Claimant was not eligible for Medicaid benefits because he had monies in excess of $2,000 and denied his application because these funds exceeded the resource eligibility limit for Medicaid. (Ex. 4.1)

10. On August 23, 2011, the Division sent Claimant notice that his application was denied. (Ex. 5) The reasons given for the denial of Claimant's application included:

a. He had resources in excess of the $2,000 Adult Public Assistance resource limit.

b. He did not have an asset trust.

The Division's denial notice acknowledged the Public Guardian was in the process of establishing a qualifying Medicaid trust and informed the Public Guardian that "even if the trust is set up in August, you will not have eligibility until September due to your 'regular' account was also over resource at the first of August." (Ex. 5) The Division recorded Claimant's funds in his "regular" account (103046) as $2,560.02 on August 1, 2011. (Ex. 6) The notice further stated that if the trust was established and approved, the first possible month of eligibility would be September 2011. (Ex. 5)

[4] The Public Guardian also separated Claimant's funds in account 103046 into a burial account, a Native funds account, and a "regular" funds account. Native income and burial funds are not counted as resources. 7 AAC 40.280.

11. On August 25, 2011, the Division determined Claimant's (Medicaid countable) funds had been placed into a Medicaid approved "special needs trust." (Ex. 6; Ex. 8-8.2) The Division determined Claimant's resources in his "regular" account were $1,944.85 on September 1, 2011 and he had placed $4,585.39 (account 103763) into the Medicaid qualifying trust. (Ex. 6) The Division approved his eligibility for Medicaid HCBW benefits beginning the month of September 2011. (Ex. 6-6.13; Ex. 8)

12. On August 26, 2011, the Division notified OPA it approved Claimant's application for Medicaid benefits beginning September 2011.[5] (Ex. 7) This same notice re-affirmed Claimant was not eligible for Medicaid benefits in August (retroactive benefits) and explained that resources are counted "at the beginning of each month and the resources in the "two accounts 103763 and 103046 put you over resource August 1, 2011." (Ex. 7)

13. Also on August 26, 2011, the Division notified OPA it denied Claimant retroactive Medicaid benefits for May, June and July because "you were over income during these months."[6] (Ex. 7.2-7.3)

14. On August 30, 2011, the Division received the Public Guardian's re-application for retroactive Medicaid benefits for July and August 2011. (Ex. 9-9.10) On September 1, 2011, the Division notified OPA it denied Claimant's August 30, 2011 application for retroactive benefits because Claimant was not eligible for Medicaid benefits until September 2011. The notice stated, in part: "you were not eligible until September as you were over resource until the asset trust was approved and funded. September 2011 is your first eligible month for Medicaid." (Ex. 10; 10.1-10.2; Ex. 11) On October 7, 2011, the Division sent another notice denying retroactive Medicaid benefits for May, June and July 2011 because Claimant had excess resources. (Ex. 12-12.2)

15. Claimant requested a fair hearing on September 16, 2011, seeking review of the denial of retroactive Medicaid benefits in July and August 2011. (Ex. 11.1)

16. Claimant asserts he should receive retroactive Medicaid benefits in July 2011 and August 2011 because the excess resources accumulated for reasons beyond his control. Claimant asserts it is unfair he is penalized by not receiving Medicaid benefits in light of all these circumstances. (Public Guardian'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

[5] The Division notified OPA that Claimant was eligible for Adult Public Assistance at the same time. (Ex. 7)

[6] This notice refers to a request for retroactive Medicaid benefits received on August 3, 2011. This date appears to be a typographic error because Claimant's application is date stamped August 8, 2011.

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 Alaskans Living Independently

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 Alaskans Living Independently program is administered under Home and Community Based Waiver Services and is a Medicaid benefit program available through Alaska Adult Public Assistance. 7 AAC 40.090; 7 AAC 40.120; 7 AAC 100.002; 7 AAC 100.400.

To be eligible for Medicaid benefits as a recipient of the Alaskans Living Independently Home and Community Based Services Waiver Program, 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.

Retroactive Medicaid benefits are not available to persons who are not eligible in the months for which retroactive Medicaid benefits are sought. 7 AAC 40.380; 7 AAC 40.383. Regulation 7 AAC 40.383 pertaining to retroactive Medicaid benefits specifies at subsection (a) "[w]hen an application for assistance under this chapter is approved, the division will determine the amount of any retroactive assistance payable to the applicant under 7 AAC 40.380." Regulation 7 AAC 40.380 makes clear that retroactive Medicaid benefits are paid only to applicants who meet the eligibility requirements in the months for which payment is sought. This regulation states, in relevant part: "(a) Payment for assistance under this chapter to an eligible applicant who meets the eligibility requirements of this chapter…."

Applicants for retroactive Medicaid benefits may have their eligibility for Mediciad considered for the three months immediately prior to their application, if the applicant has unpaid medical services during that period. 7 AAC 100.072. Eligibility must be determined separately for each month of retroactive benefits sought. 7 AAC 100.072(c). The applicant must be eligible for Medicaid benefits, including "actual resources that were available in [the] month" for which retroactive benefits are sought. 7 AAC 100.072(d).

"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

The issue in this case is whether the Division of Public Assistance erred when it denied Claimant's application for retroactive Medicaid benefits for July and August 2011.

All of the material facts in this case are undisputed and consequently neither party bears the burden of proving one or more disputed facts by a preponderance of the evidence. Therefore, resolution of the issue is a matter of applying undisputed facts to relevant law.

The parties do not dispute that Claimant's funds in OPA accounts 103763 and 103046 exceeded $2,000 (each account) on the first day of July and of August, 2011. The parties do not dispute that Claimant's monies in these accounts are a resource for purposes of Medicaid eligibility. 7 AAC 40.280.

The law clearly provides that retroactive Medicaid benefits are available only to individuals who are eligible to receive Medicaid benefits. 7 AAC 40.380; 7 AAC 40.383. A requirement of eligibility for retroactive Medicaid benefits is that the applicant not have resources in excess of $2,000 on the first day of the month for which benefits are sought. 7 AAC 40.270(a); 7 AAC 100.072(d)(3). Consequently, in July and August 2011 Claimant did not meet the resource eligibility requirements to qualify for Medicaid. Therefore, as a matter of law, Claimant is not eligible for Medicaid benefits, including retroactive Medicaid benefits, during the months of July and August 2011.

There is No Exemption from the Eligibility Resource Limit

Claimant seeks an exemption from this eligibility requirement because his accumulation of resources exceeding $2,000 resulted from circumstances not within his control and he should not be made to suffer deprivation of retroactive Medicaid benefits as a consequence. Claimant's arguments are understandable but do not overcome the mandate of the law.

The Medicaid Program is a federal program administered pursuant to specific laws and regulations which cannot be changed, absent legislation or rule-making, and cannot be 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 Hearings 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).

The Division was correct to deny Claimant retroactive Medicaid benefits in July and August 2011 because Claimant had resources in excess of $2,000 on the first day of each of those months.

CONCLUSIONS OF LAW

1. Claimant had resources valued in excess of $2,000 on the first day of July and August 2011 that made him not eligible for Medicaid benefits under the Adult Public Assistance Home and Community-Based Services Alaskans Living Independently Waiver Program during those months. 7 AAC 40.270; 7 AAC 40.090.

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

DECISION

On August 26, 2011, and October 7, 2011, the Division correctly applied the Medicaid resource limit of $2,000 to determine that Claimant was not eligible for Home and Community-Based Services Alaskans Living Independently Waiver Program Medicaid benefits during July 2011 and August 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 this March 29, 2011.

-Signed-
Claire Steffens
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on March 29, 2011 true and correct copies of the foregoing were sent to:

Claimant, c/o Jonathan Hughes, Public Guardian, Office of Public Advocacy
by Certified Mail, Return Receipt Requested.
and to other listed persons (via secure, encrypted e-mail), as follows:

[redacted], Hearing Representative
[redacted], Hearing Representative
[redacted], Staff Development & Training
[redacted], Admin. Asst., Dir.
[redacted], Chief, Policy & Program Dev
[redacted], Admin. Asst., Policy

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