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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-496  
 )  
 Claimant. ) Division Case No. [REDACTED]  
 )  
 \_\_\_\_\_ )

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

[REDACTED] (Claimant) applied for Medicaid benefits through the Social Security Administration on September 22, 2011. (Exs. 2) On October 19, 2011, the Division of Public Assistance (Division) sent the Claimant written notice that her Medicaid benefits were approved beginning with the month of October 2011. (Ex. 7)

The Claimant requested a Fair Hearing on November 16, 2011.<sup>1</sup> The purpose of her hearing request was to contest the start date of October 2011 for her Medicaid benefits

This Office has jurisdiction pursuant to 7 AAC 49.010.

The Claimant's hearing was held on January 24, 2012. [REDACTED], Esq., appeared in person and represented the Claimant. The Claimant did not attend the hearing. [REDACTED] and [REDACTED], the Claimant's adult children, attended the hearing in person and testified on the Claimant's behalf.

[REDACTED], Public Assistance Analyst with the Division, appeared in person; he represented the Division and testified on its behalf. [REDACTED], an Eligibility Technician employed by the Division, attended the hearing in person and testified on the Division's behalf.

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<sup>1</sup> The Division filed a motion to dismiss the Claimant's Fair Hearing case, arguing that the Claimant did not request her hearing in a timely manner. The Division's motion was denied on January 9, 2012 because the Claimant detailed a number of contacts with the Division, including one on November 16, 2011, which the Division should have construed as a hearing request.

## STATEMENT OF ISSUES

Was the Division correct when it, on October 19, 2011, notified the Claimant she was eligible for Medicaid benefits beginning with the month of October 2011, rather than beginning with the month of September 2011?

## FINDINGS OF FACT

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

1. The Claimant is over 65 years old. (Ex. 1) She had a heart attack in September 2011, which caused her to incur large medical bills during September 2011, which have not been paid. (██████ testimony)
2. The Claimant lives by herself. (Ex. 1) Her monthly income consists of Social Security benefits in the gross amount of \$1,402.50 and a retirement pension in the gross amount of \$258.57. (Ex. 4) Her total gross monthly income is \$1,661.07.
3. The Claimant applied for benefits at the Social Security office on September 22, 2011. (Exs. 2 – 3) Social Security notified the Division of the benefit application, which included a request for Medicaid coverage, on September 22, 2011. (Ex. 2) The Division sent the Claimant a Medicaid application to fill out on September 23, 2011. (Ex. 3)
4. The Claimant's daughter-in-law spoke to a Division Eligibility Technician and was told that her mother would need to create a qualifying income trust (Miller Trust) as part of the Medicaid qualification process. (██████ testimony)
5. The Claimant had a Miller Trust drafted. She signed the Miller Trust on September 29, 2011. The Miller Trust was registered with the Anchorage, Alaska Superior Court on September 30, 2011. (Ex. 6.3) She deposited \$200 in her Miller Trust bank account on September 30, 2011. (Ex. A)
6. The Claimant's Medicaid application was filed with the Division on September 30, 2011. (Ex. 1.1)
7. Two of the Claimant's adult children, both of whom hold powers of attorney for the Claimant, met with a Division Eligibility Technician on September 30, 2011. (██████ testimony, Ex. 4)
8. During that meeting, the Claimant's children provided the Division Eligibility Technician with a copy of the court registered Miller Trust, and a bank deposit slip showing that \$200 had been deposited in the Miller Trust on September 30, 2011. (██████ testimony, ██████ testimony, ██████ testimony, Ex. 4)
9. It is undisputed that the Claimant's children informed the Division Eligibility Technician during the September 30, 2011 meeting that they wanted to make sure that the Claimant's September

2011 medical bills were paid for by Medicaid. (█████ testimony, █████ testimony, █████ testimony) The Claimant's children both testified that they asked if the \$200 deposited into the Miller Trust bank account was sufficient to qualify the Claimant for Medicaid coverage, and if more funds needed to be deposited into the account. (█████ testimony, █████ testimony) The Division Eligibility Technician testified that they did not ask if the \$200 deposited in the Miller Trust was enough to qualify the Claimant for Medicaid coverage. (█████ testimony) It is undisputed that the Division Eligibility Technician did not inform the Claimant's children whether the \$200 Miller Trust deposit was adequate to qualify the Claimant for Medicaid coverage for September 2011, nor did she inform them of the specific amount that needed to be deposited into the Miller Trust in order to qualify the Claimant for Medicaid coverage for September 2011. (█████ testimony, █████ testimony, █████ testimony)

10. On October 7, 2011, the Division approved the Claimant's Miller Trust as satisfying the criteria for a Qualifying Income Trust. (Ex. 6.1)

11. On October 19, 2011, the Division notified the Claimant that her Medicaid application was approved beginning with the month of October 2011. (Ex. 7) That notice further explained that the Claimant's Medicaid application was not approved for the month of the application (September 2011), because the Miller Trust "was not properly funded with the amount needed to qualify for Medicaid." *Id.* The Division sent the Claimant a supplemental notice on January 12, 2012 that even though her trust was created in September 2011, "it was not funded until October 2011." (Ex. 8)

### **PRINCIPLES OF LAW**

A party who is 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 normal standard of proof in an administrative proceeding, unless otherwise stated, is the preponderance of the evidence standard. *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 Alaska Medicaid program contains a variety of coverage categories. *See* 7 AAC 100.002. Each of these categories have eligibility requirements. These include financial requirements which limit how much monthly income a Medicaid applicant/recipient may make. A single person who is aged or disabled, and who lives independently, may not make more than \$1,252 per month after income exclusions are applied. 7 AAC 100.400(a)(16)-(19); 7 AAC 40.300, 310, 320, 350; *Alaska Adult Public Assistance Manual Addendum 1* (2011 Adult Public Assistance Need Standard). There is a \$20 monthly income exclusion (deduction from income) for a person who makes unearned income. 7 AAC 100.400(a)(18); 7 AAC 40.320(a)(23). Social Security payments and retirement pension payments are classified as unearned income. 7 AAC 40.300(a)(3).

A Medicaid applicant whose monthly income exceeds the Medicaid program's monthly income limit may financially qualify for Medicaid by creating a Medicaid Qualifying Income Trust. 7 AAC

100.604(a)(1); 7 AAC 100.610.<sup>2</sup> The Medicaid Qualifying Income Trust reduces an applicant's monthly income by the amount of payments made directly into the Trust account. 7 AAC 100.606(a).

A person may argue estoppel to prevent government action if the following conditions are met:

[E]stoppel may apply against the government and in favor of a private party if four elements are present: (1) the governmental body asserts a position by conduct or words; (2) the private party acts in reasonable reliance thereon; (3) the private party suffers resulting prejudice; and (4) the estoppel serves the interest of justice so as to limit public injury.

*Crum v. Stalaker*, 936 P.2d 1254, 1256 (Alaska, 1997).

### ANALYSIS

The issue in this case is whether the Division was correct when it approved the Claimant for Medicaid benefits beginning with the month of October 2011, rather than beginning with the month of September 2011. Because this case involves an application for benefits, the Claimant has the burden of proof by a preponderance of the evidence.

The pertinent facts of this case are as follows:

1. The Claimant applied for Medicaid benefits on September 30, 2011. *See* Finding of Fact 6 above.
2. At the time she applied, her total monthly income was \$1,661.07, which consisted of Social Security and retirement payments. *See* Finding of Fact 2 above.
3. Her total monthly income exceeded the applicable monthly Medicaid income limit of \$1,272 for a single person living on her own (\$1,252 plus a \$20 income exclusion).
4. The Claimant created a Miller Trust in order to qualify for Medicaid benefits. That Trust was created, registered with the Court, and funded in the amount of \$200 as of September 30, 2011. *See* Finding of Fact 5 above.
5. The Claimant's adult children met with a Division Eligibility Technician on September 30, 2011. During that meeting, the Claimant's children provided the Division Eligibility Technician with a copy of the court registered Miller Trust, and a bank deposit slip showing that \$200 had been deposited in the Miller Trust on September 30, 2011. *See* Finding of Fact 8 above.

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<sup>2</sup> The specific requirements for a Medicaid Qualifying Income Trust are contained in 7 AAC 100.600, 602, 604, and 610.

6. There is a discrepancy in the witness testimony. The Claimant's adult children testified that they specifically asked the Division Eligibility Technician whether the amount that had deposited in the Miller Trust was enough to qualify for September Medicaid benefits. The Division Eligibility Technician testified that they did not ask. *See* Finding of Fact 9 above.
7. It is undisputed that the Claimant's adult children notified the Division representative, during the September 30, 2011 meeting, that they wanted to make sure that the Claimant had Medicaid coverage for September 2011, so that her September 2011 medical bills would be paid. *See* Finding of Fact 9 above. It is also undisputed that the Division Eligibility Technician did not advise them that the Claimant needed to have additional funds deposited into the Miller Trust in order to qualify for September 2011 Medicaid coverage. *Id.*

The facts are clear that the Claimant's monthly income was \$1,461.07 during September 2011 because she reduced her September 2011 gross income of \$1,661.07 by depositing \$200 into her Miller Trust on September 30, 2011. However, this amount of \$1,461.07 exceeded the Medicaid program's monthly income limit of \$1,272 (\$1,252 plus a \$20 income exclusion) by \$189.07. *See Alaska Adult Public Assistance Manual Addendum 1 (2011 Adult Public Assistance Need Standard); 7 AAC 100.400(a)(18); 7 AAC 40.320(a)(23).*

Based on the facts, as recited above, a strict application of the Medicaid regulations leads to the conclusion that the Claimant was not financially eligible for Medicaid benefits during the month of September, 2011. This is because her monthly income exceeded the Medicaid monthly income limit of \$1,272 (allowing for the \$20 income exclusion) during September 2011. *See Alaska Adult Public Assistance Manual Addendum 1.*

However, the Claimant argued that the Medicaid regulations should not be strictly applied because her adult children, who met with the Division Eligibility Technician on September 30, 2011, specifically asked the Eligibility Technician how much money they needed to place into the Claimant's Miller Trust in order for her to qualify for September 2011 Medicaid coverage. Her argument, given the facts recited above, raises an equitable estoppel defense to the strict application of the Medicaid regulations. In order to prevail on this defense, the Claimant must prove each one of four separate elements:

[E]stoppel may apply against the government and in favor of a private party if four elements are present: (1) the governmental body asserts a position by conduct or words; (2) the private party acts in reasonable reliance thereon; (3) the private party suffers resulting prejudice; and (4) the estoppel serves the interest of justice so as to limit public injury.

*Crum v. Stalaker*, 936 P.2d 1254, 1256 (Alaska, 1997).

The Claimant meets the requirements for equitable estoppel as explained below:

1. Although there is a discrepancy in the evidence regarding whether the Claimant's children expressly asked the Division Eligibility Technician what amount needed to be placed in the Miller Trust in order to qualify the Claimant for September 2011 Medicaid coverage, it is

not necessary to resolve the discrepancy. This is because it is undisputed that the Division Eligibility Technician was (a) made aware that the Claimant wanted Medicaid coverage for September 2011 because she had unpaid medical bills incurred during September 2011, and (b) that the Claimant's children provided the Division Eligibility Technician, on September 30, 2011, with a copy of the Miller Trust and proof showing the Claimant had deposited \$200 into the Miller Trust bank account on September 30, 2011. It is also undisputed that the Division Eligibility Technician did not tell the Claimant's children that the amount deposited was not adequate. Nor did she tell the Claimant's children the amount needed to be deposited into the Miller Trust bank account in order to financially qualify the Claimant for September 2011 Medicaid coverage.

The undisputed fact that the Claimant's children were quite clear that they wanted Medicaid coverage for the Claimant for September 2011 so that her September 2011 medical bills would be paid, shows that the Claimant was clearly asking for advice from the Division whether the amount of money that was deposited into the Miller Trust bank account on September 30, 2011 would qualify her for Medicaid coverage for the month of September 2011. The undisputed fact that the Division Eligibility Technician did not inform the Claimant's children the amount deposited in the Miller Trust bank account on September 30, 2011 was insufficient constitutes an implicit assurance by the Division Eligibility Technician that the \$200 deposited into the Miller Trust bank account was sufficient to qualify the Claimant for September 2011 Medicaid coverage. This conduct, by the Division's Eligibility Technician, satisfies the first element of the equitable estoppel test, being the assertion of a position by a governmental body.

2. The Claimant acted in reasonable reliance upon the Division's implicit assurance in that she did not deposit further funds in the Miller Trust bank account on September 30, 2011.
3. The Claimant has been prejudiced in that her September 2011 medical bills have not been covered by Medicaid.
4. Estoppel against the government (in this case, the Division), "serves the interest of justice so as to limit public injury." This is because the public as a whole is served by having government staff who can recognize a situation and correctly respond to public inquiries regarding governmental benefit program, in such cases as the present one, where the citizen, in effect, says "here's the trust, here's the deposit, I need to qualify for Medicaid for this month" and the Division does not inform the citizen of what other steps she needs to perform in order to qualify for Medicaid as requested.

The Claimant has met her burden of proof and established, by a preponderance of the evidence, that she satisfies the four part test for claiming equitable estoppel against the Division. As a result, the Division is estopped from its denial of the Claimant's application for Medicaid benefits beginning with the month of September 2011. The Division was therefore not correct when it approved the Claimant for Medicaid benefits beginning with the month of October 2011, and denied her Medicaid benefits for the month of September 2011.

### **CONCLUSIONS OF LAW**

1. The Claimant had monthly income of \$1,441.07 (after a deposit was made to her Miller Trust bank account) during the month of September 2011, the month she applied for Medicaid coverage.
2. Because the Claimant went to the Division, on September 30, 2011, applied for Medicaid benefits, provided the Division with a copy of her Miller Trust, the court registration for the Miller Trust, provided proof that the Miller Trust bank account had funds deposited into it, and clearly and undisputedly requested that she receive Medicaid coverage for the month of September 2011, and the Division failed to notify her that she was required to deposit additional funds into her Miller Trust bank account during the month of September 2011, in order to qualify for Medicaid benefits during the month of September 2011, the Claimant has proven, by a preponderance of the evidence, that she is entitled to equitably estop the Division from denying her Medicaid coverage for the month of September 2011.
3. The Division was therefore not correct when it, on October 19, 2011, notified the Claimant she was eligible for Medicaid benefits beginning with the month of October, 2011, rather than beginning with the month of September 2011.

### **DECISION**

The Division was not correct when it, on October 19, 2011, notified the Claimant she was eligible for Medicaid benefits beginning with the month of October, 2011, rather than beginning with the month of September 2011.

### **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 21st day of February 2012.

/Signed/  
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Larry Pederson  
Hearing Authority

Certificate of Service

