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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. 12-FH-01
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) was an Adult Public Assistance and Medicaid recipient in November 2011. (Ex. 3) On November 22, 2011, the Division sent him a request for information for his ongoing Adult Public Assistance and Medicaid case. (Ex. 3) On December 8, 2011, the Division sent the Claimant notice that his Adult Public Assistance and Medicaid cases were closed, because he did not comply with its information request, and that he would not receive Adult Public Assistance and Medicaid benefits after the month of December 2011. (Ex. 5.0) The Claimant requested a Fair Hearing on January 6, 2012. (Ex. 6.0)

This Office has jurisdiction pursuant to 7 AAC 49.010.

The Claimant's hearing was held on January 31, 2012. The Claimant appeared telephonically; he represented himself and testified on his own behalf. [REDACTED] also attended telephonically. She assisted the Claimant in his representation and testified on his behalf. [REDACTED], Public Assistance Analyst with the Division, appeared in person; she represented the Division and testified on its behalf.

The record was left open until February 2, 2012 for the parties to submit additional documentation, which they did. The Claimant then submitted additional documentation on February 4, 2012, without objection from the Division.

ISSUE

Was the Division correct to terminate the Claimant's Adult Public Assistance and Medicaid benefits after the month of December 2011 because he did not comply with the Division's request for information?

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

1. The Claimant is under 65 years of age. (Ex. 1) He was receiving Social Security Supplemental Security Income (SSI) benefits in October and November 2011. (Ex. 2.1)
2. On October 31, 2011, the Social Security Administration (SSA) made the decision that the Claimant was no longer eligible to receive SSI benefits because he owned resources that made him financially ineligible for SSI benefits (Code "NO4"). (Exs. 2.1 – 2.2)
3. The SSA sent the Claimant notice on November 15, 2011 that he would no longer receive SSI payments (SSI payment of \$0.00) starting on December 1, 2011. (Ex. A, pp. 3 – 5))
4. On November 21, 2011, the Division was informed, through an alert received from the SSA, that the Claimant was no longer eligible to receive SSI benefits due to his ownership of excess resources. (Ex. 2.0)
5. On November 22, 2011, the Division sent the Claimant notice that reads as follows:

The Division of Public Assistance has been alerted by the Social Security Administration that your SSI was [. . .] denied on 10/31/11 because you have countable resources in excess of what is allowed for SSI benefits. Public Assistance needs information and verification about what resources the Social Security Administration are counting to deny your claim for SSI benefits. Please provide the following: 1) information and verification about exactly what resources and their value are being counted by the Social Security Administration to deny your claim for SSI. Ideal verification would be letter(s) from the Social Security Administration explaining exactly why your SSI claim was denied.

(Ex. 3) The Division provided the Claimant with a deadline of December 7, 2011 to provide the requested information. *Id.* The November 22, 2011 notice advised the Claimant that if he did not provide the requested information by December 7, 2011, that "your assistance may be stopped or your benefits reduced." *Id.*

6. On November 27, 2011, the Claimant faxed three pages of documents to the Division. (Ex. A, p. 2) Those three pages consisted of the first three pages of the SSA November 15, 2011 letter to the Claimant notifying him that he would no longer receive SSI payments starting December 1, 2011. (Ex. A, pp. 3 – 5) Those three pages did not contain an explanation as to why the Claimant's SSI payments were stopped: there was no discussion or mention in them of the Claimant's resources. *Id.* That SSA letter had 5 pages total, as indicated by the language "Page 2 of 5" and "Page 3 of 5" contained on pages 2 and 3 of the document. (Ex. A, pp. 4 – 5) However, pages 4 and 5 of the SSA November 15, 2011 letter were not faxed to the Division, as demonstrated by the November 27, 2011 fax verification report, which states that only three pages were faxed. (Ex. A, pp. 2)
7. The Claimant also provided his care coordinator with paperwork to send to the Division. (Claimant testimony) She did not send the paperwork to the Division. *Id.*

8. On December 8, 2011, the Division sent the Claimant notice that his Adult Public Assistance and Medicaid cases were closed and that he would not receive Adult Public Assistance and Medicaid benefits after the month of December 2011. (Ex. 5.0) That notice explained that the reason the Division was closing his Adult Public Assistance and Medicaid case was because “we did not receive the items or proof we asked for.” *Id.* That notice further stated:

Items we asked for and did not get:

The Division of Public Assistance has been alerted by the Social Security Administration that your SSI was [. . .] denied on 10/31/11 because you have countable resources in excess of what is allowed for SSI benefits. Public Assistance needs information and verification about what resources the Social Security Administration are counting to deny your claim for SSI benefits. Please provide the following: 1) information and verification about exactly what resources and their value are being counted by the Social Security Administration to deny your claim for SSI. Ideal verification would be letter(s) from the Social Security Administration explaining exactly why your SSI claim was denied.

Id.

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 Public Assistance program provides financial assistance to “aged, blind, or disabled needy [Alaska] resident[s].” AS 47.25.430. In order to financially qualify for Adult Public Assistance, an applicant/recipient may not own more than \$2,000 in countable resources. 7 AAC 40.090(7); 7 AAC 40.270(a). A countable resource is one that an applicant/recipient “owns and can convert to cash.” 7 AAC 40.270(a).

An Adult Public Assistance applicant/recipient is required to “furnish adequate evidence to demonstrate his eligibility for assistance.” 7 AAC 40.050(a). The Division is allowed to investigate and redetermine an Adult Public Assistance recipient’s eligibility. 7 AAC 40.450(a) and (b). An Adult Public Assistance applicant/recipient who does not provide necessary verification is not eligible for assistance. *See Alaska Adult Public Assistance Manual* Section 400-4.

If an Adult Public Assistance recipient, who is also an SSI recipient, has his SSI benefits terminated, then the Division is required to terminate his Adult Public Assistance benefits

“regardless of whether [he] files an appeal with the Social Security Administration.” 7 AAC 40.060(c).¹

The Medicaid program has numerous eligibility categories. *See* 7 AAC 100.002. A person who is receiving SSI benefits or who is eligible for Adult Public Assistance is also eligible for Medicaid benefits. 7 AAC 100.002(b)(1) and (d)(1); 7 AAC 100.410(a) and (b).

“The agency must – . . . (b) Continue to furnish Medicaid regularly to all eligible individuals until they are found to be ineligible.” 42 C.F.R. § 435.930.

ANALYSIS

Because this issue involves the Division’s action terminating the Claimant’s Adult Public Assistance and Medicaid benefits, it is the party seeking to change the status quo. Accordingly, the Division has the burden of proof by a preponderance of the evidence. *State, Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985); *Amerada Hess Pipeline v. Alaska Public Utilities Comm’n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986).

1. Adult Public Assistance

The reason the Division terminated the Claimant’s Adult Public Assistance benefits was because it alleged the Claimant did not comply with its information request regarding the SSA’s decision to terminate his SSI benefits based upon his alleged ownership of countable resources. In order to prevail, the Division must prove, by a preponderance of the evidence, that it was entitled to request information regarding the Claimant’s resources and that the Claimant did not provide the requested information.

The facts of this case show the following:

- a. The Division was alerted by the SSA that the Claimant’s SSI benefits would terminate because he owned too many resources to financially qualify for SSI benefits.
- b. The Division made an information request to the Claimant, and provided the Claimant with a deadline of December 7, 2011 to comply. That request specifically asked “what resources the Social Security Administration [was] counting to deny your claim for SSI benefits.” The Division’s information request further stated that the “ideal verification would be letter(s) from the Social Security Administration explaining exactly why your SSI claim was denied.”
- c. The Claimant responded to the Division’s request on November 27, 2011, which was before the December 7, 2011 deadline. The Claimant’s response consisted of faxing three pages of a five page Social Security Administration letter. These three pages only informed the Claimant that his SSI payment, effective December 1, 2011, was \$0.00. There was no explanation contained in those three pages as to why the SSI payment had

¹ If the termination of SSI benefits is due to excess income or the transfer of resources, then the termination is not automatic and is dependent upon other factors. *See* 7 AAC 40.060(d) and (e).

been changed to \$0.00, nor were there any references to or listing of the Claimant's resources. While the Claimant provided his care coordinator with paperwork to send to the Division, she did not send it to the Division.

An Adult Public Assistance recipient must satisfy certain eligibility requirements. In order to financially qualify for Adult Public Assistance, an applicant/recipient may not own more than \$2,000 in countable resources. 7 AAC 40.090(7); 7 AAC 40.270(a). The Division's request was therefore made in order to determine whether the Claimant was financially eligible to continue receiving Adult Public Assistance benefits. This was a valid request, inasmuch as the Division is authorized to investigate whether an Adult Public Assistance recipient remains eligible for Adult Public Assistance benefits. *See* 7 AAC 40.450(a).

The Claimant responded to the Division's inquiry by faxing the first three pages of a November 15, 2011 SSA letter. However, those three pages contained absolutely no information about "what resources the Social Security Administration [was] counting to deny your claim for SSI benefits." Nor did those three pages contain an explanation as to why the Claimant's SSI benefits were terminated. The fact that the Claimant provided his care coordinator with paperwork to transmit to the Division does not constitute compliance with the Division's request for information because the care coordinator did not transmit the paper to the Division.²

The preponderance of the evidence therefore shows that the Claimant's response was inadequate; it failed to provide the Division with the requested information. Because the Claimant has an obligation to provide the Division with information about his eligibility for Adult Public Assistance, the Division has met its burden of proof and was correct to terminate his Adult Public Assistance benefits after the month of December 2011. *See Alaska Adult Public Assistance Manual* Section 400-4.

2. Medicaid

The Division terminated the Claimant's Medicaid benefits when it terminated his Adult Public Assistance benefits. As the above discussion on Adult Public Assistance shows, the Division was justified in terminating the Claimant's Adult Public Assistance benefits. When the Claimant lost his Adult Public Assistance benefits, as a purely legal matter, he also lost his eligibility for Adult Public Assistance related Medicaid. 7 AAC 100.002 (d)(1); 7 AAC 100.410(b).

When the Division terminates a recipient's Medicaid coverage under one category, it is required to determine if the recipient is eligible for coverage under another Medicaid category: "[t]he agency must – . . . (b) Continue to furnish Medicaid regularly to all eligible individuals until they are found to be ineligible." 42 C.F.R. § 435.930. A review of the record shows that the Claimant's only other potential Medicaid eligibility category³ was SSI related: individuals who

² Care coordinators are not Division employees. They are private individuals (or employees of private businesses), who are enrolled as Medicaid providers to provide care coordination services for Medicaid recipients. *See* 7 AAC 130.220(b)(2); 7 AAC 130.240; 7 AAC 130.319(1) – (2).

³ There are a wide variety of Medicaid eligibility categories. However, for an adult male with no minor children in the home, the only potentially applicable eligibility categories require that the Claimant receive either Adult Public Assistance or SSI benefits. *See* 7 AAC 100.102 for a complete listing of the Medicaid coverage categories.

receive SSI are also eligible for Medicaid benefits. 7 AAC 100.002(b)(1); 7 AAC 100.410(a). The Claimant, however, stopped receiving SSI benefits as of December 1, 2011.

Because the Claimant was no longer an SSI recipient as of December 1, 2011, and because the Division correctly terminated his Adult Public Assistance benefits, the Claimant was no longer eligible for Medicaid benefits. The Division has therefore met its burden of proof by a preponderance of the evidence. The Division was correct to terminate the Claimant's Medicaid benefits after the month of December 2011.

CONCLUSIONS OF LAW

1. The Claimant failed to provide an adequate response to the Division's request for information regarding what his resources were that caused the SSA to terminate his SSI benefits.
2. As a result, the Division was correct to terminate the Claimant's Adult Public Assistance and Medicaid benefits after the month of December 2011.

DECISION

The Division was correct to terminate the Claimant's Adult Public Assistance and Medicaid benefits after the month of December 2011.

APPEAL RIGHTS

If for any reason the Claimants are not satisfied with this decision, the Claimants have the right to appeal by requesting a review by the Director. If the Claimants appeal, 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 2nd day of April, 2012.

 /signed/
Larry Pederson
Hearing Authority

Certificate of Service

I certify that on this 2nd day of April, 2012, true and correct copies of the foregoing were sent to:
Claimants by U.S.P.S First Class Certified Mail, Return Receipt Requested
and to the following by secure e-mail:

Public Assistance Analyst
Public Assistance Analyst
, Policy & Program Development
, Staff Development & Training
, Administrative Assistant II
, Policy & Program Development

/signed/

J. Albert Levitre, Jr.
Law Office Assistant I