

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of)
)
 T C)
_____)

OAH No. 14-1179-APA
Agency No.

DECISION

I. Introduction

T C challenges the Division of Public Assistance’s (division) denial of Adult Public Assistance (“APA”) and APA-related Medicaid benefits. The division concluded Mr. C was financially ineligible for Medicaid. Mr. C contends that he is not “over resourced” because his trust is a Medicaid-recognized exempt special needs pooled trust. However, the trust is not a recognized Medicaid trust because it does not contain all the required elements, namely the date Mr. C was determined disabled as required by 7 AAC 100.604(b)(3). The decision of the division is affirmed.

The division was incorrect when it failed to timely act on Mr. C’s request for state disability determination. If he is determined disabled, the division can act on his application for APA Medicaid. Mr. C will have appeal rights associated with the division’s decision on the disability determination and date of coverage.

II. Facts

The material facts are not in dispute. On January 10, 2013, the Office of Public Advocacy (OPA) was appointed guardian and conservator for Mr. C. On January 30, 2014 OPA was named trustee and Mr. C the beneficiary under the T C Irrevocable Asset Trust.¹

On March 26, 2014, the division notified Mr. C that, effective April 30, 2014, it was terminating his Medicaid benefits because Mr. C had not been found disabled by the division or the Social Security Administration, and that his resources exceeded the maximum for Medicaid.² The notice stated that it would reconsider its decision if Mr. C could provide a disability determination and a copy of an eligible trust document. The notice informed him that the “TRUST CORPUS MUST CLEARLY INDICATE THE DISABILITY ONSET DATE AND

¹ Exh. A.
² Exh. 12.

THE TRUST MUST BE APPROVED BY PUBLIC ASSISTANCE POLICY IN ORDER FOR IT TO BE CONSIDERED VALID.”³

Mr. C did not appeal the March 26, 2014 denial. Instead he submitted a new APA application on April 8, 2014. In support, Mr. C provided the division with a copy of the January 30, 2014 Irrevocable Asset Trust document.⁴

The trust document states that it is an irrevocable trust for the benefit of Mr. C who is a disabled resident of Anchorage, Alaska, over the age of 65, being disabled as determine by a State of Alaska determination of disability or as determined by the Social Security Administration on the date as set out at the conclusion of this paragraph, hereby establishes this irrevocable asset trust for the sole benefit of T C, pursuant to and in conformity with the provisions of 42 U.S.C. 1396p(d)(4)(C), with the Office of Public Advocacy ... as the named Trustee.⁵

On May 14, 2014, the division denied the April 8 application for the same reason it had terminated Mr. C’s Medicaid in May, 2014: he was over resourced, he had no disability determination, and no eligible trust document.⁶ On May 23, 2014, in an effort to mollify the division, Mr. C filed an application for a State Only Disability Determination.⁷ For reasons unknown, the division did not process his application for a state disability determination.

On June 4, 2014, Mr. C requested a fair hearing on the May 14, 2014 denial of the April application. He died on July 21, 2014.

III. Discussion

A Medicaid applicant/recipient must meet several requirements including age, disability, and financial need.⁸ Generally assets contained within trusts are counted as an applicant/recipient’s assets when determining his or her financial need.⁹ There are three exceptions to the general rule. The three recognized Medicaid trusts are a qualifying income trust, a special needs trust, and a pooled trust.¹⁰ Mr. C argues 1) that he had a valid trust in place

³ Exh. 12 at 2 (emphasis in original).

⁴ Exh. A.

⁵ Exh. A at 4.

⁶ Exh. 4.

⁷ Exh. B.

⁸ 7 AAC 40.090.

⁹ *See generally* 7 AAC 100.602, .604.

¹⁰ 7 AAC 100.604(a).

at the time of his application for Medicaid and 2) that because he had not been found disabled by the Division of Vocational Rehabilitation, that did not make the “trust invalid.”¹¹

For purposes of this discussion the issue is not whether Mr. C had a valid general type trust, but rather did he have a recognized pooled Medicaid trust. It was the counting of the trust’s assets that resulted in Mr. C being over resourced and therefore, ineligible for his Medicaid. If his trust is determined to be a recognized trust, the effective date of coverage must be established.

A. *Mr. C’s January 30, 2014 Irrevocable Asset Trust Is Not A Recognized Medicaid Trust.*

The applicable regulation provides:

An applicant or recipient must submit a recognized Medicaid trust document to the department for review and approval *before the department determines Medicaid eligibility*. . . To be approved by the department the trust must . . . identify the date the beneficiary was last *determined* or redetermined . . . disabled under 7 AAC 40.170(a).¹²

Mr. C’s trust was intended to be a pooled trust for the benefit of an individual who is disabled under 42 U.S.C. 1396p(d)(4)(C).¹³ His trust had to be approved before it could be considered a recognized Medicaid pooled trust. To be approved, Mr. C had to be *determined or redetermined* disabled by the Alaska Division of Vocational Rehabilitation of the Department of Labor and Workforce Development. There was no disability determination. Mr. C may have had a “valid” general trust, but until there was a disability determination, the trust could not be a recognized Medicaid trust because it did not contain all of the required elements.

B. *The Division Erred When It Failed to Timely Act upon Mr. C’s Application For A State Only Disability Determination.*

On May 23, 2014, Mr. C filed an application for a disability determination. The division admits that the application has never been acted upon and did not have an explanation for the delay. The division should act on the application and if Mr. C is determined to be disabled, the division should determine whether he is eligible for Medicaid, and if so, the effective date of

¹¹ Applicant’s Hearing Brief at 3, 4.

¹² 7 AAC 100.604(b)(3) (emphasis added).

¹³ Ex. A-2 § 3.01. *See also* 42 U.S.C. 1396p(d)(4)(C); 7 AAC 100.614(a)(2).

coverage. Mr. C will have appeal rights associated with the division's decision on the disability determination and date of coverage.

IV. Conclusion

The division was correct when it determined Mr. C did not have a recognized Medicaid trust. The division was incorrect when it failed to timely act on Mr. C's request for state disability determination. Once he is determined disabled, the division can act on his application for APA Medicaid.

DATED this 23rd day of December, 2014.

By: Signed
Rebecca L. Pauli
Administrative Law Judge

Adoption

The undersigned, by delegation from of the Commissioner of Health and Social Services, adopts this Decision, under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 6th day of January, 2015.

By: Signed
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

[This document has been modified to conform to the technical standards for publication.]