

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

In the Matter of	)	
	)	
H B	)	OAH No. 15-0130-APA
_____	)	Division No.

**DECISION**

**I. Introduction**

H B is a former Adult Public Assistance (APA) recipient, whose APA and related Medicaid benefits expired at the end of August 2014. He reapplied for APA and its related Medicaid benefits on September 9, 2014. The Department of Health and Social Services, Division of Public Assistance (Division) denied his application. Mr. B requested a hearing.

Mr. B's hearing was held on March 11, 2015. Mr. B participated in the hearing. He was assisted by Z S, who testified on his behalf. Public Assistance Analyst Michelle Cranford represented the Division.

Mr. B had a Special Needs Trust. That Trust, which was necessary for him to financially qualify for APA and its related Medicaid benefits, had a technical error, which caused the denial of his application. After the denial of his application, that technical error was corrected retroactively by court order, effective March 20, 2013. Although the Division's initial denial was correct when it was made, the effective date of correction cured the technical defect retroactively prior to Mr. B's application. As a result, the Division's denial of Mr. B's application is REVERSED.

**II. Facts**

Mr. B is a disabled adult. He had previously qualified for APA and its related Medicaid benefits; however, those benefits lapsed at the end of August 2014.<sup>1</sup> He reapplied for APA and its related Medicaid benefits on September 9, 2014. His application disclosed that he had a bank account which contained over \$13,000 dollars.<sup>2</sup> The Trust, which owned the bank account, was filed with the Superior Court on March 15, 2013, and established by court order on March 20,

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<sup>1</sup> Ex. 33.

<sup>2</sup> Exs. 2 – 2.6.

2013. The funds for the Trust came from back Social Security Disability Insurance payments (SSDI).<sup>3</sup>

The Division denied Mr. B's application upon the basis that the Trust was defective, for four separate reasons:

1. The Trust needed to identify the full date of Mr. B's disability determination, not just the year;
2. The Trust account must be solely for Mr. B's benefit;
3. The Trust must be irrevocable; and
4. The Trust must consist solely of Mr. B's income and resources.<sup>4</sup>

After Mr. B requested a hearing, the Division sent him a supplemental denial notice informing him that because his Trust had not been approved, the money in the Trust account was a countable resource that made him financially ineligible for APA and its related Medicaid benefits.<sup>5</sup>

The original Trust document filed with the court, a copy of which was provided the Division, states that "H B. B is a disabled individual under age 65 having last been determined disabled in 2012."<sup>6</sup> The Trust funds may only be spent for Mr. B's benefit.<sup>7</sup> The Trust is irrevocable.<sup>8</sup> The Trust only contains Mr. B's funds; it was funded with his back SSDI payments.<sup>9</sup> The Trust may only be funded with assets/funds held by or for the benefit of Mr. B.<sup>10</sup>

After the Division denied Mr. B's application, he obtained a court order, retroactive ("nunc pro tunc") to March 20, 2013, the date the Trust was created. That court order modified the Trust and changed the language "H B. B is a disabled individual under age 65 having last been determined disabled in 2012" to read instead "H B. B is a disabled individual under age 65 having been determined to have been disabled since February 20, 2008 as stated in the Claim Information dated August 8, 2012."<sup>11</sup>

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<sup>3</sup> Exs. 4.1 – 4.8; Z S's testimony.

<sup>4</sup> Ex. 7.1.

<sup>5</sup> Ex. 8.

<sup>6</sup> Ex. 4.9.

<sup>7</sup> See Trust, Articles V and VI: Exs. 4.11 – 4.16.

<sup>8</sup> See Trust, Article XV: Exs. 4.18 – 4.19.

<sup>9</sup> Exs. 4.1, 4.4, 4.5 – 4.7; Z S's testimony.

<sup>10</sup> See Trust, Article IV: Ex. 4.11.

<sup>11</sup> See "Court Order Accepting Errata to Declaration of Supplemental Needs Trust Nunc Pro Tunc to March 20, 2013."

### III. Discussion

The APA program contains a number of financial eligibility requirements. One of these is that a recipient, who is not living with a spouse, may not own more than \$2,000 in countable resources.<sup>12</sup> A resource is defined as “any real or personal property that an applicant . . . owns and can convert to cash to be used for his or her support and maintenance.”<sup>13</sup> A properly set up Medicaid special needs trust is not counted as a resource.<sup>14</sup>

The requirements for a special needs trust are contained in the Alaska Medicaid regulations. The trust must cite to the authorizing federal statute. Mr. B’s Trust does: it cites to 42 USC 1396p(d)(4)(A), the federal statute applicable to special needs trusts.<sup>15</sup>

The Division found the Trust did not qualify for four separate reasons. The first was that the Trust did not specify the specific date, merely the year, of Mr. B’s disability date. The regulation requires that the trust document must “identify the date the beneficiary was last determined or redetermined. . . disabled.”<sup>16</sup> While the Trust document originally stated only the year 2012, it was modified retroactively by court order to contain the specific date. Although the Division was technically correct to find the Trust deficient, that deficiency was cured retroactively. As a result, this ground for denial was voided by the subsequent court order allowing the Trust to be modified retroactively.

The second reason for the Division’s finding the Trust defective was that it must be for the sole benefit of the beneficiary, Mr. B. This is another regulatory requirement.<sup>17</sup> However, a review of the underlying Trust document shows that the Trust is solely for Mr. B’s benefit.<sup>18</sup> Consequently, this objection is without basis.

The third reason for the Division’s finding the Trust defective is that it was not irrevocable. This is another regulatory requirement.<sup>19</sup> However, the Trust explicitly states that it is irrevocable.<sup>20</sup> This objection is therefore without basis.

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<sup>12</sup> 7 AAC 40.270.

<sup>13</sup> 7 AAC 40.260(a).

<sup>14</sup> *Alaska Adult Public Assistance Manual* Section 431-2F(2)(c).

<sup>15</sup> 7 AAC 100.604(a)(2) and (b)(1). *See* Trust Article I, Ex. 4.9.

<sup>16</sup> 7 AAC 100.604(b)(3).

<sup>17</sup> 7 AAC 100.612(a)(1).

<sup>18</sup> *See* Trust, Articles V and VI: Exs. 4.11 – 4.16.

<sup>19</sup> 7 AAC 100.612(a)(3).

<sup>20</sup> *See* Trust, Article XV: Exs. 4.18 – 4.19.

The fourth reason for the Division's finding the Trust defective is that it did not consist exclusively of Mr. B's income and resources. However, the only evidence in the record shows that the Trust was funded by Mr. B's back SSDI payments, which are his sole resources. There was no evidence presented that any funds or resources belonging to anyone else were placed in the Trust. In addition, the Trust specifically requires that additions to the Trust be for Mr. B's benefit, *i.e.*, that they are his property. Consequently, this objection is also without basis.

As an applicant for APA and its related Medicaid benefits, Mr. B had the burden of proof.<sup>21</sup> He has met his burden of proof. The Trust in question, as modified retroactively by court order, meets the requirements of the Alaska Medicaid regulations regarding special needs trusts.

#### **IV. Conclusion**

The Division's denial of Mr. B's application for APA and its related Medicaid benefits is REVERSED.

DATED this 7<sup>th</sup> day of April, 2015.

*Signed* \_\_\_\_\_  
Lawrence A. Pederson  
Administrative Law Judge

### **Adoption**

The undersigned, by delegation from 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 21<sup>st</sup> day of April, 2015.

By: *Signed* \_\_\_\_\_  
Name: Lawrence A. Pederson  
Title: Administrative Law Judge

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

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<sup>21</sup> 7 AAC 49.135.