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

In the Matter of	)	
	)	OAH No. 16-0796-MDX
M T	)	Division No.
	)	

DECISION

I. Introduction

M T is a minor who applied for TEFRA Medicaid benefits in February 2016. J D, M's mother, was notified on June 17, 2016 that M's application was denied because she exceeded the maximum qualifying score on the Inventory for Client and Agency Planning (ICAP) by two points. Ms. D requested that the denial be overturned and M's ICAP assessment be redone. The evidence in this case shows that Division of Senior and Disabilities Services (Division) does not normally redo ICAP assessments when there is only a slight overscoring. Additionally, even though the Division exceeded its 90 day application processing deadline, the regulations do not provide for an automatic approval or that the ICAP assessment be redone. Nor did the evidence show that M was prejudiced by the delay involved. Accordingly, the Division's denial of M's application is AFFIRMED.

II. Procedural History

Ms. D requested a hearing to challenge the denial of M's application. That hearing was held on July 28 and August 16, 2016. Ms. D represented M and testified on her behalf. D L, M's care coordinator, testified on her behalf. Terri Gagne, a Medical Assistance Administrator employed by the Department of Health and Social Services, represented the Division. Heather Chord, who conducts ICAP assessments for the Division, testified on its behalf.

III. Facts

M is just over six years old. She was diagnosed with Autism Spectrum Disorder (DSM-5 code 299.00) following a neuropsychological evaluation, which was conducted in February 2016. That same neuropsychological evaluation found that her cognitive abilities were in the average range, but her nonverbal and abstract reasoning skills were better developed than her

verbal reasoning and knowledge. It recommended that she pursue occupational therapy, individual therapy, and social skills development.[1]

Ms. D submitted M's application for TEFRA Medicaid benefits in February of 2016. It was first processed through the Division of Public Assistance. Ms. Chord's office received the application on March 24, 2016. The application was assigned to her in mid-May for assessment. She conducted the ICAP assessment on June 1, 2016. As part of the ICAP assessment, she interviewed three persons whose names were supplied by Ms. D. M received a broad independence score of 453 on the ICAP.[2] The cutoff score for an applicant, age 6 years, 1 month, M's age when the ICAP was administered, is 451.[3] Ms. D was notified that M did not qualify for TEFRA Medicaid on June 17.[4]

The Division has, once in the past, had an ICAP reassessed when an applicant did not meet the cutoff score by one point. That occurred in 2011.[5]

IV. Discussion

The Medicaid program has a number of coverage categories. The TEFRA Medicaid category provides Medicaid eligibility for certain disabled children, regardless of their parents' income and resources. States are allowed, at their option, to provide benefits to children 18 years of age or less who qualify as disabled individuals under §1614 of the Social Security Act and who live at home rather than in an institution. Qualification is not based on medical diagnosis but rather on the level of care the child requires.[6]

The Alaska regulation implementing TEFRA is 7 AAC 100.424, titled "Disabled child living at home." The regulation lists three separate eligibility categories, each of which has its own separate qualifying criteria. M's relevant eligibility category is that for a child who "needs a level of care offered in . . . (B) an intermediate care facility for individuals with an intellectual disability or related condition, as determined under 7 AAC 140.600."[7] In order to satisfy the eligibility requirements for this category, she must have both a qualifying diagnosis and have "a broad independence domain score equal to or less than the cutoff

---

1 Ex. E, pp. 12 – 13.
2 Ex. 1, pp. 1 – 4; Ms. Chord's testimony.
3 Ex. F.
4 Ex.
5 Ms. L's testimony; Division post-hearing submission filed on August 16, 2016.
6 The statutory provisions establishing TEFRA are in § 1902(e) of the Social Security Act (42 U.S.C. § 1396a(e)(3)). The federal regulation implementing TEFRA is 42 CFR § 435.225.
7 7 AAC 100.424(a)(5).

score in the department's Table of ICAP Scores by Age."[8] M has the necessary qualifying diagnosis, Autism Spectrum Disorder (DSM Code 299.00).[9] However, she does not have the necessary ICAP score. Her score is 453. The cutoff score is 451.

Ms. D challenged M's denial and requested an ICAP reassessment for three separate reasons. The first was that the Division has, in the past, allowed a reassessment when the ICAP cutoff score was exceeded only by a few points. The second is that the Division took over 90 days to process her application, which exceeded the time allowed by regulation. The third was that the passage of time prejudiced her because the three people who were interviewed for the ICAP scoring were no longer familiar with M's current condition.

A. Reassessment – Scoring

The regulations requiring an ICAP assessment and setting the scoring requirements do not provide for a reassessment when the ICAP cutoff score is only slightly exceeded.[10] From the evidence presented, this happened only once within the past five years and is not the Division's normal practice. Accordingly, Ms. D has not shown that M's ICAP must be redone because her score exceeded the cutoff score by only two points.

B. Timeliness

M's application was filed on February 2016. The exact date of the application is not contained in the record. Under Medicaid rules, the Department is normally required to process applications and notify an applicant if he or she is eligible or ineligible within 90 days of the date of application, for cases requiring a disability determination.[11] That 90 day period would have ended sometime in May. It is undisputed that the Department did not notify M that she was not eligible until more than 90 days after her application was submitted.

Ms. D argued that M should have a new ICAP performed because of the delay. The Medicaid regulations do not contain a provision authorizing a new assessment in the event of delay. The regulations allow a party to request a hearing when an application's processing is delayed.[12] However, they do not afford any affirmative relief such as granting

---

8 7 AAC 140.600(c) and (d)(3)(B).
9 7 AAC 140.600(c)(5); Ex. E, p. 12.
10 7 AAC 140.600(c) and (d)(3)(B).
11 7 AAC 100.012(a).
12 "An opportunity for a hearing must be granted to a recipient whose (1) request for financial, food, or medical assistance is denied or is not acted upon with reasonable promptness." 7 AAC 49.020.

automatic approval or a reassessment.[13] Accordingly, as a purely legal matter, M is not entitled to have a new ICAP performed simply because the Division took more than 90 days to process her application. It should also be noted that this is not a case where the application was processed months after the 90 day timeline.

C. Persons Interviewed

As part of the ICAP assessment, Ms. Chord interviewed three persons identified on M's February application. Ms. D argued that those persons were not, as of the beginning of June, the persons most familiar with M's condition. However, the evidence on this point was speculative and conclusory. There was no showing that there was a significant change in M's condition in the time between February and the beginning of June, nor that the persons interviewed were no longer in contact with or aware of that change. Ms. D has therefore failed to show that M's ICAP reassessment was inaccurate due to the passage of time.

V. Conclusion

As an applicant, Ms. D, acting on M's behalf, has the burden of proof in this case.[14] She has not met it. The Division is not required to do an ICAP reassessment. It must be noted, as stated at hearing by the Division, that a new application can be resubmitted for M, which would then entail a new ICAP assessment. The Division's denial of M's February 2016 TEFRA application is AFFIRMED.

DATED this 9th day of September, 2016.

Signed
Lawrence A. Pederson
Administrative Law Judge

---

[13] There is one federal case from the 7th Circuit, which provides that when a person who is already receiving Medicaid benefits requests approval for specialized medical services, delay in processing those requests beyond the specific time limits would result in automatic approval of those requests. *Smith v. Miller*, 665 F.2d 172 (7th Circuit 1981). However, the *Smith* decision carefully stated that it applied only to persons who had already been approved for Medicaid benefits; it was based in part on the fact that a medical provider had to determine medical necessity and request the service for the recipient. It was further based upon a federal Medical Assistance Manual provision which provided that "'the system should provide that requests [for prior authorization] which have not been acted on within a specified time are automatically approved.'" The decision specifically stated that it did not apply to persons who were applying for Medicaid benefits. *Smith* at 176.

[14] 7 AAC 49.135.

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 23rd day of September, 2016.

By: *Signed*
Name: Lawrence A. Pederson
Title/Agency: Admin. Law Judge/OAH

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