

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

In the Matter of the)
)
 TONIA MURCHISON)
 d/b/a FAMILY INK)
 _____)

OAH No. 12-0884-MDR

DECISION

I. Introduction and Factual Background

Tonia Murchison d/b/a Family Ink owns and operates a five bed assisted living home (ALH). She receives Medicaid payments for her ALH clientele. She applied for a daily Medicaid payment rate for her Assisted Living Home (ALH) on January 20, 2009. A disagreement arose between Ms. Murchison and the Department of Health and Social Services Medicaid Office of Rate Review (ORR) over the payment rate ORR set for the ALH clientele. The dispute went through the administrative hearing process: DHSS Office of Hearings and Appeals Case No. 2009-MRC-05 (*Family Ink I*).

In April of 2011, Commissioner Streur issued a decision in *Family Ink I* that required ORR to recalculate Ms. Murchison's payment rate.¹ ORR attempted to implement the decision in *Family Ink I*. It arrived at a payment rate of \$149.43, which was later adjusted upward to \$150.61 effective July 1, 2010. This case arises over the implementation of the decision in *Family Ink I*.

Ms. Murchison argued that ORR incorrectly calculated the payment rate and that it additionally limited the dates of its application. The matter went to hearing on May 29, 2013.² At hearing, Ms. Murchison withdrew her claim that the payment rate was incorrect. This left only the issue of the applicable period during which the payment rate was effective. ORR argued that the payment rate was effective from February 4, 2009 through February 28, 2011. Ms. Murchison submitted that the payment rate was effective through December 31, 2011.³ This is a purely legal issue, regarding the interpretation of 7 AAC 145.520.

¹ A copy of the decision in *Family Ink I* is attached to ORR's Motion for Summary Adjudication.

² ORR filed a prehearing motion for summary adjudication. That motion was denied and the case went forward to hearing as scheduled.

³ Ms. Murchison took the initial position that the starting date for the payment rate was January 20, 2009. At hearing, she agreed to the use of February 4, 2009 as the starting date.

When 7 AAC 145.520 was amended effective March 1, 2011, it contained a “grandfather” provision that provided that if a Medicaid provider’s payment rate was higher than the standard rates provided for, those rates would continue in effect through January 1, 2014. Because it is undisputed that Ms. Murchison’s Medicaid payment rate, as determined through the administrative hearing process in *Family Ink I*, exceeded the standard rate, it remained into effect beyond February 28, 2011, through December 31, 2011.⁴

II. Discussion

Ms. Murchison’s payment rate was calculated under the regulations in effect at the time she applied for a payment rate, 7 AAC 43.1058 and 7 AAC 43.1060, which allowed her to select a cost-based payment rate instead of the base payment rate of \$46.30 per day.⁵ This resulted in her payment rate (originally set at \$121.10) which, as a result of *Family Ink I*, was ultimately determined to be \$150.61.

While *Family Ink I* was pending, new Medicaid rate setting regulations went into effect on March 1, 2011. The applicable regulation, 7 AAC 145.520(f), provided that ALHs were to be paid at the lower of either their actual charges or set published rates beginning on March 1, 2011.⁶ However, if the ALH had a payment rate higher than the set published rate, then the ALH’s higher payment rate was “grandfathered” in until January 1, 2014:

(1) if the provider’s average per-unit allowed amount for the type of service, for claims with dates of service after June 30, 2009 and before October 1, 2009, and processed before February 3, 2010, is higher than the rate established under (f) of this section, the recipient care rate before January 1, 2014 is the average per-unit allowed amount for the period after June 30, 2009 and before October 1, 2009.^[7]

The set rate for a five bed or less ALH as of March 1, 2011 was \$131.77.⁸

It is undisputed that Ms. Murchison’s payment rate, as corrected by *Family Ink I*, was \$149.43 (later adjusted to \$150.61), a figure in excess of the set rate of \$131.77. ORR’s rationale for not continuing the payment rate beyond March 31, 2011 was that it could not

⁴ Although the regulation provides for an extension of the payment rate through January 1, 2014, Ms. Murchison has not requested an extension beyond December 31, 2011.

⁵ 7 AAC 43.1058 (Register 186, effective July 1, 2008); 7 AAC 43.1060 (Register 179, effective August 24, 2006).

⁶ 7 AAC 145.520 (Register 197, effective March 1, 2011). The regulation, 7 AAC 145.520(f), applies to “residential supported-living services provided under 7 AAC 130.255,” which is a category that includes ALHs. See 7 AAC 130.255(a)(2).

⁷ 7 AAC 145.520(h) (1) (Register 197, effective March 1, 2011).

⁸ See *Chart of Personal Care Attendant and Waiver Services Rates* (March 1, 2011 to June 30, 2011), <http://dhss.alaska.gov/dsds/Documents/grantservices/PDFs/Waivers/PCA%20Waiver%20Rate%20Chart.pdf> (date accessed July 2, 2012).

because the higher payment rate was not “processed” until April of 2011, when the regulation required that the higher payment rate be processed before February 3, 2010.

When a payment rate is challenged and changed upon the administrative hearing process, the payment rate is changed as of the payment rate’s inception. By statute, it is retroactive.⁹ ORR’s mechanical interpretation of the phrase “processed before February 3, 2010,” focusing only on its own internal paperwork rather than on the legal effective date of the rate, would deny Ms. Murchison the full relief provided her through the administrative hearing process in *Family Ink I*. It would allow ORR to use its own error and the delay inherent in the administrative hearing process to deny her the full payment rate—which the Commissioner has determined *should* have been set in 2009—through December 31, 2011. It would be an interpretation of a regulation that would be contrary to the Alaska statute that makes Commissioner’s decisions of this kind retroactive. Because the statute controls, Ms. Murchison is entitled to receive the payment rate established through the *Family Ink I* decision for the entire period from February 9, 2009 through December 31, 2011.

III. Conclusion

ORR’s determination that Ms. Murchison’s daily Medicaid payment rate of \$149.43, as later adjusted to \$150.61 effective July 1, 2010, should only be effective for the period from February 9, 2009 through February 28, 2011 is reversed. That payment rate is effective through December 31, 2011.

DATED this 19th day of July, 2013.

By: Signed _____
Lawrence A. Pederson
Administrative Law Judge

⁹ See AS 44.62.510(b) (“A decision in a primarily judicial proceeding has retroactive effect in the same manner as a decision of a state court.”).

Adoption

The undersigned 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 13th day of August, 2013.

By: Signed _____
William Streur, Commissioner
Department of Health and Social Services

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