

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

In the Matter of)	
)	OAH No. 12-0371-CMB
R B)	Division No.
fka R X)	
_____)	

FAIR HEARING DECISION

I. Introduction

The Division of Public Assistance (division) terminated Ms. B’s¹ household’s Food Stamp² and Medicaid benefits for her and her husband.³ Ms. B requested a hearing.⁴ After Ms. B requested her hearing, the division issued corrective notices stating that her household’s Food Stamp benefits and Medicaid benefits for her and her husband were terminated, and that their children’s Medicaid benefits would also be terminated in the future.⁵

Ms. B’s hearing was held on October 4, 2012. Ms. B represented herself; both she and her husband, B B, Jr., testified. Public Assistance Analyst Terri Gagne represented the division and testified on its behalf.

The division’s corrective notices terminating Mr. and Ms. B’s Medicaid benefits and terminating their household’s Food Stamp benefits were defective as a matter of law. Consequently, the division’s decision to terminate Mr. and Ms. B’s Medicaid benefits and terminating their household’s Food Stamp benefits is REVERSED. In addition, the division’s decision to terminate the children’s Medicaid benefits is REMANDED to the division to determine whether the children qualify for Denali KidCare or another form of Medicaid coverage.

II. Facts

The Bs live in rural Alaska where the costs of living are exceedingly high and it is difficult to make financial ends meet.⁶ They have two adults in their household and three minor

¹ Ms. B uses her married name of B instead of her former surname X.

² Congress changed the official name of the Food Stamp program in 2008 to the Supplemental Nutrition Assistance program (“SNAP”). However, this decision follows the common practice of continuing to refer to the program as the Food Stamp program.

³ Exs. 2.14, 2.16.

⁴ Ex. 2.18.

⁵ Exs. 2.15, 2.17. The corrective notice gave specific Medicaid benefit termination dates for each child. (Ex. 2.17).

⁶ Joint testimony of Mr. and Ms. B.

children.⁷ Their household owns a commercial fishing permit that is worth approximately \$7,900.⁸ The household has not used the permit to fish in a number of years.⁹

The division was aware that the Bs owned the commercial fishing permit. Ms. B provided it with that information on an April 23, 2012 public assistance application, and the division was informed, during a May 7, 2012 interview, that the permit would be used in June 2012.¹⁰

The fishing permit was not used during the 2012 fishing season, due to a combination of factors, which include not owning a boat and motor, and not having funds to purchase fuel. In addition, the Bs have to pay a yearly fee to activate the permit for use, and they did not have the funds to do that in the 2012 fishing season.¹¹

On August 15, 2012, the division sent Ms. B notice that her Food Stamp case would be closed and that she would not receive Food Stamp benefits after August 31, 2012. The reason the notice gave was that her household was over resource, because it had not used the permit, and cited to Food Stamp Manual section 602.3 in support of the termination.¹² This manual section addresses income requirements, not resource requirements.¹³

On August 15, 2012, the division sent Ms. B notice that Medicaid coverage for her and her husband would end on August 31, 2012. The reason the notice gave was that the division “DID NOT RECEIVE VERIFICATION OF FISHING FOR THIS SUMMER 2012” and cited to Medicaid Manual 5185 in support of the termination.¹⁴ This manual provision refers to the need for the division to monitor cases for ongoing eligibility issues.¹⁵

Ms. B requested a hearing on September 4, 2012.¹⁶ Ten days later, on September 14, 2012, the division mailed Ms. B corrective termination notices for both the Food Stamp and Medicaid programs.¹⁷ The Food Stamp corrective notice explained that the Food Stamp benefits would end after August 31, 2012 for the reason that the permit was counted as a resource,

⁷ Ex. 2.0.

⁸ Ex. 2.9.

⁹ Mr. B testimony.

¹⁰ Exs. 2.1, 2.6.

¹¹ Mr. B testimony.

¹² Ex. 2.14.

¹³ *Alaska Food Stamp Manual* § 602-3.

¹⁴ Ex. 2.16.

¹⁵ *Alaska Family Medicaid Manual* § 5185.

¹⁶ Ex. 2.18.

¹⁷ Gagne testimony; Exs. 2.15, 2.17.

because it was not being utilized for self-employment. The corrective notice referred to Food Stamp Manual section 602-2 in support of the termination.¹⁸ This manual provision refers to the Food Stamp program's resource limits for households and how they are determined.¹⁹

The Medicaid corrective notice explained that the permit was counted as a resource which caused the household to exceed the Medicaid resource limit of \$2,000. As a result Mr. and Ms. B's Medicaid coverage would terminate effective August 31, 2012, and their children's Medicaid coverage would also terminate as of the end of October 2012 for two of the children, at the end of January 2013 for another child,²⁰ and the end of May 2013 for their other child.²¹ The Medicaid corrective notice referred to provisions in several Medicaid manuals, all of which pertain to Medicaid resource limits.²²

III. Discussion

The facts in this case present two separate issues. The first issue is a legal issue pertaining solely to the validity of the corrective notices terminating the household's Food Stamp benefits and Mr. and Ms. B's Medicaid benefits. The second issue is whether the children's Medicaid coverage should be terminated due to household resource ownership.

A. Corrective Notices

The division issued notices on August 15, 2012 that informed Mr. and Ms. B their individual Medicaid coverage and their household's Food Stamp benefits would end at the end of August 2012. The reason for termination was excess resources. Both of these notices referred to program policy manual sections that did not identify the reason for the termination of benefits. The Food Stamp notice referred to a policy manual section regarding income requirements, not resource requirements. The Medicaid notice referred to a policy manual section regarding monitoring ongoing cases for eligibility, not resource requirements.

By regulation, adverse action notices (notices that terminate or reduce benefits) "must detail the reasons for the proposed adverse action, including the statute, regulation, or policy

¹⁸ Ex. 2.15.

¹⁹ *Alaska Food Stamp Manual* § 602-2.

²⁰ This one child is apparently no longer in the B household. While she is listed as a household member on the division's case profile printout (Ex. 1), she is not listed as a household member in the B's April 23, 2012 Food Stamp eligibility review form (Ex. 2.0), nor is she mentioned as a household member in the division's case note documenting the household's May 7, 2012 interview (Ex. 2.6).

²¹ Ex. 2.17.

²² *Alaska Family Medicaid Manual* §§ 5007 and 5150; *Alaska Aged, Disabled and Long Term Care Manual* §§ 515 and 524; 7 AAC 100.070 and 7 AAC 100.130.

upon which that action is based.”²³ It is well settled law that a defective notice cannot be cured by a public assistance recipient going through the hearing process and obtaining the information which should have been contained in the initial notice.²⁴

After Ms. B requested a hearing on September 4, 2012, the division recognized its error and mailed out corrective notices on September 14, 2012. These notices were much more comprehensive than the previous notices and referred to the applicable Food Stamp and Medicaid policy manual provisions that pertain to resource eligibility requirements. However, both of the notices operated retroactively. They purported to terminate Mr. and Ms. B’s Medicaid benefits and the household’s Food Stamp benefits after August 31, 2012.²⁵ To be legally effective, adverse action notices must be sent “at least 10 days before the date the division intends to take action denying, suspending, reducing, or terminating assistance.”²⁶ As a result, the division’s September 14, 2012 notices are ineffective as a matter of law because they were not sent to the Bs 10 days in advance of the August 31, 2012 benefit termination date.²⁷

B. Children’s Coverage

The Alaska Medicaid program contains a variety of coverage categories.²⁸ Each of these categories has different eligibility requirements. The Family Medicaid program, which provides Medicaid coverage to dependent children and their parents or caregivers who reside with them, has a resource limit of \$2,000 for the household.²⁹ Denali KidCare is a different type of Medicaid coverage available to children, where the household resources are not a factor in determining eligibility.³⁰

The federal Medicaid regulations require that before the division terminates Medicaid coverage for a person, it determine whether there is an alternative Medicaid coverage category available.³¹

²³ 7 AAC 49.070.

²⁴ *Allen v. State, Dept. of Health and Social Services, Division of Public Assistance*, 203 P.3d 1155, fn. 68 at 1169 (Alaska 2009).

²⁵ Exs. 2.15, 2.16.

²⁶ 7 AAC 49.060.

²⁷ The division is allowed to correct a defective notice by completely reissuing it. *Allen* at 1169.

²⁸ See 7 AAC 100.002.

²⁹ 7 AAC 100.102(c)(1); 7 AAC 100.104.

³⁰ 7 AAC 100.310(b)(6).

³¹ “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.

The division's September 14, 2012 corrective Medicaid termination notice not only notified Mr. and Ms. B that their Medicaid coverage was terminated, but it also informed them that their children's Medicaid coverage would end at various dates.³² This notice was timely, since the various termination dates were more than 10 days after the date the notice was sent. The reason supplied for the termination was that the value of the family's fish permit exceeded the Medicaid program's \$2,000 resource limit.³³ However, Denali KidCare program does not have resource eligibility requirements.

Assuming, for the sake of argument, that the division is correct about the B household exceeding Family Medicaid resource limits, the B children are potentially eligible for continued Medicaid coverage under Denali KidCare, and the division appears not to have taken Denali KidCare eligibility into account as required by federal Medicaid regulations. This issue was not raised by either the Bs or the ALJ during the hearing. It is therefore appropriate to remand this limited issue to the division for its consideration and determination.

IV. Conclusion

This decision does not address the factual issue of whether the Bs' commercial fishing permit makes them ineligible for Food Stamp and Medicaid benefits. Based on purely legal grounds, it holds as follows:

1. The division's decision to terminate Mr. and Ms. B's Medicaid benefits and their household's Food Stamp benefits after August 31, 2012 is REVERSED due to lack of compliance with regulatory notice requirements.
2. The division's decision to terminate the B children's Medicaid benefits is REMANDED to the division to determine whether the children qualify for Denali KidCare or another form of Medicaid coverage.

DATED this 11th day of October, 2012.

Signed _____
Lawrence A. Pederson
Administrative Law Judge

³² The end of October 2012 for two of the children, at the end of January 2013 for another child, and the end of May 2013 for the other child. (Ex. 2.17)

³³ Ex. 2.17.

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 25th day of October, 2012.

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

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