

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

In the Matter of)		
)	OAH No.	12-0432-CMB
K O)	Agency No.	
_____)		

DECISION

I. Introduction

K O has been receiving Adult Public Assistance (APA) and Medicaid benefits from the State of Alaska and Supplemental Security Income (SSI) benefits from the Social Security Administration (SSA). SSA notified the Division of Public Assistance (division) that it had found Mr. O ineligible based on the value of an insurance policy in his name. Accordingly, the division terminated Mr. O's APA and Medicaid benefits. Mr. O appealed.

A hearing was held on December 6, 2012. Mr. O was represented by counsel. The division was represented by Terri Gagne. The parties were permitted to submit closing briefs. The division was represented by counsel during the post hearing briefing.

Based on the evidence in the record, the division's action is affirmed.

II. Facts

The relevant facts are not in dispute. Mr. O has developmental disabilities and has been eligible to receive APA and Medicaid benefits based on his disabilities and the amount of his income and financial resources. His public guardian purchased an insurance policy dedicated to paying for a burial space. When SSA learned of this policy, it terminated his SSI benefits based on SSA's determination that this policy was a non-excludable resource that placed him over the financial resource limit. When the division was notified that SSA had found Mr. O to be ineligible, it terminated his state benefits.

Mr. O has appealed SSA's determination, and a hearing is scheduled in that appeal in March.

III. Discussion

Mr. O argues that SSA's determination was incorrect because the insurance policy is dedicated for the purchase of a burial space, and is therefore excluded from countable resources. The applicable Social Security regulation states that the value of a burial space is

excluded from the individual's resources.¹ This regulation goes on to say: "The value of an agreement representing the purchase of a burial space, including any accumulated interest, will be excluded from resources."² While the full insurance policy is not in the record, Mr. O makes a strong argument that SSA's determination was incorrect.³

The applicable Alaska Adult Public Assistance regulation, however, does not give the division any discretion. That regulation states:

If an applicant is receiving SSI benefits and is determined by the Social Security Administration to be ineligible, except as provided in (d) and (e) of this section, the division will terminate assistance in accordance with 7 AAC 49.060, regardless of whether the applicant files an appeal with the Social Security Administration.^[4]

The exception provided for in subsection (d) applies to individuals who are ineligible because their income exceeds SSA's income eligibility standard, but is less than Alaska's Adult Public Assistance income eligibility standard.⁵ The exception in subsection (e) applies to individuals who are ineligible based on disposal of resources rules.⁶ No argument has been made that either exception applies here. The sole basis for SSA's determination was that Mr. O's existing non-excludable resources exceed the resource limit. Regardless of whether SSA's decision was correct, the division has no option in this situation. The regulation requires it to terminate Mr. O's Adult Public Assistance benefits.

Mr. O's eligibility for Medicaid was dependent upon him receiving either Adult Public Assistance or SSI.⁷ Because he is no longer eligible for either program, he also loses his Medicaid benefits.

IV. Conclusion

Mr. O was receiving SSI benefits until the Social Security Administration found him ineligible because it determined him to have excess resources. As a consequence, the

¹ 20 C.F.R. § 416.1231(a)(1).

² 20 C.F.R. § 416.1231(a)(3).

³ No ruling is made on this question.

⁴ 7 AAC 40.060(c).

⁵ 7 AAC 40.060(d).

⁶ 7 AAC 40.060(e).

⁷ 7 AAC 100.002(b)(1) and (d)(1); 7 AAC 100.410(a) and (b).

division was required to terminate his APA and Medicaid benefits. The division's action is affirmed.

Dated this 10th day of January, 2013.

Signed _____
Jeffrey A. Friedman
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 11th day of February, 2013.

By: *Signed* _____
Name: Ree Sailors
Title: Deputy Commissioner, DHSS

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