

household's income of \$1,690 exceeded the maximum limit of \$1,584.³ for a household of two.

Ms. L appealed. She initially argued that Mr. L's benefit should not be included because that was his money and their funds were not combined.⁴ As she gained a better understanding of the reason for denial, Ms. L realized that the division was including as household income, a VA benefit attributable to her. However, Ms. L does not receive any benefit from the VA.⁵ Ms. L's household income is therefore \$1,360.

III. Discussion

Ms. L argued that she does not receive any VA benefit. Therefore, the division attributed income to the household that it does not receive. The division agrees Ms. L has established that she does not receive VA benefits, but contends that there are other reasons to question Ms. L's eligibility that it should be permitted to explore in this proceeding:

Alaska "Fair Hearings" regulation 7 AAC 49.070 provides in relevant part that:

"[u]nless otherwise specified in applicable federal regulations, the department will state in the written notice the reasons for the proposed action, including the statute, regulation, or policy upon which that action is based."⁶

The reason given for the denial is that Ms. L's

monthly countable income of \$1,690.00 is over the APA program limit . . .

This action is supported by ...7 AAC 40.310 and 7 AAC 40.450.

WE COUNTED VA PAYMENTS OF \$1360 & \$330.⁷

The regulations cited speak to income eligibility standards (7 AAC 40.310) and the redetermination process (7 AAC 40.450). The more persuasive evidence is that Ms. L does not receive the \$330 VA benefit the division attributed to her. The evidence establishes that it is more probable than not that Ms. L's household income is under the program limit and the denial was issued in error.

³ Exh. 2.8.

⁴ Exh. 2.9

⁵ April 8, 2013 Letter from C. O to E L.

⁶ The Department of Health and Social Services' "Fair Hearings" regulations apply to the Medicaid Program. See 7 AAC 49.010(a). 7 AAC § 49.070 was applied by the Alaska Supreme Court in *Baker v. State, Dept. of Health & Social Services*, 191 P.3d 1005, 1009 (Alaska 2008) and *Allen v. State, Dept. of Health & Social Services*, 203 P.2d 1155, 1168 – 1170 (Alaska 2009). In the same vein are federal Medicaid regulations 42 C.F.R. § 431.201, 42 C.F.R. § 431.206, and 42 C.F.R. § 431.210.

⁷ Exh. 2.8 (emphasis in original).

The division raised other potential reasons that it contends support its adverse action. However, those reasons were not provided by written notice. Because there is a presumption of continued eligibility for APA/MDE recipients,⁸ the division is required to provide adequate notice to the recipient prior to termination of those benefits. It may not assert new reasons for termination, which were not raised in the initial termination notice. Until written notice detailing those reasons is given to Ms. L prior to termination, they may not serve as a basis for the division's adverse action.⁹

IV. Conclusion

Because the reason stated in the denial notice to Ms. L is not supported by the record, the division's denial cannot be upheld. The division's decision is reversed.

DATED this 2nd day of May, 2013.

By: Signed
Rebecca L. Pauli
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 16th day of May, 2013.

By: Signed
Name: Rebecca L. Pauli
Title: Administrative Law Judge

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

⁸ See 7 AAC 40.430.

⁹ *Allen*, n. 68 at 1169. See also *Rodriguez By and Through Corella v. Chen*, 985 F.Supp. 1189, 1195 - 1196 (D. Ariz.1996), a Medicaid case in which the federal district court stated:

The reasons for denial stated in the notice "should be accurate and tailored to the individual case. This way the applicant can understand why the government took the adverse action in order to prepare his or her appeal.

.....

Most importantly, the law cited must be accurate Providing incorrect, cryptic or inaccessible citations without further guidance to low-income individuals is providing no any guidance at all. While citing to the general provisions is rudimentary, the applicable provision as applied to the particular case is mandatory.