

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

In the Matter of	)	
	)	
F L N	)	OAH No. 13-1180-CMB
<hr style="width:40%; margin-left:0"/>	)	DPA Case No.

**DECISION**

**I. Introduction**

The issue in this case is whether F N's monthly household income exceeded the maximum income limit for a household of one under the Adult Public Assistance (APA) program, its related Medicaid category (APA-related Medicaid), and the Food Stamp program, as of August 1, 2013. This decision concludes that, while Ms. N subsequently created a Qualifying Income Trust, that trust does not affect Ms. N's eligibility for the benefit programs at issue until October 2013. During the months of August 2013 and September 2013, Ms. N's monthly income exceeded the applicable maximum income limits for Adult Public Assistance, APA-related Medicaid, and Food Stamp benefits. Accordingly, the Division of Public Assistance (Division or DPA) was correct to terminate Ms. N's APA, APA-related Medicaid, and Food Stamp benefits effective August 31, 2013.

**II. Facts**

**A. Ms. N's Medical Problems / Physical Impairments<sup>1</sup>**

Ms. N is 61 years old.<sup>2</sup> She became disabled on December 2, 2007 when she was attacked by an assailant wielding a machete.<sup>3</sup> Since then she has had 19 surgeries.<sup>4</sup> She now needs surgery on both her hands, and she needs Medicaid coverage in order to pay for these surgeries.<sup>5</sup> Due to her physical impairments she has had an in-home assistant for the last five and one-half years, but she cannot pay for the in-home assistant without her Medicaid benefits.<sup>6</sup>

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<sup>1</sup> Ms. N's medical problems are not relevant to the legal issue of whether she meets the financial eligibility requirements of the APA, APA-related Medicaid, and Food Stamp programs. However, because they impart a broader understanding of Ms. N's overall situation, Ms. N's medical problems are briefly discussed here.

<sup>2</sup> Ex. 1.

<sup>3</sup> S Z hearing testimony.

<sup>4</sup> F N hearing testimony.

<sup>5</sup> F N hearing testimony.

<sup>6</sup> S Z hearing testimony.

***B. Ms. N's Financial Situation and Income***

Ms. N has received Social Security Disability Insurance benefits (SSDI) since 2008.<sup>7</sup> She has been receiving \$717.00 per month in SSDI since January 2013.<sup>8</sup> Ms. N's receipt of this income is not in dispute.<sup>9</sup>

Ms. N also receives Social Security widow's benefits.<sup>10</sup> She began receiving them in June 2013. The widow's benefits are currently \$1,196.00 per month. Ms. N's receipt of this income is also not in dispute.<sup>11</sup>

In addition to the federal benefits received from the Social Security Administration (SSA), Ms. N has also received public assistance from the State of Alaska.<sup>12</sup> She has received Adult Public Assistance (APA), and APA-related Medicaid, since July 2011 or before. From June through August 2013 her monthly APA payment was \$362.00 per month. She has also received Food Stamp benefits since May 2013 or before.

***C. Relevant Procedural History***

On July 31, 2013 Ms. N submitted her July 2013 bank statement to the Division.<sup>13</sup> The statement showed that Ms. N had begun receiving \$1,196.00 per month in widow's benefits. The Division eligibility technician processing Ms. N's case then checked the SSA computer interface and confirmed that Ms. N was now receiving \$717.00 per month in SSDI, plus \$1,196.00 per month in widow's benefits, for total income of \$1,913.00 per month. On August 1, 2013 the Division notified Ms. N that it was terminating her APA, APA-related Medicaid, and Food Stamp benefits, effective August 31, 2013, because her countable income exceeded the applicable income limits for the APA and Food Stamp programs.<sup>14</sup>

On August 13, 2013 Ms. N contacted the Division to discuss the termination of her benefits.<sup>15</sup> At this time the Division notified her that she might be able to re-qualify for benefits by creating a Qualifying Income Trust (QIT or Miller Trust), and mailed her a brochure on QITs. On August 27, 2013 Ms. N requested a hearing to contest the Division's

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<sup>7</sup> Exs. A-3.0 and A-3.1; S Z hearing testimony.

<sup>8</sup> Exs. A-3.1 and A-14; S Z hearing testimony.

<sup>9</sup> F N hearing testimony; S Z hearing testimony.

<sup>10</sup> All references in this paragraph are based on Exs. A-3.0, A-3.2, and A-14 unless otherwise noted.

<sup>11</sup> F N hearing testimony; S Z hearing testimony.

<sup>12</sup> All references in this paragraph are based on Exs. A-1 and A-3.3.

<sup>13</sup> Ex. A-3.0 (source for entire paragraph).

<sup>14</sup> Ex. A-4.

<sup>15</sup> Ex. A-5 (source for entire paragraph).

termination of her APA, APA-related Medicaid, and Food Stamp benefits.<sup>16</sup> She did not request that her benefits be continued pending the issuance of a decision in this case.<sup>17</sup>

Ms. N's hearing was held on September 24, 2013. Ms. N participated in the hearing by phone and testified on her own behalf. Ms. N was represented by S Z, who also testified on Ms. N's behalf. Public Assistance Analyst Terri Gagne participated in the hearing by phone and represented the Division. Following the hearing the record was left open for post-hearing filings through October 15, 2013, at which time the record closed and the case became ripe for decision.

### III. Discussion

The issue in this case is the factual issue of whether Ms. N's countable monthly income exceeds the maximum income limits applicable under the Adult Public Assistance program, the APA-related Medicaid program, and/or the Food Stamp program. The APA and Food Stamp programs have different regulations and different monthly income limits. Accordingly, eligibility under the two programs must be analyzed separately.<sup>18</sup>

#### A. *Financial Eligibility for Adult Public Assistance and APA-Related Medicaid*

Alaska's Adult Public Assistance (APA) program provides cash assistance to needy aged, blind, and disabled Alaskans. APA recipients are also eligible for Medicaid benefits.<sup>19</sup>

APA-related Medicaid uses the APA financial eligibility criteria (discussed below) for making APA-related Medicaid financial eligibility determinations.<sup>20</sup> Thus, if a person is not financially eligible for Adult Public Assistance, the person is likewise not financially eligible for APA-related Medicaid.<sup>21</sup>

Social security benefits of the type received by Ms. N are considered countable unearned income for APA financial eligibility purposes, but her Food Stamp benefits are not.<sup>22</sup>

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<sup>16</sup> Exs. A-7.0, A-7.1.

<sup>17</sup> Ex. A-7.1.

<sup>18</sup> Ms. N did not expressly assert that the Division's mathematical calculations regarding her countable monthly income were incorrect, or that the Division applied the wrong income standard in making its APA, APA-related Medicaid, and/or Food Stamp eligibility determinations. However, it is still appropriate to examine these issues to ensure that the Division's determination was correct.

<sup>19</sup> See APA program description on the Division's website at <http://dhss.alaska.gov/dpa/Pages/apa/default.aspx> (accessed on October 17, 2013).

<sup>20</sup> A person who has been approved for Adult Public Assistance (APA) is automatically eligible for Medicaid benefits. See 7 AAC 100.002(d)(1); 7 AAC 100.410(b). The category of Medicaid which a person automatically obtains as a result of APA eligibility is known as "APA-related Medicaid."

<sup>21</sup> See 7 AAC 100.400 at subsection (a)(2) and subsections (a)(10) through (a)(20).

<sup>22</sup> 7 AAC 40.300(a)(3); Alaska Adult Public Assistance Manual Section 441-2(A).

Thus, before applying deductions, Ms. N had countable income of \$1,913.00 per month, for APA purposes, beginning in July 2013.

Once an applicant / recipient's total (gross) income has been determined, applicable deductions are subtracted.<sup>23</sup> The Adult Public Assistance Program's list of allowable deductions from income is set forth in 7 AAC 40.320 and 7 AAC 40.330. Examples of allowable deductions include the value of social services furnished to the applicant/recipient; income tax refunds; taxes on real property or food refunded by a public agency; certain grants, scholarships, and/or fellowships used to pay for tuition, fees, books, or supplies at an educational institution; foodstuffs obtained through subsistence activities; and certain payments for the foster care of a child. The only deductions available to Ms. N based on the facts of this case are (1) a general deduction of \$20.00 under 7 AAC 40.320(a)(23) for "the first \$20 per month of income, earned or unearned, other than unearned income based on need;" and (2) the portion of Ms. N's \$717.00 per month SSDI payment which represents the premium payment for supplementary medical insurance under Title XVIII of the Social Security Act (42 U.S.C. 1395s), which in this case is \$104.90.<sup>24</sup> Adding these two deductions together gives Ms. N a total monthly deduction of \$124.90. Subtracting Ms. N's deductions (\$124.90) from Ms. N's gross income (\$1,913.00) results in total monthly countable income of \$1,788.10 for purposes of APA and APA-related Medicaid.

For 2013, the countable monthly income limit for Adult Public Assistance and APA-related Medicaid, applicable to an applicant or recipient who (like Ms. N) lives alone and independently, is \$1,319.00.<sup>25</sup> Ms. N's countable income is \$1,788.10. Thus, Ms. N's countable income exceeds the applicable APA and APA-related Medicaid income limit by \$469.10. If an applicant or recipient's income, after applicable deductions, exceeds the applicable maximum income level based on household size, then the applicant or recipient is not eligible for Adult Public Assistance or APA-related Medicaid; there is no hardship exception. Accordingly, the Division was correct to terminate Ms. N's Adult Public Assistance and APA-related Medicaid benefits based on her July 2013 income.

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<sup>23</sup> See 7 AAC 40.230, 7 AAC 40.310(a), 7 AAC 40.320(a), and 7 AAC 40.350.

<sup>24</sup> 7 AAC 40.320(a)(2); Ex. A-3.1.

<sup>25</sup> Ex. 14.1; *see also* 7 AAC 40.310 and *Alaska Adult Public Assistance Manual* Addendum 1, available online at <http://dpaweb.hss.state.ak.us/manuals/apa/apa.htm> (date accessed October 17, 2012).

**B. Financial Eligibility for Food Stamp Benefits**

The Food Stamp program is a federal program administered by the states; its statutes are codified at 7 USC Sections 2011 – 2029. The United States Department of Agriculture’s Food and Nutrition Service has promulgated regulations to implement the Food Stamp program; those regulations are codified primarily at 7 CFR Sections 271-274. The Department of Health and Social Services (DHSS) administers the Food Stamp program in Alaska. DHSS has promulgated its own Food Stamp regulations at 7 AAC 46.010 - 7 AAC 46.990.

Under 7 CFR § 273.9, a household which (as here) is not categorically eligible is required to satisfy both gross and net income eligibility standards in order to qualify for Food Stamp benefits. These income eligibility standards are based on the federal poverty income levels established in 42 U.S.C. 9902(2) and are adjusted periodically for inflation. The current income limits are published in the Division's Food Stamp Program Manual at Addendum 4.<sup>26</sup> During the period October 2012 through September 2013, the income limits for a one person household were \$1,514.00 (gross) and \$1,165.00 (net).<sup>27</sup>

The procedures for determining gross and countable/net income, specified by federal Food Stamp regulations, are as follows.<sup>28</sup> First, the Division determines gross monthly income by adding together the non-exempt income from all sources, earned and unearned. In this case, Ms. N's non-exempt income, for Food Stamp purposes, consists of her APA payment (\$362.00 per month), her SSDI payment (\$717.00 per month), and her widow's benefits (\$1,196.00 per month). Thus, Ms. N's gross income for Food Stamp purposes is \$2,275.00.

Next, the Division compares the household's gross monthly income to the gross monthly income standards for the household's size (set forth in Food Stamp Manual at Addendum 4). The gross monthly income limit for a household of one, applicable from October 2012 through September 2013, was \$1,514.00.<sup>29</sup> Ms. N's monthly gross income of \$2,275.00 is \$761.00 greater than the applicable gross income limit of \$1,514.00. If a household (as here) fails the “gross income test,” the analysis ends, and it is unnecessary to apply deductions and calculate the household's net income.<sup>30</sup>

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<sup>26</sup> Ex. 25.0.

<sup>27</sup> Exs. A-3.8, A-3.9.

<sup>28</sup> See 7 C.F.R. § 273.9, 7 C.F.R. § 273.10(d), 7 C.F.R. § 273.10(e), and the State of Alaska’s Food Stamp Manual at § 603-2.

<sup>29</sup> Alaska Food Stamp Manual transmittal number 2012-04.

<sup>30</sup> Alaska Food Stamp Manual Section 603-2(A).

If an applicant or recipient's gross income exceeds the applicable maximum income level based on household size, then the applicant or recipient is not eligible for Food Stamp benefits; as with APA, there is no hardship exception. Accordingly, the Division was correct to terminate Ms. N's Food Stamp benefits based on her July 2013 income.

*C. The Effect of the Qualifying Income Trust*

Ms. N signed a declaration of trust creating a Qualifying Income Trust (QIT) on the day of the hearing (September 24, 2013), and the trust was registered with the No Name Superior Court on September 30, 2013.<sup>31</sup> This trust is designed to receive Ms. N's monthly SSDI and widow's benefit payments, and to release to Ms. N only so much income as will allow Ms. N to qualify for APA and APA-related Medicaid.<sup>32</sup>

Qualifying (or "Qualified") Income Trusts have been authorized by 42 USC § 1396p(d)(4)(B) as a legitimate means for allowing individuals, whose income would otherwise exceed Medicaid income eligibility limits, to qualify for Medicaid. In order to qualify the beneficiary for Medicaid, the trust must be composed of only the beneficiary's income, and, upon the death of the beneficiary, all money remaining in the trust, up to the total Medicaid expenditures paid on behalf of the beneficiary, must go to the state.<sup>33</sup>

Ms. N's QIT appears to satisfy the above requirements, and the Division's hearing representative stated at hearing that, once Ms. N has an approved QIT, and assuming all other eligibility factors remain the same, Ms. N should once again be eligible for APA and APA-related Medicaid. However, Ms. N's QIT did not become effective until September 30, 2013, too late to affect Ms. N's eligibility for August 2013 and September 2013 benefits. Accordingly, regardless of whether Ms. N's QIT may qualify her for benefits beginning in October 2013, the Division was still correct to terminate Ms. N's benefits, effective August 31, 2013, because the QIT was not yet in existence.

Finally, Ms. Z appeared to assert at hearing that the Division had an obligation to inform Ms. N of the possible benefits of a QIT as soon as the over-income issue arose, and that, since the Division did not inform Ms. N of the advantages of a QIT until August 13, 2013, the Division should be prevented from terminating Ms. N's benefits. In retrospect, the best practice would be for the Division to inform applicants and recipients of QITs in the same

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<sup>31</sup> Exs. A-1, A-13.

<sup>32</sup> Ex. A-4.

<sup>33</sup> See the Department of Health and Social Services Aged, Disabled and Long Term Care Medicaid Eligibility Manual at Section 526.

notice which advises that the applicant or recipient is over-income. However, the Division has no legal obligation to do so.

***D. The Division does not have the Authority to Disregard the Applicable Regulations***

The Division did not dispute that Ms. N has a great need for APA, Medicaid, AND Food Stamp benefits, and the record clearly supports that finding. However, the Division is required to follow the applicable income eligibility regulations as currently written.<sup>34</sup> Likewise, the Office of Administrative Hearings does not have the authority to create exceptions to these regulations.<sup>35</sup> To provide benefits to an applicant or recipient under the circumstances which existed in this case would require amendments to existing laws, perhaps at both the state and federal levels. Those changes cannot be made through the hearing process.

**IV. Conclusion**

During the months of August 2013 and September 2013, Ms. N's monthly income exceeded the applicable maximum income limits for Adult Public Assistance, APA-related Medicaid, and Food Stamp benefits. Accordingly, the Division was correct to terminate Ms. N's APA, APA-related Medicaid, and Food Stamp benefits effective August 31, 2013. The Division's determination is therefore affirmed.

Dated this 21st day of October, 2013.

Signed  
Jay Durych  
Administrative Law Judge

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<sup>34</sup> “Administrative agencies are bound by their regulations just as the public is bound by them.” *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010).

<sup>35</sup> See 7 AAC 49.170 (limits of the hearing authority).

## 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 18<sup>th</sup> day of November, 2013.

By: Signed \_\_\_\_\_

Name: Ree Sailors

Title: Deputy Commissioner, DHSS

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