

or how to complete the application process so that he could be eligible for Medicaid during the month of September.⁸

Mr. N submitted his completed application and trust document on October 21, 2013.

III. Discussion

Medicaid is a federal program that pays for medical costs, and is administered by each state. A person may receive Medicaid coverage for up to three months before the month of application.⁹ The division looks at income and resource limits for each month to determine whether retroactive coverage will be allowed.¹⁰

The income limit for an individual in 2013 is \$1,319 per month.¹¹ The first \$20 per month of income is excluded,¹² however, so Mr. N would be eligible if his income was no greater than \$1,339 per month. Mr. N's social security benefit is more than this amount. Before he receives his disability payment, \$265 is deducted for child support. However, Child Support payments made by the non-custodial parent are not deducted from income for purposes of calculating Medicaid eligibility. Thus, Mr. N has more income than the eligibility limit.

To avoid being over income, Mr. N has created what is commonly called a Miller Trust. If properly set up, this trust can receive his income and disburse to Mr. N no more than the maximum income amount.¹³ As long as the trust is receiving Mr. N's disability income, and as long as he has no other income, Mr. N is not over the income eligibility limit.

In this case, there is no dispute that Mr. N now has a properly set up Miller Trust.¹⁴ It is also undisputed that the trust was not in effect until October of 2013. Mr. N's argument is that if he had been properly instructed by the division when he first learned of the trust requirement in August, or when he attempted to file the trust with the division in September, he would have been eligible for Medicaid during the month of September.

⁸ Exhibit 5.1, S N testimony; B E testimony.

⁹ 7 AAC 100.072(a).

¹⁰ 7 AAC 100.072(c) & (d).

¹¹ Exhibit 10.1. Medicaid uses the income standards set out in 7 AAC 40.310 which are adjusted annually for inflation. 7AAC 100.400.

¹² 7 AAC 40.320(a)(23).

¹³ See 7 AAC 100.604 (Medicaid trusts); 7 AAC 100.610 (qualifying income trusts).

¹⁴ See Exhibit 2.22 – 2.42.

As noted above, Mr. N contacted Legal Services after learning of the trust requirement. Legal Services did not prepare his trust document until September 11, 2013. For Mr. N to be eligible, the trust would have had to be in existence on September 3, 2013 when he received his September disability payment.¹⁵ While Mr. N may well have asked Legal Service to prepare the paperwork sooner, there is insufficient evidence in the record to prove by a preponderance of the evidence that Legal Services would have been able to comply with that request.¹⁶ It is, therefore, unnecessary to determine whether the division should have provided more information when he visited in August and September, or whether the division can be required to approve the application based on the failure to give more or better information.

One unusual factor, however, is that even though the trust was not actually completed until October 14, 2013, Mr. N was found eligible for Medicaid for the month of October. He was found eligible even though Mr. N received his October 3rd benefit before the trust documents were completed. Mr. N argued that if he had received better advice in September, he could have had the trust completed shortly after September 11th when the documents were completed by Legal Services. Since he was eligible in October based on a trust signed on October 14th, he would have been eligible in September for a trust signed during that month.

While Mr. N's argument is logical, it is not persuasive here. Based on the applicable regulations, Mr. N was not eligible for Medicaid in October if he received his October 3rd social security benefit. Either he did not receive that benefit, or the division erred in finding him eligible. An error in Mr. N's benefit during October does not require a finding that the division should have made that same error in September.

IV. Conclusion

While the division cannot give legal advice, it might have been able to provide more information about what Mr. N needed to do to complete his Miller Trust and become eligible for Medicaid. However, Mr. N has not met his burden of proving that any failure to provide that information caused him to be ineligible in September. He has not shown that Legal Services could have completed his trust paperwork in time to have the trust in effect

¹⁵ Unless fully complete, the trust would not have been able to receive his September 3rd benefit.

¹⁶ Mr. N has the burden of proving that the division's denial of retroactive Medicaid was incorrect. 7 AAC 49.135.

on September 3, 2013, when he received his September income. The division's denial of retroactive Medicaid for the month of September 3, 2013, is upheld.

Dated this 31st day of December, 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 Es after the date of this decision.

DATED this 14th day of January, 2014.

By: *Signed* _____
Name: Jeffrey A. Friedman
Title: Administrative Law Judge

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