

III. Discussion

Mr. D is entitled to receive Medicaid benefits if he is eligible for either SSI or Adult Public Assistance benefits.⁴ He is entitled to Adult Public Assistance if he is aged, blind, or disabled.⁵ Mr. D does not meet the definitions of aged or blind.⁶ He is, however, considered disabled if he is

unable to engage in substantial gainful activity by reason of a medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months[. ⁷]

By regulation, the division follows the SSA's determination on questions of disability. A person is eligible for Adult Public Assistance as a disabled individual if he or she is first found by the SSA to meet the SSA's definition of disability.⁸ For purposes of this decision, Mr. D is only eligible for either Medicaid or Adult Public Assistance if he is found to be disabled by the SSA.

Mr. D applied for SSI and asked that SSA find him to be disabled. The SSA has the option of making SSI payments for up to six months before making a formal determination of whether an applicant is eligible.⁹ An applicant is eligible for those payments if the SSA finds there is a "high degree of probability" that the applicant will qualify for SSI after a complete review.¹⁰ In this case, the SSA began paying SSI benefits before making its formal decision. Accordingly, it must have found a high degree of probability that Mr. D would ultimately be found to be disabled. Because Mr. D was in fact receiving SSI benefits, the division found him eligible for both Adult Public Assistance and Medicaid.¹¹

While it previously expected to rule otherwise, the SSA actually determined that Mr. D was not eligible for SSI benefits. That decision said, in part,

Although your condition is currently severe, it is expected to improve and will not result in significant limitations in your ability to perform basic work

⁴ 7 AAC 100.410.

⁵ AS 47.25.430(a).

⁶ AS 47.25.615(1) and (3).

⁷ AS 47.25.615(5).

⁸ 7 AAC 40.170(a).

⁹ 20 CFR §416.931.

¹⁰ 20 CFR §416.933.

¹¹ Division's Exhibit 11.2 (Medicaid approval). The record does not appear to contain a copy of the Adult Public Assistance approval, but the fact of his prior receipt of those benefits was not in dispute.

activities. We have determined that your condition is not expected to remain severe enough for 12 months in a row to keep you from working.^[12]

Based solely on SSA's action, the division terminated Mr. D's Medicaid and Adult Public Assistance.¹³

Generally, welfare benefits cannot be stopped without first providing an opportunity for a pretermination hearing.¹⁴ The division does not contest that Mr. D is entitled to a hearing before his benefits end – his Medicaid was continued pending the result of this proceeding – but asserts that the only relevant factual question is whether SSA has terminated his SSI benefits.

Mr. D, however, submitted evidence to show that he was in fact disabled and eligible to receive SSI benefits, and therefore should continue to receive Medicaid. He argued that since he is entitled to receive a pretermination hearing, and since SSA did not provide him with one, he should be allowed to show in this proceeding that SSA's determination was factually incorrect.

This case is governed by an Alaska Adult Public Assistance regulation which says:

[i]f an applicant is receiving SSI benefits and is determined by the Social Security Administration to be ineligible, . . . 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.^[15]

Mr. D makes a reasonable argument that due process requires he be given a hearing on the underlying factual question – whether he is disabled – before his benefits are terminated. The Commissioner, however, has no jurisdiction to address or resolve that issue. The Commissioner may not ignore validly adopted state regulations or rule on whether the regulation is unconstitutional.¹⁶ Whether the SSA's regulations are constitutional must also be addressed in a different forum.

Mr. D has a right to a hearing to contest the termination of his Alaska Adult Public Assistance and Medicaid benefits, but the only relevant issue is whether the SSA has found

¹² Mr. D's Exhibit 7. The SSA letter erroneously states that Mr. D has colon cancer.

¹³ Division's Exhibit 2.

¹⁴ See *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970).

¹⁵ 7 AAC 40.060(c). The exceptions stated in the omitted portion of the regulation are not applicable here.

¹⁶ See *In re Holiday Alaska, Inc.*, OAH No. 08-0245-TOB (Commissioner of Commerce, Community and Economic Development 2009), page 5, available at <http://aws.state.ak.us/officeofadminhearings/Documents/TOB/TOB080245.pdf>, upheld in *Holiday v. State*, 280 P.3d 537 (Alaska 2012).

him to be ineligible. Once the division has established, as here, that his SSI benefits were terminated, regardless of the possibility that the SSA's termination is factually or legally incorrect, the division is required to terminate Mr. D's Adult Public Assistance benefits. And because Mr. D's Medicaid benefits hinge on his eligibility for either Alaska Adult Public Assistance or SSI benefits, those Medicaid benefits must also be terminated.¹⁷

IV. Conclusion

Mr. D was receiving SSI benefits. When the SSA found him to be ineligible, the division was required to terminate his Medicaid and Adult Public Assistance benefits. Accordingly, the division's action is affirmed.

Dated this 19th day of March, 2014.

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 15th day of April, 2014.

By: *Signed*

Name: Ree Sailors

Title: Deputy Commissioner, DHSS

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

¹⁷ *In re N C*, OAH No. 12-0982-CMB (Commissioner of Health and Social Services 2013), pages 2 – 3, available at <http://aws.state.ak.us/officeofadminhearings/Documents/CMB/CMB120982.pdf>.