

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

In the Matter of:)
)
 N N) OAH No. 14-0247-CMB
) DPA Case No.

DECISION

I. Introduction

The issue in this case is whether the amount of N N' countable monthly household income exceeds the maximum income limit for a household of one under the Adult Public Assistance (APA) program and its related Medicaid category (APA-related Medicaid). This decision concludes that Ms. N constitutes a one person household for APA purposes, and Ms. N' Social Security widow's / survivor's benefits constitute countable income for purposes of determining financial eligibility for APA and APA-related Medicaid. Accordingly, the Division of Public Assistance (DPA or Division) correctly concluded that Ms. N' countable monthly income exceeds the applicable maximum income limit for Adult Public Assistance and APA-related Medicaid. The Division's decision denying Ms. N' application for Adult Public Assistance and APA-related Medicaid is therefore affirmed.

II. Facts

A. Ms. N' Financial Circumstances and Living Situation

Ms. N is 56 years old¹ and has been found to be disabled by the Social Security Administration (SSA).² She is widowed and lives in a single family home.³ On January 3, 2014 Ms. N submitted an application for Adult Public Assistance, Medicaid / health insurance, and Chronic and Acute Medical Assistance (CAMA).⁴ In her application Ms. N stated that she is disabled,⁵ and that her income consists of \$1,531.00 per month in Social Security widow's benefits.⁶ Ms. N also indicated that her primary monthly expenses consist of a \$769.00 mortgage payment, \$250.00 heating bill, \$250.00 electric bill, and \$50.00 refuse bill.⁷ Ms. N

¹ Ex. 1.

² Ex. 3.1.

³ Exs. 2.1, 2.8, undisputed hearing testimony.

⁴ Exs. 2.0 - 2.17. Ms. N' CAMA application is not at issue in this case.

⁵ Exs. 2.1, 2.5.

⁶ Exs. 2.6, 2.7. Ms. N began receiving these benefits in August 2013 (Ex. 2.18). The monthly gross payment amount is \$1,554.00 (Ex. 3.1).

⁷ Ex. 2.9.

indicated that her bills were paid with her widow's benefits, and did not indicate that anyone else helped with her expenses.⁸

On January 23, 2014 Ms. Michael participated in an income eligibility interview with a DPA eligibility technician (ET). Ms. N told the ET that her household consisted of herself, her oldest daughter, two sons, and a female friend (five persons total).⁹

B. Relevant Procedural History

On January 24, 2014 the Division mailed a written notice to Ms. N stating that her application for APA and APA- related Medicaid benefits had been denied because her countable monthly income of \$1,536.00 exceeded the applicable maximum APA income limit of \$1,339.00.¹⁰ This notice also stated that Ms. N might be able to become financially eligible for Medicaid by establishing a Qualifying Income Trust (Miller Trust), and that the local DPA office could provide her with additional information regarding such Medicaid Qualifying Income Trusts.¹¹ On February 7, 2014 Ms. N requested a hearing to contest the Division's denial of her application for APA and APA-related Medicaid benefits.¹²

Ms. N' hearing was held on March 3, 2014. Ms. N participated in the hearing by phone, represented herself, and testified on her own behalf. Public Assistance Analyst Terri Gagne participated in the hearing by phone and represented the Division. At the end of the hearing the record was closed and the case became ripe for decision.

III. Discussion

A. Overview of Adult Public Assistance and APA-Related Medicaid

Adult Public Assistance is a state program based on AS 47.25.430(a), which states in relevant part that "financial assistance shall be given . . . to every aged, blind, or disabled needy resident . . ."¹³ The APA program gives cash to Supplemental Security Income (SSI) recipients and others who have income and resources within APA income and resource limits.¹⁴ APA recipients are also eligible for Medicaid benefits.¹⁵

⁸ Ex. 2.7.

⁹ Ex. 3.0.

¹⁰ Ex. 4.

¹¹ Ex. 4.

¹² Exs. 5.0, 5.1.

¹³ See also AS 47.25.590(b) ("[t]he purpose of AS 47.25.430 - 47.25.615 is to furnish financial assistance as far as practicable to needy aged, blind, and disabled persons, and to help them attain self-support or self-care").

¹⁴ See Division of Public Assistance website at <http://dhss.alaska.gov/dpa/Pages/apa/default.aspx> (date accessed May 16, 2014).

¹⁵ *Id.*

Medicaid is an “entitlement program” created by the federal government, but administered by the state, to provide payment for medical services for low-income citizens.¹⁶ People qualify for Medicaid by meeting federal income and asset standards and by fitting into a specified eligibility category.¹⁷

One of the Medicaid eligibility categories available in Alaska is Adult Public Assistance (APA) - related Medicaid.¹⁸ APA-related Medicaid is the Medicaid category under which Ms. N seeks to qualify in this case. APA-related Medicaid uses many (but not all) of the APA financial eligibility criteria (discussed below) for making APA-related Medicaid financial eligibility determinations.¹⁹ Thus, if a person is not financially eligible for Adult Public Assistance, the person is generally not financially eligible for APA-related Medicaid either.²⁰

B. Does Ms. N Satisfy the Applicable Financial Eligibility Criteria?

The Division denied Ms. N' application based on the assertion that her monthly countable income exceeded the applicable limit for Adult Public Assistance and APA-related Medicaid. For purposes of APA and APA-related Medicaid, countable income is determined by adding together the applicant / recipient's total (gross) income, and then subtracting any applicable deductions.²¹

A threshold issue in this case is whether Ms. N should be considered to be a member of a household of five, or a household of one, for purposes of APA eligibility. For 2014, the APA income eligibility limit for a person residing in another person's household is \$1,106.00, while the APA income eligibility limit for a person living independently is \$1,339.00.²² The question arises as to which income eligibility limit applies to Ms. N. Adult Public Assistance Manual Section 450-3, titled "Living In Another's Household," provides in relevant part as follows:

An individual or couple is In Another's Household and on the lower need and payment standards only if the individual or couple: (1) Lives in another person's

¹⁶ See State of Alaska Division of Health Care Services website at http://dhss.alaska.gov/dhcs/Pages/medicaid_medicare/default.aspx (date accessed May 16, 2014).

¹⁷ *Id.*

¹⁸ See the Alaska Department of Health and Social Services' "Aged, Disabled and Long Term Care Medicaid Eligibility Manual" at Section 500(A), accessed online at <http://dpaweb.hss.state.ak.us/manuals/adltc/adltc.Htm> (date accessed May 16, 2014).

¹⁹ See 7 AAC 100.400.

²⁰ See 7 AAC 100.400 at subsection (a)(2) and subsections (a)(10) through (a)(20).

²¹ See 7 AAC 40.230, 7 AAC 40.310(a), 7 AAC 40.320(a), and 7 AAC 40.350.

²² See Alaska Adult Public Assistance Manual, Addendum 1, accessed online at <http://dpaweb.hss.state.ak.us/manuals/apa/apa.htm> (date accessed May 16, 2014).

household for the full calendar month except for temporary absences; and (2)
Receives both food and shelter from others living in that household . . .

Ms. N indicated in her application that she lives in a house that she owns rather than a house that someone else owns (Ex. 2.8). In addition, Ms. N wrote in her application that all her "bills are paid from my widow's pension" (Ex. 2.7); she did not state that she receives financial assistance for food and shelter from others living in her household. Accordingly, Ms. N is considered to be living independently for APA eligibility purposes, and therefore qualifies for a higher income eligibility standard than would apply if she were living in another person's household.

The next issue is whether Ms. N' widow's benefits are countable income for APA purposes. APA regulation 7 AAC 40.300(a)(3) defines "unearned income" in relevant part as "any income that is not earned, including . . . pensions or retirement payments, disability benefits . . . social security payments . . . [and] assistance payments such as SSI . . .".²³ Thus, Ms. N' widow's benefits are countable income for APA purposes unless they are specifically excluded by another regulation.

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 any social services furnished the applicant by a governmental or private agency; income tax refunds; any 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 deduction which applies in this case is the deduction for the applicant's first \$20.00 of monthly income provided by 7 AAC 40.320(a)(23). Subtracting this \$20.00 deduction from Ms. N' monthly gross widow's benefit of \$1,554.00 (Ex. 3.1) results in monthly countable income of \$1,534.00.

As noted above, the APA income eligibility limit for a person (like Ms. N) who is considered to be living independently is \$1,339.00.²⁴ If an applicant or recipient's income,

²³ See also Adult Public Assistance Manual Section 441-2, titled "Unearned Income," which provides in relevant part as follows:

Unearned income is any income that is not earned. Unearned income includes but is not limited to the following types . . . Benefits Paid Under Title II of The Social Security Act . . . Retirement, survivors, and disability insurance (RSDI) monthly benefits count as unearned income."

²⁴ See Alaska Adult Public Assistance Manual, Addendum 1, accessed online at <http://dpaweb.hss.state.ak.us/manuals/apa/apa.htm> (date accessed May 16, 2014).

after applicable deductions, exceeds the applicable maximum income level based on household size, then the applicant or recipient is not eligible for APA or APA-related Medicaid. Ms. N's countable monthly income of \$1,534.00 exceeds the 2014 maximum countable income limit for an individual living independently (\$1,339.00) by \$195.00. Accordingly, Ms. N is not currently eligible for Adult Public Assistance or APA-related Medicaid.

C. Though the Result in This Case may Seem Unfair, 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 additional income and medical benefits, and the record clearly supports that finding. However, the Division is required to follow the APA income eligibility regulations as currently written.²⁵ Likewise, the Office of Administrative Hearings does not have the authority to create exceptions to these regulations.²⁶ To provide APA and APA-related Medicaid coverage for someone in Ms. N's current situation would require changes in law, perhaps at both the state and federal level. Those changes cannot be made through the hearing process. However, as the Division has previously advised Ms. N, she may be able to become financially eligible for APA and APA-related Medicaid by forming a Qualifying Income Trust (Miller Trust).

IV. Conclusion

In summary, Ms. N' countable monthly income exceeds the Adult Public Assistance and APA-related Medicaid programs' applicable monthly income limit. Accordingly, the Division was correct to deny Ms. N' application for Adult Public Assistance and APA-related Medicaid benefits dated January 3, 2014. The Division's determination denying Ms. N' application is therefore affirmed.

Dated this 20th day of May, 2014.

Signed

Jay Durych
Administrative Law Judge

²⁵ "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).

²⁶ 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 29th day of May, 2014.

By: Signed _____
Name: Jay D. Durych
Title: Administrative Law Judge, DOA/OAH

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