

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

In the Matter of:)
)
 T D) OAH No. 14-0466-CMB
) DPA Case No.
_____)

DECISION

I. Introduction

The issue in this case is whether the amount of T D's countable monthly household income exceeds the maximum income limit for a household of one under the Adult Public Assistance-related Medicaid category (APA-related Medicaid).¹ This decision concludes that Ms. D constitutes a one person household for APA-related Medicaid purposes, and that Ms. D's pension / retirement benefits and Social Security disability insurance (SSDI) constitute countable income for purposes of determining financial eligibility for APA-related Medicaid. Accordingly, the Division of Public Assistance (DPA or Division) correctly concluded that Ms. D's countable monthly income exceeds the applicable maximum income limit for APA-related Medicaid.² The Division's decision denying Ms. D's application for APA-related Medicaid is therefore affirmed.

II. Facts

A. Ms. D's Financial Circumstances and Living Situation

Ms. D is 59 years old³ and has been found to be disabled by the Social Security Administration (SSA).⁴ On March 17, 2014 Ms. D submitted an application for Adult Public Assistance, Medicaid / health insurance, Chronic and Acute Medical Assistance (CAMA), General Relief Assistance (GRA), and Food Stamps.⁵ In her application Ms. D stated that her income consists of \$1,100.00 per month in Social Security disability benefits and \$341.00 in

¹ Ms. D's written hearing request indicates that, originally, she also requested a hearing regarding the Division's denial of an application for Food Stamp benefits (Ex. 6.1). However, at hearing, Ms. D's representative clarified that the only application as to which Ms. D wanted a hearing was her application for APA-related Medicaid benefits (N T hearing testimony).

² However, as the Division has previously advised Ms. D, she may be able to become financially eligible for APA and APA-related Medicaid by forming a Qualifying Income Trust (Miller Trust).

³ Ex. 1.

⁴ Ex. 3.1.

⁵ Exs. 2.0 - 2.16. Only Ms. D's application for Medicaid is at issue in this case.

pension / retirement benefits.⁶ Ms. D also indicated that her primary monthly expenses consist of mobile home rent and/or space rent of \$420.00 per month, a \$278.24 per month heating bill, a \$253.61 per month electric bill, and a \$5.00 per month telephone bill.⁷

On March 20, 2014 Ms. D participated in an eligibility interview with a DPA eligibility technician (ET).⁸ Ms. D told the ET that her household consisted of herself and her daughter N, and that her only income was her monthly Social Security disability check and monthly pension / retirement check. The Division subsequently verified that Ms. D currently receives a Social Security disability check in the amount of \$1,221.90 per month,⁹ and a pension check from National Retirement Fund in the amount of \$351.02 per month,¹⁰ for total gross monthly income of \$1,572.92.

B. Relevant Procedural History

On March 21, 2014 the Division mailed a notice to Ms. D stating that her application for APA and APA-related Medicaid benefits had been denied because her countable monthly income exceeded the applicable maximum APA income limit.¹¹ This notice also stated that Ms. D might be able to become financially eligible for Medicaid by establishing a Medicaid Qualifying Income Trust (Miller Trust), and that the local DPA office could provide her with additional information regarding such Medicaid Qualifying Income Trusts.¹² On March 24, 2014 the Division mailed Ms. D another notice stating that, although she did not qualify for Medicaid, she did qualify for Special Low Income Medicare.¹³ On March 26, 2014 Ms. D requested a hearing to contest the Division's denial of her application for APA-related Medicaid benefits.¹⁴

Ms. D's hearing was held on April 17, 2014. Ms. D participated in the hearing by phone, represented herself, and testified on her own behalf; she was assisted by her daughter N T and interpreter Jessica Chavez. Public Assistance Analyst Jeff Miller 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.

⁶ Ex. 2.6.

⁷ Ex. 2.9.

⁸ All factual findings in this paragraph are based on Exs. 3 and 5 unless otherwise stated.

⁹ Ex. 3.1.

¹⁰ Ex. 3.3.

¹¹ Ex. 4.

¹² Ex. 4.

¹³ Ex. 5.1.

¹⁴ Exs. 6.0, 6.1.

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 . . ." ¹⁵ The APA program gives cash to Supplemental Security Income (SSI) recipients and others who have income and resources within APA income and resource limits. ¹⁶ APA recipients are also eligible for Medicaid benefits. ¹⁷

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. ¹⁸ People qualify for Medicaid by meeting federal income and resource standards and by fitting into a specified eligibility category. ¹⁹ One of the Medicaid eligibility categories available in Alaska is Adult Public Assistance (APA)-related Medicaid. ²⁰ APA-related Medicaid is the Medicaid category under which Ms. D 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. ²¹ Thus, if a person is not financially eligible for Adult Public Assistance, the person is generally not financially eligible for APA-related Medicaid, either. ²²

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

The Division denied Ms. D's 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. ²³

¹⁵ 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").

¹⁶ See Division of Public Assistance website at <http://dhss.alaska.gov/dpa/Pages/apa/default.aspx> (date accessed May 29, 2014).

¹⁷ *Id.*

¹⁸ See State of Alaska Division of Health Care Services website at http://dhss.alaska.gov/dhcs/Pages/medicaid_medicare/default.aspx (date accessed May 29, 2014).

¹⁹ *Id.*

²⁰ 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 29, 2014).

²¹ See 7 AAC 100.400.

²² See 7 AAC 100.400 at subsection (a)(2) and subsections (a)(10) through (a)(20).

²³ See 7 AAC 40.230, 7 AAC 40.310(a), 7 AAC 40.320(a), and 7 AAC 40.350.

A threshold issue in this case is whether Ms. D should be considered to be a member of a household of two 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 \$1,339.00.²⁴ The question arises as to which income eligibility limit applies to Ms. D. 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 household for the full calendar month except for temporary absences; and (2) Receives both food and shelter from others living in that household . . .

Ms. D did not indicate in her application that she lives in a house that someone else owns. In addition, Ms. D did not state that she receives financial assistance for food and shelter from others living in her household. Accordingly, Ms. D 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. D's monthly SSDI benefits and pension check from the National Retirement Fund 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 . . .".²⁵ Thus, Ms. D's SSDI benefits and National Retirement Fund 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 to 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

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 29, 2014).

²⁵ 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."

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. D's monthly gross income of \$1,572.92 results in monthly countable income of \$1,552.92.

As noted above, the APA income eligibility limit for a person (like Ms. D) who is considered to be living independently is \$1,339.00.²⁶ 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 APA or APA-related Medicaid. Ms. D's countable monthly income of \$1,552.92 exceeds the 2014 maximum countable income limit for an individual living independently (\$1,339.00) by \$213.92. Accordingly, Ms. D 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. D 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.²⁷ Likewise, the Office of Administrative Hearings does not have the authority to create exceptions to these regulations.²⁸ To provide APA and APA-related Medicaid coverage for someone in Ms. D's current financial 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. D, she may be able to become financially eligible for APA and APA-related Medicaid by forming a Medicaid Qualifying Income Trust.

IV. Conclusion

In summary, Ms. D's 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. D's application for Adult Public Assistance and APA-related

²⁶ See Ex. 10 and Alaska Adult Public Assistance Manual, Addendum 1, accessed online at <http://dpaweb.hss.state.ak.us/manuals/apa/apa.htm> (date accessed May 29, 2014).

²⁷ "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).

²⁸ See 7 AAC 49.170 (limits of the hearing authority).

Medicaid benefits dated March 17, 2014. The Division's determination denying Ms. D's application is therefore affirmed.

Dated this 2nd day of June, 2014.

Signed _____
Jay Durych
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 11th day of June, 2014.

By: *Signed* _____
Signature
Jay D. Durych _____
Name
Administrative Law Judge _____
Title

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