

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

In the Matter of)	
)	
Q N)	OAH No. 18-0134-MDE
_____)	Agency No.

DECISION

I. Introduction

Q N applied for Medicaid benefits. Although Ms. N’ daughters, A D and C N, set up a Medicaid Income Qualifying Trust for Ms. N, the trust was not approved or funded for November 2017 or December 2017. And so, the Department of Health and Social Services, Division of Public Assistance (Division) determined that Ms. N’ monthly countable income exceeds the Medicaid income limit and deemed her ineligible for Medicaid benefits. Ms. N’ daughters appealed on her behalf and requested a hearing. Based on the evidence in the record, the Division’s eligibility determination is affirmed.

II. Factual and Procedural Background

Q N was a Medicaid recipient.¹ When her husband died in June 2017, her income and Medicaid eligibility changed.² As a result, she lost Medicaid benefits.³ Ms. N’ daughters, worked with Ms. N’ Care Coordinator, M Z to get the Medicaid benefits back in place.⁴ They had to submit new application forms.⁵ And because Ms. N’ monthly income was more than the Medicaid income limit, they had to set up a Medicaid Income Qualifying Trust (also known as a Miller Trust) for Ms. N’ excess resources.⁶

All of this happened on the heels of their father’s death.⁷ In addition to their mother’s Medicaid, they were also dealing with issues with their father’s estate.⁸ It was a very stressful and overwhelming time for Ms. D and Ms. N.⁹

¹ A D Testimony; C N Testimony.
² D Testimony; N Testimony.
³ D Testimony; N Testimony.
⁴ D Testimony; N Testimony.
⁵ D Testimony; N Testimony.
⁶ D Testimony; N Testimony; Debra Randall Testimony.
⁷ D Testimony; N Testimony.
⁸ D Testimony; N Testimony.
⁹ D Testimony; N Testimony.

Income that is deposited into a Miller Trust is not income for purposes of determining a Medicaid applicant's eligibility.¹⁰ Accordingly, when an applicant's income is more than the Medicaid eligibility income limits, the applicant may deposit excess income into a qualifying trust fund (*e.g.* a Miller Trust) to maintain Medicaid eligibility.¹¹ The Division's policy section must approve any trust before the Division can determine Medicaid eligibility.¹²

Ms. D and Ms. N contacted attorney Sonja Redmond for assistance with setting up a Miller Trust in July 2017.¹³ Ms. Redmond, who had drafted other Medicaid trusts, drafted Ms. N's trust in accordance with the Medicaid trust regulations.¹⁴ Ms. Redmond did not submit the trust to the Division or register it with the court.¹⁵ Nor did she follow up with the Division about approval of the trust.¹⁶ She, instead, gave Ms. D and Ms. N the entire trust document, and left it up to them to get the trust account set up, the trust documents approved by Medicaid, and the trust registered with the court.¹⁷ Ms. D and Ms. N provided the trust to Ms. Z, who submitted the trust to the Division for approval.¹⁸

There is some confusion about when the trust documents were submitted to the Division for approval. Ms. D and Ms. N believed that Ms. Z submitted the documents in July 2017.¹⁹ However, there were communication issues between Ms. N and Ms. Z, and Ms. Z did not actually submit the trust documents to the Division until September 2017.²⁰ When she did so, she failed to submit the full trust document—there were pages missing.²¹

Ms. D and Ms. N applied for Medicaid for their mother on September 28, 2017.²² They requested retroactive Medicaid coverage for July and August 2017.²³ They attended an eligibility interview with Eligibility Technician, Debra Randall on October 26, 2017.²⁴ At that interview, Ms. D and Ms. N verified their mother's resources and income, and Ms. Randall informed them that the income limit for Medicaid eligibility is \$1,366 and that any income over

¹⁰ See 7 AAC 100.606(a); Marie Laroza Testimony.

¹¹ Marie Laroza Testimony.

¹² See 7 AAC 100.604(b); Randall Testimony; Laroza Testimony.

¹³ D Testimony; N Testimony; Sonja Redmond Testimony.

¹⁴ Redmond Testimony.

¹⁵ Redmond Testimony.

¹⁶ Redmond Testimony.

¹⁷ Redmond Testimony.

¹⁸ D Testimony; N Testimony.

¹⁹ D Testimony; N Testimony.

²⁰ Sheila Jacobson Testimony.

²¹ D Testimony; N Testimony; Antoinette Horn Testimony.

²² Ex. 20.

²³ Ex. 5.

²⁴ D Testimony; N Testimony; Debra Randall Testimony; Ex. 5.

that limit needed to go into the trust fund.²⁵ Ms. Randall, who enters her case notes right after conducting interviews, also noted that according to Ms. N, the trust had not been funded, and Ms. N was not sure if they would be able to fund the trust for October 2017.²⁶ Ms. N and Ms. D explained that they owed the assisted living home for July, August, September, and October.²⁷ Ms. D and Ms. N asked Ms. Randall what they should do.²⁸ Ms. Randall advised Ms. D and Ms. N that if they funded the trust and the Division’s policy section approved the trust before October 31, 2017, the Division could revisit the application.²⁹ Because Ms. N’s monthly income was more than the Medicaid income limit and the trust had not been approved, Ms. N’s September application, and request for retroactive benefits for July and August 2017, was denied.³⁰ Ms. Randall explained that income over \$1,366 needs to go into the trust monthly and when waiver services are approved, income over \$2,205 needs to go into the trust monthly.³¹ On October 31, 2017, as recommended by Ms. Randall, Ms. N deposited \$3,059.04 into the trust account.³²

On November 15, 2017, Ms. D went to the Division office to inquire about the denial.³³ Ms. D met with Eligibility Technician Marie Laroza.³⁴ Ms. D reported that Ms. N’s monthly Social Security income was only \$1,900 and that the \$2,009 that was reported was for June 2017 only.³⁵ According to Ms. D, her mother had not received any checks for Mr. N’s BP pension until November because there was an overpayment of \$2,200 in Mr. N’s last check.³⁶ Finally, Ms. D reported that Ms. N had received an overpayment notice from Social Security for \$701.³⁷ Ms. Laroza asked Ms. D for a copy of the overpayment notice from the Social Security Administration.³⁸ Ms. Laroza noted that the trust had been established but had not yet been approved or registered with the court—the copy that Ms. D brought in with her to that meeting

²⁵ Randall Testimony; Ex. 5.

²⁶ Ex. 20; Ex. 5; Randall Testimony.

²⁷ D Testimony; N Testimony.

²⁸ D Testimony; N Testimony.

²⁹ Randall Testimony; Ex. 5.

³⁰ Ex. 20.

³¹ Ex. 20.

³² Ex. 6.1; N Testimony.

³³ Ex. 21; Laroza Testimony.

³⁴ Ex. 21; Laroza Testimony.

³⁵ Ex. 21; Laroza Testimony.

³⁶ Ex. 21; Laroza Testimony.

³⁷ Ex. 21; Laroza Testimony.

³⁸ Ex. 21; Laroza Testimony.

did not have a signature.³⁹ Ms. Laroza told Ms. D that she would follow up with the Division's policy section about the status of the trust approval.⁴⁰

The following day, Ms. Laroza emailed Ms. D, informing her that the trust was incomplete and that she was trying to identify what was missing.⁴¹ Ms. Laroza advised Ms. D that they would need to re-register the trust with any amendments.⁴² Later that same day, Ms. Laroza emailed Ms. D, copying Ms. N and Ms. Redmond.⁴³ Ms. Laroza reported that the policy section could not tell what type of trust it was supposed to be as it did not follow the regulations.⁴⁴ Eligibility Technicians do not provide advice about trusts, and simply pass along the messages they receive from the policy section.⁴⁵ Ms. Laroza referred Ms. D to her lawyer.⁴⁶ She also recommended that Ms. D file a new application for November.⁴⁷

Ms. Laroza reminded Ms. D about how much money needed to go into the trust:

I want to point out how much money the trust has to be funded *once* it is established *and approved*. You may do it two different ways depending on what type of services:

- If you want her to receive AP-related Medicaid (while waiting for her waiver services to get approved), the limit is \$1366. Therefore, if her income is SSA \$2009.80 (we count the total gross amount) + BP pension of \$2415.34 = \$4425.14, she must fund it at \$3059.14 (\$4425.14 - \$1366 = \$3059.14).
- If she's pursuing waiver and gets approval from Senior and Disability Services (SDS), the limit goes up to \$2205. Therefore she only needs to fund the trust at \$2220.14 (\$4425.14 - \$2205 = \$2220.14). The caveat on this is that she won't get Medicaid until her plan of care form SDS is approved. As opposed to the regular AP-related Medicaid noted in the first bullet.⁴⁸

Ms. D and Ms. N interpreted that email to mean that they did not need to fund the trust until it was approved.⁴⁹ Ms. N removed the money from the trust account on November 16,

³⁹ Ex. 21; Laroza Testimony.

⁴⁰ Ex. 21; Laroza Testimony.

⁴¹ Ex. A at 3.

⁴² Ex. A at 3.

⁴³ Ex. A at 3.

⁴⁴ Ex. A at 1.

⁴⁵ Randall Testimony; Laroza Testimony.

⁴⁶ Ex. A at 1.

⁴⁷ Ex. A at 1.

⁴⁸ Ex. A at 1 (emphasis added).

⁴⁹ D Testimony; N Testimony.

2017 to pay the assisted living home.⁵⁰ And they did not fund the trust in December or January.⁵¹

After the meeting with and emails from Ms. Laroza, Ms. D and Ms. N called Ms. Redmond.⁵² Ms. Redmond reviewed the trust document and could not find any deficiencies.⁵³ Based on her conversations with Ms. D and Ms. N, Ms. Redmond's understanding was that the trust did not have enough pages or was missing pages.⁵⁴ She believed the trust document she drafted complied with the regulations, and would have expected the Division to be more explicit about what was missing.⁵⁵ No one from the Division contacted Ms. Redmond, and she did not contact anyone at the Division to inquire about what was wrong with the trust.⁵⁶ It did not register that the Division did not receive the full document, and no one re-submitted the trust document until after February 8, 2018.⁵⁷

Ms. D filed a new application for Medicaid benefits on November 22, 2017.⁵⁸ They attended an eligibility interview with Eligibility Technician, Tyrone on January 23, 2018.⁵⁹ At that interview, Ms. D and Ms. N verified their mother's resources and monthly income of approximately \$4,230.81.⁶⁰ Ms. D and Ms. N informed Tyrone that Ms. Randall had told them not to fund the trust until it was approved, and thus, they did not fund the trust for November or December.⁶¹ Tyrone informed them that the income limit for Medicaid eligibility (for waiver services) was \$2,205 for 2017 and \$2,250 for 2018 and that any income over the applicable limit needed to go into the trust—that if they did not fund the trust, Ms. N would not be income eligible.⁶² Because Ms. N's monthly income was more than the Medicaid income limit and the trust had not been approved, Ms. N's November application was also denied.⁶³

⁵⁰ N Testimony; Ex. 6.3.

⁵¹ Ex. 6.2, 6.3, 6.4.

⁵² D Testimony; N Testimony; Redmond Testimony.

⁵³ Redmond Testimony.

⁵⁴ Redmond Testimony.

⁵⁵ Redmond Testimony.

⁵⁶ Redmond Testimony.

⁵⁷ D Testimony; N Testimony; Redmond Testimony. On February 8, 2018, Ms. N talked to Eligibility Technician Antoinette Horn. Ms. Horn informed Ms. N that the Division had not received all the trust documents. Specifically, the Division received only 2 pages of the trust. Ms. N responded that she would contact Ms. Redmond to submit the entire trust documentation. Ex. 22; Horn Testimony.

⁵⁸ Ex. 2.1-2.8.

⁵⁹ D Testimony; N Testimony; Ex. 2.

⁶⁰ Ex. 2; Ex. 3.

⁶¹ Ex. 2.

⁶² Ex. 2.

⁶³ Ex. 3.

Ms. D and Ms. N appealed that decision, and the matter was referred to the Office of Administrative Hearings. The telephonic hearing took place over three days, February 20, 2018, February 27, 2018, and March 5, 2018. Ms. D and Ms. N, who are also Ms. N's powers of attorney represented Ms. N. In addition to their own testimony, Ms. D and Ms. N presented testimony from Adult Protective Services Specialist Sheila Jacobsen and attorney, Sonja Redmond. Division representative Sally Dial represented the Division and presented testimony from Eligibility Technicians Debra Randall, Marie Laroza, and Antoinette Horn. All exhibits offered by both parties were admitted without objection.

III. Discussion

The Alaska Medicaid program contains a variety of coverage categories. Each category has different eligibility requirements. These include financial requirements which limit how much monthly income a Medicaid applicant may have, and how much in resources (cash, other personal property, and real property) an applicant may own. Because Ms. N is applying for benefits, she has the burden of proving by a preponderance of the evidence that she is financially eligible for Medicaid.⁶⁴

A Medicaid Waiver applicant or recipient may not have more than \$2,250 in countable monthly income.⁶⁵ For APA-related Medicaid, an applicant or recipient may not have more than \$1,393 in countable monthly income.⁶⁶ A person's monthly countable income can, however, be reduced by diverting some or all of it into a properly set up and funded Medicaid Qualifying Income Trust, or as here, what is commonly called a Miller Trust.⁶⁷ But that trust must be approved by the Division.⁶⁸

In this case, the undisputed facts show that Ms. N had gross income of \$4,230.81 (Social Security and a BP pension). There is no dispute that Ms. D and Ms. N attempted to set up and obtain approval of a Miller Trust for their mother. But the Division did not receive the complete trust document when Ms. N's Care Coordinator, Ms. Z submitted it in September 2017. As a result, the trust was never approved. Although the Division could have been more precise about

⁶⁴ 7 AAC 49.135. Preponderance of the evidence is defined as: "Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." *Black's Law Dictionary* 1064 (5th Ed. 1979).

⁶⁵ Ex. 19. In 2017, the income limit was \$2,205 per month.

⁶⁶ Alaska Adult Public Assistance Manual, APA Need Standards and Supplemental Security Income Eligibility/Payment Standards, Addendum 1 available at http://dpaweb.hss.state.ak.us/manuals/apa/addendum/addendum_1.htm. In 2017, the income limit for APA-related Medicaid was \$1,366 per month.

⁶⁷ 7 AAC 100.600(a).

⁶⁸ See 7 AAC 100.604(b); Randall Testimony; Laroza Testimony.

what was missing, it did not mislead Ms. D or Ms. N. On the contrary, the Division informed them that the trust was incomplete or that it was missing pages. Yet no one attempted to submit a new draft or resubmit a new copy of the full trust document. The record also shows that at least one eligibility technician informed Ms. D and Ms. N that they needed to fund the trust with income that exceeded the Medicaid income limits monthly; still, none of Ms. N' excess income was deposited into her trust account in November, December, or January. As a result, all of Ms. N' income for those months was countable. And she was not financially eligible for Medicaid when she applied.

Nevertheless, Ms. D and Ms. N argue that they did not fund the trust account because they were told not to fund it until the trust was approved. The legal doctrine of equitable estoppel prevents a party from taking a position contrary to a position previously asserted. To successfully invoke estoppel against a governmental agency, four elements must be established:

1. the assertion of a governmental position by either conduct or words;
2. an act which reasonably relied upon the governmental position;
3. resulting prejudice; and
4. “estoppel serves the interest of justice so as to limit public injury.”⁶⁹

Ms. D and Ms. N initially alleged that they removed money from the trust account after Ms. Randall told them to take the money out to pay the assisted living home.⁷⁰ Ms. Randall denied that allegation.⁷¹ Indeed, Ms. Randall credibly testified that because the trust has to be funded every month the applicant receives income, she never would have told Ms. D and Ms. N not to fund the trust.⁷² She instead told them that income over \$1,366 needs to go into the trust monthly and when waiver services are approved, income over \$2,205 needs to go into the trust monthly.⁷³ Moreover, the evidence shows that rather than remove money from the account after talking to Ms. Randall, Ms. N deposited money into the account—consistent with Ms. Randall's alleged advice.⁷⁴ Accordingly, I conclude that although Ms. D and Ms. N were confused about the process, Ms. Randall did not tell Ms. D and Ms. N not to fund the trust account. Nor did she tell them to remove the money from the account.

⁶⁹ *Wassink v. Hawkins*, 763 P.3d 971, 975 (Alaska 1988).

⁷⁰ D Testimony; N Testimony; Ex. 4.

⁷¹ Randall Testimony.

⁷² Randall Testimony.

⁷³ Ex. 20.

⁷⁴ Ex. 6.1. Ms. N later testified that she got her dates wrong—she claims it was Ms. Laroza who told her to remove the money from the trust account to pay the assisted living home.

Next, Ms. D and Ms. N claim that Ms. Laroza told them not to fund the trust account until the trust was approved.⁷⁵ They point to Ms. Laroza's November 16, 2017 email as evidence of this statement.⁷⁶ In that email, Ms. Laroza informs Ms. D and Ms. N how much money to fund the trust with "*once it is established and approved.*"⁷⁷ I agree that that the email is poorly-worded, and I believe that Ms. D's or Ms. N' interpretation is reasonable. That said, Ms. Laroza explained that the trust had to be approved and funded before an eligibility determination could be made. The language in the email and any confusion created by it are not the same as an "assertion of a governmental position" that Ms. D and Ms. N should not have funded the trust account or that they should have removed money from the account until the trust was approved. Moreover, as discussed above, the purpose of a Miller Trust is to divert some or all of an applicant's or recipient's countable income, so that he or she will meet the income eligibility requirements. Given Ms. Randall's instructions to fund the trust monthly with any income over the Medicaid income limits, so that Ms. N would be income eligible, I do not believe that Ms. D's or Ms. N' reliance on a poorly-worded email was reasonable.⁷⁸ Accordingly, the Division is not equitably estopped from finding that Ms. N is ineligible.

While the Division cannot give legal advice, it might have been able to provide more precise and clear information about what Ms. D and Ms. N needed to complete their mother's Miller Trust. However, Ms. D and Ms. N have not met their burden of proving that the Division gave them incorrect information. And the Division was correct in finding that Ms. N' income exceeded the program limit.

IV. Conclusion

Ms. N was not financially eligible for Medicaid benefits during the months of November and December 2017. As a result, the Division's denial of her November 22, 2017 Medicaid application is AFFIRMED.

Dated: April 6, 2018

Signed _____
Jessica Leeah
Administrative Law Judge

⁷⁵ D Testimony; N Testimony.
⁷⁶ D Testimony; N Testimony.
⁷⁷ Ex. A at 1 (emphasis added).
⁷⁸ Ex. 5; Ex. 20;

Adoption

The undersigned, by delegation from 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 26th day of April, 2018.

By: Signed _____

Name: Jessica Leeah _____

Title: Administrative Law Judge _____

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]