

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

In the Matter of	)	
	)	OAH No. 18-0924-MDE
D C	)	Division No. 0507428
_____	)	

**DECISION**

**I. Introduction**

D C is a Medicaid recipient who applied to renew her benefits in March 2018. In August 2018, her benefits were approved for the month of March 2018, denied for April 2018, and approved for May 2018 onward. The denial for April was made because she received Native corporation dividends in April, which the Division of Public Assistance (Division) found made her financially ineligible during that month. Ms. C disagreed with the Division and requested a hearing.

Ms. C receives Medicaid under the Long-Term Care (LTC) category. When Medicaid LTC recipients receive income in excess of the Medicaid program’s limits, the excess funds are used for what is referred to as Cost of Care, which means that the recipient is required to pay the excess funds toward his or her medical care directly to the medical care provider, which in turn reduces the amount of funds required to be expended by the Medicaid program. Because Ms. C’s application was filed in March, and approved beginning with the month of March, as an already approved Medicaid recipient, her excess income received in April should have been allocated toward her Cost of Care obligation rather than making her ineligible for benefits. Accordingly, the denial of Ms. C’s eligibility for April 2018 is reversed.

**II. Facts<sup>1</sup>**

Ms. C is an elderly woman who resides in a skilled and long-term care nursing facility. She was receiving Medicaid benefits in early 2018. Her benefits were due to expire at the end of February 2018. The Division notified her that the benefits were expiring and that she needed to reapply for those benefits.<sup>2</sup> Ms. C did not timely file her renewal application and her benefits expired at the end of February 2018.<sup>3</sup> She filed her renewal application on March 27, 2018.<sup>4</sup>

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<sup>1</sup> These factual findings are established by a preponderance of the evidence.  
<sup>2</sup> Ex. 2.  
<sup>3</sup> Ex. 2.1.  
<sup>4</sup> Exs. 4.1 – 4.7.

Ms. C received two Native Corporate dividends in 2018: one payment of \$2,583.30 on March 2, 2018 and another payment of \$2,583.30 on April 20, 2018.<sup>5</sup> When processing the application, the Division determined that Ms. C was financially eligible for Medicaid in March, but that the entirety of the April dividend was countable as income for Ms. C in April. The Division then added the April dividend amount (\$2,583.30) to Ms. C's Social Security of \$965 and determined that the total amount of \$3,548.30 exceeded the \$2,250 monthly income limit for Medicaid. The Division then approved Ms. C's Medicaid application for March 2018, denied it for April 2018, and approved it for May 2018 onward.<sup>6</sup>

### III. Discussion

Ms. C filed her renewal application at the end of March 2018. Because her renewal application was filed after her benefits expired at the end of February 2018, her application was considered a new application and she was required to meet "all requirements of a new applicant."<sup>7</sup> The Alaska Medicaid program contains a variety of coverage categories. *See* 7 AAC 100.002. Each of these categories has different financial requirements. As an applicant for Medicaid LTC benefits, Ms. C could not have countable monthly income that exceeded \$2,250.<sup>8</sup> However, the financial post-eligibility rules allow her countable monthly income to exceed the limit, but she is required to use excess income to make direct payments to her medical care providers, which in turn, which reduces the amount the Medicaid program pays to those providers. This direct payment by Ms. C is referred to as a Medicaid Cost of Care contribution.<sup>9</sup>

It is undisputed that Ms. C was financially eligible for Medicaid LTC in March 2018, the month of her application. The issue that arises is whether her Native corporate dividend made her financially ineligible during April 2018. It is undisputed that her April 2018 income, which was her Native corporate dividend plus her Social Security payment, exceeded the Medicaid program's income limit of \$2,250.<sup>10</sup>

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<sup>5</sup> Ex. 6.5.

<sup>6</sup> The Division issued multiple notices to this effect: Exs. 8, 12 – 13.1.

<sup>7</sup> 7 AAC 100.022(c)(1).

<sup>8</sup> 7 AAC 100.502; *Alaska Aged, Disabled and Long Term Care Medicaid Eligibility Manual Addendum 1* (Ex. 24).

<sup>9</sup> 7 AAC 100.550 – 554.

<sup>10</sup> Native corporate dividends have a yearly "disregard" of \$2,000, which means that the first \$2,000 of that dividend is not counted. 7 AAC 40.280(a)(15)(A). Since that "disregard" was fully applied to the March 2018 dividend, the entire April 2018 dividend was countable.

If Ms. C was a brand new applicant in April 2018, her income for the month would place her over the income limit and render her ineligible for Medicaid LTC coverage. The Division takes the position that since the application had not yet been approved in April, that Ms. C's financial eligibility for that month should be determined as though she was an applicant, and not an approved recipient for that month. Ms. C takes the opposite position, arguing that her application was approved beginning with March 2018, which meant that she was a Medicaid recipient in April 2018. As a result, this would enable her to receive excess income, and have it handled through the Cost of Care mechanism, rather than rendering her ineligible.

The Division's argument is less persuasive than Ms. C's. Ms. C's eligibility was approved beginning in March 2018. Although the Division did not approve her eligibility until several months after the application was filed, the application was filed in March 2018, and she was approved beginning with that month; her eligibility related back to the date of the original application. Accordingly, her income for April 2018 should have been handled under the "post-eligibility" procedures set out in regulation: "[a]fter establishing initial Medicaid eligibility, the department will determine if a recipient must pay a portion of the cost of the recipient's long-term care services."<sup>11</sup>

Ms. C's case is also factually consistent with the example provided in the Division's *Alaska Aged, Disabled and Long Term Care Medicaid Eligibility Manual*: "[a] Medicaid case closes February 28 for failure to submit the required review form. If the client reapplies for Medicaid on March 29 and is found eligible, cost-of-care is applied for March.<sup>12</sup> Ms. C had no gap in her Medicaid coverage. Although, her case closed at the end of February, she reapplied before the end of March and her coverage was reinstated effective the beginning of March. Under the example provided in the Division's Manual, excess income received in March would not have rendered her ineligible, but rather would have been handled under Cost of Care. Because her eligibility was established effective March, her excess income for April was also required to be covered under Cost of Care. As a result, the Division's denial of coverage for April due to financial eligibility was incorrect, and instead the Division should have handled the April income under the Cost of Care procedure.

#### **IV. Conclusion**

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<sup>11</sup> 7 AAC 100.550(a).

<sup>12</sup> *Alaska Aged, Disabled and Long Term Care Medicaid Eligibility Manual* § 570 F.

The Division's determination that Ms. C was not eligible for Medicaid coverage in April 2018 is reversed. Instead, the Division is to review Ms. C's April 2018 income and calculate a Cost of Care obligation taking that income into account.

DATED this 23rd day of November, 2018.

By: Signed  
Signature  
Lawrence A. Pederson  
Name  
Administrative Law Judge  
Title

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

### **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 4<sup>th</sup> day of January, 2018.

By: Signed  
Signature  
Jillian Gellings  
Name  
Project Analyst/DHSS  
Title

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