



for that benefit is higher than the one for regular Medicaid.<sup>7</sup> The Ds appealed because they feel they need regular Medicaid.

### III. Discussion

In an appeal hearing such as this one, applicants for new benefits, such as the Ds, have the burden of proving their eligibility by a preponderance of the evidence.<sup>8</sup>

For purposes of eligibility, a resource is

any real or personal property that an applicant, together with his or her spouse . . . owns and can convert to cash to be used for his or her support and maintenance.<sup>9</sup>

Mr. D's whole-life policy is property that can be converted to cash and therefore it is a resource. Individuals who live with spouses can only be eligible for regular Medicaid if the couple has "non-excludable" resources that do not exceed \$3,000 in total value.<sup>10</sup> The cash value of Mr. D's policy exceeds that amount by \$5,691.59.

Certain resources are excluded from the resource calculation. Term insurance is excluded,<sup>11</sup> but the whole-life policy is not term insurance. Burial insurance is excluded,<sup>12</sup> but the whole-life policy is not burial insurance. Whole-life insurance can be excluded if its face value does not exceed \$1,500,<sup>13</sup> but since the face value of Mr. D's policy is \$10,000, this exception does not apply. The regulations are explicit that "if the face value of life insurance exceeds \$1,500, its cash surrender value is a resource."<sup>14</sup>

These regulations leave no room for excluding the whole-life policy from the resource calculation. This case is very similar to *In re C.S.*,<sup>15</sup> decided on behalf of the Commissioner of Health and Social Services in 2013. There, a whole life policy with a cash value of \$6,533.10 was found to disqualify an individual from regular Medicaid. As in this case, the individual was awarded SLIM-B benefits instead. The Department has been consistent in its application of the regulation making whole life policies countable as resources whenever their face value exceeds the \$1,500 threshold.

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<sup>7</sup> Testimony of Sally Dial.

<sup>8</sup> 7 AAC 49.135.

<sup>9</sup> 7 AAC 40.260(a).

<sup>10</sup> 7 AAC 40.270(a).

<sup>11</sup> 7 AAC 40.280(a)(7).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> OAH Case No. 13-0390-MDE (published at <https://aws.state.ak.us/OAH/Decision/Display?rec=2140>).

Testimony at the hearing made it clear that the policy could be liquidated and spent on a variety of things, such as paying down debt or fixing a car, and it would no longer be a disqualifying resource. However, that step had not been taken at the time of the hearing.

#### IV. Conclusion

The Division's denial of E and M D's August 27, 2018 applications for regular Medicaid is affirmed. This decision does not restrict their eligibility as soon as their resources are within the program limits.

DATED this 14<sup>th</sup> day of December, 2018.

By: Signed  
Signature  
Andrew M. Lebo  
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 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 2<sup>nd</sup> day of January, 20 19.

By: Signed  
Signature  
Andrew M. Lebo  
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.]