

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

In the Matter of)	
)	
Q M)	OAH No. 18-0793-MDE
)	Agency No. 05941639
_____)	

DECISION

I. Introduction

Q M applied for Medicaid benefits on July 2, 2018.¹ Her application was approved effective August 2018, and she was denied Medicaid eligibility for the month of July 2018 because she exceeded the program’s resource limit of \$2000.00 on July 1, 2018. N and H J, who were given power of attorney over Ms. M, appealed on her behalf.

A hearing began on September 5, 2018. Mr. and Mrs. J appeared in person; Mr. Miller, on behalf of the Division, appeared telephonically. The matter was concluded on September 10, 2018.

The issue in this case is when, for purposes of Medicaid resource eligibility, money paid by Ms. M with personal, non-certified checks, stopped being a countable resource. Because the Medicaid financial eligibility regulations require that resources are measured on the first day of each month, and because Ms. M’s bank account balance, as of July 1, 2018, was \$2122.18, she was over resource limits for Medicaid for July 2018, regardless of the fact that she had outstanding checks written from her bank account. As a result, the Division’s denial of Ms. M’s eligibility for July 2018 is affirmed.

II. Facts

The facts relevant to this case are undisputed. Ms. M applied for the Medicaid waiver program when residing in Oregon.² She initially left Alaska because Alaska did not have a memory care program that met her needs and she had family in Oregon.³ After some efforts, on June 29, 2018, it was determined Ms. M qualified for care at Wildflower Court Skilled Nursing in

¹ Ms. M suffers from Frontotemporal Degeneration (Exhibit C). While she is the recipient of services, this matter is being spearheaded by H and N J. They have made tremendous efforts in advocating for Ms. M. For clarification, although it is the H and N J making arguments, the decision shall refer to it as Ms. M’s position because she is the ultimate beneficiary of the services.

² Mr. J testimony; Exhibit C.

³ Exhibit 9.1; Mr. J testimony; Mrs. J testimony; Exhibit C.

No Name, AK.⁴ N and H J, with their power of attorney of Ms. M, began moving her from Oregon to Alaska; they were navigating the Medicaid system.⁵

On Jun 29, 2018, Mr. J wrote checks from Ms. M's bank account to reimburse him and his wife for expenses paid by them on their personal credit card for Ms. M's move.⁶ They deposited their checks on June 29, 2018.⁷ As of July 1, 2018, those funds had not been withdrawn from Ms. M's bank account and the balance was \$2122.18.⁸

Ms. M was admitted to Wildflower Court Skilled Nursing of July 2, 2018.⁹

III. Discussion

Because Ms. M is an applicant for new services, she bears the burden of proof by a preponderance of the evidence.¹⁰

Medicaid is an "entitlement program" created by the federal government, but administered by each state, to provide medical services for low income citizens.¹¹ People qualify by meeting federal income and asset standards, as well as meeting specified eligibility categories.¹² The countable resource limit is \$2000.00 for an individual.¹³ The value of an applicant's countable resources is determined on the first day of the month in which the application is received.¹⁴

Medicaid resources are defined broadly by Alaska Medicaid regulation 7 AAC 40.260 (a) as "any real or personal property that an applicant... owns or can convert to cash to be used for his or her support or maintenance."

Bank accounts are typically countable as a resource for Medicaid resource limits.¹⁵ Ms. M's accounts on July 1, 2018 totaled \$2122.18.¹⁶ Ms. M did not present any evidence of qualifying for any exceptions or deductions to be considered in determining the countable resources.¹⁷

⁴ Exhibit 9.1; Exhibit 9.2; Exhibit 9.3; Mr. J testimony.

⁵ Exhibit P; Mr. J testimony; Mrs. J testimony.

⁶ Exhibit 9.1; Exhibit C; exhibit G; Exhibit H.

⁷ Exhibit 9.2; Exhibit 9.3; Mr. J testimony; Exhibit D; Exhibit F.

⁸ Exhibit 7; Exhibit 7.1; Exhibit 7.2; Mr. J testimony.

⁹ Exhibit I; Exhibit J.

¹⁰ 7 AAC 49.135.

¹¹ Exhibits 15-25.2.

¹² 7 AAC 100.502.

¹³ 7 AAC 40.270.

¹⁴ 7AAC 40.270 (b).

¹⁵ 7 AAC 40. 260.

¹⁶ Exhibit 7; Exhibit 7.1; Exhibit 7.2; Mr. J testimony.

¹⁷ Mr. J testimony; Ms. J testimony.

Ms. M agreed the accounts are resources that should be counted.¹⁸ It was argued that because the bank was closed on July 1, 2018 and the checks were submitted prior to that date, the deposited checks, totaling \$845.49, were unavailable for Ms. M's use and Ms. M met the resource income requirement.

Under Alaska's negotiable instrument laws, bank deposits and collection laws, and funds transfers law, the money remains the resource of Ms. M until the check clears.¹⁹ Ms. M argues that based on Federal Reserve Financial Services and Fiserv Clearing Network, the resources were cleared the following day, and it was simply not documented until July 2, 2018 because July 1, 2018 was not a business day.²⁰ Mr. J also said the resources would not have been available to Ms. M because she does not have any credit or debit card attached to the account that would have allowed those funds to be withdrawn early. First National Bank utilizes Fiserv Clearing Network and represents that their clients will receive 100% of funds the next day.²¹ Unfortunately, the regulation governing countable resources strictly interprets the resources as being determined on the first day of the month, without consideration of whether it is a business day.²² Therefore, the only permissible way to determine Ms. M's resources is the total of her countable resources, including her bank account balances, on July 1, 2018, without regard to whether there were outstanding checks drawn on her bank account.

IV. Conclusion

The regulations regarding countable resources do not contain any hardship exception or ability to waive the resource limits. The Office of Administrative Hearings does not have the discretion to relax the Medicaid program's eligibility requirements or calculate resources on an alternative schedule.²³ The regulations require that Ms. M's resources do not exceed \$2000.00 on the first of each month. Because her resources on July 1, 2018 exceeded \$2000.00, the Division's decision is affirmed.

DATED: September 11, 2018

By: Signed
Signature
Hanna Sebold
Name

¹⁸ Mr. J testimony.

¹⁹ AS 45.03.310, AS 45.03.601, AS 45.04.215; AS 45.14.104, AS 45.14.405 and AS 45.14.406.

²⁰ Exhibit S; Exhibit T, Mr. J testimony.

²¹ Exhibit S.

²² Exhibit 15.

²³ *Burke v. Houston NANA L.L.C* 222 P3d 851, 868-869 (Alaska 2010). Also see State of Alaska Fair Hearings regulations 7 AAC 49.170.

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 25th day of September, 2018.

By: Signed
Signature
Hanna Sebold
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.]