



received by the Division on December 7, 2017, showing that Ms. N received a monthly pension payment in the amount of \$535.62, in addition to her monthly Social Security payment.<sup>4</sup>

Ms. N had an in-person meeting with a Division eligibility technician on January 8, 2018 where the Trust was discussed.<sup>5</sup> Ms. N's testimony regarding that meeting was as follows:

- During her meeting with the eligibility technician, she provided the eligibility technician with Ms. M's monthly income figures, including that she received \$535.62 from her pension.
- Ms. N then asked him how much was needed to be placed in the Trust in order for Ms. M to be financially eligible for Medicaid.
- She took notes during that meeting.
- The eligibility technician gave her the amount that she needed to place in the Trust, which she recorded in her notes. Those notes show that she was told that she was supposed to deposit \$150.02 per month in the Trust beginning in February.<sup>6</sup>

After the January 8, 2018 interview, Division staff reviewed the Trust documents and determined that they did not technically comply with the requirements contained in the State Medicaid regulations.<sup>7</sup> The Division then issued a notice specifying the Trust deficiencies on March 7, 2018.<sup>8</sup> Ms. N had the Trust corrected and the modified Trust was filed with the Division on April 10, 2018. The Division then approved the Trust on April 13, 2018.<sup>9</sup>

Ms. N was a credible witness. This credibility determination is based upon a visual observation of Ms. N during the hearing, the consistency of her testimony, and her corroborating notes taken during the interview, which were introduced into evidence.<sup>10</sup> There was no evidence rebutting Ms. N's testimony, other than Ms. Dial's testimony that an eligibility technician would not, as a matter of general procedure, tell an applicant how much money needed to be placed in a trust.<sup>11</sup> Ms. Dial did not have actual knowledge of the conversation that occurred between the eligibility technician and Ms. N. Accordingly, it is more likely true than not true that the

---

<sup>4</sup> Exs. 2.24, 2.26.

<sup>5</sup> Ex. 2.

<sup>6</sup> Ms. N's testimony.

<sup>7</sup> Ex. 4.

<sup>8</sup> Ex. 5.

<sup>9</sup> Exs. 7 – 7.1.

<sup>10</sup> The notes are contained in the record at Exhibit A.

<sup>11</sup> Ms. Dial's testimony. The Division did not present the eligibility technician who conducted the January 8, 2018 interview as a witness. According to the Division's representative, he has retired from State employment.

eligibility technician informed Ms. N that in order for Ms. M to financially qualify for Medicaid, that the Trust needed to have \$150.02 per month deposited in it from Ms. M's monthly income. While this communication might have been based upon a mistake on the eligibility technician's part as to the amount of Ms. M's pension,<sup>12</sup> this apparent mistake does not change the factual finding that Ms. N was told a deposit of \$150.02 into the Trust would financially qualify Ms. M for Medicaid. This is due to Ms. N's credible testimony that she informed the eligibility technician about the pension amount, and the fact that the Division had copies of Ms. M's bank statements showing the pension amount as of December 7, 2017, well before the January 8, 2018 meeting.

In July 2018, the Division asked for verification that Ms. M's Trust had been funded.<sup>13</sup> Ms. N provided the Division with information that her monthly income in 2018 was \$1,865 from Social Security and \$535.62 from her pension, totaling \$2,400.62 per month. She deposited \$150.02 monthly, the amount she was given by the eligibility technician, into the Trust during each of the preceding months of March – June 2018. This reduced her countable monthly income to \$2,250.60. The Division then denied Ms. M's application because her monthly countable income exceeded the Medicaid program's income limit of \$2,250.00.<sup>14</sup>

### **III. Discussion**

The Alaska Medicaid program contains a variety of coverage categories. *See* 7 AAC 100.002. Each of these categories has differing 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. M is applying for benefits, she has the burden of proof, by a preponderance of the evidence, to demonstrate that she is financially eligible for those benefits.<sup>15</sup>

A Medicaid Waiver applicant/recipient may not have more than \$2,250 in countable monthly income.<sup>16</sup> Ms. M's monthly countable income is \$2,400.62. An applicant/recipient can reduce her or his monthly countable income, however, by diverting some or all of it to a properly

---

<sup>12</sup> See the Division's casenote dated January 8, 2018, detailing Ms. N's interview at the bottom of the page, where it reads "Pension \$535.02." Ex. 2.

<sup>13</sup> Ex. 8.1.

<sup>14</sup> Exs. 9 – 10.

<sup>15</sup> 7 AAC 49.135.

<sup>16</sup> 7 AAC 100.502(a)(4); AS 47.07.020(b)(6); *Aged, Disabled and Long Term Care Medicaid Eligibility Manual* Addendum 1 (<http://dpaweb.hss.state.ak.us/manuals/adltc/adltc.htm>).

set up and funded Medicaid Qualifying Income Trust.<sup>17</sup> If Ms. M reduced her monthly income to \$2,250 or less by depositing adequate funds to such a Trust each calendar month, then her monthly income would not disqualify her from Medicaid Waiver eligibility. It is undisputed that Ms. M did have such a Trust. However, Ms. M does not dispute that her Trust was not properly set up until April 2018.<sup>18</sup>

The evidence in this case shows that in April 2018, Ms. M's Trust had \$150.02 deposited in it, which reduced her countable income to \$2,250.60, \$.60 more than the allowable income limit. This would normally disqualify her from eligibility for Medicaid. However, the facts of this case demonstrate that the Division is equitably estopped from denying her application:

[E]stoppel may apply against the government and in favor of a private party if four elements are present: (1) the governmental body asserts a position by conduct or words; (2) the private party acts in reasonable reliance thereon; (3) the private party suffers resulting prejudice; and (4) the estoppel serves the interest of justice so as to limit public injury.<sup>19</sup>

Ms. M satisfies this test as follows:

1. The eligibility technician informed Ms. N that \$150.02 was the amount she needed to place in Ms. M's Trust in order for Ms. M to financially qualify for Medicaid.
2. Ms. N reasonably relied upon the eligibility technician's representation given that he was the Division's representative and had Ms. M's income information at the time he made the representation.
3. Ms. M has been prejudiced inasmuch as she could have qualified for Medicaid by simply depositing an additional \$.60 per month into the Trust.
4. Estoppel against the government (in this case, the Division), "serves the interest of justice so as to limit public injury." This is because the public as a whole is served by having government staff who can recognize a situation and correctly respond to public inquiries regarding governmental benefit program, in such cases as the present one, where the citizen notifies the Division what the income is and asks

---

<sup>17</sup> 7 AAC 100.600(a).

<sup>18</sup> See Ms. N's August 22, 2018 response to the Division's post-hearing filing: "[i]n response to the brief filed by the Division . . . regarding the start date for claimant's Medicaid eligibility, the identification of April 13, 2018 as the approval date of the corrected trust documents is acceptable."

<sup>19</sup> *Crum v. Stalaker*, 936 P.2d 1254, 1256 (Alaska, 1997).

how much needed to be placed in the Trust to qualify, and the Division's representative gives incorrect advice.

As discussed above, equitable estoppel precludes the Division from denying Ms. M's Medicaid application. However, even though the application was filed in December of 2017, the Trust was not properly in effect until April of 2018. Accordingly, the application is approved, but coverage does not begin until April of 2018.

**IV. Conclusion**

The Division's denial of Ms. M's December 2017 Medicaid application is reversed. Her application is approved effective April 1, 2018.

DATED this 28<sup>th</sup> day of September, 2018.

*Signed* \_\_\_\_\_  
Lawrence A. Pederson  
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 15th day of October, 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.]