

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

In the Matter of )  
 )  
P M ) OAH No. 19-0439-MDE  
 ) Agency No.  
\_\_\_\_\_ )

**DECISION**

**I. Introduction**

P M, with the assistance of her son, U M, applied for Home and Community Based Waiver Services on January 16, 2019.<sup>1</sup> On April 22, 2019, the Department of Health and Social Services, Division of Public Assistance (DPA) notified the family her waiver application was approved with coverage effective January 8, 2019 through January 9, 2020.<sup>2</sup> On April 22, 2019, DPA denied her request for retroactive benefits to begin October 3, 2018.<sup>3</sup>

A Fair Hearing on that issue was requested May 8, 2019.<sup>4</sup> The hearing was held over two days in July 2019. U M represented his mother at the hearing. Jeff Miller represented DPA. Christina Baker, a DPA Eligibility Technician, and L T, Ms. M’s care coordinator, appeared as witnesses. The record remained open until August 5, 2019 for the parties to submit additional evidence.<sup>5</sup>

After due deliberation, DPA’s decision denying Ms. M’s request for retroactive benefits to October 3, 2019 is AFFIRMED.

**II. Facts**

P M sought Home and Community Based Waiver Services for long term care benefits from the State of Alaska. She filed an initial application on October 3, 2018. DPA sent a denial notice for that application on November 5, 2018,<sup>6</sup> but based on surrounding factual circumstances, the Ms believed the application was subsequently returned to pending status and continued to submit information in support of the application. Ms. M received a level of care

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<sup>1</sup> Ex. 2.

<sup>2</sup> Ex. 7.

<sup>3</sup> Ex. 8; Office of Administrative Hearings Case Referral Notice dated May 20, 2019, p. 2.

<sup>4</sup> Ex. 9-9.1.

<sup>5</sup> Originally Ms. M had cases with both DPA and the Division of Senior Disability Services (DSDS). On June 3, 2019, this matter was continued to July 11, 2019 so her DSDS matter could be completed before this matter was addressed. The hearing began on July 11 but was recessed to July 24 when the parties discovered the existence of additional evidence. The hearing remained open to August 5, 2019 for the submission of additional evidence and response.

<sup>6</sup> Ex. 2. Testimony of T. M, L. T, and C. Baker.

assessment that found she met the necessary level of care to qualify for waiver services on January 8, 2019.

On January 16, 2019, Ms. M filed a reapplication for waiver benefits. DPA awarded waiver benefits effective January 8, 2019 to January 9, 2020 based on the January 16, 2019 application. Because the M family believed the original application submitted October 3, 2018 should have been the basis for the award, they requested Ms. M receive waiver benefits retroactive to October 3, 2018.

There were a number of disputed factual issues in this case. However, the disputed issues all relate to whether Ms. M's October 3, 2018 application was handled properly. A large part of the hearings in July 2019 addressed the intricate factual details relevant to those issues and a clearer outline of events was established. However, the details of file management ultimately make no difference to the question of whether retroactive benefits are available and need not be addressed in this decision.

### **III. Discussion**

The issue in this case is whether DPA correctly denied a request by Ms. M for payment of retroactive waiver benefits beginning October 3, 2018. Because this case involves an initial determination of benefits rather than termination or denial of established benefits, Ms. M has the burden of proving by a preponderance of the evidence that her request should have been approved.<sup>7</sup>

Ms. M applied for benefits through the Home and Community Based Waiver program on both October 3, 2018 and January 16, 2019.<sup>8</sup> To be eligible for those benefits, a person must meet 1) certain financial eligibility requirements for income and resource limits, as found through an interview and application process with DPA, and 2) require a certain level of care (LOC) as assessed by the Division of Senior Disability Services (DSDS), not DPA.<sup>9</sup> A person will only be eligible if the LOC assessment determines the applicant require services equivalent

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<sup>7</sup> 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 shows that the fact sought to be proved is more probable than not. *Black's Law Dictionary* 1064 (5th Ed. 1979).

<sup>8</sup> 7 AAC 130.200-319.

<sup>9</sup> 7 AAC 130.205; 7 AAC 130.207.

to those provided in a skilled or intermediate nursing facility.<sup>10</sup> The standards for those services are set forth by regulation.<sup>11</sup>

The purpose of the Home and Community Based Waiver Program is to support the independence of Alaskans who experience physical or developmental disabilities by providing services in their homes and in the community rather than in an institution such as a nursing home. Alaska has a variety of waiver services, each with its unique eligibility requirements and covering different sets of services. Waivers are not the same as traditional Medicaid.<sup>12</sup>

Ms. M did not request traditional Medicaid benefits in either October 2018 or January 2019. Her son knew her financial resources were too great for her to be eligible, so he did not apply for those on her behalf.<sup>13</sup>

Federal law requires retroactive benefits be available to traditional Medicaid recipients.<sup>14</sup> Alaska has adopted a regulation to implement that law.<sup>15</sup> Thus, if a person qualifies for traditional Medicaid, she may request benefits for the three months prior to the successful application. She will receive retroactive benefits if her income in those months also meets eligibility requirements.<sup>16</sup>

However, the rules governing waiver benefits in this case are different. They are set forth in 7 AAC 130.200-319. There is no provision for retroactive benefits for the services requested by Ms. M.<sup>17</sup> The DPA representative and Ms. M's care coordinator testified that benefits for the services requested by her cannot begin until DSDS completes the LOC assessment. Thus, because Ms. M's LOC was not complete until January 9, 2019, no benefits prior to that date were available to her regardless of which application was considered.

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<sup>10</sup> *Id.*

<sup>11</sup> 7 ACC 140.515 (skilled nursing); 7 AAC 140.510 (intermediate nursing).

<sup>12</sup> Testimony of J. Miller, C. Baker, and L. T.

<sup>13</sup> Testimony of T. M.

<sup>14</sup> 42 US Code, Sec. 1396a(a) (34). "A State plan for medical assistance must...provide that in the case of any individual who has been determined to be eligible for medical assistance under the plan, such assistance will be made available to him for care and services included under the plan and furnished in or after the third month before the month in which he made application (or application was made on his behalf in the case of a deceased individual) for such assistance if such individual was (or upon application would have been) eligible for such assistance at the time such care and services were furnished."

<sup>15</sup> 7 AAC 100.072, Retroactive Medicaid Eligibility.

<sup>16</sup> 7 AAC 100.072(c); Testimony C. Baker and L. T.

<sup>17</sup> *Id.*

#### **IV. Conclusion**

The DPA's determination Ms. M was eligible for waiver benefits effective January 9, 2019 and denying her any retroactive waiver benefits is Affirmed.

Dated September 26, 2019.

*Signed* \_\_\_\_\_  
Carmen E. Clark  
Administrative Law Judge

#### **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 10<sup>th</sup> day of October, 2019.

By: *Signed* \_\_\_\_\_  
Name: Carmen Clark  
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.]