

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

In the Matter of)
)
N Z) OAH No. 20-0415-MDE
) Agency No.
_____)

DECISION

I. Introduction

N Z is a Medicaid recipient who received Medicaid benefits through October 2019. His benefits ended and he reapplied for Medicaid benefits, including retroactive benefits, on December 11, 2019. The Division of Public Assistance (Division) approved his application effective January 2020 but denied retroactive benefits for November and December 2019 because it determined his resources exceeded the \$2,000.00 resource cap for those months. Mr. Z, through his court-appointed guardian, requested a hearing to contest that decision.

The hearing was held on July 15, 2020. The Division was represented by Jeff Miller. N Z was represented by his guardian and brother, X Z. Based on the evidence in the record and an explanation of how resource eligibility is calculated, X Z agreed that his brother, N Z, was over the resource eligibility limit to receive retroactive Medicaid benefits if all the bank accounts reviewed by the Division were properly attributed to him. However, he claimed those bank accounts belonged to him and not his brother. The record was held open until September 9, 2020 for X Z to provide additional bank records and the parties to brief the issue of whether the funds in those accounts belonged to N Z.

Following review of the submitted documentation and supplemental briefing, this decision concludes N Z exceeded the resource limitation for eligibility in November and December 2019.

Accordingly, the Division’s denial decision is Affirmed.

II. Facts

N Z is a single, adult man. He had been receiving Medicaid benefits through October 2019 and did not receive benefits in November or December 2019.¹ His brother, X Z, is his guardian. X Z applied for the Medicaid long-term care benefits on behalf of his brother on

¹ Ex. 3.1.

December 11, 2019.² Ultimately this request was approved January 12, 2020.³ The accompanying request for retroactive Medicaid benefits was denied, however.⁴

The Division denied retroactive benefits for November and December 2019 based on a finding N Z's resources exceeded the financial eligibility limitation for those months.⁵ The Division's decision was based on review of three accounts at Bank A listed as resources in N Z's application. The listed accounts were a checking account ending in 0461, a savings/debit card account ending in 4658, and an account labeled "burial" ending in 4665.⁶ Regulations require the Division base financial eligibility determinations on resources as they exist on the first day of the month.⁷ The applicable financial ceiling for resources for an individual to retain Medicaid eligibility is \$2,000.00.⁸ Analyzing accounts ending 0641 and 4658, the Division concluded N Z's resources were \$2,235.00 on November 1, 2019⁹ and \$2,440.00 on December 1, 2019.¹⁰

Mr. Z appealed that determination on April 22, 2020.¹¹

The hearing was held on July 15, 2020. The Division was represented by Jeff Miller. Mr. Z was represented by his brother, X Z. X Z agreed that N Z would have been over the resource limit and ineligible to receive retroactive benefits on November 1 and December 1, 2019 if the bank accounts considered by the Division were resources belonging to N. However, he argued the Bank A accounts 0641 and 4658, listed in N Z's application, should not have been used in the tally of his brother's resources because he, not his brother, was owner of those accounts.¹² According to his argument, the Division erred when it included those accounts in its calculation of N Z's resources, and as result N Z would meet eligibility standards and the Division's prior denial decision should be reversed.¹³

² Ex. 2-2.15.

³ Ex. 6.7.

⁴ Ex. 9.

⁵ *Id.* The Division also denied N Z's request for retroactive Medicaid for September and October 2019 because he had already received benefits for those months. That portion of the Division's decision was not appealed.

⁶ Ex. 2-2.15; Ex. 19-19.9.

⁷ 7 AAC 40.270(b).

⁸ 7 AAC 40.270(a)(1).

⁹ Ex. 2.11-12.

¹⁰ Ex. 2.9-10.

¹¹ Ex. 13.

¹² Testimony of M. Z.

¹³ *Id.*

This argument had not been previously presented to the Division. Therefore, the record was held open until September 9, 2020 for X Z to submit additional bank records and the parties to brief this argument.

III. Discussion

The Alaska Medicaid program contains a variety of coverage categories.¹⁴ 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 retain. Because N. Z is applying for benefits, he has the burden of proof, by a preponderance of the evidence, to demonstrate that he is financially eligible for those benefits.¹⁵

N Z is a single man, residing in an assisted living home, who applied for Medicaid under the Long-Term Care Coverage category.¹⁶ As such his resources may not exceed \$2,000.00. The resources are counted at the beginning of the month.¹⁷ This resource limit applies to retroactive Medicaid benefits.¹⁸ Resources are defined as “any real or personal property that an applicant, together with his or her spouse under 7 AAC 40.240, owns and can convert to cash to be used for his or her support or maintenance.”¹⁹ The federal Medicaid regulation states in relevant part, “[i]f the individual has the right, authority or power to liquidate the property or his or her share of the property, it is considered a resource.”²⁰ Bank accounts are typically counted as a resource.²¹

Here, the Division denied N Z’s application for retroactive Medicaid benefits because bank records demonstrated he exceeded the \$2,000.00 resource cap on November 1, 2019 and December 1, 2019.²² X Z acknowledged that if the Bank A accounts were properly designated N

¹⁴ See, 7 AAC 100.002.

¹⁵ 7 AAC 49.135.

¹⁶ Exs. 2-2.8.

¹⁷ 7 AAC 100.500 and 7 AAC 100.502(a)(2) are the regulations that govern financial resources for Medicaid Long-Term care applications. They incorporate the standard Medicaid resource eligibility requirements contained in 7 AAC 100.400(a)(14) which in turn incorporate the Adult Public Assistance eligibility requirements contained in 7 AAC 40.270. Pursuant to that regulation, a single applicant/recipient may not have more than \$2,000.00 in countable resources, which is measured “at any time on he first day of the calendar month.”

¹⁸ 7 AAC 100.072(d)(3).

¹⁹ 7 AAC 40.260. See note 19 above.

²⁰ 20 C.F.R. § 416.1201(a)(1).

²¹ 7 AAC 40.260. See note 19 above.

²² See 7 AAC 40.090(8); 20 C.F.R. § 416.1201(b). 7 AAC 40.270(b) directs the Division to determine the value of financial institution accounts on the first day of the calendar month. Thus, when valuing bank accounts, balance fluctuations at other times in the month and outstanding checks are irrelevant.

Z's resources, the Division's decision was correct. He argued, however, the bank accounts were improperly designated as resources belonging to his brother because he, rather than N Z, was the owner of the accounts. In support of that argument he submitted eight pages of records from Bank A." The signature card is clearly handwritten as "X Z guardian of N J. Z."²³ The account ending in 4658 is a debit card/checking account. The account title is "N Z C/O X Z." X Z is listed as guardian for the account.²⁴

To support his argument, X Z focuses on the fact that the Personal Signature Card for 0461 lists him as the "owner" of the account. While use of that term might theoretically cause some confusion regarding whether the account qualifies as a resource for N Z, emphasis on only a portion the banking label distorts the record and ignores the reality of legal ownership. The complete name on the document specifically identifies X Z as *Guardian of N Z* as the owner of the account.²⁵ The accounts ending 0461 and 4658 are guardianship accounts. In other words, while X Z might have signature authority on those accounts, the funds belong to N Z.

A guardian is a person who has "the legal authority and duty to care for another's person or property, especially because of the other's infancy, capacity, or disability."²⁶ The person under the guardian's charge or protection is known as the ward.²⁷ X Z as guardian to N Z is authorized to manage his brother's finances.²⁸ He must control the money to support and maintain N's best interests.²⁹ He cannot use the funds for his own purposes.³⁰ Thus, as guardian X Z does not have any ownership over his brother's money in Bank A accounts 0641 and 4658. With a guardianship account, the money belongs to the ward not the guardian.

N Z, the ward, owns the money in the guardianship accounts ending in 0461 and 4658 regardless of the bank's nomenclature for its records. The money in the accounts is property that can and should be converted for his support or maintenance. That this is so was acknowledged

²³ Ex. A, B.

²⁴ Ex. C., D.

²⁵ Ex. A., B.

²⁶ BLACK'S LAW DICTIONARY 774 (Deluxe 9th Ed. 2009).

²⁷ *Id.* at 1720.

²⁸ AS 13.26.266(b).

²⁹ AS 13.26.001; 13.26.316. More information on the general responsibilities of guardians may be found in *Powers and Duties of Guardians and Conservators of Adults*, Alaska Court System (August 2019)(available on-line at <https://public.courts.alaska.gov/web/forms/docs/pg-510.pdf>).

³⁰ *Id.*

when the two accounts were identified as resources in N Z's application for Medicaid Waiver.³¹
The Division correctly treated the accounts as his resources.

There was no dispute that the account balances were over the \$2,000.00 resource limitation on November 1 and December 1, 2019. Accordingly, the Division did not err when it denied retroactive Medicaid benefits to N Z for those months.

IV. Conclusion

For the reasons contained herein the decision by the Division is Affirmed.

Dated: September 30, 2020

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 26th day of October, 2020.

By: Signed
Name: Jillian Gellings
Title: Project Analyst
Agency: Office of the Commissioner, DHSS

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

³¹ Ex. 2.9, 2.11-12.