

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

In the Matter of)	
)	
C. B.)	OAH No. 24-0372-MDE
_____)	

DECISION

I. Introduction

When calculating Medicaid cost of care for C. B., the Division of Public Assistance (“DPA”) counted as income monthly payments from a structured settlement to a special needs trust. Because these payments are income to the trust, not Mr. B., DPA’s decision is reversed.

II. Facts

In settlement of a personal injury lawsuit against the State of Alaska Department of Corrections in 2002, the superior court established a special needs trust for the benefit of C. B.¹ An annuity pays the trust \$150 per month for the life of Mr. B., with funds intended to provide Mr. B. with supplemental clothing, education, travel, food, entertainment, and medical care and medications.²

Mr. B. receives assisted living facility waiver benefits under Medicaid. When determining his cost of care in 2024, DPA included the \$150 monthly annuity payment as income, which the agency had not in the past.³

Mr. B. appealed on January 16, 2024.⁴ DPA did not refer this matter to OAH for hearing until June 11, 2024. A hearing was attempted on July 2, 2024, but Mr. B.’s Office of Public Advocacy representative did not appear. The hearing was rescheduled and held on July 15, 2024.

III. Discussion

The sole issue Mr. B. disputes is DPA’s treatment as income of the \$150 monthly annuity payment to his special needs trust.

To support its position that the annuity payments are income, DPA pointed to (1) portions of its manual specifying that all income available to an individual should be treated as income;⁵

¹ B. Ex. A.
² *Id.*
³ DPA Ex. 2.-1.19.
⁴ DPA Ex. 4.1.
⁵ DPA Ex. 7.4-7.5.

and (2) a Department of Health and Human Services, Centers for Medicare & Medicaid Services letter regarding treatment of accounts set up under the Achieving a Better Life Experience (“ABLE”) Act as income.⁶

ABLE accounts are tax-advantaged savings accounts for disabled individuals.⁷ Mr. B.’s trust is not an ABLE account.⁸

As specified in the court order creating it, this is a special needs trust.⁹ A court may create a special needs trust to hold funds from a legal settlement for the benefit of a disabled person.¹⁰ Under federal statute, funds paid to a special needs trust are not income.¹¹ OAH has also previously held that annuity payments from a court settlement to a special needs trust are not income because the payments are received by the trust, not the beneficiary.¹² Similarly, the \$150 monthly annuity payments here are received by Mr. B.’s special needs trust, not by Mr. B. himself. The annuity payments are not funds paid to or available to Mr. B. and therefore are not income.

Because the annuity payments are not made to Mr. B., but to a type of trust that federal law specifies is not to be treated as income, DPA should not have treated the annuity payments here as income in determining Mr. B.’s cost of care.

IV. Conclusion

For the reasons discussed above, DPA’s decision to treat the annuity payments as income in calculating Mr. B.’s cost of care is reversed.

Dated: July 16, 2024

By: Signed
Signature
Rebecca Kruse
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.]

⁶ Ex. 6-6.6.

⁷ 26 U.S.C. § 529A.

⁸ Young testimony; B. Ex. A; B.

⁹ B. Ex. A.

¹⁰ 42 U.S.C. § 1396p(d)(4)(A); 7 AAC 100.612.

¹¹ 42 U.S.C. § 1396p(d)(4)(A).

¹² *In re SD*, OAH 17-0970-MDE (2018).

Adoption

The undersigned, by delegation from the Commissioner of Health, 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 August, 2024.

By: Signed
Signature
Daniel R. Phelps II
Name
Process Improvement Manager
Title

