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

In the Matter of	)	
	)	
Q. T.	)	OAH No. 23-0122-MDE
	)	

DECISION

I. Introduction

Q. T. applied for Medicaid benefits. After Mr. T.'s application was initially denied and he requested a hearing, the Division of Public Assistance (DPA) reopened the application, and subsequently notified Mr. T. that his Special Needs Medicaid Trust did not satisfy the Medicaid program's financial eligibility requirements.

Mr. T.'s hearing proceeded on March 7, 2023 on the issue of whether his Special Needs Medicaid Trust satisfied the applicable financial regulatory requirements. Mr. T. was represented by Richard Vollertsen, Esq. K. G., Mr. T.'s Life Care Manager, testified on his behalf. Sally Dial, a Fair Hearing representative with DPA represented it and testified on its behalf.

The evidence in this case demonstrated, by a preponderance of the evidence, that Mr. T. previously qualified for Alaska Medicaid, utilizing the same regulatory criteria for his Trust instrument. He left Alaska and was taken off the Alaska Medicaid rolls. When he returned to Alaska, he reapplied for Alaska Medicaid and his previously approved Trust instrument had not changed. Because there has been no change in the Trust instrument, other than a substitution of the Trustee, and no change in the applicable regulatory criteria since his earlier approval, Mr. T. has established that he continues to be financially eligible for Alaska Medicaid benefits. Accordingly, the denial of his application is reversed.

II. Facts and Course of Proceedings

Mr. T. is a severely disabled adult, with a primary diagnosis of quadriplegia.[1] Mr. T. was originally approved to receive Alaska Medicaid benefits in 2009.[2] After that approval, the "Q. T. Irrevocable Asset Trust" was created in May 2011 by court order and registered with the

[1] Exs. M, 0.
[2] Ms. Dial's testimony.

Anchorage, Alaska Superior Court on May 5, 2011.[3] The Trust instrument states that Mr. T. was "last . . . determined to be blind or disabled on or about December 2009."[4]

Ms. Dial reviewed DPA's online computer records pertaining to Mr. T.'s prior Medicaid coverage during the hearing. Her review showed that Mr. T. Medicaid benefits were originally issued in a general Adult Public Assistance/Disabled eligibility category for Medicaid but changed in August of 2013 to an eligibility category that could have involved his Trust. However, she did not see any specific indication in those records that showed his Trust had been specifically sent to or approved by Medicaid policy staff. Her review did find one note regarding an unidentified issue with Mr. T.'s Trust in July of 2012. Those same records showed that Mr. T. received Alaska Medicaid benefits continuously from November 2009 through March of 2018.[5]

Mr. T. subsequently moved to Florida and he began receiving Medicaid benefits through the State of Florida effective with the month of December 2018.[6]

Mr. T. returned to Alaska in 2022. The Trustee of his Trust was changed by court order on April 6, 2022.[7] However, the language in the Trust instrument was not changed. He applied for Alaska Medicaid benefits on October 12, 2022.[8] DPA requested more information from him, with that information due no later than November 21, 2022.[9]

On December 13, 2022, the Division of Senior and Disabilities Services notified Mr. T. that he met the Nursing Facility Level of Care requirement necessary to qualify for Medicaid Home and Community-Based Waiver benefits. However, its approval notice also notified Mr. T. that "[y]ou must also meet financial eligibility requirements as administered by Division of Public Assistance."[10]

On January 25, 2023, because Mr. T. had not heard from DPA regarding the status of his application, Mr. T.'s Medicaid Care Coordinator sent an email to DPA asking for information.

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3 Exs. 2 – 2.27.

4 Ex. 2.6. It should be noted that there is information in the record showing that the Social Security Administration (SSA) found him "disabled on July 9, 2009." *See* Ex. I. There is, however, no information in the record as to when the SSA made that disability determination, which can be a considerable time later after the date of disability onset.

5 Ms. Dial's testimony. *Also see* Exs. J – L.

6 Ex. N.

7 Exs. 2.30 – 2.31.

8 Ex. A.

9 Ex. B.

10 Ex. Q, p. 1.

No response was received and another email was sent to DPA on January 30, 2023.[11] On January 30, 2023, DPA notified Mr. T. that it was denying his Medicaid application because he did not respond to its earlier request for information.[12] Mr. T. requested a hearing. After his hearing request, DPA vacated its earlier dismissal and reviewed his Trust documents. DPA then notified Mr. T. on March 2, 2023, that his Trust did not satisfy the applicable regulatory requirements and needed to be modified by March 13, 2023:

> Q.'S SPECIAL NEEDS MEDICAID TRUST NEEDS CORRECTIONS IN ORDER TO BE APPROVED:
>
> - PER 7 AAC 100.604(B)(3), THE TRUST DOCUMENT MUST IDENTIFY THE DATE THE BENEFICIARY WAS LAST DETERMINED OR RE-DETERMINED BLIND UNDER 7 AAC 140.140(A) OR DISABLED UNDER 7 AAC 40.170(A).[13]

On March 2, 2023, DPA filed a motion to alternatively dismiss or postpone the case, stating that the case was not ripe for hearing because DPA had withdrawn its earlier denial and instead requested correction of the Trust. That motion was denied, and the hearing proceeded on March 7, 2023 as scheduled.

III. Discussion

This is an application for benefits. As such, Mr. T. has the burden of proof by a preponderance of the evidence.[14] Because DPA's notice of March 2, 2023 clearly stated that Mr. T.'s application would not be approved unless the Trust was modified and gave him only until March 13, 2023 to modify it, this was effectively a denial of the application due to alleged deficiencies in the Trust, especially given the length of time necessary to obtain court approval for an amended Trust.[15] The salient issue is whether the existing Trust instrument, without the modification requested by DPA, satisfies the regulatory requirements.

The general rule is that assets held or funds disbursed by "grantor" trusts, whether revocable or irrevocable are considered, under certain circumstances, to be the assets or income of the recipient.[16] There are, however, three types of trusts, that will not be counted as an

[11] Ex. D.
[12] Ex. B.
[13] Ex. 3.2 (capitalization in original).
[14] 7 AAC 49.135.
[15] For an example of the timelines involved in modifying a court-approved Trust, the court order changing the Trustee in Mr. T.'s Trust was originally filed with the Court in mid-January 2022, recommended for approval by a Magistrate Judge on February 14, 2022, and not signed by the Superior Court Judge until April 6, 2022. (Exs. 2.30 – 2.31).
[16] 7 AAC 100.602.

applicant/recipient's asset or income for Medicaid financial eligibility purposes.[17] One of those types of trust is a "special needs trust," which is the type of trust involved in this case.[18]

The Alaska regulations set forth the basic requirements for a special needs trust. They include a requirement that the trust "identify the date the beneficiary was last determined or redetermined blind under 7 AAC 40.140(a) or disabled under 7 AAC 40.170(a)."[19] This portion of the regulation has not changed since 2007.[20] Specifically, the Trust instrument reads "last . . . determined to be blind or disabled on or about December 2009."[21] DPA maintains, however, that this language is insufficient to meet the regulatory requirements and that a month, day, and year is required, not merely a statement of the month and year.

What is notable in this case is that the evidence shows that Mr. T.'s Trust was created in 2011 and was approved by DPA. This conclusion that it was approved by DPA is shown by the fact that DPA was aware of the Trust, given Ms. Dial's testimony, shows that an issue was raised about the Trust in 2012, and although Ms. Dial was not able to identify the specific issue or find an explicit approval of the Trust given the limited information that she was able to access, Mr. T. received Alaska Medicaid benefits continuously through March of 2018. This means that the Division had to have reviewed and approved his Trust during that eligibility period.

Neither the language of the Trust instrument nor the applicable portion of the Medicaid regulations have changed since 2011, when Mr. T.'s Trust was created. What has happened instead in that the DPA, in Mr. T.'s case, is interpreting the regulation differently than when it originally approved the Trust: it now asserts that the exact day, month, and year of the disability needs to be provided in the Trust instrument, rather than the month and year which it previously approved. DPA has given no reason for this narrower reading of the regulation. In fact, this narrow reading is inconsistent with the official statement of the Social Security Administration, the government entity that determines disability,[22] which reads "[i]n many instances, we do not need to establish an exact [established onset date] for [disability insurance benefit] claims. After the first day of the month, all other days of that month have an equal effect on the claimant's

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[17] 7 AAC 100.604(a).

[18] *See* 7 AAC 100.604(a)(2) and 7 AAC 100.612.

[19] 7 AAC 100.604(b)(3).

[20] The 2007 version of the regulation was enacted effective July 20, 2007 – Register 183. The current version of the regulation went into effect August 1, 2020, Register 235. However, the portion of the regulation involved in this case, 7 AAC 100.604(b)(3), was not changed when the regulations was amended in 2020.

[21] Ex. 2.6.

[22] 7 AAC 100.604(b)(3); 7 AAC 40.140(a); 7 AAC 40.170(a).

monthly benefit and waiting period."[23] Accordingly, the Division having earlier determined that this exact Trust instrument met regulatory requirements, which would have included the date of disability determination, and those regulatory requirements having not changed since the earlier approval, it may not now deny Mr. T.'s application based upon his Trust not having a specific day of the disability determination month stated in the Trust instrument.

IV. Conclusion

Mr. T.'s Trust satisfies the regulatory requirements for a special needs Medicaid trust. Accordingly, the Division may not require that it be amended. Consequently, the denial of Mr. T.'s application is reversed.

Dated: March 17, 2023

SIGNED
Lawrence A. Pederson
Administrative Law Judge

[23] SSA Program Operations Manual System, DI 25501.300 (Ex. F).

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 27th day of April, 2023.

By: SIGNED
Name: Daniel Phelps
Title: Project Coordinator

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