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**STATE OF ALASKA  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
OFFICE OF HEARINGS AND APPEALS**

In the Matter of )  
 )  
 [REDACTED], ) OHA Case No. 09-FH-412  
 )  
 Claimant. ) DPA Case Nos. [REDACTED]  
 )  
 \_\_\_\_\_ )

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

[REDACTED] (Claimant) was a recipient of Adult Public Assistance Program and Medicaid Program benefits (Ex. 1). On May 8, 2009 the Claimant signed and submitted an Eligibility Review Form (Form Gen-72) to the State of Alaska Division of Public Assistance (DPA or Division) (Exs. 2.0 – 2.5). The Claimant’s wife, [REDACTED], applied for Alaska Temporary Assistance Program (ATAP), Food Stamp Program, and Medicaid Program benefits on May 13, 2009 (Exs. 2.6 – 2.15).

On May 28, 2009 the Division mailed to the Claimant a notice stating that Family Medicaid benefits had been approved for the Claimant’s wife, daughter, and son for June 2009, but that eligibility would be re-determined for July 2009 (Ex. 5).

On June 4, 2009 the Division mailed to the Claimant a notice titled “Medicaid Closed – Over Income” (Ex. 7.0). On June 4, 2009 the Division also mailed to the Claimant a second notice titled “APA Closed – Over Income” (Ex. 7.1). On an unspecified date between June 4, 2009 and July 7, 2009 the Division mailed to the Claimant a revised APA / Medicaid case closure notice which changed or corrected the benefit termination date from June 30, 2009 to July 31, 2009, and which also addressed termination of the Claimant’s Family Medicaid benefits (Ex. 7.2).

The Claimant requested a fair hearing on July 7, 2009 (Exs. 8.0 – 8.2). This Office has jurisdiction to resolve the dispute pursuant to 7 AAC 49.010.

On July 8, 2009 the Division notified the Claimant that the Family Medicaid coverage for him and his wife would be continued pending the outcome of the Claimant's hearing (Ex. 8.3). On July 10, 2009 the Division notified the Claimant that the hearing regarding the termination of his Family Medicaid benefits would be held on September 9, 2009 (Exs. 61, 62).

Pursuant to the Claimant's request, a hearing was held on September 9, 2009 before Hearing Officer Jay Durych. The Claimant and his wife attended the hearing telephonically. The Claimant represented himself and testified on his own behalf. The Claimant's wife also testified on behalf of the Claimant. [REDACTED], Public Assistance Analyst with the Division, attended the hearing in person and represented and testified on behalf of the Division. The parties' testimony was received and all exhibits submitted were admitted into evidence. At the end of the hearing the record was closed and the case was submitted for decision.

### **ISSUES**

1. Was the Division correct to terminate the Claimant's Family Medicaid Program benefits effective July 31, 2009 based on the assertion that there was no longer an eligible / dependent child living in the Claimant's home?
2. Was the Division correct to terminate the Claimant's Adult Public Assistance (APA) benefits effective July 31, 2009 based on the assertion that the Claimant's household's monthly income exceeded the Adult Public Assistance Program's applicable monthly income limit?
3. Was the Division correct to terminate <sup>1</sup> the Claimant's APA-related Medicaid Program benefits effective July 31, 2009 based on the assertion that the Claimant's household's monthly income exceeded the APA-related Medicaid Program's applicable monthly income limit?

### **FINDINGS OF FACT**

The following facts were established by a preponderance of the evidence:

1. The Claimant's household consists of four persons (Ex. 2.0). These are the Claimant, his wife, his daughter (born [REDACTED], 1990), and his son (born [REDACTED], 1991) (Ex. 2.0).
2. The Claimant is disabled and receives Social Security Disability Income (SSDI) from the United States Social Security Administration in the amount of \$901.00 per month (Exs. 4.0, 6.0).

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<sup>1</sup> Because some of the Division's notices informed the Claimant of actions taken with regard to more than one benefit program, the record was not completely clear as to whether the Division's action with regard to the APA-related Medicaid program was an initial denial of the Claimant's wife's application or was a termination of the Claimant's existing APA-related Medicaid benefits. This difference is normally significant in that the Claimant has the burden of proof with regard to initial applications, while the Division has the burden of proof with regard to termination of existing benefits (see section titled Principles of Law, below). Because of the uncertainty in the notices, the burden of proof has been placed on the Division. Doing so eliminates any possible error given the resolution of this case in favor of the Division.

During the period March 2009 – July 2009 the Claimant was also receiving Adult Public Assistance benefits and related APA/Medicaid benefits from the State of Alaska (Ex. 1).

3. The Claimant was receiving Family Medicaid Program benefits as of May 8, 2009 (Ex. 1). On that date the Claimant signed and submitted an Eligibility Review Form (Form Gen-72) to the Division (Exs. 2.0 – 2.5).

4. The Claimant's wife, [REDACTED], applied for Medicaid Program benefits on May 13, 2009 (Exs. 2.6 – 2.15). On that date (May 13, 2009) the Claimant, his wife, and their daughter participated in a DPA eligibility interview (Ex. 4.0).

5. The Claimant's wife was working full time but her employment was terminated on March 7, 2009 (Ex. 4.0). As of May 28, 2009 she was receiving \$226.00 per week / \$971.80 per month in unemployment insurance benefits, plus an additional unemployment insurance benefit of \$25.00 per week / \$107.50 per month pursuant to the American Recovery and Reinvestment Act of 2009 (Exs. 4.0 – 4.1; Ex. 6.0). Her monthly income thus totaled \$1,079.30.

6. The Claimant's daughter was [REDACTED] years old during the period relevant hereto (Ex. 2.0). She has graduated from high school, attends college part-time, and works for an auto supply store part-time (Ex. 4.0). As of June 3, 2009 she was earning \$696.60 per month (Ex. 6.0).

7. The Claimant's son was [REDACTED] years old during the period relevant hereto (Ex. 2.0). He graduated from high school in [REDACTED] and is not yet employed (Exs. 4.0, 6.0). He receives \$363.00 per month in Social Security benefits (Exs. 4.1, 6.0).

8. On May 27, 2009 the Division determined that the Claimant's wife was receiving the unemployment insurance benefits referenced in Paragraph 5, above and made the decision to terminate the Claimant's Adult Public Assistance and related APA/Medicaid benefits effective June 30, 2009 (Ex. 3).

9. The Division's electronic file case notes dated May 28, 2009 state that as of that date the Division intended to terminate the Claimant's wife's Family Medicaid benefits, and change the Claimant's son's Medicaid coverage from the Family Medicaid category to the Under 21 Medicaid category, based on the information obtained during the eligibility interview (Ex. 4.1).

10. On May 28, 2009 the Division mailed to the Claimant a notice stating that Family Medicaid benefits had been approved for the Claimant's wife, daughter, and son for June 2009, but that eligibility would be re-determined for July 2009 (Ex. 5).

11. The Division conducted a computerized Medicaid income eligibility assessment for the Claimant on June 3, 2009 (Ex. 6.2).

12. On June 4, 2009 the Division mailed to the Claimant a notice titled "Medicaid Closed – Over Income" (Ex. 7.0). This notice stated in relevant part as follows:

Your Medicaid case is closed. You will not get benefits after June 2009 because your income amount is now over the limit for this program . . . .

\$2,406.00 is the Medicaid countable income for your household. \$1,301.00 is the Medicaid income limit for your household size.

\* \* \* \* \*

Family Medicaid Manual Sections 5020 and 5172; Aged / Disabled / LTC Medicaid Manual Sections 523 and 550-C; and APA Manual Section 451-1 support this action.

[Your son] is the only household member who remains eligible for Medicaid through the Denali Kid Care [DKC] Medicaid Program [because its] income limits are a lot higher than for Family Medicaid and Under 21 Medicaid. Your Social Security Income, [your wife's] unemployment income, and [your daughter's] income put all three of you over-income for any of the Medicaid programs. When [your wife's] unemployment [insurance payments] end or she starts working, you are welcome to reapply for APA (Adult Public Assistance) and Medicaid. Medicaid continues for [your son] under [DKC] because he is still under 19 years old.

13. On June 4, 2009 the Division also mailed to the Claimant a second notice titled "APA Closed – Over Income" (Ex. 7.1). This notice stated in relevant part as follows:

We closed your Adult Public Assistance (APA) case because your income is over the APA program limit. You will not receive an APA payment after June 2009.

\$1,504.00 is the APA income limit for your household.

\* \* \* \* \*

You may reapply for APA any time with a new application.

This action is supported by APA Manual Section 480-1.

You are welcome to reapply when [your wife's] unemployment benefits stop or when she starts working again.

14. On an unspecified date <sup>2</sup> between June 4, 2009 and July 7, 2009 the Division mailed to the Claimant a revised Medicaid closure notice (Ex. 7.2). The notice was titled "Medicaid Denied – Other Reasons" and stated in relevant part as follows:

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<sup>2</sup> For unknown reasons this notice (Ex. 7.2) has the numbers "999999" printed in the place where the date of the notice is supposed to be stated. In many cases the failure of a notice to state its date would be fatal to the Division's determination and require reversal of the Division's decision. This is because 7 AAC 49.060 generally requires that the Division "give written notice to the client at least 10 days before the date the division intends to take action denying, suspending, reducing, or terminating assistance . . . ." In this case, however, it is clear from the

\* \* \* \* \*

You do not have an eligible child living in your home who meets the Family Medicaid age requirements. This action is based on Family Medicaid Manual Section 5013.

\* \* \* \* \*

Medicaid Manual Section 5013C supports this action. This is a corrected notice on the June 2009 denial of your [Medicaid] application. The Family Medicaid was denied due to no eligible child in the home – your son . . . turned 18 and is no longer in school. Eligibility terminated July 2009 and not June 2009 as first stated. Your household was over income for other potential [Medicaid] categories.

15. On July 7, 2009 the Claimant's wife requested a hearing regarding the Division's termination of her Family Medicaid benefits and her husband's Family Medicaid benefits (Exs. 8.0 – 8.2). The Claimant's wife also requested that her Family Medicaid benefits and her husband's Family Medicaid benefits be continued pending the outcome of their hearing (Exs. 8.0 – 8.2).

16. On July 8, 2009 the Division mailed a notice to the Claimant advising that, pursuant to the Claimant's request, his family's Medicaid benefits were being continued pending issuance of a decision in this case (Ex. 8.3).

17. At the hearing of September 9, 2009 the Claimant testified by telephone as follows:

a. He has been disabled for approximately five years. He always worked for a living prior to becoming disabled.

b. He has had three operations in the last five years, and needs one more surgery soon.

c. He himself has some form of medical insurance coverage through AARP. However, he is concerned about ensuring medical coverage for the rest of his family. He is particularly concerned about ensuring medical coverage for his wife, who has had three sinus-related surgeries and three back surgeries.

d. Without Medicaid coverage his family cannot afford needed medical care. He has previously had to borrow money to obtain medical care.

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Division's internal memoranda, and from the timing of the Claimant's filing of his hearing request, that the notice was received by July 7, 2009 (see Exhibits 8.0 – 8.2). Accordingly, the Division's notice in this case was timely.

e. Many doctors do not wish to accept patients who are covered by Medicare and / or Medicaid and this is also a big problem. The Claimant is paying one of his doctors \$200.00 per month out of his own pocket because of this.

f. His son recently became ■ years of age. Both his son and his daughter are attending college.

g. He receives \$901.00 in Social Security benefits per month. Virtually all of this money must go towards payment of the mortgage on his family's home.

18. At the hearing of September 9, 2009 the Claimant's wife testified by telephone as follows:

a. She is sick. Her doctor has told her that she needs to have another surgery. She needs Medicaid so that she can see have this surgery.

b. She wants to work, but she needs to get medical care first.

c. She will only receive unemployment insurance benefits for two more weeks.

19. The Claimant did not assert:

a. that his son was attending school on a full-time basis at the time the Division's Family Medicaid eligibility determination was made;

b. that the Division's findings as to the sources or amounts of the Claimant's household's income were in any way incorrect;

c. that the Division's mathematical calculations regarding the Claimant's household's countable monthly income were in any way incorrect; or

d. that the Division applied an incorrect income standard in making its APA and/or its APA/Medicaid eligibility determinations.

## **PRINCIPLES OF LAW**

### **I. Burden of Proof and Standard of Proof.**

This case involves the Division's termination of existing benefits.<sup>3</sup> The party seeking a change in the status quo normally has the burden of proof.<sup>4</sup> In this case the Division is attempting to change the status quo or existing state of affairs by terminating existing benefits. Accordingly, the Division bears the burden of proof in this case.

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<sup>3</sup> See footnote 1, above.

<sup>4</sup> *State of Alaska Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

The regulations applicable to this case do not specify any particular standard of proof. Therefore, the “preponderance of the evidence” standard is the standard of proof applicable to this case.<sup>5</sup> This standard is met when the evidence, taken as a whole, shows that the facts sought to be proved are more probable than not or more likely than not.<sup>6</sup>

## II. The Medicaid Program – In General.

Medicaid was established by Title XIX of the Social Security Act in 1965 to provide medical assistance to certain low-income needy individuals and families. 42 USC § 1396 et. seq. Medicaid is a cooperative federal-state program that is jointly financed with federal and state funds. *Wilder v. Virginia Hospital Association*, 496 U.S. 498, 501, 110 S.Ct. 2510, 110 L.Ed.2d 455 (1990).

On the federal level, the Secretary of the U.S. Department of Health and Human Services (“HHS”) administers the program through the Health Care Financing Administration (“HCFA”). In Alaska, the Department of Health and Social Services administers the Medicaid program in accordance with applicable federal and state laws and regulations.

Because Medicaid is a federal program, many of its requirements are contained in the Code of Federal Regulations (CFRs) at Title 42, Part 435 and Title 45, Part 233. The Medicaid program’s general eligibility requirements are set forth at 42 CFR Sections 435.2 – 435.1102.

The State of Alaska’s statutes implementing the federal Medicaid program are set forth at A.S. 47.07.010 – A.S.47.07.900. The State of Alaska’s regulations implementing the Medicaid program are set forth in the Alaska Administrative Code at Title 7, Chapters 43 and 100.

## III. Family Medicaid.

The Medicaid program has a large number of eligibility groups because it covers needy individuals in a variety of circumstances. See 7 AAC 100.002. Among its various eligibility groups, the Medicaid program provides medical coverage for financially eligible households that include minor children. See 7 AAC 100.002(a)(1)(B); 7 AAC 100.100. This particular type of Medicaid coverage is known as Family Medicaid. *Id.*

Pursuant to 7 AAC 100.104, certain persons must be included within a Family Medicaid household in order for that household to be eligible for benefits. Where a household consists of a parent or caretaker relative and one or more dependent children, the dependent child or children

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<sup>5</sup> A party in an administrative proceeding can assume that preponderance of the evidence is the applicable standard of proof unless otherwise stated. *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Commission*, 711 P.2d 1170 (Alaska 1986).

<sup>6</sup> *Black’s Law Dictionary* at 1064 (West Publishing, 5<sup>th</sup> Edition, 1979).

must be living in the home of the parent or caretaker relative in order to maintain Family Medicaid eligibility. 7 AAC 100.104(a); 7 AAC 100.110(a).

Pursuant to 7 AAC 100.104(a) to be considered a dependent child, an individual must (among certain other requirements) be “under 18 years of age; or . . . under 19 years of age and enrolled full-time in a secondary school or in the equivalent vocational or technical training . . . .”

#### IV. The Adult Public Assistance Program.

The Adult Public Assistance (APA) Program is a cash benefit program established to furnish financial assistance to needy aged, blind, and disabled persons and to help them attain self-support or self-care. See AS 47.25.430, AS 47.25.590(b), and the DPA website at <http://health.hss.state.ak.us/dpa/programs/apa/> (date accessed July 31, 2009). People who receive APA financial assistance are over 65 years old or have severe and long term disabilities that impose mental and physical limitations on their day-to-day functioning. *Id.*

The APA Program has financial eligibility requirements. Countable monthly income for APA purposes is calculated by adding together an applicant’s and his/her spouse’s gross monthly income (both earned and unearned) and then subtracting allowable income deductions. 7 AAC 40.300; 7 AAC 40.310(a); 7 AAC 40.350. “The income and resources of an applicant’s spouse who is living with [him or her] are considered income and resources of the applicant.” 7 AAC 40.240(a).

7 AAC 40.300 defines “income” for purposes of the APA Program in relevant part as follows:

(a)(1) "income" means any property, money, or service received by an applicant, together with the applicant's spouse . . . which can be used, directly or indirectly to meet the applicant's need for food, clothing, and shelter;

(a)(2) "earned income" means wages or other compensation paid by an employer in exchange for service rendered . . .

(a)(3) "unearned income" means any income that is not earned, including income from . . . disability benefits . . . social security payments . . . assistance payments such as SSI . . . unemployment compensation . . . and any income considered available to the individual under 7 AAC 40.240.

\* \* \* \* \*

7 AAC 40.320 defines “income exclusions” for purposes of the APA Program in relevant part as follows:

(a) The following income is excluded in determining the total monthly income of an applicant, together with the applicant's spouse under 7 AAC 40.240: . . . . (20) \$65 per month of any earned income plus one-half of the remainder . . . . (23) the first \$20 per month of income, earned or unearned, other than unearned income based on need.



\* \* \* \* \*

(b) The exclusions in (a) of this section apply first to unearned income and then to earned income in the order in which they are listed . . . .

7 AAC 40.350 states how an applicant's total monthly income is computed for purposes of the APA Program:

The following computations are made to determine total monthly income: (1) the monthly income available to the applicant is identified by source, type, and amount; (2) from the amounts identified are subtracted any amounts which are excluded under 7 AAC 40.320 or 7 AAC 40.330; (3) the resulting amounts, if any, are added and rounded to the nearest dollar. This amount, which cannot be less than zero, is the total monthly income.

The Adult Public Assistance Program's list of allowable deductions from an applicant's income and his spouse's income is provided in 7 AAC 40.320 and 7 AAC 40.330. There is a general deduction of \$20. 7 AAC 40.330(a)(23). Among the other possible deductions is one provided pursuant to federal regulation 20 CFR 416.1163. 7 AAC 40.330(b). This deduction is given only to households that include a spouse, who is not eligible for Adult Public Assistance, and one or more children: "[w]e then deduct an allocation for ineligible children in the household." 20 CFR 416.1163(b). An "ineligible child" is defined as an individual's "natural child or adopted child, or the natural or adopted child of [their] spouse, or the natural or adopted child of [their] parent or of [their] parent's spouse. . . who is under age 21, lives in the same household with you, and is not eligible for SSI benefits." 20 CFR 416.1160(d).

The Adult Public Assistance program also allows a deduction from household earned income of "\$65.00 per month of any earned income plus one-half of the remainder." 7 AAC 40.320(a)(20). There is no deduction provided for utilities, mortgage payments, or childcare costs. *See* 7 AAC 40.320 - 330.

If an applicant who is part of a married couple who live together in their own home, and only one of them is otherwise eligible <sup>7</sup> for Adult Public Assistance, and the couple have a countable monthly income that exceeds \$1,504.00, then the applicant is not financially eligible for Adult Public Assistance. 7 AAC 40.310(a)(5) and (c); *Alaska Adult Public Assistance Manual Addendum 1*.

#### V. APA-Related Medicaid.

A person who has been approved for Adult Public Assistance is automatically eligible for Medicaid benefits. 7 AAC 100.002(d)(1); 7 AAC 100.410(b). The category of Medicaid which a person automatically obtains as a result of APA eligibility is known as "APA-related Medicaid."

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<sup>7</sup> An applicant is otherwise eligible if he or she is 65 years of age or older, blind, or permanently and totally disabled. *See* 7 AAC 40.020 and 7 AAC 40.120.

Most Medicaid eligibility categories other than Family Medicaid (specifically including APA-related Medicaid) use the APA financial eligibility criteria (discussed above) for making APA-related Medicaid financial eligibility determinations. See 7 AAC 100.400. That regulation, titled “Applicability of APA regulations,” provides in relevant part as follows:

(a) The following APA regulations apply to Medicaid eligibility determinations for the eligibility categories described in 7 AAC 100.002(b), (d), and (e) and 7 AAC 100.400 - 7 AAC 100.426, unless otherwise provided in this chapter . . . . (11) 7 AAC 40.240 (Income and Resources of Spouses) . . . . (16) 7 AAC 40.300 (Income); (17) 7 AAC 40.310 (Income Eligibility Standards); (18) 7 AAC 40.320 (Income Exclusions); (19) 7 AAC 40.350 (Computation of Income) . . . .

Thus, if a person is not financially eligible for APA, the person is likewise not eligible for APA-related Medicaid.

### **ANALYSIS**

#### Introduction: Contentions of the Parties; Definition of Issues.

At the hearing of September 9, 2009 the Division’s hearing representative asserted as follows:

- a. The Division was required to approve APA and Family Medicaid benefits for June 2009 solely because of the timing of the filing of the Claimant’s application and applicable notice requirements (i.e. the Division approved benefits for June 2009 based on procedural grounds rather than “on the merits”).
- b. The Division is required to consider the income of all members of a household when making an eligibility determination.
- c. The Claimant and his wife are no longer eligible for Adult Public Assistance (APA) benefits or APA-related Medicaid benefits because the household’s receipt of the Claimant’s wife’s unemployment insurance benefits and the Claimant’s daughter’s wages, in conjunction with the Claimant’s pre-existing Social Security benefits, caused the household’s income to exceed the APA Program’s maximum monthly income limit.
- d. If the Claimant’s household’s income decreases the Claimant and his wife may become eligible for some form of Medicaid.
- e. The Claimant’s daughter is not eligible for Medicaid coverage because the household’s income is too high. However, if she leaves the Claimant’s household to live on her own, she can then apply for Medicaid on her own behalf.
- f. If the Claimant’s household’s income decreases the Claimant’s daughter may become eligible for Under-21 Medicaid.
- g. The Claimant’s son is eligible for Medicaid coverage under the Denali Kid Care Program.

The Claimant did not directly dispute the Division's assertions. Rather, the Claimant's primary assertion was that he and his wife have a great need for medical coverage (see Findings of Fact at Paragraphs 17-18, above).

There are thus three issues to be decided in this case:

1. Was the Division correct to terminate the Claimant's Family Medicaid Program benefits effective July 31, 2009 based on the assertion that there was no longer an eligible / dependent child living in the Claimant's home?
2. Was the Division correct to terminate the Claimant's Adult Public Assistance Program benefits effective July 31, 2009 based on the assertion that the Claimant's household's monthly income exceeded the Adult Public Assistance Program's applicable monthly income limit?
3. Was the Division correct to terminate the Claimant's APA-related Medicaid Program benefits effective July 31, 2009 based on the assertion that the Claimant's household's monthly income exceeded the APA-related Medicaid Program's applicable monthly income limit?

These issues will be addressed separately in the order stated above. Because the Division is the party attempting to change the status quo, the Division bears the burden of proof on these issues (see footnote 1 and Principles of Law at page 6, above).

#### I. Was The Division Correct To Terminate The Claimant's Family Medicaid Program Benefits?

Where (as here) a household consists of a parent or caretaker relative and one or more dependent children, at least one "dependent child" must be living in the home of the parent or caretaker relative in order to maintain Family Medicaid eligibility. 7 AAC 100.104(a); 7 AAC 100.110(a). Accordingly, the issue to be determined is whether the Claimant had at least one "dependent child" living in his home at the time the Division's eligibility determination was made.

The Claimant's household consists of four persons (Ex. 2.0). These are the Claimant, his wife, his daughter (born [REDACTED], [REDACTED]), and his son (born [REDACTED], [REDACTED]) (Ex. 2.0). At the time the Division's final eligibility determination was made on or about July 7, 2009, the Claimant's daughter was thus [REDACTED] years of age, and the Claimant's son was [REDACTED] years of age.

In order to be considered a "dependent child" for purposes of the Family Medicaid Program, an individual must (among certain other requirements) be "under 18 years of age; or . . . under 19 years of age and enrolled full-time in a secondary school or in the equivalent vocational or technical training . . . ". See 7 AAC 100.104(a).

The Claimant's daughter is [REDACTED]. Accordingly, she can no longer be classified as a "dependent child" under 7 AAC 100.104(a) even if she was attending secondary school full-time.

The Claimant's son is ■. Thus, pursuant to 7 AAC 100.104(a), he can still be considered a "dependent child" as long as he is "enrolled full-time in a secondary school or in the equivalent vocational or technical training . . . ". The Claimant's son graduated from high school in May 2009 (Exs. 4.0, 6.0). The Claimant testified that his son was attending college as of the date of the hearing (September 9, 2009). However, the Claimant did not assert that his son was attending college on a full-time basis *at the time the Division's Family Medicaid eligibility determination was made*.

Further, college is not "secondary school." The American Heritage Dictionary of the English Language (4<sup>th</sup> Edition, Houghton Mifflin Company, 2000) defines "secondary school" in relevant part as "a school that is intermediate in level between elementary school and college and that usually offers general, technical, vocational, or college-preparatory curricula." Thus, one is in secondary school only if one is attending junior high school ("middle school") or high school.

It is undisputed that the Claimant's son graduated from high school in May 2009. Thus, the Claimant's son has been out of "secondary school," and has therefore not been a "dependent child," since May 2009. Accordingly, the Division carried its burden and proved, by a preponderance of the evidence, that there was no longer an eligible / dependent child living in the Claimant's home at the time the Division's final eligibility determination was made on or about July 7, 2009. The Division was therefore correct to terminate the Claimant's Family Medicaid Program benefits effective July 31, 2009.

## II. Was The Division Correct To Terminate The Claimant's Adult Public Assistance Program Benefits?

The Division terminated the Claimant's Adult Public Assistance (APA) benefits based on the assertion that the Claimant's household's countable income exceeded the applicable APA program limit (Ex. 7.1). To determine whether this decision was correct, the Claimant's household's income must be analyzed according to the applicable regulations.

The amount of the Claimant's household's income is not in dispute. At the time of the Division's eligibility determination, the Claimant was receiving Social Security Disability Income (SSDI) in the amount of \$901.00 per month (Exs. 4.0, 6.0). As of May 28, 2009 the Claimant's wife was receiving \$226.00 per week / \$971.80 per month in unemployment insurance benefits, plus an additional unemployment insurance benefit of \$25.00 per week / \$107.50 per month pursuant to the American Recovery and Reinvestment Act of 2009 (Exs. 4.0 – 4.1; Ex. 6.0). As of June 3, 2009 the Claimant's daughter was earning \$696.60 per month (Ex. 6.0). At the time of the Division's eligibility determination the Claimant's son was receiving \$363.00 per month in Social Security benefits (Exs. 4.1, 6.0).

The first step in calculating the household's monthly countable income is to add the monthly income of the Claimant to the monthly income of his spouse. 7 AAC 40.240(a). This results in  $\$901.00 + \$971.80 + \$107.50 = \$1,980.30$ .

The Adult Public Assistance Program's list of allowable deductions from an applicant's income and his spouse's income is provided in 7 AAC 40.320 and 7 AAC 40.330. There is a general deduction of \$20.00 under 7 AAC 40.320(a)(23) for "the first \$20 per month of income, earned

or unearned, other than unearned income based on need.” This reduces the Claimant’s countable monthly household income to \$1,960.30.

The Adult Public Assistance Program also allows a deduction from household *earned income* of “\$65.00 per month of any earned income plus one-half of the remainder.” 7 AAC 40.320(a)(20). However, both the Claimant’s Social Security Disability Income and the Claimant’s wife’s unemployment insurance benefits are classified as “unearned income” pursuant to 7 AAC 40.300(a)(3). Accordingly, this deduction is not available to the Claimant.

The only other possible deduction which appears to apply here is provided by 20 CFR 416.1163 and 7 AAC 40.330(b).<sup>8</sup> Applying the deduction formula of 20 CFR 416.1163<sup>9</sup> results in a \$337.00 deduction for the Claimant’s son and a zero (\$0.00) deduction for the Claimant’s daughter (who has income which offsets the deduction). This \$337.00 is subtracted from the wife’s monthly income of \$1,079.30, thereby reducing the Claimant’s countable monthly income from \$1,960.30 to \$1,623.30.

Where (as here) a claimant is part of a married couple who live together in their own home, and where (as here) only one of them is otherwise eligible<sup>10</sup> for Adult Public Assistance, the maximum monthly countable income limit for the claimant is \$1,504.00. See 7 AAC 40.310(a)(5) and (c); *Alaska Adult Public Assistance Manual* Addendum 1.

The Division has thus carried its burden and proved, by a preponderance of the evidence, that the Claimant’s household’s countable monthly income (\$1,623.30) exceeded the Adult Public Assistance Program’s applicable monthly income limit (\$1,504.00). Accordingly, the Division was correct to terminate the Claimant’s Adult Public Assistance benefits effective July 31, 2009.

### III. Was The Division Correct To Terminate The Claimant’s APA-Related Medicaid Benefits?

The Division terminated the Claimant’s APA-related Medicaid benefits based on the assertion that the Claimant’s household’s countable income exceeded the applicable APA-related Medicaid program limit (Exs. 7.0, 7.2). To determine whether this decision was correct, the Claimant’s household’s income must again be analyzed according to the applicable regulations.

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<sup>8</sup> This deduction is available only to households which (as here) include a spouse, who is not eligible for Adult Public Assistance, and one or more ineligible children. An “ineligible child” is defined as a claimant’s “natural child or adopted child, or the natural or adopted child of [the claimant’s] spouse, or the natural or adopted child of [the claimant’s] parent or of [the claimant’s] parent’s spouse. . . who is under age 21, lives in the same household with you, and is not eligible for SSI benefits.” 20 CFR 416.1160(d). The record indicates that the Claimant’s son and daughter are each eligible for this deduction.

<sup>9</sup> “The allocation for each ineligible child is the difference between the Federal benefits rate for an eligible couple and the Federal benefit rate for an eligible individual.” 20 CFR 416.1163(b)(1). From this amount is subtracted the ineligible child’s own income. 20 CFR 416.1163(b)(2). The resulting figure is then subtracted from the ineligible spouse’s income (from earned income until exhausted, then from unearned income). 20 CFR 416.1163(b)(3).

<sup>10</sup> An applicant is otherwise eligible if he or she is 65 years of age or older, blind, or permanently and totally disabled. See 7 AAC 40.020 and 7 AAC 40.120.

Most Medicaid eligibility categories other than Family Medicaid (and specifically APA-related Medicaid) use the APA financial eligibility criteria (discussed above) for making Medicaid financial eligibility determinations. See 7 AAC 100.400. Thus, if a person is not financially eligible for APA, the person is likewise not eligible for APA-related Medicaid.

As demonstrated above, the Claimant's household's countable monthly income of \$1,623.30 exceeded the Adult Public Assistance Program's applicable monthly income limit of \$1,504.00. Because the Claimant's household's countable monthly income exceeded the Adult Public Assistance Program's applicable monthly income limit, it also exceeded the applicable APA-related Medicaid program limit.

Accordingly, the Division has carried its burden and proven, by a preponderance of the evidence, that the Claimant's household's countable monthly income exceeded the APA-related Medicaid Program's applicable monthly income limit.<sup>11</sup> The Division was therefore correct to terminate the Claimant's APA-related Medicaid benefits effective July 31, 2009.

### CONCLUSIONS OF LAW

1. The Division carried its burden and proved, by a preponderance of the evidence, that:
  - a. The Claimant's household was not eligible for Family Medicaid benefits because there was no longer an eligible / dependent child living in the Claimant's home
  - b. The Claimant was not eligible for Adult Public Assistance (APA) benefits because his household's countable monthly income exceeded the APA Program's applicable household monthly income limit of \$1,504.00.
  - c. The Claimant was not eligible for APA- related Medicaid program benefits because his household's countable monthly income exceeded the Program's applicable household monthly income limit of \$1,504.00.

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<sup>11</sup> The Division's Medicaid termination notice dated June 4, 2009 (Ex. 7.0) stated that "\$1,301.00 is the Medicaid income limit for your household size," and that "\$2,406.00 is the Medicaid countable income for your household" (Ex. 7.0). These are the financial eligibility figures for the Family Medicaid Program, not the APA-related Medicaid program. See Family Medicaid Eligibility Manual at Section 5172 and Addendum 2.

In *Allen v. State, Department of Health & Social Services, Division of Public Assistance*, 203 P.3d 1155 (Alaska 2009) the Alaska Supreme Court stated that "a major purpose served by benefit change or denial notices is protecting recipients from agency mistakes" and that "such notices should provide sufficient information to allow recipients to detect and challenge mistakes."

The Division's Medicaid termination notice dated June 4, 2009 (Ex. 7.0) did not correctly state the income eligibility figures with regard to termination of *APA-related Medicaid*. However, the Division's three notices (Exs. 7.0, 7.1, and 7.2), when viewed collectively, adequately informed the Claimant that the APA-related Medicaid income eligibility limit for his family was \$1,504.00, and that his family was over-income for that program. Accordingly, although the Division's notices in this case could have more clearly distinguished between the criteria for the three programs at issue (Family Medicaid, Adult Public Assistance (APA), and APA-related Medicaid), the Division's notices were never-the-less minimally sufficient under *Allen*.

2. The Division was therefore correct to terminate the Claimant's Family Medicaid Program benefits, Adult Public Assistance (APA) Program benefits, and APA-related Medicaid Program benefits, effective July 31, 2009.

### DECISION

The Division was correct to terminate the Claimant's Family Medicaid Program benefits, Adult Public Assistance (APA) Program benefits, and APA-related Medicaid Program benefits effective July 31, 2009.

### APPEAL RIGHTS

If for any reason the Claimant is not satisfied with this decision, The Claimant has the right to appeal by requesting a review by the Director. To do this, send a written request directly to:

Director of the Division of Public Assistance  
Department of Health and Social Services  
PO Box 110640  
Juneau, AK 99811-0640

If the Claimant appeals, the request must be sent within 15 days from the date of receipt of this Decision. Filing an appeal with the Director could result in the reversal of this Decision.

DATED this \_\_\_\_\_ day of October, 2009.

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Jay Durych  
Hearing Authority

### CERTIFICATE OF SERVICE

I certify that on this \_\_\_\_\_ day of October 2009 true and correct copies of the foregoing document were sent to the Claimant via U.S.P.S. mail, and to the remainder of the service list by e-mail, as follows:

Claimant – Certified Mail, Return Receipt Requested

\_\_\_\_\_, Director  
\_\_\_\_\_, Policy & Program Development  
\_\_\_\_\_, Administrative Assistant II  
\_\_\_\_\_, Eligibility Technician I  
\_\_\_\_\_, Staff Development & Training  
\_\_\_\_\_, Fair Hearing Representative

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J. Albert Levitre, Jr.  
Law Office Assistant I