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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. 11-FH-59
)
 Claimant.) DPA Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

Ms. [REDACTED] (Claimant) completed and signed an application for medical benefits under the Under 21 Medicaid Program, (a sub-program of the Family Medicaid Program), on January 31, 2011 (Exs. 1.0 – 2.9). The State of Alaska Department of Health and Social Services, Division of Public Assistance (DPA or Division) received the Claimant’s application on January 31, 2011 (Ex. 2.0). On February 3, 2011 the Division mailed a notice to the Claimant stating that her application for Under 21 Medicaid benefits had been denied because her countable monthly household income exceeded the Program’s applicable income limit (Ex. 6). On February 4, 2011 the Claimant verbally requested a Fair Hearing (Exs. 7.0, 7.1).

This Office has jurisdiction to resolve this dispute pursuant to 7 AAC 49.010.

The Claimant’s hearing was held on March 16, 2011 before Hearing Examiner Jay Durych. The Claimant participated in the hearing by telephone, represented herself, and testified on her own behalf. [REDACTED], a Public Assistance Analyst with the Division, attended the hearing in person and represented and testified on behalf of the Division. The parties’ testimonies were received and all exhibits submitted by the parties were admitted into evidence. At the end of the hearing the record was closed and the case became ripe for decision.

ISSUE

Was the Division correct when, on February 3, 2011, it denied the Claimant’s application for Under 21 Medicaid Program benefits dated January 31, 2011, because the Claimant’s household’s average monthly countable (net) income exceeded the Under 21 Medicaid Program’s applicable maximum monthly countable (net) income limit?

SUMMARY OF DECISION

The Division's financial eligibility calculations in this case were mathematically correct, and the Division applied the correct income standards. Neither the Division nor this Office have the authority to make exceptions to financial eligibility regulations. Accordingly, DPA was correct when, on February 3, 2011, it denied the Claimant's application for Under 21 Medicaid Program benefits dated January 31, 2011, because the Claimant's household's average monthly countable (net) income exceeded the Under 21 Medicaid Program's applicable maximum monthly countable income limit.

FINDINGS OF FACT

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

1. The Claimant's household consists of four (4) persons (Exs. 1, 2.1). These are the Claimant, her mother and her two brothers (Exs. 1, 2.1).
2. The Claimant completed and signed an application for Under 21 Medicaid Program benefits on January 31, 2011 (Exs. 1.0 – 2.9). The Claimant was 19 years of age at the time of her application (Exs. 1, 2.1). The Division received the Claimant's application on January 31, 2011 (Ex. 2.0).
3. At page 3 of her application the Claimant wrote that she was (a) working part-time about 20 hours per week; (b) paid at the rate of \$10.00 per hour; and (c) paid bi-weekly earning \$800.00 per month. (Ex. 2.2).
4. At page 3 of her application the Claimant also wrote that her mother was (a) working full-time about 40 hours per week; (b) paid at the rate of \$13.00 per hour; and (c) paid bi-weekly earning \$2,080.00 per month. (Ex. 2.2).
5. On February 1, 2011 the Claimant participated by phone in an eligibility interview with a DPA Eligibility Technician (Ex. 3). Following this interview the Claimant's application was held pending receipt of the Claimant's and her mother's last three pay statements (Ex. 3). A written notice confirming the employment income documentation still needed by the Division was mailed to the Claimant on February 2, 2011 (Ex. 4).
6. On February 2, 2011 the Division received the documentation concerning the Claimant's household's employment income which it had requested (Ex. 5). This documentation indicated that the Claimant's own income was as follows (Exs. 5.1 – 5.3):

<u>Pay Period</u>	<u>Pay Date</u>	<u>Gross Wages</u>	<u>Hours Worked</u>
11-21 through 12-4, 2010	12-17-10	\$380.00	38
12-5 through 12-18, 2010	12-31-10	\$400.00	40
1-2 through 1-15, 2011	01-28-11	\$200.00	20

7. The documentation received by the Division on February 2, 2011 indicated that the Claimant's mother's income was as follows (Exs. 5.4 – 5.6):

<u>Pay Period End Date</u>	<u>Gross Wages</u>	<u>Hours Worked</u>
12-12-2010	\$1,076.40	80.00
12-26-2010	\$536.20	40.00
01-28-2011	\$578.32	40.00 ¹

8. Based on the income referenced in Paragraph 6 above, the Division calculated the Claimant's average gross monthly income by (a) adding the gross income from the Claimant's three paychecks (\$380.00 plus \$400.00 plus \$200.00); (b) dividing the total of \$980.00 by three, arriving at an average bi-weekly wage of \$326.67; and (c) multiplying the average bi-weekly wage of \$326.67 by 2.15 to arrive at average monthly gross wages of \$702.33 (Ex. 5).

9. Based on the income referenced in Paragraph 7 above, the Division calculated the Claimant's mother's average gross monthly income by (a) adding the gross income from the Claimant's mother's two lowest and most recent paychecks (\$536.20 plus \$578.32); (b) dividing the total of \$1,114.52 by two, arriving at an average bi-weekly wage of \$557.26; and (c) multiplying the average bi-weekly wage of \$557.26 by 2.15 to arrive at average monthly gross wages of \$1,198.11 (Ex. 5).

10. When the Claimant's average gross monthly income of \$702.33 is added to the Claimant's mother's average gross monthly income of \$1,198.11, the resulting total is \$1,900.44 (Ex. 5.7).

11. From the Claimant's household's average gross monthly income of \$1,900.44, the Division then deducted a \$180.00 work expense deduction (Exs. 5.7, 5.8). This resulted in total household countable (net) income of \$1,720.44 (Exs. 5.7, 5.8).

12. During the 2011 calendar year, the Under 21 / Family Medicaid countable / net income limit for a family consisting of four persons (including at least one adult) was \$1,627.00 (Ex. 5.9; DPA Hearing Representative's testimony). Accordingly, based on the Division's calculations, the Claimant's total countable / net monthly household income of \$1,720.44 exceeded the applicable Under 21 / Family Medicaid countable / net income limit of \$1,627.00 by \$93.44. *Id.*

13. On February 3, 2011 the Division mailed a notice to the Claimant stating that her application for Under 21 Medicaid Program benefits had been denied (Ex. 6). The notice stated in relevant part as follows [Ex. 6 - text format condensed for brevity]:

Your Medicaid application received in our office [on] January 31, 2011 is denied because your monthly countable income is more than the limit for this program. \$1,720.44 is the Medicaid countable income for your household. \$1,627 is the Medicaid income limit for your household size Family Medicaid Manual

¹ The Claimant worked 32 hours at \$13.03 per hour and 8 hours at \$19.55 per hour.

Sections 5020, 5160, and 5172; Aged / Disabled / Long Term Care Medicaid Manual Sections 523 and 550-C; and APA Manual Section 451-3 support this action.

14. At the hearing of March 16, 2011 the Claimant testified in relevant part as follows:

- a. In January [2011] she was having severe abdominal pains and had to go to the emergency room. She was told that she had an ovarian cyst.
- b. She did not have medical insurance. She was told that she should apply for Medicaid.
- c. The bill for the medical services provided to her in January was for \$3,000.00. The hospital has told her that she must pay the bill within six months. She cannot pay this bill on her own within that time.
- d. She is supposed to go to the doctor for a follow-up visit, but she cannot afford to do so without Medicaid coverage.
- e. She (the Claimant) attends college full-time and also works 20 hours per week. Her mother normally works 40 hours per week. However, her mother took some time off for Christmas in December 2010.
- f. She helps her mother with household bills. However, neither she nor her mother earn very much money. By the end of the month, after paying their bills, they have nothing left.

PRINCIPLES OF LAW

I. Burden of Proof and Standard of Proof.

The party seeking a change in the status quo normally bears the burden of proof.² In this case the Claimant is attempting to change the status quo or existing state of affairs by obtaining Under 21 Medicaid benefits. Accordingly, the Claimant bears the burden of proof in this case.

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.³ 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.⁴

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

³ 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, 1179 (Alaska 1986).

⁴ *Black’s Law Dictionary* at 1064 (West Publishing, 5th Edition, 1979).

II. Family Medicaid and Under 21 Medicaid – In General.

Medicaid was established in 1965 by Title XIX of the Social Security Act to provide medical assistance to certain needy individuals and families. 42 USC § 1396 *et. seq.* 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.

In Alaska, the State Department of Health and Social Services (“DHSS”) administers the Medicaid Program in accordance with applicable federal and state statutes and regulations. The State of Alaska’s statutes implementing the federal Medicaid Program are set forth at AS 47.07.010 – AS 47.07.900. The State of Alaska’s regulations implementing the Medicaid Program are set forth in the Alaska Administrative Code at Title 7, Chapter 43 and Chapter 100 *et. seq.*

III. Family Medicaid and Under 21 Medicaid – Relevant Financial Eligibility Requirements.

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. One of the Medicaid Program’s eligibility groups provides medical coverage for financially eligible households that include minor children. See 7 AAC 100.002(a)(1)(B); 7 AAC 100.100. This type of Medicaid coverage is known as Family Medicaid. *Id.* Family Medicaid includes a sub-program for certain persons under 21 years of age; this sub-program is known as “Under 21 Medicaid.” See 7 AAC 100.250 *et. seq.*

In general, eligibility for Under-21 Medicaid is determined according to the Family Medicaid eligibility criteria set forth in 7 AAC 100.100 - 7 AAC 100.199. See 7 AAC 100.250, titled “Under 21 Medicaid.” The exceptions to this general rule are not applicable on the facts of this case.

7 AAC 100.102(c), titled “Determining Eligibility,” provides in relevant part as follows:

(c) A household is financially eligible if . . . (2) the total monthly income available to meet the financial needs of the household does not exceed the 185 percent qualifying income standard established in 7 AAC 100.190 for the household's size and type; and (3) the countable monthly income available to meet the financial needs of the household, after certain amounts are disregarded or deducted under this chapter, does not exceed the need standard [of] 7 AAC 100.190 for the household's size and type.

7 AAC 100.150(b), titled “Availability of Income,” provides in relevant part that, “Except as otherwise provided in this chapter, the department will determine the availability of income to a Family Medicaid household as follows: (1) the income of a parent who resides with that parent’s dependent child is available to the dependent child”

7 AAC 100.160 lists types of income which are exempt or non-countable for purposes of the Family Medicaid Program. However, none of the types of income counted in this case are included.

7 AAC 100.162(a), titled “Child-Student Earned Income Exemption,” provides in relevant part that “[t]he earned income of a *dependent child* who is a full-time or part-time student is exempt when determining Family Medicaid eligibility. [Emphasis added]. Pursuant to 7 AAC 100.104(a)(1), “to be determined a dependent child, an individual must . . . be (A) under 18 years of age; or (B) under

19 years of age and enrolled full-time in a secondary school or in the equivalent vocational or technical training”

7 AAC 100.168, titled “Best Estimate of Prospective Income,” provides in relevant part:

(c) In determining the amount of income anticipated to be received, the department may average the monthly income received . . . in previous months.

(d) If income from a source is received on a weekly or biweekly basis, the department will estimate the anticipated monthly income by multiplying weekly amounts by 4.3 and biweekly amounts by 2.15.

7 AAC 100.180 provides in relevant part as follows:

(a) Before determining eligibility under (b) of this section, the department will first determine if a household's (2) total monthly income is equal to, or less than, the applicable 185-percent standard established in 7 AAC 100.190.

(b) For a household that qualifies under (a) of this section, the department will determine if that household meets the applicable need standard established in 7 AAC 100.190 by determining that household's countable income. Countable income is the total monthly income less all applicable deductions and disregards from income under 7 AAC 100.184 and 7 AAC 100.186.

(c) The department will determine a household to be income eligible for Family Medicaid if (1) that household's countable income is equal to, or less than, the applicable need standard in 7 AAC 100.190; and (2) each individual included in the household meets all other eligibility requirements of this chapter.

7 AAC 100.184, titled “Deductions From Income,” provides in relevant part as follows:

In calculating a household's countable income under 7 AAC 100.180(b), the department will deduct (1) \$90 from the total gross monthly earned income of each individual included in the household who is employed

7 AAC 100.199 provides in relevant part as follows:

In 7 AAC 100.100 - 7 AAC 100.199, unless the context requires otherwise, (1) "countable income" means total monthly income less all applicable deductions and disregards from income under 7 AAC 100.184 and 7 AAC 100.186 (2) "dependent child" means an individual determined to be a dependent child under 7 AAC 100.104(a)(1);⁵ (3) "earned income" means nonexempt gross income earned as an employee (7) "total monthly income" means the sum of a household's

⁵ Pursuant to 7 AAC 100.104(a)(1), “to be determined a dependent child, an individual must . . . be (A) under 18 years of age; or (B) under 19 years of age and enrolled full-time in a secondary school or in the equivalent vocational or technical training”

nonexempt earned income, self-employment income, and unearned income that is received or anticipated to be received in a month

During the 2011 calendar year, the Family Medicaid *gross income limit* for a family of four (including at least one adult) was \$3,009.00. *See* 7 AAC 100.190 and Alaska Family Medicaid Manual, Addendum 2 (Ex. 5.9). During the 2011 calendar year, the Family Medicaid *net income limit* for a family of four (including at least one adult) was \$1,627.00. *See* 7 AAC 100.190 and Alaska Family Medicaid Manual, Addendum 2 (Ex. 5.9).

IV. Other Legal Principles Applicable to This Case.

“Administrative agencies are bound by their regulations just as the public is bound by them.” *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010).

State of Alaska Fair Hearing regulation 7 AAC 49.170 provides in relevant part that “the role of the hearing authority (i.e. this Office) is limited to the ascertainment of whether the laws, regulations, and policies have been properly applied in the case and whether the computation of the benefit amount, if in dispute, is in accordance with them.”

ANALYSIS

Introduction: Definition of Issues.

The Claimant did not assert that the Division’s mathematical calculations regarding the Claimant’s household’s monthly income were in any way incorrect, or that the Division applied an incorrect income standard in making its Family / Under 21 Medicaid income eligibility determination. Rather, the Claimant questioned only the fairness of the Division’s decision given the circumstances of her case. Likewise, the Division did not question the Claimant’s need for medical services or the difficulty of paying for them without Medicaid assistance.

Accordingly, there are no disputed factual issues in this case. The Claimant’s eligibility can be determined as a matter of law by applying the relevant regulations. The analysis which follows will apply the applicable regulations to the undisputed facts of the case to determine whether or not the Division’s eligibility determination was correct.

I. Did the Claimant’s Average Monthly Countable (Net) Income Exceed the Under 21 / Family Medicaid Program’s Applicable Monthly Countable (Net) Income Limit?

The Division denied the Claimant’s application for Under 21 Medicaid benefits based on the assertion that the Claimant’s household’s countable (net) income exceeded the Under 21 Medicaid Program’s applicable countable / net income limit. To determine whether this decision was correct, the Claimant’s household’s income must be analyzed according to the applicable regulations.

The procedure for determining financial eligibility for Under 21 Medicaid has two (2) steps. First, the applicant must meet the gross income test. *See* 7 AAC 100.102(c) and 7 AAC 100.180. If the applicant meets the *gross income test*, he or she must then satisfy the *net income test*. *Id.* Thus, an applicant is only eligible for Under 21 Medicaid if he or she satisfies *both* the gross income test *and*

the net income test. *Id.* If the applicant fails the *gross income test*, the applicant is denied at that point without determining whether the applicant satisfies the *net income test*. *Id.*

In this case, the Claimant's only two countable sources of income were (1) her mother's employment income; and (2) her own employment income (see Findings of Fact at Paragraphs 3-7).

Initially, one might appropriately question whether the "Child-Student Earned Income Exemption," provided by 7 AAC 100.162, applies to the facts of this case. This exemption excludes the income of a full-time or part-time student in certain circumstances. However, the Child-Student Earned Income Exemption applies only to the earned income of a *dependent* child. The facts of this case indicate that the Claimant could be considered a dependent child based on the common understanding of the term.

However, pursuant to 7 AAC 100.104(a)(1), "to be determined a dependent child, an individual must . . . be (A) under 18 years of age; or (B) under 19 years of age and enrolled full-time in a secondary school or in the equivalent vocational or technical training" In this case, the Claimant is 19 years of age (Ex. 2.1). However, she is attending college, not secondary school (i.e. high school), vocational school, or technical training. Thus, the exemption provided by 7 AAC 100.162 does not apply to the Claimant. Accordingly, her income must be included when determining her financial eligibility.

The Division calculated the Claimant's average gross monthly income by (a) adding the gross income from the Claimant's three paychecks (\$380.00 plus \$400.00 plus \$200.00); (b) dividing the total of \$980.00 by three for average bi-weekly wages of \$326.67; and (c) multiplying the average bi-weekly wages of \$326.67 by 2.15 to arrive at average monthly gross wages of \$702.33 (Ex. 5). The averaging of income was correct pursuant to 7 AAC 100.154 and 7 AAC 100.168. *See* Principles of Law at 6, above. Multiplication of the bi-weekly wages by 2.15, to arrive at a monthly wage amount, was correct pursuant to 7 AAC 100.168(d). *See* Principles of Law at page 6, above.

The Division calculated the Claimant's mother's average gross monthly income by (a) adding the gross income from the Claimant's two lowest paychecks (\$536.20 plus \$578.32); (b) dividing the total of \$1,114.52 by two for average bi-weekly wages of \$557.26; and (c) multiplying the average bi-weekly wages of \$557.26 by 2.15 to arrive at average monthly gross wages of \$1,198.11 (Ex. 5). This was also in accordance with the applicable regulations (see discussion in preceding paragraph).

The Division then added the Claimant's average gross monthly income of \$702.33 to the Claimant's mother's average gross monthly income of \$1,198.11, resulting in a total of \$1,900.44 (Ex. 5.7). This was again in accordance with the applicable regulations and was also mathematically correct.

The Division then deducted, from Claimant's household's average gross monthly income of \$1,900.44, two \$90.00 work expense deductions (i.e. one for the Claimant and one for her mother) (Exs. 5.7, 5.8). This was in accordance with 7 AAC 100.184 (see Principles of Law at page 7, above) and resulted in total household countable (net) income of \$1,720.44 (Exs. 5.7, 5.8).

During the 2011 calendar year, the Under 21 / Family Medicaid countable / net income limit for a family consisting of four persons (including at least one adult) was \$1,627.00 (Ex. 5.9; DPA Representative's testimony). The Claimant's total countable (net) monthly household income of

\$1,720.44 exceeded the applicable Under 21 / Family Medicaid countable (net) income limit of \$1,627.00 by \$93.44. The Division's financial eligibility determination was therefore correct.

II. Does the Division Have the Power to Make Exceptions to Avoid Hardship in Certain Cases?

The Claimant's primary complaint regarding the Division's financial eligibility determination is that it does not seem fair to her (*See* Findings of Fact at Paragraph 14, above). It is not disputed that the Claimant has a significant need for medical services. It is also not disputed that the Claimant's household's financial resources are limited. However, the Division is not at liberty to ignore its own regulations.⁶ Likewise, this Office does not have the authority to create an exception to a valid regulation.⁷

The Division was therefore correct when, on February 3, 2011, it denied the Claimant's application for Under 21 Medicaid benefits dated January 31, 2011, because the Claimant's household's countable (net) monthly income exceeded the Under 21 Medicaid Program's applicable maximum monthly countable (net) income limit.

CONCLUSIONS OF LAW

1. The Division was correct to estimate the Claimant's employment income, based on the three most recent wage statements provided by her, as required by 7 AAC 100.150, 7 AAC 100.152, 7 AAC 100.154, and 7 AAC 100.168.
2. The Division was correct to estimate the Claimant's mother's employment income, based on the two most recent wage statements provided by her, as required by 7 AAC 100.150, 7 AAC 100.152, 7 AAC 100.154, and 7 AAC 100.168.
3. The Division correctly applied the applicable household income eligibility standards pursuant to 7 AAC 100.190 and Alaska Family Medicaid Manual, Addendum 2.
4. The Claimant's average total countable (net) monthly household income of \$1,720.44 exceeded the applicable Under 21 / Family Medicaid countable (net) income limit of \$1,627.00.
5. The Division's financial eligibility determination was therefore correct.

DECISION

The Division was correct when, on February 3, 2011, it denied the Claimant's application for Under 21 Medicaid Program benefits dated January 31, 2011.

⁶ "Administrative agencies are bound by their regulations just as the public is bound by them." *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010).

⁷ State of Alaska Fair Hearing regulation 7 AAC 49.170 provides in relevant part that "the role of the hearing authority (i.e. this Office) is limited to the ascertainment of whether the laws, regulations, and policies have been properly applied in the case and whether the computation of the benefit amount, if in dispute, is in accordance with them."

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. 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. To appeal, 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

DATED this 5th day of May, 2011.


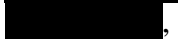
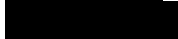
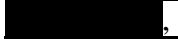
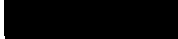

(signed)

Jay Durych
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on May 5, 2011 true and correct copies of this document were sent to the Claimant via USPS Mail, and to the remainder of the service list by secure / encrypted e-mail, as follows:

Claimant – Certified Mail, Return Receipt Requested

, DPA Hearing Representative
, DPA Hearing Representative
, Policy & Program Development
, Staff Development & Training
, Administrative Assistant II
, Eligibility Technician I

(signed)

By: _____
J. Albert Levitre, Jr.
Law Office Assistant I