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

In the Matter of	)	
	)	
E. S.	)	OAH No. 23-0711-MDE
	)	

DECISION

I. Introduction

E. S. applied for long-term care Medicaid, which has a monthly income limit for eligibility. Mr. S. receives more than the limit in Social Security and annuity payments. His representative deposited funds into a trust account to lower Mr. S.'s monthly income below the limit, but did so based on his net monthly income. The Division denied Mr. S.'s Medicaid application based on his gross monthly income being over the limit. Although the regulations at issue do not use the term "gross," they describe a monthly income without reducing for withholdings, which is essentially a person's gross income. The Division was thus correct to consider Mr. S.'s gross monthly income and correctly found this income exceeds the limit for Medicaid eligibility. The Division's decision is affirmed.

II. Facts

Mr. S. is over the age of 65 and lives in an assisted living facility.[1] He applied for long-term care benefits under the Home and Community Based Medicaid Waiver program on September 6, 2023.[2] The monthly income limit for benefits under this program is $2742.[3]

Mr. S. has a gross monthly income of $4344.90, consisting of a $1863 annuity payment and $2481.90 Social Security.[4] Mr. S. also has an irrevocable trust, known as a Miller Trust, to receive some of his income.[5] Funds deposited into a Miller Trust are not recognized as monthly income for purposes of Medicaid eligibility.[6]

For September 2023, a total of $1249.17 was deposited into Mr. S.'s trust account.[7] Subtracting this deposit from his gross monthly payments left Mr. S. with a gross monthly

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1 Ex. 2.1.
2 Ex. 2.1-2.8.
3 Ex. 12.
4 Ex. 2.9-2.11.
5 Ex. 2.12-34.
6 7 AAC 100.606(a).
7 Ex. 4.4.

income of $3095.73 for September 2023. Because that exceeds the monthly income limit of $2742, the Division denied his Medicaid application.[8]

Mr. S. appealed.[9] A hearing was held on December 5, 2023. Mr. B.C. B., who has power of attorney for Mr. S., appeared on his behalf.

III. Discussion

To be eligible for long-term care Medicaid, a person may not have a total monthly income that exceeds 300 percent of the supplemental social security rate.[10] As of the time Mr. S. applied for Medicaid, this maximum monthly income was $2742.[11] His gross monthly income in September 2023 when he applied for Medicaid, even after a deposit into his Miller Trust, was $3095.73 — several hundred dollars over the income limit.

Mr. B. explained that he deposited funds in Mr. S.'s trust so that his *net* income would be below the $2742 limit, and pointed out that the pertinent regulations do not specify that monthly income means gross income. Mr. B. is correct that the regulations do not use the term "gross."[12] But nor do they specify "net" monthly income. Income is defined as "any property, money, or service received by an applicant."[13] Net income are the funds a person receives and has available for use at will. But withheld funds, such as income taxes, are also funds paid to and received by a person; they are simply held back to offset what a person owes to the government. In that sense, any income "received" means a person's gross income.

The regulations also include a list of income that is excluded from a person's monthly income determination, and these exclusions support the interpretation that income means gross income. One of the exclusions is "any ordinary and necessary expense incurred in getting or receiving unearned income, except for income tax."[14] In other words, income tax withholding is *not* excluded from a person's unearned income for purposes of determining monthly income. The list of excluded income does not include Medicare either, as was withheld from Mr. S.'s annuity payment.[15] Since tax and Medicare are not excluded from a person's monthly income, it

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8 Ex. 5.

9 Ex. 6.

10 AS 47.07.020(b)(6); 7 AAC 100.502(a)(4).

11 Ex. 12.

12 The pertinent regulations here are primarily regulations governing Adult Public Assistance, set forth in 7 AAC 40, made applicable to Medicaid eligibility by 7 AAC 100.400.

13 7 AAC 40.300(a)(1).

14 7 AAC 40.320(a)(7). As income from Social Security and an annuity, Mr. S.'s income is unearned income. 7 AAC 40.300(a)(3).

15 7 AAC 40.320(a); Ex. 2.9.

is Mr. S.'s income before those withholdings that is at issue for determining if he is over the monthly income limit.

Because the income limit is based on a person's gross monthly income, the Division correctly determined that Mr. S.'s income as of September 2023 exceeded the monthly limits for Medicaid eligibility. The Division explained at the hearing that adjustments to the funds deposited in Mr. S.'s Miller Trust may allow a different outcome on a future Medicaid application.

IV. Conclusion

Mr. S.'s gross monthly income, even reduced by deposits into his Miller Trust, exceeded the monthly income limit for Medicaid eligibility and therefore the Division correctly denied his Medicaid application. The Division's decision is affirmed.

Dated: December 12, 2023

SIGNED
Rebecca Kruse
Administrative Law Judge

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 4th day of January, 2024.

By: SIGNED
Name: Rebecca Kruse
Title: Administrative Law Judge

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