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

In the Matter of	)	
	)	
L. B.	)	OAH No. 24-0063-MDE
	)	

DECISION

I. Introduction

L. B. applied for Medicaid benefits. The Department of Health, Division of Public Assistance (the "Division"), determined she was ineligible because her monthly income exceeded the limit set by the Medicaid program. Ms. B. requested a hearing to challenge this decision.

Ms. B.'s hearing was held on March 5, 2024. Her husband and conservator, K. N., testified on her behalf. The Division was represented by Assistant Attorney General Justin Nelson. Since the evidence is undisputed that Ms. B.'s monthly income exceeded that allowed by applicable Medicaid regulations, the denial of her application is AFFIRMED.

II. Facts[1]

In June 2020 Ms. B. was diagnosed with dementia attributed to a progressive neurocognitive disorder. Following this diagnosis Ms. B. began receiving Social Security disability benefits which, in 2023, paid her $3,248 per month. Mr. N. was also appointed as Ms. B.'s legal guardian.

While Mr. N. initially cared for Ms. B. at home, he recognized that her steadily worsening condition would eventually require institutional care. To that end, in January 2023 Mr. N. went to the Division's office in Anchorage to seek information on how to apply for Medicaid nursing home benefits on Ms. B.'s behalf. There, Mr. N. recalls speaking with a person seated behind a counter for approximately 10-15 minutes regarding the application process and basic Medicaid eligibility requirements. During this dialogue Mr. N. recalls being advised that Ms. B. could have no more than $2,000 in her bank account in order to qualify for Medicaid coverage. Mr. N. does not remember telling the person he spoke with that he is married to Ms. B., or the amount of disability benefits she receives.

On May 4, 2023, Mr. N. placed Ms. B. in an assisted living facility. At this time there was approximately $70,000 in Ms. B.'s personal bank account. Mr. N. paid for the cost of Ms. B.'s care using these funds based on his understanding that most of this money needed to be spent

[1] Except where otherwise noted, these facts are drawn from the hearing testimony of Mr. N., or an email he sent to OAH and the Division's attorney on March 4, 2024.

before she would be Medicaid eligible. After this account was largely exhausted, on October 16, 2023, Mr. N. submitted an application for Medicaid nursing home benefits on behalf of Ms. B. In that application he disclosed the fact she was receiving monthly disability benefits of $3,248.[2] As part of this application Mr. N. requested retroactive benefits dating back to August 2023.[3]

Mr. N. did not realize that the Ms. B.'s monthly benefits exceeded the program limit of $2,742 until he received a notice from the Division on January 29, 2024, which advised that Ms. B.' application was being denied on this basis.[4] After receiving this notice Mr. N. went back to the Division's office seeking follow-up guidance. There, he claims a Division employee gave him the advice to hire a care coordinator who could help guide him through the process.

Mr. N. acted on this advice and hired a care coordinator who advised him that Alaska's Medicaid eligibility rules have provisions that allow married couples to hold a "Community Spouse Resource Allowance" of up to $148,620.[5] Given this allowance, Mr. N. believes it was unnecessary for him to spend down Ms. B.'s bank account as he did. This care coordinator also assisted Mr. N. in setting up a qualifying income trust (also known as a "Miller trust") for Ms. B.'s monthly disability payments that allows her to meet Medicaid income eligibility requirements. Once this trust was in place, Mr. N. submitted a new application for Medicaid benefits that was pending as of the date of the hearing.[6]

III. Discussion

A. The Requested Relief

The Medicaid program's income eligibility guidelines had an upper monthly income limit of $2,742 for persons such as Ms. B. That income limit was raised to $2,829 effective January 1, 2024.[7] Mr. N. readily concedes that Ms. B.'s monthly income exceeded that allowed by Medicaid's eligibility rules for the long term care coverage that he applied for in October 2023. However, Mr. N. contends that if the Division employee he spoke with in January 2023 had advised him to hire a care coordinator, then he could have taken steps to ensure that Ms. B. was covered by Medicaid before she entered an assisted living home in May 2023. This in turn would have eliminated the need to spend down Ms. B.'s bank account for the cost of her care between May and October 2023. The remedies that Mr. N. seeks on account of the Division's alleged

2 Exhibit 2.1 – 2.4.
3 Exhibit 2.3.
4 Exhibit 4.
5 *See* Aged, Disabled and Long Term Care Medicaid Eligibility Manual, sec. 552 and Addendum 1.
6 Exhibit F.
7 Ex. 8.

oversight is payment of approximately $60,000 to replenish Ms. B.'s bank account, along with an order establishing that Ms. B. is retroactively eligible for Medicaid benefits back to May 2023.

Though Mr. N. did not use the term "equitable estoppel" when advocating for Ms. B.'s behalf in this matter, it is the legal doctrine implicated when a private party seeks relief after allegedly receiving and relying upon incorrect information or guidance from a state employee. Whether Ms. B. has any entitlement to relief under this legal doctrine will be addressed below.

B. Most of the Relief Sought for Ms. B. is Simply Unavailable in this Proceeding

Under the Division's regulations, the only issue that can be resolved by administrative law judges in appeals of Medicaid eligibility determinations is whether "the law and policies have been properly applied according to the record as it existed at the time the decision was made."[8] This means that administrative law judges do not have the authority to order the Division to pay money to a Medicaid applicant. Nor do they have the authority to compel the Division to grant Medicaid benefits to someone who plainly fails to meet applicable eligibility criteria.

Accordingly, the only question that can be answered in this proceeding is whether the Division correctly determined that Ms. B. had monthly income exceeding $2,742 that made her ineligible for Medicaid long term care benefits in October 2023. No other type of relief is available to Ms. B. in this proceeding.

C. Ms. B. is Not Entitled to Relief Under the Doctrine of Equitable Estoppel

Even assuming for argument's sake that the doctrine of equitable estoppel can be asserted in Medicaid eligibility appeals, the facts described by Mr. N. would not entitle Ms. B. to any relief here.

Private persons may invoke equitable estoppel to prevent the government from taking action against them by establishing the following four elements: (1) a governmental body has asserted a position by conduct or words; (2) the person acted in reasonable reliance thereon; (3) the person suffers resulting prejudice; and (4) the estoppel serves the interest of justice so as to limit public injury.[9] This doctrine cannot be applied here, however, since there is no evidence showing the Division made any type of specific assertion regarding Ms. B.'s eligibility for Medicaid benefits, or that Mr. N. reasonably relied on the information he was provided.

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[8] 7 AAC 49.170.

[9] *State, Dept. of Commerce and Economic Dev., Div. of Ins. v. Schnell*, 8 P.3d 351, 355-356 (Alaska 2000).

As described by Mr. N., the conversation he had with the Division employee was relatively brief and very general in nature. It was so non-specific that the fact Mr. N. and Ms. B. are married went unspoken. Likewise, there is no indication that the Division employee was informed of Ms. B. receiving over $3,000 a month in disability benefits. This is not a scenario where a well-informed agency employee offered specific assurances regarding Ms. B.'s eligibility for Medicaid benefits. Instead, the evidence shows that Mr. N. asked a few general questions that prompted some broad answers regarding Medicaid eligibility rules. Such generalized information does not rise to the level of an "assertion" by a government agency that can be reasonably relied upon by a private party.

This same reasoning applies to Mr. N.'s complaint that the Division employee he dealt with should have recommended the services of a care coordinator. Quite simply, there is nothing in state or federal law that requires a person who has not yet submitted an application for Medicaid benefits to be advised of the potential advantages of working with a care coordinator. Moreover, Mr. N. never mentioned the type of circumstances – such as his marriage to Ms. B. or the monthly income she was receiving – that might have suggested to a Division employee that a care coordinator might be a good idea for Ms. B..

While the Division employee that Mr. N. spoke with could conceivably be faulted for not doing more to gather information regarding Ms. B.'s specific circumstances, it has been established that a party claiming equitable estoppel must show more than a "mere failure to inform or assist" on the part of an agency's employees.[10] The after-the-fact observation that Ms. B. might have benefitted from the assistance of a care coordinator in January 2023 does entitle her to the relief that Mr. N. has proposed here.

IV. Conclusion

Based on the foregoing, the Division's denial of the Medicaid application dated October 16, 2023 that was submitted on behalf of Ms. B. is AFFIRMED.

DATED: March 22, 2024.

By: SIGNED
Max Garner
Administrative Law Judge

[10] *Alaska Limestone Corp. v. Hodel*, 614 F. Supp. 642, 647 (D. Alaska 1985) (*citing Lavin v. Marsh*, 644 F.2d 1378, 1382 (9th Cir. 1981)). *See also United States v. Ven-Fuel, Inc.,* 758 F.2d 741, 761 (1st Cir. 1985) (fact government employees demonstrated a "reluctance to be of assistance" an insufficient basis for invoking equitable estoppel).

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 5th day of April, 2024.

By: SIGNED
Name: Max D. Garner
Title: Administrative Law Judge

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