

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS  
ON REFERRAL BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of )  
 )  
 T G N ) OAH No. 13-0258-GRE  
 ) DPA Case No.  
 )  
\_\_\_\_\_ )

**FAIR HEARING DECISION**

**I. Introduction**

The issue in this case is whether Mr. T N is entitled to a hearing when his Alaska Senior Benefits are current, there is no outstanding benefit payment issue, and the benefits have not been modified, reduced, or terminated. This decision concludes that he is not, that the pending Motion for Summary Adjudication should be granted, and that this case should be dismissed.

**II. Facts**

Mr. N has received benefits under the Alaska Senior Benefit Program (ASBP) since March 2012 or before.<sup>1</sup> On February 19, 2013 the Division of Public Assistance (DPA or Division) mailed a notice to Mr. N stating that it was time for the annual review of his eligibility for ASBP benefits.<sup>2</sup> Enclosed with this notice was a renewal application.<sup>3</sup> Mr. N completed and signed the renewal application on February 23, 2013 and mailed it back to the Division.<sup>4</sup> The Division received Mr. N's application on February 27, 2013.<sup>5</sup> Included with the completed application was a hearing request form signed by Mr. N.<sup>6</sup>

The Division reviewed Mr. N's application and hearing request on February 28, 2013, noting that there did not appear to have been any adverse action taken in Mr. N's case.<sup>7</sup> In fact, on March 1, 2013 the Division reauthorized Mr. N's ASBP benefits for another year.<sup>8</sup> However, the Division honored Mr. N's hearing request and on March 1, 2013 the Division referred the case to the Office of Administrative Hearings.<sup>9</sup> Submitted with the Division's case referral form was a petition to

---

<sup>1</sup> Ex. 12.  
<sup>2</sup> Exs. 14, 15.  
<sup>3</sup> Exs. 14, 15, and 19 - 22.  
<sup>4</sup> Exs. 19-22.  
<sup>5</sup> Ex. 19.  
<sup>6</sup> Ex. 16.  
<sup>7</sup> Exs. 13, 17.  
<sup>8</sup> Ex. 2.  
<sup>9</sup> Exs. 6 - 8.

dismiss Mr. N's hearing request on the basis that the Division had not taken any adverse action against him.<sup>10</sup>

### III. Discussion

The Division's petition to dismiss Mr. N's hearing request constitutes a motion for summary adjudication under this Office's hearing regulations.<sup>11</sup> Summary adjudication is appropriate "if a genuine dispute does not exist between the parties on an issue of material fact."<sup>12</sup> The nonmoving party (in this case Mr. N) has 15 days following service of such a motion to file a written response.<sup>13</sup> Where (as here) the nonmoving party fails to oppose the motion "within the time set for the response, the motion is ripe for decision, and the administrative law judge may issue an order based on the applicable law and the existing record."<sup>14</sup>

The Division's motion for summary adjudication is based on regulation 7 AAC 49.020. That regulation, titled "Opportunity for Hearing," states in relevant part as follows:

An opportunity for a hearing must be granted to a client whose (1) request for an application is denied; (2) claim to financial, food, or medical assistance, contained in his application, is denied or is not acted upon with reasonable promptness; (3) receipt of benefits the division intends to modify or terminate; or (4) request for a covered Medicaid service is denied.

This Office does not have jurisdiction to hear complaints against the Division except for the purposes set out in 7 AAC 49.020, i.e. when an application is denied, benefit processing is delayed, or when benefits have been modified or terminated. This Office may dismiss a hearing request if "the issues by which the client is aggrieved are not those set out in 7 AAC 49.020."<sup>15</sup>

The undisputed facts show that the Division has taken no adverse action with regard to Mr. N's ASBP benefits. Mr. N has not had an application denied, and his ASBP benefits have not been modified, suspended, or terminated. Because Mr. N's hearing request does not fall within any of the four subsections of 7 AAC 49.020, above, Mr. N is not entitled to a hearing under 7 AAC 49.020 and 7 AAC 49.100(1).

---

<sup>10</sup> Exs. 9 - 11. The Division's petition indicates that it was served on Mr. N by mail on March 1, 2013.

<sup>11</sup> 2 AAC 64.250.

<sup>12</sup> 2 AAC 64.250(a).

<sup>13</sup> 2 AAC 64.270(a).

<sup>14</sup> 2 AAC 64.270(c).

<sup>15</sup> 7 AAC 49.100(1).

#### **IV. Conclusion**

In summary, because the Division has taken no adverse action against Mr. N, there is currently no hearable issue for this Office to decide, and there is no relief which this Office can grant Mr. N. Accordingly, the Division's motion for summary adjudication is granted, and this case is dismissed.

DATED this 20th day of March, 2013.

*Signed* \_\_\_\_\_

Jay Durych

Administrative Law Judge

#### **Adoption**

The undersigned, by delegation from of the Commissioner of Health and Social Services, 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 3<sup>rd</sup> day of April, 2013.

By: *Signed* \_\_\_\_\_

Name: Jay D. Durych

Title: Administrative Law Judge

[This document has been modified to conform to the technical standards for publication.]