

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

In the Matter of)
)
 K G)
_____)

OAH No. 14-0490-GRE
Agency No.

DECISION

I. Introduction

The Division of Public Assistance denied K G’s application for senior benefits because Ms. G did not provide required documentation until one week after the 30-day deadline for making a decision on the application had passed. The regulation governing applications, however, allows the Department of Health and Social Services to extend the deadline if the failure to provide documentation was due to factors beyond the applicant’s control.¹ Because the facts show that Ms. G’s failure to provide timely documentation was due to factors beyond her control, and because the division did not provide notice that she must request an extension before the 30-day time period expired, the division’s denial of her application is reversed.

II. Facts

K G is an elderly woman who suffers from dementia. On February 26, 2014, Ms. G’s court-appointed conservator, L T N, applied for senior benefits on Ms. G’s behalf.² The Division of Public Assistance conducted an interview, and pended the case so that Mr. T N could obtain documentation of Ms. G’s retirement income from her former employer.³ On March 11, 2014, the division informed Mr. T N in writing that the documentation must be received by March 26, 2014, or it would deny Ms. G’s application. Although Mr. T N made a diligent effort to timely comply with the request for the documentation, he had considerable difficulty in obtaining the necessary information from the entity administering Ms. G’s retirement.⁴ The former employer was not acknowledging the conservatorship and had not sent Ms. G her retirement checks for a considerable period.⁵ Mr. T N did not send any documentation to the

¹ 7 AAC 47.557(a).

² Exhibit 2. The Alaska Senior Benefits Payment Program (Senior Benefits) is a cash assistance program that pays a monthly cash benefit to eligible Alaska residents who are 65 years of age or older. AS 47.45.301 – 302.

³ Exhibit 4.

⁴ T N testimony; Exhibit 8.2.

⁵ *Id.*

division before the March 26 deadline, and on March 28, 2014, the division denied the application.

On April 1, 2014, Mr. T N finally received Ms. G's retirement checks, including checks dating back to July 1, 2013. He faxed copies of checks to the division on April 2, 2014. He also requested a fair hearing regarding the denial of the application.⁶

A telephonic hearing was held on April 23, 2014. Mr. T N represented Ms. G and Jeff Miller represented the division.

III. Discussion

The regulations that govern senior benefits require the department to issue a written decision within 30 days after receiving an application.⁷ The regulations also require, however, that “[t]he department will extend the time period if the department determines that a decision cannot be rendered because of a factor that is beyond the control of the individual or the department.”⁸

The division has interpreted this regulation to strictly require applicants to notify the division of a problem with obtaining information *before* the end of the 30 day time period. Under this view, once an application is denied, it cannot be re-opened even if a factor beyond the control of the individual or the department prevented the department from determining whether the applicant is eligible for the benefit.

The regulation, however, does not tell an applicant that the request for an extension of the 30-day time period must be made before the 30 days expires. From the division's point of view, this interpretation may seem obvious—the regulation permits an extension, but to extend a deadline, the deadline cannot have run. To an applicant, however, the requirement of obtaining permission, rather than forgiveness, may not be obvious. An applicant who is waiting on documentation from a third party may assume that he or she will be allowed to tell the story of why the delay occurred when the applicant provides the documentation. In the absence of notice that the request for an extension must occur before the 30 days expires, an applicant might well be reluctant to contact the agency multiple times.

Here, although the division sent written notice on March 11 to Mr. T N, advising him that the application would be denied if the documentation was not received by March 26, 2014, the

⁶ *Id.*

⁷ 7 AAC 47.557(a).

⁸ *Id.*

notice did not tell him that he could request an extension based on factors outside his control or that any such request must be received before March 26.⁹ The division argues that the notice told him to call the division if he had any questions, and he did not call. A notice that a person may call with questions, however, is not equivalent to notice that a request for an extension must be made before the deadline for processing the application.

In *Manning v. Alaska R.R.*, the Alaska Supreme Court made clear that an agency's failure to give notice of a deadline will make the deadline inoperative, even when the deadline is clearly expressed in the governing law.¹⁰ The court specifically referenced the situation where a party might not be aware of the significance of an event and then is "later apprised of its intended significance."¹¹ In that situation, the court held, the deadline should not be enforced. Moreover, in public assistance cases, the court has especially vigilant about enforcing notice requirements, particularly when the "risk of erroneous deprivation of benefits is substantial [and] the importance of those benefits to [the applicant] is clear."¹²

Unlike the clear deadline that the court tolled in the *Manning* case, the requirement that the request for an extension be made within the 30-day time period is not explicit in the governing regulations.¹³ That makes actual notice to the applicant of the deadline even more critical. Under the cases of the Alaska Supreme Court, the absence of notice is fatal to the division's attempt to strictly enforce the March 26 deadline for Mr. T N's request for an extension.¹⁴

Here, Mr. T N informed the division on April 2 that the documentation had been delayed through factors that were beyond his control. That is only one week after the 30-day deadline

⁹ Exhibit 4.

¹⁰ *Manning v. Alaska R.R. Corp.*, 853 P.2d 1120, 1124 (Alaska 1993) (holding that agency's failure to give notice of deadline for appeal tolls deadline). See also *Smart v. State, Dept. of Health and Social Services*, 237 P.3d 1010, 1015 (Alaska 2010) ("to comply with due process, notice must also be 'reasonably calculated, under all the circumstances, to inform interested parties of action affecting their property rights.'" (quoting *City of Homer v. Campbell*, 719 P.2d 683, 686 (Alaska 1986))).

¹¹ *Manning*, 853 P.2d at 1124 (quoting *Owsichek v. State, Guide Licensing & Control Bd.*, 627 P.2d 616, 622 (Alaska 1981)).

¹² *Allen v. State, Dept. of Health & Social Services, Div. of Public Assistance*, 203 P.3d 1155, 1168 (Alaska 2009).

¹³ In addition, the requirement that the request for an extension be received before the 30-day deadline is not explicit in the division's manual. See Exhibit 13. Although the manual provides that applications will be denied if the application is not complete within 30 days, it does not say that a request for an extension due to factors beyond the applicant's control must be received within 30 days. Moreover, even if the manual were clear on this issue, the manual is not adopted into law and does not provide notice to applicants of the division's interpretation.

¹⁴ This decision is based only on the absence of notice to Mr. T N that he must request the extension before March 26, 2014.

expired. In addition, it was only one day after he received the documentation. Mr. T N acted reasonably under the circumstances. His failure to provide the documentation within 30 days was due to factors beyond his control. Accordingly, as allowed under 7 AAC 47.557, the department extends the time period for making the decision on Ms. G's application. The division's decision denying the application is reversed.

IV. Conclusion

The division's decision denying Ms. G's February 26, 2014 application for failure to timely provide documentation is reversed. The application is remanded to the division to treat the application and supporting documentation as timely filed, and determine Ms. G's eligibility based on the February 26 application and supporting documents.

DATED this 28th of April, 2014.

By: Signed
Stephen C. Slotnick
Administrative Law Judge

Adoption

By delegation from the Commissioner of Health and Social Services, I adopt 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 3rd day of June, 2014.

By: Signed
Name: Ree Sailors
Title: Deputy Commissioner, DHSS

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