

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

In the Matter of:)
) OAH No. 16-0103-GRE
 K G) DPA Case No.
)
_____)

DECISION

I. Introduction

The issue in this case is whether the Division of Public Assistance (DPA or Division) was correct to terminate K G's Senior Benefits Program (SBP) payments based on the fact that Mr. G is not yet 65 years old.¹ Alaska Statute (A.S.) 47.45.302 (a)(1), and SBP regulation 7 AAC 47.547(2), explicitly limit eligibility for monthly SBP payments to Alaska residents who are 65 years of age or older. It is undisputed that Mr. G is currently 55 years old. Accordingly, based on the SBP regulations, and the undisputed evidence, Mr. G is not yet eligible for participation in the Senior Benefits Program. The Division's decision, terminating Mr. G's mistakenly-granted Senior Benefits Program payments, is therefore affirmed.

II. Facts

Mr. G is 55 years old.² His household income consists of Social Security payments of about \$1,347.00 per month, and Adult Public Assistance (APA) payments of \$1.00 per month.³

On November 17, 2015, Mr. G completed and signed an application for the Senior Benefits Program.⁴ Mr. G's application was received by the Division on November 20, 2015, and on December 9, 2015, Mr. G participated in an eligibility interview with a DPA eligibility technician (ET).⁵ Mr. G's application clearly stated his age, which at that time was 54 years.⁶ However, for whatever reason, the ET did not notice that Mr. G was not yet 65 years old, and approved his SBP application.⁷

On January 19, 2016, the Division realized that Mr. G was not yet 65 years of age, and that his application had been granted by mistake.⁸ Accordingly, on January 20, 2016, the Division

¹ Ex. 4.
² Ex. 1; K G hearing testimony.
³ Ex. 2.0.
⁴ Exs. 2.1 - 2.4.
⁵ Ex. 2.0.
⁶ Ex. 2.1.
⁷ Exs. 2.0.
⁸ Ex. 3.

issued a notice to Mr. G stating that his SBP case was being closed, effective January 31, 2016.⁹ The Division's notice stated in relevant part as follows:¹⁰

You are no longer eligible for Senior Benefits because: [You were] approved in error for [the SBP] as [you are] not yet age 65. You have been overpaid \$175.00 a month from 11/2015 to 01/2016 = \$525.00 in overpayments. You will get a separate letter stating how you may pay this money back.^[11]

On January 29, 2016, Mr. G requested a hearing to contest the Division's termination of his SBP payments.¹² Mr. G's hearing was held on February 25, 2016. Mr. G participated in the hearing by phone, represented himself, and testified on his own behalf. Sally Dial, a Public Assistance Analyst employed by the Division, participated in the hearing by phone and represented the Division. All testimony and exhibits offered by the parties were admitted into evidence. The record closed at the end of the hearing.

III. Discussion

A. Overview of Alaska's Senior Benefits Program

Alaska's Senior Benefits Program has its roots in the Alaska Longevity Bonus Program, established in 1972.¹³ Alaska residents became eligible upon reaching the age of 65. Payments were not available to seniors who applied after 1996. The program was subsequently defunded in 2003, and final benefits were issued for the month of August 2003.

In September 2003, the Governor's office used its executive authority to establish the needs-based Senior Assistance Program for low-income Alaskans, aged 65 and older, who were financially impacted by the elimination of the Alaska Longevity Bonus Program. Payments were limited to \$120.00 per month. The program ended in March 2004.

In April 2004, the SeniorCare Program was established to replace the former Senior Assistance Program. The new program was expanded to include a prescription drug benefit. Low-income seniors that passed the program's income and resource limits could choose to receive either a \$120.00 per month payment, or a prescription drug benefit. The program ended in July 2007.

⁹ Ex. 4.

¹⁰ Ex. 4 (paragraph breaks in the original notice have been deleted here for brevity).

¹¹ This case does not concern Mr. G's liability for repayment of any SBP payments that he received. As discussed at hearing, that issue will be dealt with by the Division in a separate notice. If and when the Division issues that notice, Mr. G will have the right to request a hearing on the overpayment / repayment issue.

¹² Ex. 5.

¹³ All references in this section are based on the Department of Health and Social Services' website for the Senior Benefits Program, accessed February 25, 2016 at http://dhss.alaska.gov/dpa/Documents/dpa/pdf/SBP_Fact_Sheet.pdf.

In August 2007, the current Senior Benefits Program was established to replace the SeniorCare Program. The program provides three payment levels that are based on the senior's gross annual income. Income limits are tied to the Federal Poverty Guidelines for Alaska, and change each year as the poverty level changes. There were 11,746 Senior Benefits Program recipients as of December 2015. The average age of SBP recipients is 75, and the oldest current SBP recipient is 104 years old.

Regulation changes finalized in January 2016 have reduced benefit amounts due to a shortfall in the current legislature's appropriation for the program. The highest benefit level will be reduced to \$47.00 per month effective March 1, 2016. The program is currently scheduled to end on June 30, 2018.

The statutes creating and defining the SBP are located at A.S. 47.45.301 - A.S. 47.45.309. The regulations implementing the SBP are located at 7 AAC 47.545 - 7 AAC 47.571. A.S. 47.45.302(a)(1), and 7 AAC 47.547(2), each explicitly limit eligibility for monthly SBP payments to Alaska residents who are 65 years of age or older.

B. Is Mr. G Currently Eligible to Receive SBP Payments?

The relevant statute and regulation, A.S. 47.45.302(a)(1), and 7 AAC 47.547(2), explicitly limit eligibility for monthly SBP payments to Alaska residents who are 65 years of age or older. Mr. G testified at hearing that the date of birth listed on the first page of his SBP application is correct.¹⁴ That being the case, Mr. G is currently about 10 years too young to receive SBP payments. Accordingly, the Division erred in granting Mr. G's SBP application, and the Division was correct to terminate Mr. G's SBP payments once it noticed its mistake.

IV. Conclusion

Mr. G acknowledged at hearing that he is not yet 65 years of age. Accordingly, the Division was correct to terminate Mr. G's mistakenly-granted Senior Benefits Program payments. The Division's determination is therefore affirmed.

DATED this 26th day of February, 2016.

Signed

Jay Durych
Administrative Law Judge

¹⁴ Ex. 2.1.

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 8th day of March, 2016.

By: Signed
Name: Jay D. Durych
Title: Administrative Law Judge, DOA/OAH

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