

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

In the Matter of)	
)	OAH No. 16-1377-HAP
K K)	Agency No.
_____)	

DECISION

I. Introduction

K K applied for heating assistance. The Division of Public Assistance determined that she was eligible for \$450 in heating assistance benefits. Ms. K appealed the decision for two reasons: 1) the Division did not timely act on her application, and 2) she received substantially reduced heating assistance benefits.

Ms. K’ hearing convened on December 16, 2016. She represented herself and testified on her own behalf. Jeff Miller, Public Assistance Analyst with the Division, represented the Division. A follow up hearing was held on December 20, 2016, in order for the Division to answer questions raised in the first hearing.

The record shows that the Division incorrectly calculated Ms. K’ benefits. The corrected calculation shows that Ms. K is eligible for \$900 in heating assistance benefits. Ms. K did not establish that the Division violated its eligibility processing deadline.

II. Facts

For many years, the State of Alaska operated two heating assistance programs: the Alaska Affordable Heating Program (AKAHP), and the federal Low Income Home Energy Assistance Program (LIHEAP).¹ The state eliminated AKAHP in July 2016.² LIHEAP is still available for households with income at or below 150% of the federal poverty income guidelines. The Department of Health and Social Services notified residents of these changes through direct mailings, social media, public notice, and press releases.³ The notice informed residents that eligible LIHEAP applicants would see a benefit reduction.⁴

¹ Ex. 18.
² Ex. 18.
³ Ex. 18 -19.3.
⁴ Ex. 18 – 18.1

Ms. K filled out a heating assistance application on August 23, 2016.⁵ The Division received the application on September 1, 2016.⁶ On September 2, 2016, the Division sent Ms. K a notice that her application was incomplete.⁷ The Division asked Ms. K to identify her fuel oil vendor.⁸ Ms. K does not use fuel oil.⁹ She uses wood, electric, and propane to heat her home. In early November, the Division asked Ms. K to clarify the number of bedrooms in her dwelling.¹⁰

On November 4, 2016, the Division sent Ms. K notice that she was approved for \$450 in benefits.¹¹ The notice stated that the Division would send \$338 to No Name products, and \$112 to No Name Association for Ms. K' benefit.¹² The Division sent \$112 to NNA for Ms. K' account.¹³ The Division sent a voucher to No Name for Ms. K' wood purchase.¹⁴

No Name is an authorized vendor that Ms. K has worked with in the past. By the time the payment for wood was sent out in November, No Name had declined to provide Ms. K with wood.¹⁵ Ms. K experienced difficulty finding another authorized wood vendor. Ms. K was still working with Division staff to identify and pay a wood vendor at the time of hearing.

At hearing, the Division explained the formula it used to arrive at Ms. K' \$450 benefit amount. The Division considers community of residence, fuel type, dwelling type, household size, income, and age and disability status.¹⁶ For dwelling type, the Division used a factor of .4 because Ms. K lives in a trailer, RV, or mobile home that is less than 980 square feet, as described in its manual.¹⁷ The Division relied on a past OAH decision that described Ms. K' dwelling type as a trailer approximately 40 feet long and eight or nine feet wide (360 square feet), with two bedrooms, and another ten by ten structure occasionally used for sleeping.¹⁸ In

⁵ Ex. 2.

⁶ Ex. 2.

⁷ K testimony; Ex. A, letter from Ms. K to Division staff (Nov. 10, 2016).

⁸ K testimony.

⁹ K testimony.

¹⁰ K testimony.

¹¹ Ex. 4.

¹² Ex. 4.

¹³ Miller testimony.

¹⁴ K testimony. Ms. K explained that Division staff informed her there would be a delay reissuing her wood voucher because one had already gone out to No Name.

¹⁵ K testimony.

¹⁶ Ex. 5.5. - 5.6

¹⁷ Miller testimony; Ex. 5.3.

¹⁸ Ex. 8 – 8.1.

that case, the ALJ determined that Ms. K' description aligned most closely with two bedroom single family home dwelling type, with a multiplication factor of 1.¹⁹

In response to questions, the Division realized that a discrepancy existed between its manual, which contained updated dwelling type calculations requiring a .4 multiplication factor, and its regulations, which did not reflect these changes. The ALJ granted a continuance for the Division to consider this information. When the parties reconvened, the Division explained that the regulations were not yet updated to reflect program changes. The Division submitted a recalculated benefit amount for Ms. K, using a single family two bedroom dwelling type, with a multiplication factor of 1.²⁰ Under the updated calculation, Ms. K is eligible for \$900 in heating assistance benefits.²¹ The updated calculation indicated that the remaining \$788 in benefits were earmarked for wood purchase.²²

III. Discussion

Ms. K challenges the Division's timeliness in processing her application and the reduction in her benefit amount. She maintains these challenges under the Division's updated benefit calculation.

A. Timeliness

Turning first to timeliness, the Division is required to make an eligibility determination and mail notice of eligibility within 45 days of receipt of a completed heating assistance application.²³ Ms. K argues that the Division did not comply with this regulation, and remained out of compliance at the time of hearing.

The Division received Ms. K' application on September 1, 2016. The Division determined Ms. K' eligibility for benefits on November 4, 2016, or 64 days after she applied. If her application was complete, the Division should have made an eligibility determination within 45 days, or by October 16, 2016.

However, the Division notified Ms. K on September 2nd that her application was incomplete. The 45 day deadline is not triggered until the Division receives a complete application. According to Ms. K, the Division still had questions about her dwelling type in

¹⁹ Ex. 8 – 8.1.

²⁰ Ex. 20, Division's recalculation letter (Dec. 20, 2016); The Division relied on Ex.8, as noted in footnote 19.

²¹ Ex. 20.

²² The Division already paid GVEA \$112. $900 - 112 = 788$. The parties did not address the apportionment between wood and electric under the Division's corrected benefit calculation.

²³ 7 AAC 44.220(c).

early November.²⁴ Overall, it is unclear when the Division deemed Ms. K' application complete. Consequently, it is also unclear that the Division violated its eligibility determination deadline.

Assuming that Ms. K initially submitted a complete application does not affect the outcome of this case. In the absence of any express provision for a penalty or other consequence for untimely action, time limits on state agency action are generally considered directory, rather than mandatory.²⁵ Therefore, even if the Division did violate the deadline, there is no penalty or remedy available.²⁶

Ms. K' argument that the Division remained out of compliance at the time of hearing is unpersuasive. The regulation governs eligibility determinations, not award completion.²⁷ Here, the Division determined Ms. K' eligibility on November 4, 2016. Ms. K argues that she still has not been able to purchase wood, and her benefit award remains unfulfilled. The Division sent a voucher to a vendor Ms. K used in the past. Friction developed between the vendor and Ms. K, who has a history of problems with wood vendors.²⁸ The Division should not be held liable for vendor–recipient relationship difficulties.

B. *Benefit amount*

Ms. K also challenges her reduction in benefits. Ms. K testified that she previously received \$1322 in heating assistance benefits. Ms. K received those benefits when Alaska operated two heating assistance programs. AKAHP is no longer funded. Eligible recipients receive fewer benefits under LIHEAP alone.

The Division recalculated Ms. K' benefit amount using a multiplication factor of 1, based on regulations that, according to the Division, will soon change to reflect the manual. The recalculation used the correct dwelling type for two reasons. First, the regulation controls over the Division's policy manual, and the current regulation does not specifically align with Ms. K's dwelling type. Second, the prior OAH decision relied on the current regulation when it determined Ms. K' dwelling most closely matched a two-bedroom home.²⁹

²⁴ Ex. A.

²⁵ *In re ASRC Communications, Ltd.*, OAH No. 04-0007-CON, n. 23 (Comm'r Dept. of Administration, 2005) citing *State, Div. of Insurance v. Schnell*, 8 P3d 351, 257 (Alaska 2000).

²⁶ Although Ms. K did not propose a specific remedy, she suggested that an increased benefit might be appropriate.

²⁷ Similarly, Ms. K argued that the Division violated deadlines because she had not received a final eligibility determination. The regulation speaks to an initial eligibility determination, not a post-appeal determination. Ms. K submitted no evidence to the contrary.

²⁸ See *In re KK*, OAH No. 13-0510-HAP (Comm'r of Health & Soc. Services 2013).

²⁹ See *in re redacted*, Office of Hearings and Appeals case no. 09-FH-2146.

Ms. K did not challenge the Division's recalculation, except in general opposition to a reduction. The Division's updated calculation is correct in terms of community of residence, fuel type, household size, and age and disability status.³⁰

IV. Conclusion

The Division's updated benefits determination is correct. Ms. K is eligible for \$900 in heating assistance.

DATED this 24 day of January 2017.

Signed

Bride Seifert
Administrative Law Judge

Adoption

The undersigned adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 28th day of February, 2017.

By: Signed

Signature
Douglas Jones

Name
Medicaid Program Integrity Manager
Title

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

³⁰ If the regulations change to reflect the manual, Ms. K dwelling type classification and multiplication factor will change from 1 to 4.