

information.

The address on both notices matched Ms. N' address, P.O. Box 000, No Name, AK.⁸ The Division did not receive any returned, undeliverable mail.⁹ The Division did not receive a recertification application and Ms. E's Medicaid case was closed on July 31, 2013.

Ms. N requested a fair hearing on the issue on December 19, 2013, many months after the termination of benefits.¹⁰ Ms. N' fair hearing request form states that neither she nor Ms. E's care coordinator received the recertification notices or a Medicaid closure letter.¹¹

On December 20, 2013, the Division mailed a notice of non-referral to fair hearing.¹² On January 13, 2013, Ms. N submitted a letter requesting reconsideration of the non-referral, stating she did not receive the notices.¹³ The Division referred the case to the Office of Administrative Hearings on the sole issue of timeliness of hearing request.¹⁴

At hearing, Ms. N testified that she did not receive the notices.¹⁵ Her husband, Mr. N, also testified that no notice was received.¹⁶ Mr. N stated that they were unaware that Ms. E's Medicaid benefits were terminated until December 2013, when they were contacted by Ms. E's housing provider, indicating that Medicaid payments were denied.

III. Discussion

Under 7 AAC 49.030, a request for hearing in a public benefits case of this type must ordinarily be made "not later than 30 days after the date of the [required] notice." In this case, the notice of the Division's action was distributed to Ms. E, in care of Ms. N, at the address she provided. There is a rebuttable presumption that mail is received unless returned by the United States Postal Service.¹⁷

The Department of Health and Social Services is authorized to entertain a hearing request made after the time limit "only if the administrative law judge finds . . . that the request for a

⁸ Hearing recording.

⁹ Ex. 5; Miller presentation.

¹⁰ Ex. 6.

¹¹ Ex. 6.

¹² Ex. 7.

¹³ Ex. 8.

¹⁴ Ex. 8.1.

¹⁵ Ms. N testimony.

¹⁶ Mr. N testimony.

¹⁷ *M.S.*, OAH No. 12-0828-ATP (December 26, 2012) (citing *Ocasio v. Fashion Inst. of Tech.*, 9 Fed. Appx. 66, 68 (2d Cir. 2001)(applying the "usual presumption that the letter was received within three days after mailing"))).

hearing could not be filed within the time limit.”¹⁸ When an appeal is untimely under 7 AAC 49.030, Department of Health and Social Services regulations provide no discretion. The administrative law judge is required to dismiss the appeal.¹⁹ However, in this case, the record does not contain notice of appeal rights by which Ms. N could challenge the Division’s termination of Ms. E’s benefits.

Medicaid regulations require notice prior to the Division’s suspension, reduction, or termination of recipient benefits.²⁰ The notice must contain hearing right information, or “an effective opportunity to defend.”²¹ The record supplied by the Division does not contain notice of appeal rights.²² The Division’s failure to include appeal rights in the notice equates to inadequate notice. Because inadequate notice was supplied, the undersigned cannot find that the hearing request was untimely.²³

Furthermore, in this particular case, ruling on the timeliness issue necessarily encompasses a ruling on the merits as well. The Division was not authorized to terminate Ms. E’s Medicaid benefits without sufficient notice, including appeal rights. Here, those were not supplied.

IV. Conclusion

The Division’s decision to non-refer this matter for fair hearing is reversed. The Division’s termination of benefits is also reversed. The Division shall reinstate Ms. E’s Medicaid benefits for the month of August 2013.

Dated this 24th day of February, 2014.

Signed

Bride A. Seifert
Administrative Law Judge

¹⁸ 7 AAC 49.030(a).

¹⁹ 7 AAC 49.100(5)(dismissal authority in this situation is delegated by regulation to the administrative law judge; no proposed decision process under AS 44.64.060 is contemplated).

²⁰ 7 AAC 49.060; 42 C.F.R. § 431.210(a).

²¹ 7 AAC 49.070; 42 C.F.R. § 431.206(b); *See also Baker v. State, Dept. of Health & Social Services*, 191 P.3d 1005, 1009 (Alaska 2008).

²² If appeal rights were included in the original notice, the Division may supplement the record and supply such evidence through a proposal for action.

²³ *B.M.*, OAH No. 12-0245-MDE (September 6, 2012).

Non-Adoption Options

C. Under a delegation from the Commissioner of Health and Social Services and in accordance with AS 44.64.060(e)(4), I reject, modify, or amend one or more factual findings as follows, based on the specific evidence in the record described below:

In accordance with Footnote 22 in the Decision, the Department did produce evidence of notice given of appeal rights. Therefore the Department's action properly determined that the fair hearing request was untimely.

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 21st day of March, 2014.

By: Signed
Ree Sailors, Deputy Commissioner
Department of Health and Social Services