

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

In the Matter of: )  
 )  
D O ) OAH No. 14-0697-MDE  
 ) Agency No.  
\_\_\_\_\_)

**DECISION AND ORDER OF DISMISSAL**

**I. Introduction**

The issue in this case is whether D O requested a hearing regarding the denial of his Medicaid application within the time required by the applicable regulations. The Division of Public Assistance (DPA or Division) asserts that it provided proper notice of its determination to Mr. O, but that Mr. O failed to request a hearing on a timely basis, and therefore waived his right to a hearing on the merits of his application. Mr. O does not dispute that his hearing request was untimely, but rather asserts that he has a great need for the Medicaid coverage.

This decision concludes, based on the preponderance of the evidence in the record, that Mr. O received proper notice of the Division's determination, but subsequently failed to request a hearing on a timely basis. On the facts of this case, there is no provision of law which would allow the administrative law judge (ALJ) to extend the period for the filing of the hearing request. Accordingly, Mr. O is not entitled to a hearing on the merits of the Division's denial of his Medicaid application. The Division's decision finding Mr. O's hearing request to be untimely is therefore affirmed, and this case is dismissed.

**II. Facts**

Mr. O is 22 years old.<sup>1</sup> He came to Alaska in June 2011.<sup>2</sup> He has recently been employed at No Name and as a pharmacy technician.<sup>3</sup>

On February 19, 2014 Mr. O had a medical emergency and subsequently underwent surgery.<sup>4</sup> After his surgery, his doctor advised him not to work for a period of time, so he was unable to support himself.<sup>5</sup> He had no place to stay and was forced to sleep in his car.<sup>6</sup>

---

<sup>1</sup> Ex. 1.  
<sup>2</sup> D O hearing testimony.  
<sup>3</sup> Exs. 2.18, 2.22.  
<sup>4</sup> D O hearing testimony.  
<sup>5</sup> D O hearing testimony.  
<sup>6</sup> D O hearing testimony.

Mr. O applied for Medicaid on March 10, 2014.<sup>7</sup> He applied on an emergency basis as a legal alien.<sup>8</sup> On March 11, 2014 a DPA eligibility technician (ET) reviewed Mr. O's Medicaid application, determined that he was not eligible for any category of Medicaid, and created a denial notice using the Division's electronic information system (EIS).<sup>9</sup> Pursuant to the Division's standard practice, the notice was printed *en mass* with the Division's other notices during the night of March 11 - March 12, 2012.<sup>10</sup>

On March 12, 2014 DPA mailed its notice to Mr. O, advising him that his Medicaid application had been denied.<sup>11</sup> The reverse side of this notice contained information explaining how to request a hearing to contest the Division's determination.<sup>12</sup> Pursuant to the Division's standard practice, the notice was delivered to the U.S. Post Office *en mass* with the Division's other notices.<sup>13</sup> The Division's EIS has no record that the notice was returned to DPA as undeliverable, nor any record of any contact from Mr. O from March 11, 2014 until May 7, 2014.<sup>14</sup>

On May 7, 2014 Mr. O requested a hearing to contest the Division's denial of his Medicaid application.<sup>15</sup> Mr. O's hearing was held as scheduled on June 5, 2014. Mr. O attended the hearing, represented himself, and testified on his own behalf. DPA Public Assistance Analyst Terri Gagne participated in the hearing by phone, represented the Division, and testified on its behalf. Following the hearing, the record was left open through June 13, 2014 for post-hearing filings. The record closed on June 13, 2014.

At hearing, Mr. O credibly testified in relevant part as follows:

1. The address he used on his application, to which the denial notice was sent, is his father's address. He was not actually residing at that address at the time the denial notice was sent to him.
2. He checks his mail at his father's house about once each week.
3. He believes he received the Division's notice during the first week of April 2014. When he saw that his application had been denied he became frustrated, and so he did not examine the reverse side of the notice.

---

<sup>7</sup> Exs. 2.0 - 2.22.

<sup>8</sup> D O hearing testimony.

<sup>9</sup> Ex. 3, Terri Gagne hearing testimony.

<sup>10</sup> Terri Gagne hearing testimony.

<sup>11</sup> Ex. 4. The denial notice was sent to the same address provided by Mr. O on his Medicaid application (compare Exs. 2.0, 2.18, 2.21, and 4).

<sup>12</sup> Ex. 10.

<sup>13</sup> Terri Gagne hearing testimony.

<sup>14</sup> Terri Gagne hearing testimony.

<sup>15</sup> Exs. 5.0, 5.1.

4. He telephoned the Division shortly after receiving the denial notice, but at that time he did not know what to do.

5. On or about May 5, 2014 he spoke with someone regarding the denial and was advised to submit a hearing request. He submitted his hearing request two days later.

### III. Discussion

#### A. Overview of the Medicaid Program

The Medicaid program is an “entitlement program” created by the federal government, but administered by the states, to provide payment for medical services for low-income citizens.<sup>16</sup> People qualify for Medicaid by meeting federal income and asset standards and by fitting into a specified eligibility category.<sup>17</sup> In order to participate in Medicaid, federal law requires states to cover certain population groups (mandatory eligibility groups) and gives states the flexibility to cover other population groups (optional eligibility groups).<sup>18</sup>

#### B. The Threshold Timeliness Issue

The timeliness of hearing requests in public assistance cases of this type is governed by Alaska "Fair Hearing" regulation 7 AAC 49.030. Pursuant to 7 AAC 49.030, a request for hearing must ordinarily be made “not later than 30 days after the date of the notice.” The Department of Health and Social Services' regulation allows the consideration of a hearing request made *after* this time limit “only if the administrative law judge finds . . . that the request for a hearing *could not be filed* within the time limit” (emphasis added).<sup>19</sup> By its terms, this is a very narrow exception.

In this case, the preponderance of the evidence indicates that the Division mailed its Medicaid denial notice to Mr. O, at the correct address as listed on his application, on March 12, 2014. Thirty days from that date was April 11, 2014. Mr. O’s hearing request was clearly not made until May 7, 2014, 26 days later. Accordingly, under the language of the regulation, Mr. O's hearing request was untimely unless it *could not have been filed* by April 11, 2014.

Mr. O acknowledged at hearing that he received the Division's notice during the first week of April 2014. He stated that, when he saw that his application had been denied, he became frustrated, and this is understandable. However, based on the Division's regulation, the thirty-day deadline for filing a hearing request may only be extended if the applicant or recipient could not

---

<sup>16</sup> See State of Alaska Division of Health Care Services website at [http://dhss.alaska.gov/dhcs/Pages/medicaid\\_medicare/default.aspx](http://dhss.alaska.gov/dhcs/Pages/medicaid_medicare/default.aspx) (date accessed July 16, 2014).

<sup>17</sup> *Id.*

<sup>18</sup> See the official Medicaid website at <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Eligibility/Eligibility.html> (date accessed July 16, 2014).

<sup>19</sup> 7 AAC 49.030(a) (italics added).

have requested a hearing on a timely basis (*i.e.* unless, under the circumstances of the case, it would have been impossible to do so). In this case, Mr. O *could* have filed a hearing request by April 11, 2014; he simply did not do so until May 7, 2014.

**IV. Conclusion and Order**

In summary, the preponderance of the evidence indicates that Mr. O received proper notice of the Division's determination, but failed to request a hearing as to the Division's determination within the 30-day period specified by 7 AAC 49.030. The Division's request to dismiss this case must therefore be granted, and this matter is dismissed pursuant to 7 AAC 49.100(5). Mr. O is, of course, free to contest any future Medicaid determinations that he may disagree with as long as he requests a hearing on a timely basis.

**Notice of Appeal Rights**

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 July, 2014.

*Signed*  
\_\_\_\_\_  
Jay Durych  
Administrative Law Judge

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