

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

In the Matter of:)
)
 N C) OAH No. 14-0744-MDE
) DPA Case No.

DECISION AND ORDER

I. Introduction

This case is the appeal of N C whose application for Medicaid was denied because she did not timely respond to a request for information. This decision concludes that Ms. C satisfied her burden of proving, by a preponderance of the evidence, that she responded to the request on timely basis, because she took action to provide a response within three days of when she actually received notice of the request. Accordingly, the decision of the Division of Public Assistance (DPA or Division), which found Ms. C had failed to timely respond to the Division's request is overturned. Ms. C's application for benefits is remanded to the Division for processing.

II. Facts

Ms. C applied for Medicaid for her son on January 13, 2014.¹ On March 24, 2014, the Division mailed a request for additional information and notified Ms. C that she had only until April 3, 2014 to respond to the request.² The Division mailed its request letter to Ms. C by regular, first class mail.³ The letter was mailed to Ms. C at P.O. Box 0000, No Name, AK 99XXX.⁴ This is Ms. C's correct mailing address.⁵ On April 24, 2014 Ms. C was sent a notice that her application had been denied because of her failure to timely respond to the Division's request for information. On May 7, 2014 Ms. C called the Division and explained that she had not received the request for information.⁶ Ms. C has provided the information requested by the Division.

Ms. C requested a formal hearing. This request was referred to the Alaska Office of Administrative Hearings. Administrative Law Judge Mark T. Handley was assigned to conduct the formal hearing, which was held on June 2, 2014. Ms. C participated and filed exhibits. DPA

¹ Division's Exhibit 2-2.3.
² Division's Exhibits 4& 5-5.1.
³ Recording of Hearing.
⁴ Recording of Hearing & Division's Exhibit 5-5.1.
⁵ Division's Exhibit 8.
⁶ Division's Exhibit 6.

Public Assistance Analyst Jeff Miller represented the Division and filled a position paper and the agency record. The hearing was audio-recorded. The record closed at the end of the hearing.

Ms. C's explanation at hearing was that she had never received the Division's denial request for information. Ms. C's argued that the time period for responding had not begun until she received actual notice that such a request had been made and her response was therefore timely. The Division's argument was that it had mailed its notice to Ms. C at her proper address, had not received the request back from the Post Office, and that Ms. C had not presented persuasive evidence to rebut the presumption that she had timely received the request for information.

Based on the evidence in the record, I conclude that it is more likely than not that the Division mailed the request for information to Ms. C and correctly addressed that request. This mail was not returned. There is no dispute that Ms. C did not timely respond to the Division's request if she received it, however, the evidence in the record shows that it is more likely than not that the request was not delivered to her mail box despite the presumption that it was.⁷

III. Discussion

The Division may deny a Medicaid application if an applicant refuses to timely provide request information needed to determine the eligibility of the applicant.”⁸ There is no real dispute that Ms. C's response would have been untimely and that the Division would have appropriately denied the application had Ms. C received the request for information and ignored it. Ms. C did point out at the hearing that the Division had already missed its own deadline in making an eligibility determination before making the request for information, but this probably would not have excused a failure to respond or at least contact the Division for over a month after the request was sent. Given the finding that Ms. C did not actually receive the Division's request it is not necessary to rule on this or other issues Ms. C raised that may have mitigated her failure to respond if she had not timely responded once she received notice of the request.

The Division is entitled to the presumption that Ms. C actually received the notice requesting information within a few days after it was mailed.⁹ The Division provided records

⁷ Recording of Hearing-Testimony of Ms. C.

⁸ 7 AAC 100.016(b).

⁹ The proper mailing of a document creates a presumption of delivery. *See Hagner v. United States*, 285 U.S. 427, 430 (1932) (“The rule is well settled that proof that a letter properly directed was placed in a post office creates a presumption that it reached its destination in usual time and was actually received by the person to whom it was addressed”); *see also Jefferson v. Spenard Builder's Supply, Inc.*, 366 P. 2d 714, 717 (Alaska 1961) and *Martens v. Metzgar*, 524 P.2d 666 (Alaska 1974) (when properly addressed and properly stamped mail is deposited in the United States mail, it is presumed that this mail has been delivered).

showing the mailing was probably made and the request sent to the correct address. This means that absent any evidence showing that the delivery was not made, the Division would have met its burden to show that Ms. C actually received the request or would have if she had been reasonably diligent in checking her mailbox while she had a time sensitive application pending.

In this case, a preponderance of the evidence shows that although the Division's request for information was mailed to Ms. C at her correct address; and that mail was not delivered to her mailbox. Ms. C's mailbox is a Post Office box at the No Name Post Office. Ms. C has the only key to that box and is the only person authorized to receive mail at that address. Ms. C was a credible witness. She gave frank answers to questions. She had a good recollection of the facts surrounding her application and the time period surrounding the Division's mailing and receiving notice, through her son's provider, that her application was denied.

Ms. C's appeal and her testimony at the hearing indicates that she is a very organized person and that she is and has been very engaged in the application process. These considerations and Ms. C's credible sworn testimony that she did not receive the Division's request for information persuasively rebut the presumption that she did. At the hearing, there was clear indication that Ms. C's may qualify for the Medicaid benefits that she applied for on behalf of her son, but the Division has not had an opportunity to carefully review her eligibility and make that determination because her denial was based on her failure to provide the information needed to make that determination and the information needed to establish her eligibility was not received before her application was denied. The Division should be given that opportunity through a remand rather than having that review and the eligibility determination made at for the first time the formal hearing level.

IV. Conclusion and Order

In summary, the preponderance of the evidence indicates that Ms. C did not refuse to timely provide the information requested by the Division and was diligent in responding to the Division's request given the delay in her actual notice of the Division's request due to the probable failure of the Post Office to deliver that request. **The Division's denial of Ms. C's application based on her refusal to timely provide requested information is overturned and this case is remanded back to the Division to review her eligibility for benefits.** If her application is denied on the merits after

her eligibility is reviewed, she will be entitled to a hearing on that denial as long as she requests a hearing on a timely basis.

DATED this 3rd day of June, 2014.

Signed _____

Mark T. Handley
Administrative Law Judge

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 27th day of June, 2014.

By: *Signed* _____

Name: Mark T. Handley
Title: Administrative Law Judge

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