

notices are printed and mailed out on the same day as the date printed on the notice.⁴ The denial notice was therefore mailed on September 30, 2014.

Mr. C's public guardian, N G, prepared a new Medicaid application for Mr. C. She signed it October 1, 2014. It was filed with the Division on October 2, 2014.⁵ She testified that she did not know that the July 31, 2014 application was denied when she prepared the October 2014 application. She explained that she had been on vacation and returned to the office on October 1, 2014. She became nervous due to the lack of communication about Mr. C's July 31, 2014 application, did not receive the denial notice, and prepared the October 2014 application out of an excess of caution.⁶

Tom Fernette is a legal benefits specialist with the Office of Public Advocacy. He reviewed Mr. C's file on November 4, 2014. He did not see a written notice denying Mr. C's July application. He contacted the Division, was informed of the denial, and requested a copy of the denial notice. Upon receipt of the notice, he requested a hearing. The Division received the hearing request on November 6, 2014.⁷ The Division denied Mr. C a hearing on the basis that his hearing request was untimely.⁸

Both Ms. Dooley and L O, another Division employee, reviewed Mr. C's file with the Division and the Division's returned mail. They did not find any returned notices for Mr. C.⁹

III. Discussion

An applicant for Medicaid benefits is required to request a hearing within 30 days of the date notice is sent advising him or her that those benefits have been denied.¹⁰ It is undisputed that Mr. C's hearing request is dated November 4, 2014, and was received by the Division on November 6, 2014; both dates are more than 30 days after the date of the September 30, 2014 denial notice.

There is a common-law doctrine known as the "mailbox rule," which "raises a presumption that the postal service 'delivered the document to the addressee in the usual time[.]' if the document was properly mailed, but the presumption can be rebutted by evidence that the

⁴ Jeff Miller's testimony.

⁵ Exs. 2 – 2.7.

⁶ N G's testimony.

⁷ Mr. Fernette's testimony; Ex. 51.

⁸ Ex. 52.

⁹ Annette Dooley's testimony; L O's testimony.

¹⁰ 7 AAC 49.030(a).

document was not received by the deadline.¹¹ Courts have also stated that the fact that the United States Postal Service fails to return a piece of first class mail to the sender creates a rebuttable presumption that the mail was received by the addressee.¹² The evidence demonstrates that it is more likely than not true that the Division mailed the denial notice to Mr. C's guardian on September 30, 2014 and that the Division's denial notice was not returned by the Postal Service to it. These facts create a rebuttable presumption that Mr. C's guardian was sent the denial notice of September 30 and received it.

Mr. C, however, fails to rebut the presumption that he received the denial notice. Although the guardian testified that she did not receive the denial notice, the fact that she prepared and signed a new application on October 1, 2014, and had it filed with the Division on October 2, 2014 belies her testimony. If she was concerned about the lack of communication, she could have simply contacted the Division, or had one of her colleagues contact the Division and inquire about the status of the July application.¹³ If she had been verbally informed about the denial, and chose to file a new application while waiting on the formal notice of the denial, that would have been a credible scenario. However, her explanation that she filed the new application due to nervousness over the lack of communication is simply not credible. Because there is a rebuttable presumption that Mr. C was sent and received the denial notice, which was not rebutted by him, he had until 30 days after September 30, 2014 to file his hearing request: "a request for a hearing . . . must be made to the department in writing by a recipient, or by a legal representative acting on the recipient's behalf, not later than 30 days after the date of the notice required under 7 AAC 49.060."¹⁴ Mr. C's hearing request was therefore due on October 30, 2014. However, his hearing request was dated November 4, 2014, and was received by the Division on November 6, 2014.¹⁵ Accordingly, it was late and this action is time-barred.

¹¹ *In the Matter of G. W. and M. E.*, OAH 07-0605-PFD, p. 10 (Commissioner of Revenue, 2008) citing *Philadelphia Marine Trade Ass'n v. Commissioner of Internal Revenue Service*, 523 F.3d 140, 147 (3rd Cir. 2008) (describing the development of the mailbox rule in the context of a tax refund dispute the resolution of which depended on when the IRS received a letter). *In the Matter of G. W. and M. E.* is available online at <http://aws.state.ak.us/officeofadminhearings/Documents/PFD/PFD070605.pdf>.

¹² See *N.L.R.B. v. J & W Drywall, Lather & Plastering Co., Inc.*, 19 F.3d 1433 (6th Cir. 1994); *Clarke v. Nicholson*, 21 Vet. App. 130 (Vet. App. 2007).

¹³ Mr. Fernette's testimony that he contacted the Division on November 4, 2014 to inquire about the status of the July 2014 application demonstrates that a phone call to the Division was possible, and would have yielded a copy of the denial notice.

¹⁴ 7 AAC 49.030(a).

¹⁵ Ex. 51.

IV. Conclusion and Order

The Division's decision to deny Mr. C a hearing on the denial of his July 31, 2014 Medicaid application is affirmed.

Appeal Rights: This is a final order for purposes 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 order.

DATED this 23rd day of June, 2015.

Signed _____
Lawrence A. Pederson
Administrative Law Judge

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