

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

In the Matter of	)	
	)	OAH No. 12-0203-APA
K K	)	Division No.
_____	)	

**DECISION AND ORDER OF DISMISSAL**

**I. Introduction**

K K is a former Interim Assistance recipient. Her benefits were terminated by the Division of Public Assistance (division) after the Department of Health and Social Services' Office of Hearings and Appeals upheld the division's decision to terminate her Interim Assistance benefits.<sup>1</sup> Ms. K requested a hearing on July 17, 2012 asserting that she was entitled to receive continuing Interim Assistance benefits.<sup>2</sup> The division filed a motion to dismiss this case.

Ms. K' hearing was held on August 7, 2012. Ms. K represented herself and testified on her own behalf. Terri Gagne, Public Assistance Analyst with the Division, represented the Division. The hearing was recorded.

This decision concludes that Ms. K does not currently have a hearable issue regarding her eligibility for Interim Assistance benefits and that this case should be dismissed.

**II. Facts<sup>3</sup>**

Ms. K applied for and began receiving Interim Assistance benefits in 2004.<sup>4</sup> On September 18, 2009, the Social Security Administration (SSA) notified Ms. K that the SSA's Appeals Council had declined to review her appeal of the SSA Administrative Law Judge decision that denied her Supplemental Security Income (SSI) application, which denial was SSA's "the final decision" on that application.<sup>5</sup> On November 16, 2009, Ms. K filed an objection with the SSA which challenged the final denial of her SSI application.<sup>6</sup>

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<sup>1</sup> See Department of Health and Social Services' Office of Hearings and Appeals (OHA) Case No. 11-FH-470. That decision was issued on May 31, 2012.

<sup>2</sup> Ex. 11.1.

<sup>3</sup> These facts are taken from the factual findings made in OHA Case No. 11-FH-470 as well as the exhibits introduced by the parties in this case.

<sup>4</sup> Finding of Fact 1, OHA Case No. 11-FH-470.

<sup>5</sup> Finding of Fact 3, OHA Case No. 11-FH-470.

<sup>6</sup> Finding of Fact 4, OHA Case No. 11-FH-470.

On October 19, 2011, the SSA informed the division that Ms. K did not have any active cases with the SSA and that her SSI application had been denied at the SSA Appeals Council level.<sup>7</sup> On October 20, 2011, the division sent Ms. K notice that she would stop receiving Interim Assistance benefits after October 31, 2012 because her SSI application had been denied.<sup>8</sup> On October 25, 2011, the SSA sent Ms. K notice that she had no active appeals with the SSA, no further appeal rights with the SSA, and that her options were to either file a new disability claim or file suit in federal court.<sup>9</sup>

Regardless, on November 21, 2011, Ms. K filed a reconsideration request with the SSA as well as a new application for SSI benefits. The SSA rejected her reconsideration request on November 23, 2011.<sup>10</sup> The new application remained pending.

On November 20, 2011, Ms. K requested a hearing challenging the division's termination of her Interim Assistance benefits. She also requested she receive continuing Interim Assistance benefits while her Interim Assistance hearing request was pending.<sup>11</sup> On May 31, 2012, the Department of Health and Social Services' Office of Hearings and Appeals (OHA) issued a decision that upheld the termination of Ms. K' Interim Assistance benefits.<sup>12</sup> Ms. K appealed that termination to the Director of the Division of Public Assistance for the Department of Health and Social Services (Director), who upheld the OHA's decision on July 19, 2012.<sup>13</sup>

On June 20, 2012, while the termination of her Interim Assistance benefits case was on appeal to the Director, the division notified Ms. K that she would not receive Interim Assistance benefits as a result of the OHA decision.<sup>14</sup>

Ms. K filed a new application for Interim Assistance benefits on June 25, 2012.<sup>15</sup> She completed the application process including completing an Interim Assistance reimbursement agreement.<sup>16</sup> On July 16, 2012, the division notified Ms. K that a decision on her Interim Assistance application was delayed while it was waiting for her medical records.<sup>17</sup> Ms. K

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<sup>7</sup> Finding of Fact 5, OHA Case No. 11-FH-470.

<sup>8</sup> Finding of Fact 6, OHA Case No. 11-FH-470.

<sup>9</sup> Finding of Fact 7, OHA Case No. 11-FH-470.

<sup>10</sup> Finding of Fact 8, OHA Case No. 11-FH-470.

<sup>11</sup> Finding of Fact 9, OHA Case No. 11-FH-470.

<sup>12</sup> Decision dated May 31, 2012, OHA Case No. 11-FH-470.

<sup>13</sup> Director's Decision dated July 19, 2012, OHA Case No. 11-FH-470.

<sup>14</sup> Ex. 2.

<sup>15</sup> Exs. 3.0 – 3.9.

<sup>16</sup> Ex. 7.1.

<sup>17</sup> Ex. 10.

requested a hearing on July 17, 2012, which stated, in pertinent part, that she was “requesting a fair hearing with continued benefits for my adult public assistance interim assistance. . . . I still have not received my 07/2012 check. The requested application was approved 06/25/2012.”<sup>18</sup>

As of July 31, 2012, Ms. K’ November 21, 2011 SSI application had been denied and was in appeal status.<sup>19</sup>

### **III. Discussion**

Ms. K filed a hearing request on July 17, 2012 requesting that she receive Interim Assistance benefits. The division filed a motion to dismiss asserting that Ms. K’ Interim Assistance application had not been denied and, as a result, she does not have a hearable issue. The threshold issue is therefore whether Ms. K has a hearable issue. As discussed below, Ms. K does not have a current hearable issue, and this case is dismissed as premature.

Interim Assistance is a monthly payment in the amount of \$280 provided by the State to Adult Public Assistance applicants while they are waiting for the Social Security Administration (SSA) to approve their Supplemental Security Income (SSI) application.<sup>20</sup> As part of the Interim Assistance application process, an applicant must have, in addition to other requirements, (1) filed an SSI application, and (2) completed an Interim Assistance reimbursement agreement, wherein the applicant agrees that the division will be reimbursed for the Interim Assistance payments from the applicant’s SSI payments in the event SSI is approved.<sup>21</sup>

Approval for Interim Assistance is not automatic upon the completion of the application. The division must determine that the applicant is “likely to be found disabled by the Social Security Administration.”<sup>22</sup>

It is undisputed that Ms. K received Interim Assistance benefits in the past, that she reapplied for those benefits, and that she is not currently receiving them. Ms. K argued that she should receive Interim Assistance benefits for two reasons: first, that her application had been approved; second, that she had an ongoing SSA appeal and that her Interim Assistance benefits could not be denied while that appeal was pending. Each of these arguments is addressed below.

#### ***A. Approval of Application***

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<sup>18</sup> Ex. 11.1 (emphasis in original).

<sup>19</sup> Ex. 9.2.

<sup>20</sup> 7 AAC 40.170(a) and (b); AS 47.25.455.

<sup>21</sup> 7 AAC 40.060(a); 7 AAC 40.375(c).

<sup>22</sup> 7 AAC 40.180(b)(1).

Ms. K filed a new application for Interim Assistance benefits on June 25, 2012, after her previous Interim Assistance benefits were terminated by the division and that termination was upheld by OHA. Ms. K argued that her application had been approved and that she should receive Interim Assistance benefits. However, the record shows that her application had not been approved. In fact, on July 16, 2012, one day before her July 17, 2012 hearing request, the division explicitly notified Ms. K that a decision on her application was being delayed while it waited for her medical records.<sup>23</sup>

As part of her argument, Ms. K pointed out that she had completed her Interim Assistance reimbursement agreement. The purpose of an Interim Assistance reimbursement agreement is to reimburse the division for the Interim Assistance payments from the applicant's SSI payments in the event SSI is approved.<sup>24</sup> It is part of the Interim Assistance application process. Ms. K implicitly argued that once she completed the Interim Assistance reimbursement agreement, that her Interim Assistance benefits were automatically approved. However, the regulations are clear that approval of Interim Assistance is dependent upon the division determining that an "applicant is likely to be found disabled by the Social Security Administration."<sup>25</sup>

The record shows that the division has not yet finished processing Ms. K' Interim Assistance application. As a result, she has not been approved or denied for Interim Assistance benefits. Ms. K' argument that she is entitled to Interim Assistance benefits because her application was approved therefore fails.

### ***B. Pending SSA Appeal***

The division closed Ms. K' prior Interim Assistance case on October 20, 2011 after it was informed by the SSA that Ms. K had exhausted her appeals from the denial of her SSI application. Ms. K challenged the division's closure of her Interim Assistance benefits; the closure was upheld by OHA, and affirmed by the division Director on appeal.<sup>26</sup>

Ms. K, however, has a pending SSA appeal. That appeal is from the denial of a November 21, 2011 SSI application. Ms. K argues that because she has a pending SSA appeal,

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<sup>23</sup> Ex. 10.

<sup>24</sup> 7 AAC 40.375(c).

<sup>25</sup> 7 AAC 40.180(b)(1).

<sup>26</sup> Decision dated May 31, 2012, OHA Case No. 11-FH-470 and Director's Decision dated July 19, 2012 OHA Case No. 11-FH-470.

she is entitled to receive Interim Assistance benefits.<sup>27</sup> Her argument would be persuasive only if her pending SSA appeal predated the termination of her earlier Interim Assistance benefit case.<sup>28</sup> However, her pending SSA appeal is from the denial of her November 21, 2011 SSI application, an application that was filed after the division closed her earlier Interim Assistance benefit case.

As noted above, Interim Assistance benefits are not automatically approved upon the submission of an application. They are also not automatically approved when an Interim Assistance applicant files an SSI application. These are steps in the application process. In order for an applicant to be found eligible for Interim Assistance, the division (not the applicant, not the SSA) is required to determine that an “applicant is likely to be found disabled by the Social Security Administration.”<sup>29</sup> The division has not made that determination. The fact that Ms. K has a pending SSA appeal does not alter that fact, nor does it entitle Ms. K to receive Interim Assistance benefits.

#### **IV. Conclusion**

A hearing is only available to an applicant who has been denied, who disagrees with a benefit amount, or when the application has been unreasonably delayed.<sup>30</sup> None of those factors are present in the current case. Ms. K’ application has not been denied. Interim Assistance has a fixed benefit amount,<sup>31</sup> so there is no potential dispute over that amount. And as of the hearing date, August 7, 2012, there was no showing that her application processing was unreasonably delayed, merely that the division required additional medical information to process her application.

Ms. K is therefore not currently entitled to request a hearing regarding Interim Assistance benefits because her June 25, 2012 Interim Assistance application has not been granted nor denied.<sup>32</sup> The fact that she has a pending SSA appeal regarding her November 21,

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<sup>27</sup> Ms. K’ argument was difficult to follow. It could be construed as a request to reconsider the May 31 2012 Decision, and the Director’s July 19, 2012 Decision on appeal in OHA Case No. 11-FH-470. However, her only recourse to challenge those decisions is to file a timely appeal with the Alaska Superior Court, not a new hearing request with the OAH. 7 AAC 49.230 and Alaska Rules of Appellate Procedure 602(a)(2).

<sup>28</sup> An Interim Assistance applicant who is found by the division to be likely to be approved for SSI benefits continues to receive Interim Assistance benefits until he or she is approved for SSI, receives and does not appeal an SSI denial, or is dismissed or denied at the SSA Appeals council level. 7 AAC 40.190(a).

<sup>29</sup> 7 AAC 40.180(b)(1).

<sup>30</sup> 7 AAC 49.020.

<sup>31</sup> 7 AAC 40.375(b).

<sup>32</sup> If the division denies Ms. K’ June 25, 2011 Interim Assistance application, she has 30 days after the notice of denial to request a fair hearing challenging that denial. 7 AAC 49.020(1); 7 AAC 49.040.

2011 SSI application, which was filed after the division closed her earlier Interim Assistance benefit case, does not affect this conclusion. The division's motion to dismiss is granted.

DATED this 12th day of September, 2012.

*Signed*  
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Lawrence A. Pederson  
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 26<sup>th</sup> day of September, 2012.

By: *Signed*  
\_\_\_\_\_  
Name: Lawrence A. Pederson  
Title: Administrative Law Judge

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