

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

In the Matter of)	
)	
C L)	OAH No. 17-1288-MDE
_____)	Division No.

DECISION AND ORDER ON TIMELINESS

I. Introduction

C L is a Medicaid recipient who was required to pay a portion of his Medicaid cost of care. The Division of Public Assistance (Division) notified him that his cost of care obligation was going to change effective December 1, 2017. N L, Mr. L’s father and guardian, requested a hearing to challenge the cost of care. After the hearing request was made, the Division of Public Assistance vacated the cost of care requirement because C L was approved for a type of Medicaid - Working Disabled Medicaid which does not require a cost of care payment, beginning in October of 2017.

The matter went to hearing on January 23, 2018. N L represented C L and testified on his behalf. Jeff Miller, a Public Assistance Analyst with the Division, represented the Division and testified on its behalf.

The Division argued that this case did not present a hearable issue because the issue of any change to C L’s cost of care payment was resolved by the Division’s approval of his Working Disabled Medicaid case, which vacated his cost of care responsibility beginning with the month of October. Mr. L disagreed and argued that C L’s Medicaid cost of care requirement, for the time from 2015 through September 2017, should be revisited. The evidence in this case, however, demonstrates that no hearing request was ever made to challenge or dispute Mr. L’s previous cost of care determinations. Accordingly, he cannot use the instant case to challenge previous determinations. This case is therefore dismissed under the authority of 7 AAC 49.100(5).

II. Facts

The following facts were established by a preponderance of the evidence.¹

¹ These factual findings are based upon the documents in the record and the testimony of Mr. L and Mr. Miller.

C L is a disabled adult. He has been receiving Medicaid benefits for several years. He has been receiving notices that he was responsible paying a portion of his Medicaid costs (cost of care) for several years. His guardian, N L, provided a timeline that showed notices were sent about C L's cost of care obligation starting in December of 2014,² and that Mr. L made numerous contacts to the Division to talk to the Division about the cost of care issue thereafter. A number of his contacts were never responded to, and he did not ask for a hearing to challenge the cost of care.

Mr. L met with a Division of Public Assistance employee in the Medicaid long-term care unit in October 2017. Based upon his discussion, he filed an application for C L for a type of Medicaid that does not have a cost of care, specifically the Working Disabled Medicaid category.

Mr. L then received notices dated November 28, 2017 that changed C L's cost of care obligation beginning with the month of December 2017. He, for the first time, requested a hearing to challenge the cost of care requirement. After he requested the hearing, the Division finished processing the October 2017 application for Working Disabled Medicaid and approved it, beginning with the month of October 2017. The Division then vacated the Medicaid cost of care requirement beginning with the month of October 2017.

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 there has been a change or a termination in those benefits. That hearing request must be made in writing.³ "The administrative law judge shall deny or dismiss a hearing request or terminate a hearing if . . . (5) the appeal was untimely . . ."⁴

It is undisputed that the first time Mr. L requested a hearing to challenge the cost of care requirement was after he received the November 28, 2017 notices. That was too late to request a hearing to challenge a cost of care requirement that he was notified of substantially earlier than November 28, 2017. For instance, Mr. L's timeline shows the most recent cost of care notice,

² December 22, 2014, February 23, 2015, May 19, 2015, December 16, 2015, February 16, 2017. *See Timeline* filed by Mr. L on January 23, 2018.

³ 7 AAC 49.030(a). Official notice is taken of the fact that all Division notices are sent on two sided paper. One side contains the notice advising applicants/recipients of the Division's action and the other side advises the applicants/recipients of their hearing rights.

⁴ 7 AAC 49.100.

which predated the November 28, 2017 notice, was dated February 16, 2017.⁵ He would have needed to request a hearing on that cost of care requirement in March of 2017.

Mr. L argued that he should be allowed to challenge the cost of care requirement back to 2015, despite the fact he did not request a hearing until after receiving the November 28, 2017 cost of care requirement. His argument is that if the Division had responded to his inquiries and he had been given proper advice from the Division, that C L could have applied for and been approved for Working Disabled Medicaid in early 2015, which would have meant that C L would have had no cost of care obligation. While Mr. L's argument and frustration are understandable, the regulation governing hearing requirements are clear. He undisputedly did not request a hearing until well after the deadlines for challenging the earlier cost of care determinations. He cannot revisit them at this late date.⁶

IV. Conclusion and Order

This case is dismissed. The matter for which the hearing was originally requested, being the change in Mr. L's Medicaid cost of care beginning with the month of December 2017 has been fully resolved. Mr. L cannot use this case as a forum to challenge earlier actions by the Division which he did not timely request a hearing upon.

DATED this 7th day of February, 2018.

Signed

Lawrence A. Pederson

Administrative Law Judge

Adoption

The undersigned, by delegation from 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 22nd day of February, 2018.

By: *Signed*

Name: Lawrence A. Pederson

Title: Administrative Law Judge/OAH

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

⁵ See *Timeline*.

⁶ It must also be noted that although C L was approved for Working Disabled Medicaid based upon his October 2017 application, it is speculative to assume that this means he would have also been approved for Working Disabled Medicaid in 2015.