

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES
DIVISION OF PUBLIC ASSISTANCE

SARAH PALIN, GOVERNOR

P.O. BOX 110640
JUNEAU, ALASKA 99811-0640
PHONE: (907) 465-3347
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October 14, 2008

[REDACTED]

Re: OHA Case #08-FH-380
Child Care Assistance
Agency Case # [REDACTED]

Dear [REDACTED]:

This is in response to your request to appeal [REDACTED] August 28, 2008 Child Care Assistance fair hearing decision. Your appeal was received in my office on September 12, 2008.

At issue is whether or not the agency should pay child care assistance benefits for the period of August 17, 2007 through March 18, 2008, the time period when [REDACTED] requested, but did not receive, continuation of assistance while waiting for her fair hearing decision.

I have reviewed the hearing record and listened to the proceeding. While it was previously determined that the Division improperly did not reinstate or continue Ms. [REDACTED] child care assistance while she was waiting on the outcome of her fair hearing, I concur with the Hearing Authority's finding that Ms. [REDACTED] was not entitled to assert a payment claim for retroactive benefits when she did not incur any out of pocket expenses for child care.

I, therefore, affirm and incorporate by reference the Hearing Authority's decision that our agency was correct to deny Ms. [REDACTED] request for payment of retroactive assistance. This decision has been reached based upon a review of the hearing record, fair hearing exhibits, the Hearing Authority's decision, and applicable laws and regulations. If for any

[REDACTED]
October 14, 2008

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reason you are not satisfied with this decision, you may appeal to the Superior Court within 30 days.

Sincerely,

Ellie Fitzjarrald
Director

Cc: Larry Pederson, Hearing Authority
[REDACTED], Assistance Attorney General
[REDACTED], Child Care Program Office
[REDACTED], Policy and Program Development
[REDACTED], Staff Development and Training
Case File
Hearing File

Office of Hearings and Appeals
3601 C Street, Suite 1322
P. O. Box 240249
Anchorage, AK 99524-0249
Ph: (907)-334-2239
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**STATE OF ALASKA
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
OFFICE OF HEARINGS AND APPEALS**

In the Matter of)
)
 [REDACTED],) OHA Case No. 08-FH-380
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION ON SUMMARY JUDGMENT

STATEMENT OF THE CASE

[REDACTED] (Claimant) was receiving Child Care Assistance benefits from the Division of Public Assistance Child Care Program Office (Division) for two minor children in 2007. Her Child Care Assistance benefits were terminated for one of the two children in August 2007. She requested a Fair Hearing on that termination and requested continuing benefits. *ITMO* [REDACTED]

The Claimant's case went to hearing on February 7, 2008. A Decision was issued on March 21, 2008 in that case, holding the Claimant's Child Care Assistance benefits had been terminated incorrectly, and that the Division had improperly failed to provide the Claimant with reinstated or continuing benefits. *ITMO* [REDACTED]

On May 9, 2008, the Claimant then requested the Division pay her retroactive Child Care Assistance benefits. The Division denied the Claimant's request on May 28, 2008. The Claimant requested a Fair Hearing on June 3, 2008.

The parties filed cross-motions for summary judgment. There were no disputed factual issues, and no evidentiary hearing was held. Oral argument on the parties' cross-motions was held on July 25, 2008.

The Claimant attended oral argument in person and was represented by [REDACTED], Esq. of [REDACTED]. [REDACTED], Assistant Attorney General, represented the Division and attended telephonically.

ISSUES

Was the Division correct when it denied the Claimant's request she be paid retroactive Child Care Assistance benefits?

UNDISPUTED FACTS

1. Claimant's Child Care Assistance benefits for one of the two children in her household were terminated in August 2007.
2. Claimant requested that her Child Care Assistance benefits be reinstated and continued while she pursued her Fair Hearing challenging the termination of the Child Care Assistance benefits.
3. The Division did not reinstate and/or continue the Claimant's Child Care Assistance benefits while her Fair Hearing challenging the termination of the Child Care Assistance benefits was pending.
4. The child did not attend daycare from August 17, 2007 through March 18, 2008. The Claimant did not incur any daycare expenses for the child from August 17, 2007 through March 18, 2008. The child was cared for by either her paternal grandfather or by other friends or family members. They were not paid for their services. (Affidavit of [REDACTED] in Support of Motion for Summary Judgment)
5. The Fair Hearing Decision held the Division's termination of the Claimant's Child Care Assistance benefits and its failure to reinstate and/or continue the Claimant's Child Care Assistance benefits were both incorrect. *ITMO* [REDACTED], Decision dated [REDACTED].

PRINCIPLES OF LAW

This case involves the issue of whether or not the Division was correct when it denied the Claimant's request she be paid retroactive Child Case Assistance benefits. The parties have cross-moved for summary judgment. The Alaska Fair Hearing regulations, 7 AAC 49.010 *et. seq.*, do not contain a summary judgment procedure. This Decision will therefore look to Alaska Rule of Civil Procedure 56 for guidance.

Summary Judgment is appropriate only where there are no genuine issues of material fact and when "the moving party is entitled to judgment as a matter of law." Civil Rule 56(c).

Child Care Assistance is a program that assists in paying day care costs for qualifying individuals and households. AS 47.25.001. The program pays an authorized child care provider directly, or if the family has hired an approved in-home child care provider, the family is paid. 7 AAC 41.345(a).

An individual who is adversely affected by the Division's Child Care Assistance action may request an administrative review of the action. 7 AAC 41.435(a). An action terminating Child Care Assistance benefits is stayed pending the administrative review. 7 AAC 41.435(d). If the administrative review finds against the individual, that individual may request a Fair Hearing under 7 AAC 49. 7 AAC 41.440(c).

Upon request, benefits are to be reinstated retroactively or continued, pending the issuance of a decision in the Fair Hearing case. 7 AAC 49.190. Additionally, if a Fair Hearing decision is entered in a Claimant's favor, the Division is required to issue corrective benefits:

If the hearing authority . . . determines that the division action at issue was in err, the division shall provide assistance retroactive to the effective date of the erroneous denial, modification, suspension, termination, or reduction.

7 AAC 49.210.

ANALYSIS

The undisputed facts in this case show the following:

1. The Claimant's Child Care Assistance benefits were terminated.
2. The Claimant requested a Fair Hearing on the termination and requested continued Child Care Assistance benefits pending the hearing results.
3. The Claimant prevailed at her Fair Hearing.
4. The Division improperly did not honor her request for continued Child Care Assistance benefits, and the child did not receive Child Care Assistance benefits from August 17, 2007 through March 18, 2008 as a result.
5. The Claimant did not pay for child care services for the child during the time period August 17, 2007 through March 18, 2008.

The legal issue is whether or not the Claimant is entitled to be paid for improperly withheld Child Care Assistance benefits when she did not incur any out of pocket expenses.

If this was a case where the Claimant was receiving direct benefits such as Adult Public Assistance or Food Stamp benefits, then the Fair Hearing regulations mandate reimbursement: "the division **shall** provide assistance retroactive to the effective date of the erroneous denial, modification, suspension, termination, or reduction." 7 AAC 49.210

(emphasis supplied). Similarly, if the Claimant had out of pocket expenses for services that should have been covered but were not, then reimbursement would be authorized. See *Kurnick v. Dept. of Health & Rehab. Servs.*, 661 So.2d 914, 918 (Fla. 1st CDA 1995) (Medicaid case where reimbursement made directly to the client for out of pocket expenses).

This case, however, does not present either a claim for payment of retroactive benefits that were to be made directly to the Claimant, or for reimbursement to the Claimant of out of pocket expenses. It is essentially a claim for compensatory damages.

The parties have not presented any Alaska law on point, and this Hearing Officer is unaware of any. The parties have presented only two cases, neither of which comprises binding precedent. One is an unreported Connecticut Superior Court Case, *Jenkins v. Commissioner*, CV 94 036 77 75; 1995 Conn. Super. LEXIS 2152 (New Haven, Connecticut). The other is a Florida case, *French v. Dept. of Children and Families*, 920 So.2d 671 (Fla 5th DCA 2006).

In the Connecticut case, Ms. Jenkins had her child care benefits terminated on July 11, 1994. The effective date of the termination was June 13, 1994. She requested a fair hearing on the issue. Ms. Jenkins lost at the administrative fair hearing level. She appealed to the Superior Court. The Superior Court found her child care benefits had been improperly terminated, and ordered Connecticut to “reinstate and pay the plaintiff” child care benefits. *Jenkins*, Lexis 2152 at 7. However, the Superior Court opinion in *Jenkins* does not say if Ms. Jenkins incurred child care expenses after her child care benefits were terminated, or if Ms. Jenkins was simply to receive a direct payment without having incurred child care expenses. Without this information, *Jenkins* does not help either side in this case.

In the *French* case, Ms. French was receiving Medicaid Personal Care Assistant benefits. She lived with her parents, who provided her with 24 hour care. Her mother was authorized to be her Medicaid paid personal care assistant. Florida first reduced Ms. French’s personal care assistant benefits and then disenrolled her mother as an authorized personal care assistant provider. Ms. French requested an administrative hearing, and the hearing officer reinstated Ms. French’s full benefits and reenrolled her mother as Ms. French’s personal care assistant. The hearing officer did not order retroactive payments. The appellate court ordered retroactive payments, holding that the personal care assistant program “authorizes family members to be compensated for providing personal care.” *French* at 676. It should be noted the federal Medicaid program regulations and the Florida Medicaid regulations, like the Alaska Fair Hearing regulations, both require corrective payments in the event of an incorrect benefit reduction or termination. 42 CFR 431.246; Florida Administrative Code Rule 65-2.066(6).

French is distinguishable from the instant case. The Claimant has not argued or shown she had a family member enrolled as an approved child care provider who provided uncompensated child care assistance. She does make the argument, in an attempt to align her situation more closely to *French*, that her family members could have been enrolled

as authorized child care providers. If the Claimant had an authorized child care provider who continued to provide services, without compensation, after an erroneous child care assistant benefit termination, *French* would be on point. But since she did not have an authorized child care provider who provided child care assistance without compensation after an erroneous termination of benefits, *French* is not on point.

The Claimant has been damaged. She had her Child Care Assistance benefits terminated incorrectly. Despite her request, she did not have her Child Care Assistance benefits reinstated and/or continued as required by the Child Care Assistance regulations and the Fair Hearing regulations. However, she did not incur any out of the pocket expenses for child care. Her family members and friends provided her with child care for free. Under these circumstances, the Claimant does not have a remedy available to her.

There being no genuine issues of material fact, and the Division being entitled to summary judgment as a matter of law, the Division's motion for summary judgment is granted and the Claimant's motion for summary judgment is therefore denied.

CONCLUSIONS OF LAW

The Claimant was not entitled to assert a payment claim for retroactive benefits when she did not incur any out of pocket expenses for child care.

DECISION

The Division was correct when it denied the Claimant's request for payment of retroactive Child Care Assistance benefits.

APPEAL RIGHTS

If for any reason the Claimant is not satisfied with this decision, the Claimant has the right to appeal by requesting a review by the Director. To do this, the Claimant must send a written request directly to:

Director of the Division of Public Assistance
Department of Health and Social Services
PO Box 110640
Juneau, AK 99811-0640

An appeal request must be sent within 15 days from the date of receipt of this decision.
Filing an appeal with the Director could result in the reversal of this decision.

DATED this 28th day of August, 2008.

Larry Pederson
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 28th day of
August 2008, true and correct copies
of the foregoing were sent to:

[REDACTED] – Certified Mail, Return Receipt Requested.
[REDACTED], Assistant Attorney General
[REDACTED], Director
[REDACTED], Policy & Program Development
[REDACTED], Staff Development & Training

Al Levitre
Law Office Assistant I