

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

In the Matter of	)	
	)	OAH No. 12-0583-APA
H D. X	)	Former OHA Case No.
_____	)	DPA Case No.

**DECISION**

**I. Introduction**

The issue in this case is whether the Division of Public Assistance was correct to terminate H D. X' Interim Assistance benefits because the United States Social Security Administration denied Mr. X' application for Supplemental Security Income at the Appeals Council level. This decision concludes, based on the evidence in the record, that the Division of Public Assistance was correct to terminate Mr. X' Interim Assistance benefits after April 30, 2012.

**II. Facts**

There are no relevant facts in dispute. Mr. X applied for Interim Assistance (IA) benefits on January 24, 2011 while his application for Supplemental Security Income (SSI) was pending with the United States Social Security Administration (SSA).<sup>1</sup> Mr. X' application for IA was approved in January 2011 and he began receiving Interim Assistance.<sup>2</sup>

On May 2, 2011 SSA denied Mr. X' application for SSI at the Administrative Law Judge (ALJ) level.<sup>3</sup> Mr. X then appealed the SSA ALJ's decision to the SSA Appeals Council.<sup>4</sup> On November 2, 2011 the SSA Appeals Council denied Mr. X' appeal.<sup>5</sup> Mr. X subsequently appealed SSA's denial of his application for SSI to the United States District Court.<sup>6</sup>

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<sup>1</sup> Exhibit 1. Filing an application for SSI with SSA is a legal prerequisite to receipt of Interim Assistance benefits from the State of Alaska. *See* Adult Public Assistance Manual Section 426-2 B, A.S. § 47.25.455, and 7 AAC § 40.375(a).

<sup>2</sup> Exhibit 1.

<sup>3</sup> Exhibit 2.1.

<sup>4</sup> Exhibit 2.2.

<sup>5</sup> Exhibit 2.2.

<sup>6</sup> X hearing testimony.

Beginning on March 22, 2012 the Division of Public Assistance sent three notices to Mr. X stating that his benefits would end after April 30, 2012 because the Social Security Administration had issued a final determination that he was not eligible for SSI benefits.<sup>7</sup> On March 22, 2012 the Division mailed the first of these notices to Mr. X; this first notice stated in relevant part as follows:<sup>8</sup>

Your application for Adult Public Assistance (APA) and Medicaid received August 25, 2008, is denied. If you have been receiving Interim Assistance it will end on 4/30/12.

We denied your application because [SSA] determined that you are not blind or disabled and denied your application for [SSI].

If you give us proof you have appealed the SSI decision by 4/19/12, you will continue to receive \$280 per month from Interim Assistance. If the medical screener had not made a decision on your eligibility for Interim Assistance at the time of the denial, that process will start again.<sup>[9]</sup>

If you win your SSI appeal, we will redetermine your eligibility for APA and Medicaid benefits.

This action is supported by APA Manual sections 425-2C and 426-5 and 7 AAC 40.060.

On April 9, 2012 the Division issued a second notice to Mr. X stating that his Interim Assistance case would be closed effective April 30, 2012.<sup>10</sup> This notice explained that "once an individual has exhausted the SSI appeal process, he or she may choose to appeal the SSI decision to the federal district court," but that "Interim Assistance is not available pending an appeal to the court."<sup>11</sup>

Finally, on April 25, 2012 the Division issued a third notice.<sup>12</sup> This notice stated in relevant part as follows:

Your Adult Public Assistance (APA) and Medicaid application received January 24, 2011 is denied. Interim Assistance benefits end on 4/30/12.

This is because the [SSA] denied your appeal of their decision that you are not blind and/or disabled.

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<sup>7</sup> Exhibits 3, 4, 6, 11.

<sup>8</sup> Exhibit 11.

<sup>9</sup> Exhibit 11. As with Exhibits 3 and 6, this is a copy of a computer printout rather than the actual notice.

<sup>10</sup> Exhibits 3 and 4.

<sup>11</sup> Ex. 3.

<sup>12</sup> Exhibit 6. This exhibit is a copy of a computer printout. A copy of the actual notice is not in the record, but there is no dispute that the notice was sent to and received by Mr. X. Nor is there any dispute that the printout is an accurate summary of the actual notice.

Mr. X requested a hearing on April 23, 2012.<sup>13</sup> His hearing was held on June 27, 2012. The hearing was recorded. Mr. X participated in the hearing by phone, represented himself, and testified on his own behalf. DPA Public Assistance Analyst Jeff Miller participated in the hearing by phone, represented the Division, and testified on its behalf. The record was left open for post-hearing filings through July 20, 2012, after which time the case became ripe for decision.

### III. Discussion

Interim Assistance is a monthly payment in the amount of \$280 provided by the State of Alaska to Adult Public Assistance applicants while those applicants' eligibility for Supplemental Security Income (SSI) is being determined by the Social Security Administration.<sup>14</sup>

Initially, it is important to note that the SSA has its own appeal process for reviewing SSI decisions, and that the SSA's process is separate from the process under state law for reviewing Interim Assistance decisions made by the Division. Federal regulations provide a three step process for appealing disability determinations. If the applicant disagrees with SSA's initial determination, he or she has a right to request reconsideration.<sup>15</sup> If dissatisfied with the reconsideration decision, the applicant can request a hearing before an SSA administrative law judge (ALJ).<sup>16</sup> Finally, if the hearing before the ALJ is not favorable, the applicant can ask the Appeals Council to review the ALJ's decision.<sup>17</sup> This is the final step in the SSA's administrative review, and the Appeals Council's decision is the final agency decision.<sup>18</sup> After this step, the only appeal from a denial of SSI is to the U.S. District Court.<sup>19</sup>

The time period within which the Division must continue to pay Interim Assistance is specified by Adult Public Assistance regulation 7 AAC 40.190, which states in relevant part:

(a) . . . . Interim assistance will end upon the division's receipt of notification of the Social Security Administration's final determination of eligibility or ineligibility for SSI benefits. *An applicant will continue to receive interim assistance until the applicant* (1) is approved for SSI; (2) receives an adverse SSI decision and fails to appeal it to the next appeal level; (3) withdraws or abandons

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<sup>13</sup> Exhibit 4.1.

<sup>14</sup> AS 47.25.455; 7 AAC 40.170(a) and (b); 7 AAC 40.375(a).

<sup>15</sup> 20 CFR § 416.1400(a)(2).

<sup>16</sup> 20 CFR § 416.1400(a)(3).

<sup>17</sup> 20 CFR § 416.1400(a)(4).

<sup>18</sup> 20 CFR § 416.1481.

<sup>19</sup> 20 CFR § 416.1400(a)(5).

an appeal at any level; or (4) receives a notice of dismissal or an adverse decision from the Social Security Appeals Council. [Emphasis added].

In this case, Mr. X received a notice from the SSA Appeals Council stating that it would not review the decision of the SSA administrative law judge.<sup>20</sup> Mr. X argued at the hearing in this case that the Appeals Council *should* have reviewed and granted his application for SSI. However, it is not disputed that the Appeals Council in fact *did not* review or grant his application for SSI. This Office cannot reverse or modify a decision made by the SSA Appeals Council; only the U.S. District Court may do that.<sup>21</sup>

The Alaska Interim Assistance regulations regarding the effect of the denial of an application for Supplemental Security Income by the Social Security Administration at the Appeals Council level are clear and unambiguous. Pursuant to 7 AAC 40.160(a), an Interim Assistance recipient “will continue to receive interim assistance until the [recipient] . . . (4) receives . . . an adverse decision from the Social Security Appeals Council.” This regulation (7 AAC 40.160(a)) does not contain any exception to the termination requirement for cases in which a recipient appeals his or her adverse Appeals Council decision to federal district court.<sup>22</sup>

In summary, Mr. X' eligibility for state Interim Assistance benefits ended when the Social Security Administration's Appeals Council denied his application for Supplemental Security Income on November 2, 2011. Pursuant to AS 47.25.455(a), 7 AAC 40.375(a), 7 AAC 40.190(a), and 7 AAC 40.160(a), the Division has no discretion; it must stop paying Interim Assistance benefits to Mr. X.

#### **IV. Conclusion**

Mr. X received notice from the SSA Appeals Council that it would not review the

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<sup>20</sup> Exhibit 2.1.

<sup>21</sup> First, the State of Alaska's “Fair Hearings” regulations do not give this Office the authority to second-guess the findings and conclusions of a federal agency. See 7 AAC 49.020, 7 AAC 49.100, and 7 AAC 49.170. Second, the Supremacy Clause of the United States Constitution (Article VI, Section 2) generally operates to prevent a state agency from attacking the findings of a federal agency. See, for example, *Mancusi-Ungaro v. Caldwell*, 205 S.E.2d 58 (Ga.App. 1974) (the findings of a federal agency are final and conclusive on a state agency).

<sup>22</sup> The foregoing interpretation of the Interim Assistance statutes and regulations was confirmed by the Alaska Supreme Court in *Moore v. Beirne*, 714 P.2d 1284 (Alaska 1986), where the court held “that the [interim assistance statute] requires state payment of interim assistance *through the SSI appeals process until a final SSI eligibility determination is made administratively.*” [Emphasis added].

decision of the SSA administrative law judge. Accordingly, the Division was correct to terminate Mr. X' Interim Assistance benefits after April 30, 2012.

Dated this 23rd day of August, 2012.

*Signed* \_\_\_\_\_  
Jay Durych  
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 10<sup>th</sup> day of September, 2012.

By: *Signed* \_\_\_\_\_  
Name: Ree Sailors  
Title: Deputy Commissioner, DHSS

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