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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-872
)	
Claimant.)	Division Case No. [REDACTED]
_____)	

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) applied for Medicaid benefits on September 15, 2008. (Ex. 1) On November 17, 2008, the Division of Public Assistance (Division) sent the Claimant written notices it was denying his application for Medicaid benefits because he did not comply with the Division's request for information. (Ex. 5) The Claimant requested a fair hearing on December 2, 2008. (Ex. 6.1) This office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to the Claimant's request, a hearing was held on January 13 and February 3, 2009 in front of Hearing Officer Claire Steffens. The Claimant attended both hearing dates in person and represented himself. **[REDACTED]**, the Claimant's sister, attended both hearing dates in person. She testified on behalf of the Claimant and assisted in his representation. **[REDACTED]**, Public Assistance Analyst with the Division, attended both hearing dates in person and represented the Division. **[REDACTED]**, an Eligibility Technician employed by the Division, attended telephonically and testified on behalf of the Division on January 13, 2009.

This case was administratively reassigned to Hearing Officer Larry Pederson,¹ who reviewed the entire file and listened to the recording of the entire hearing prior to issuing this Decision.

ISSUE

Was the Division correct to deny the Claimant's September 15, 2008 Medicaid application because he had failed to comply with the Division's requests for information?

¹ This hearing officer also observed the January 13, 2009 portion of the hearing, where both the Claimant and Ms. **[REDACTED]** testified.

FINDINGS OF FACT

1. Claimant applied for Medicaid benefits on September 15, 2008. (Ex. 1) At the time of his application, the Claimant was on unpaid medical leave from his job due to an injury not related to his employment. (Ex. 2)
2. On September 29, 2008, Ms. [REDACTED], an Eligibility Technician employed by the Division, interviewed the Claimant in person about his Medicaid application. (Ex. 2) The Claimant was provided a work statement for his employer to fill out. (Claimant testimony)
3. On September 29, 2008, the Claimant took the employer work statement to his workplace, where it was then faxed to his employer's payroll office. (Ex. A, pp. 1 – 2; Claimant testimony)
4. On September 30, 2008, the Division mailed the Claimant notice it required the completed work statement from his employer no later than October 10, 2008, or his Medicaid application would be denied. (Ex. 3)
5. The Claimant testified he called Ms. [REDACTED] "roughly five times" to confirm the information had been received, leaving a message on her voicemail each time and that he never received a return call from Ms. [REDACTED]. The Claimant testified he contacted his employer's payroll office and that [REDACTED] told him that she had mailed the completed work statement to the Division.
6. Ms. [REDACTED] the Claimant's sister, testified that the Claimant resided with her at the time and that she heard him leave several phone messages for Ms. [REDACTED]. She further testified that she had never heard any phone messages from Ms. [REDACTED] on her telephone answering machine.
7. Ms. [REDACTED] testified she wrote down telephone messages she received in her phone log. She reviewed her telephone log and testified she had not received any voice mail messages from the Claimant.
8. Ms. [REDACTED] testified she did not receive the completed work statement and the Division denied the Claimant's Medicaid application on November 14, 2008. (Ex. 4; Lovekin testimony)
9. On November 17, 2008, the Division mailed the Claimant written notice his Medicaid application was denied. (Ex. 5)

PRINCIPLES OF LAW

This case involves the question of whether or not the Division was correct to deny the Claimant's application for Medicaid benefits. Because this case involves the denial of an application, the Claimant has the burden of proof² by a preponderance of the evidence.³

² "Ordinarily the party seeking a change in the status quo has the burden of proof." *State, Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985)

The Division is authorized to request verification that an applicant meets the eligibility requirements for the Medicaid program, and if the applicant refuses to provide the requested verification, the agency is authorized to deny eligibility. 7 AAC 100.016(a) and (b). An applicant's income, derived from employment or otherwise, is a factor used in determining if an individual is eligible for Medicaid. 7 AAC 100.102(c).

ANALYSIS

This case presents a narrow issue, whether or not the Division was correct to deny the Claimant's Medicaid application because he did not comply with its request for information, i.e. the work statement completed by his employer. It is not disputed that the Claimant faxed his employer the work statement for completion.

It first needs to be noted that the Division's request for an employer's completed work statement was made for a valid purpose, finding out information about the Claimant's employment and income. His employment income would have been a factor in determining his financial eligibility for Medicaid benefits.

The Claimant testified he contacted Ms. [REDACTED] from his employer's payroll office, and that she told him she had mailed the completed employer's work statement to the Division. While the Claimant is credible, his testimony regarding Ms. [REDACTED]'s statement to him is hearsay. In contrast, Ms. [REDACTED] testified she did not receive the completed employer's work statement. Ms. [REDACTED]'s direct testimony is more credible than the Claimant's hearsay testimony. It is therefore established that the Claimant did not provide the completed employer work statement to the Division.

The Claimant and his sister both testified regarding the Claimant's multiple attempts to determine if the Division had received the completed work statement. While the Claimant and his sister had a motivation to misrepresent his attempts to contact the Division, nothing in the evidence or the witness demeanor gives any reason to doubt their credibility. Accordingly, both the Claimant and his sister are found to be credible.

Ms. [REDACTED], the Eligibility Technician processing the Claimant's Medicaid application, testified she did not receive any messages from the Claimant. She has no motivation to misrepresent the facts. She is also credible.

Given the fact the Claimant, his sister, and Ms. [REDACTED] were all credible witnesses, the only possible factual conclusion is that the Claimant made multiple attempts (he testified as to "roughly five times") to contact Ms. [REDACTED] to find out if the requested information had been

³ Preponderance of the evidence is the normal standard of proof in an administrative proceeding. *Amerada Hess Pipeline v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986). Preponderance of the evidence is defined as "[e]vidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th Ed. 1979)

received. For some unknown reason, Ms. [REDACTED] did not receive any messages from the Claimant.

Regardless, the Claimant had the responsibility to supply the requested employer's work statement to the Division. He has the burden of proof in this case. He did not meet it. He did not supply the completed employer's work statement to the Division. Although he made repeated attempts to contact Ms. [REDACTED] and confirm her receipt of his employer's work statement, he should have realized from her failure to return his messages that she had not received the messages. Neither is the failure to return the messages grounds for him to assume that she had received the completed employer's work statement. He should have persevered in his attempts to contact Ms. [REDACTED]. He did not do so.

Under these circumstances, the Division was correct to deny the Claimant's Medicaid application because the Claimant did not supply the Division with his completed employer's work statement.

CONCLUSIONS OF LAW

1. The Claimant did not supply the Division with the completed employer's work statement as requested by the Division.
2. The Claimant's failure to supply the Division with the completed employer's work statement is not excused by his multiple attempts to contact the Eligibility Technician processing his Medicaid application.
3. The Claimant's failure to respond to supply the Division with the completed employer's work statement was grounds for the Division to deny his September 15, 2008 Medicaid application.
4. The Division's action denying Claimant's September 15, 2008 Medicaid application was correct.

DECISION

The Division was correct to deny the Claimant's September 15, 2008 Medicaid application.

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 19th day of March, 2009.

Larry Pederson
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 19th day of March 2008,
true and correct copies of the foregoing were
sent to:

Claimant – Certified Mail, Return Receipt Requested.

[REDACTED], Director Policy & Program Development - email
[REDACTED], Director's Office - email
[REDACTED], Policy & Program Development - email
[REDACTED], Policy & Program Development - email
[REDACTED], Staff Development & Training - email
[REDACTED], Fair Hearing Representative - email

Al Levitre
Law Office Assistant I