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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. 09-FH-003
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) has been receiving Adult Public Assistance and Medicaid benefits from the State of Alaska since November 2007. (Ex. 1) On January 5, 2009, the Division of Public Assistance (Division) sent the Claimant written notice it was terminating his Adult Public Assistance and conditionally terminating his Medicaid benefits effective January 31, 2009. (Ex. 6.0) The Claimant requested a fair hearing on January 5, 2009. (Ex. 5.2) This office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to the Claimant's request, a hearing was held on February 3, March 3, and April 8, 2009. The Claimant attended each hearing date telephonically, testified on his behalf, and represented himself. The Claimant's brother, [REDACTED] attended the March 3 and April 8 hearing dates telephonically, testified on his brother's behalf, and assisted in his representation. [REDACTED], Public Assistance Analyst with the Division, attended in person and represented the Division.

ISSUE

Was the Division correct to terminate the Claimant's Adult Public Assistance and Medicaid benefits effective January 31, 2009?

FINDINGS OF FACT

1. The Claimant is receiving disability benefits from the federal government.¹ (Ex. 3)

¹ There is a factual discrepancy in the evidence as to whether the Claimant is receiving Supplemental Security Insurance or Social Security Disability Income. It is not necessary to resolve this discrepancy. See fn. 5 below.

2. The Claimant has been receiving Adult Public Assistance and Medicaid benefits from the State of Alaska since November 2007. (Ex. 1)
3. On October 28, 2008, the Division received an Eligibility Review form (Gen 72) purportedly signed by the Claimant on October 28, 2008. (Ex. 2.0 – 2.4) That same Eligibility Review form states that a “██████████” was authorized to assist with his public assistance case. (Ex. 2.3)
4. The October 28, 2008 Eligibility Review form discloses that the Claimant is the owner of a “house/apartment” valued at \$50,000.00. (Ex. 2.1)
5. The Division sent the Claimant written notice on December 10, 2008 that it required information regarding the real property (house and apartment), its location, its value, and the amount owed upon the property. (Ex. 4) The Division gave the Claimant a deadline of December 22, 2008 to supply the information, and cautioned him that failure to supply the information could lead to closure of his Public Assistance and Medicaid cases. *Id.*
6. The Claimant did not respond to the Division’s request for information within the timeline set by the Division. (Ex. 5)
7. The Division then sent the Claimant written notice on January 5, 2009, it was terminating his Adult Public Assistance case effective January 31, 2009 because he did not respond to its request for information. (Ex. 6.0) That same written notice informed the Claimant his Medicaid case would also be terminated effective January 31, 2009, unless he was receiving Supplemental Security Income benefits. *Id.*
8. On January 5, 2009, the Claimant called the Division and spoke to ██████████. In that conversation, he informed Ms. ████████ that he did not own a house or an apartment, and that someone was falsifying his documents. (Exs. 6.1, 7)
9. On January 12, 2009, ██████████, who is employed by the Division, called the Claimant and spoke to him about his hearing request. (Ex. 7) Her notes of the conversation reflect that the Claimant acknowledged being a partial owner of a house and an apartment, that he did not know the value of the property, and that its condition was in disrepair. *Id.* The Claimant also provided the Division with his brother’s phone numbers, and stated his brother was the person who could respond to the Division’s financial questions. *Id.*
10. The Claimant’s statements, both prior to the hearing and at hearing, cast doubt upon his competency, for the following reasons:
 - a. He was confused during the hearing. He did not appear to appreciate and/or comprehend the reason for the hearing, or the issues involved. He mentioned income as an issue several times, when it was not an issue. (Claimant testimony) He did not address the Division’s position that he did not respond to the Division’s request for information. He denied completing the October 28, 2008 Eligibility Review form, stating repeatedly that

someone broke into his hotel room and took documents from it, and then put documents in it. (Claimant testimony) He stated someone wrote information on the Eligibility Review form that he did not know about. (Claimant testimony; Exs. 6.1, 7)

- b. He stated he did not know who “██████████,” the authorized representative listed on his form, was. (Exs. 6.1, 7)
- c. Referring to his Public Assistance application, he stated that the Alaska Psychiatric Institute has the last “assessment” for Public Assistance that was done. (Claimant testimony)

11. The Claimant’s brother has been his guardian in the past. (Brother’s testimony) The Claimant has had a number of differing psychiatric diagnoses in the past. *Id.* The Claimant’s brother often does not know where his brother is, until he receives a phone call from a state agency, such as happened in this case. *Id.*

12. The Claimant is a limited partner in real property (the house and apartment) located in ██████████. (Ex. A, pp. 1, 6 – 30) His brother is the general partner. (Brother testimony; Ex. A, p. 6) The Claimant cannot sell his limited partnership interest without the consent of the general partner. (Brother testimony; Ex. A, p. 17) The Claimant’s brother estimated the partnership’s equity in the real property totaled \$95,000. (Brother testimony; Ex. A, p. 1)

PRINCIPLES OF LAW

This case involves a termination of benefits. The Division has the burden of proof² by a preponderance of the evidence.³

The Alaska Adult Public Assistance regulations provide the Division with the authority to request information from Adult Public Assistance recipients:

Upon receipt of information from any source that indicates that a change in circumstances affecting an applicant’s eligibility or amount of assistance may have occurred, the division shall investigate and, if necessary, adjust the amount of assistance or suspend or terminate assistance in accordance with 7 AAC 49.060.

7 AAC 40.460. When the Division requests information from a benefit recipient, it is required to “provide the client with a written notice that states what evidence is needed and [give] a reasonable

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)

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)

amount of time (at least 10 days) to submit the necessary proof.” *Alaska Adult Public Assistance Manual* §400-4(B).

An individual who receives Supplemental Security Income from the federal government is automatically eligible to receive Medicaid benefits from the State of Alaska. 7 AAC 100.002(b)(1); 7 AAC 100.410(a). An Adult Public Assistance recipient is also eligible to receive Medicaid benefits from the State of Alaska. 7 AAC 100.002(b)(2) and (d)(1).

ANALYSIS

The facts in this case are not disputed. The Claimant was receiving Adult Public Assistance and Medicaid benefits from the State of Alaska. The Division became aware that he had an ownership interest in real property (house and apartment), through the Claimant’s October 28, 2008 renewal application for those benefits.⁴ The Division requested information about the real property. The Claimant did not respond by the Division’s December 22, 2008 deadline. On January 5, 2009, the Claimant spoke to a Division employee denying that he owned any real property. Then, after the Division sent its January 5, 2009 notice informing the Claimant his Adult Public Assistance and Medicaid benefits would terminate on January 31, 2009, he spoke to a Division employee on January 12, 2009, supplying her with information about the property and directing her to contact his brother for more information. The Division continued with its decision to terminate the Claimant’s Adult Public Assistance and Medicaid benefits.

While it is undisputed that the Claimant did not timely comply with the Division’s request for information, the Division should not have terminated his Adult Public Assistance and Medicaid benefits, due to a combination of factors:

- a) The Claimant responded to the Division’s request for information, albeit late. However, the Division received the information on January 12, 2009, which was 19 days before the Claimant’s benefits were due to expire. Consequently, the agency had sufficient information to determine if the claimant met the Adult Public Assistance and Medicaid financial eligibility requirements several weeks before those benefits were due to terminate.
- b) The Claimant’s competency is in question. *See* Finding of Fact 10 - 11 above. Given 1) his verbal denial provided to the Division on January 5, 2009 that he owned any real property; 2) then his verbal statement provided to the Division on January 12, 2009 that he did own real property; and 3) his confusion at the hearing, it is exceedingly doubtful he comprehended what information the Division was requesting or the purpose for the Division’s request. *See* Findings of Fact 8 – 11 above.

It should be emphasized the Division followed its regulations and policies in this case. However, given the unique facts of this case, i.e. the Claimant’s questionable competency and the fact the Division received the requested information 19 days before his benefits were scheduled to terminate, the

⁴ The Claimant disputed having furnished that information to the Division. *See* Finding of Fact 10(a) above.

Division should have rescinded its termination of the Claimant's Adult Public Assistance and Medicaid benefits. It should be noted that neither the applicable regulations nor the agency policy manuals provide any guidance on this issue.

The Division raised an additional reason for termination of the Claimant's benefits at the hearing. That reason was that the Claimant owned real property worth in excess of the Adult Public Assistance and Medicaid resource limits. The Division did not include this reason in the termination notice sent to the Claimant. "Due process requires that benefit recipients be given 'timely and adequate notice detailing the reasons for a proposed termination, and an effective opportunity to defend' before their benefits are reduced or terminated, in order to afford them protection from 'agency error and arbitrariness.'" *Allen v. Dept. of Health & Social Services, Division of Public Assistance*, 203 P.3d 1155, 1167 (Alaska 2009) (citation omitted) Because the Division's January 5, 2009 termination notice did not inform the Claimant his benefits were being terminated due to his ownership of real property, it did not satisfy the standard expressed in *Allen*. Accordingly, it will not be considered here.

CONCLUSIONS OF LAW

1. The Division's request for information was valid, and its initial decision to terminate the Claimant's Adult Public Assistance and Medicaid⁵ benefits, due to a lack of timely response, was equally valid.

2. However, given the fact the Claimant provided the Division with its requested information 19 days before the scheduled termination of his Adult Public Assistance and Medicaid benefits, coupled with the fact the Claimant's competency is questionable, the Division's final action terminating the Claimant's Adult Public Assistance and Medicaid benefits effective January 31, 2009 was not correct; it should have rescinded its termination action.

3. The Division may not raise an additional reason for termination of benefits at hearing, when that reason was not included in its notice of termination.

DECISION

The Division was not correct when it terminated the Claimant's Adult Public Assistance and Medicaid benefits effective January 31, 2009.

⁵ This conclusion assumes that the Claimant was not receiving Supplemental Security Income benefits. There is a discrepancy in the evidence as to whether he receives Supplemental Security Income, which potentially affects his eligibility for Medicaid benefits. If the Claimant was receiving Supplemental Security Income benefits, then he would be automatically eligible for Medicaid benefits, regardless of his eligibility for Adult Public Assistance. 7 AAC 100.002(b)(1); 7 AAC 100.410(a). If he was not receiving Supplemental Security Income benefits, then his eligibility for Medicaid is dependent upon his eligibility for Adult Public Assistance. 7 AAC 100.002(b)(2) and (d)(1). However, since this Decision finds that the Division should not have terminated the Claimant's benefits, it is not necessary to address this issue.

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, 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 filed within 15 calendar days from the date of receipt of this Decision. Filing an appeal with the Director could result in the reversal of the Hearing Authority's decision.

DATED this 30th day of April 2009.

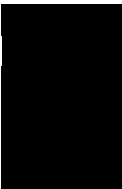
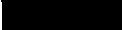
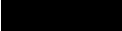
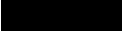
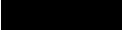

Larry Pederson
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 30th day of April 2009, true and correct copies of the foregoing was sent:

By First Class Mail, Certified, Return Receipt Request to the Claimant and Claimant's Representative;

and to the following by electronic mail:

, Division Hearing Representative
, Director
, Director's Office
, Policy & Program Development
, Policy & Program Development
, Staff Development & Training

Al Levitre, Law Office Assistant I