

Office of Hearings and Appeals  
3601 C Street, Suite 1322  
P. O. Box 240249  
Anchorage, AK 99524-0249  
Ph: (907)-334-2239  
Fax: (907)-334-2285

**STATE OF ALASKA  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
OFFICE OF HEARINGS AND APPEALS**

In the Matter of )  
 )  
 [REDACTED], ) OHA Case No. 09-FH-224  
 )  
 Claimant. ) Division Case No. [REDACTED]  
 )  
 \_\_\_\_\_ )

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

[REDACTED] (Claimant) applied for Interim Assistance on December 8, 2008. (Ex. 2) On March 5, 2009 the Division of Public Assistance (Division) sent the Claimant written notice it was denying his application for Interim Assistance. (Ex. 6) The Claimant requested a fair hearing on April 3, 2009 (Ex. 7) This office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to the Claimant's request, a hearing was held on May 20, 2009. The Claimant attended the hearing telephonically, represented himself and testified on his own behalf. The Claimant's wife, [REDACTED], attended the hearing telephonically and testified on the Claimant's behalf.

[REDACTED], Public Assistance Analyst with the Division, attended in person and represented the Division. [REDACTED] and [REDACTED], both of whom are Eligibility Technicians employed by the Division, attended the hearing telephonically and testified on behalf of the Division.

Following the May 13, 2009 hearing, this case was reassigned to Hearing Officer Larry Pederson, who reviewed the entire hearing record and listened to the recording of the entire hearing before issuing this Decision.

**ISSUE**

Was the Division correct to deny the Claimant's December 8, 2008 application for Interim Assistance because he did not furnish the Division with a physician's examination report (AD #2) by February 10, 2009?

## FINDINGS OF FACT

The following facts are established by a preponderance of the evidence:

1. The Claimant applied for Interim Assistance benefits on December 8, 2008. (Exs. 2.0 – 2.9)
2. The Claimant participated in an in-person intake interview with regard to his December 8, 2008 Interim Assistance application on January 12, 2009. (Ex. 3.0) Eligibility Technician [REDACTED] conducted the interview. *Id.* At the end of the interview, Eligibility Technician [REDACTED] came in, spoke to the Claimant, gave him a Medicaid coupon for a medical examination and a copy of a physician's examination report (AD #2) to have filled out by an examining physician. (West testimony) The Claimant had only one interview. ([REDACTED] testimony)
3. The Claimant was not able to obtain a doctor's appointment until February 6, 2009. ([REDACTED] testimony; Claimant testimony; Ex. 14) On January 21, 2009, the Claimant called the Division, spoke to [REDACTED] informing her he would not be able to see a doctor until February 6, 2009, and was issued a new Medicaid coupon good during the month of February 2009. *Id.*
4. On January 22, 2009, the Division mailed the Claimant a written notice informing him that he had until February 10, 2009 to turn in the physician's examination report (AD #2). (Ex. 4)
5. The Claimant did not turn in the physician's examination report (AD #2) by the February 10, 2009 deadline. ([REDACTED] testimony; Ex. 8)
6. The Claimant first met with a physician on February 6, 2009. (Claimant testimony) He acknowledged he did not turn in the physician's examination report by the February 10, 2009 deadline. (Claimant testimony; Ex. 8) He explained the failure to turn in the physician's examination report was due to the physician being unable to complete it because the physician needed to see his medical records first. (Claimant testimony; Ex. 8)
7. The Division denied the Claimant's Interim Assistance application because he failed to provide the physician's examination report and sent him a written denial notice on March 5, 2009. (Ex. 6)
8. The Claimant spoke to Eligibility Technician [REDACTED] on April 6, 2009, after his Interim Assistance application was denied. ([REDACTED] testimony; Ex. 8) [REDACTED] wrote a casenote that day documenting his conversation with the Claimant. (Ex. 8) During the April 6, 2009 conversation, the Claimant told [REDACTED] the following:
  - a. He had received the Division's notice informing him the physician's examination report was due by February 10, 2009.
  - b. He went to his physician's appointment on February 6, 2009. The physician was not able to complete the examination report because he did not have his medical records. He went back to the physician on March 3, 2009, and the physician was again not able

to complete the examination report. He had another appointment with the physician on April 7, 2009.

- c. ██████ asked the Claimant if he had called his Public Assistance caseworker to let her know there would be a delay in turning in the physician's examination report. The Claimant told ██████ that he did not call the caseworker.

(Miller testimony; Ex. 8)

9. At hearing, the Claimant testified he did call the caseworker on February 6, 2009 to let her know there would be a delay in turning in the physician's examination report. The Claimant further testified that he was never informed there was a deadline for turning in the physician's examination report. The Claimant's testimony was not credible on either of these statements because his testimony changed throughout the hearing as follows:

- a. He first testified he did not meet ██████ until April 2009. He then changed his testimony to state that he met ██████ at his second interview in February 2009. The Division only interviewed the Claimant once, which occurred in January 2009. (Ex. 3.0; West testimony)
- b. The Claimant adamantly denied ever having been notified there was a deadline (February 10, 2009) for turning in the physician's examination report. However, he told ██████ on April 6, 2009 that he had received the Division's January 22, 2009 notice which gave him the February 10, 2009 deadline (Ex. 4). (█████ testimony; Ex. 8)
- c. Further, at hearing, despite stating several times that he never received notice of a deadline, the Claimant admitted having received the January 22, 2009 notice. After he acknowledged having received the deadline notice, he then testified he called his caseworker on February 6, 2009 to notify her the physician's examination report would be late.

10. The Claimant testified he was able to have the physician's examination report completed by March 3, 2009. His wife testified she dropped off the completed physician's examination report to the Division's front desk on March 3, 2009. Both of these statements are not credible. They are inconsistent with the Claimant's April 6, 2009 statement to ██████ that his doctor had not yet completed the physician's examination report and that he had another appointment on April 7, 2009. (█████ testimony; Ex. 8)

11. In contrast to the Claimant, ██████ was a credible witness. He had no motivation to misrepresent the facts. His testimony was internally consistent and consistent with the casenote he wrote on April 6, 2009 of his April 6, 2009 discussion with the Claimant. (Ex. 8) Further, it was consistent with the fact he noted the Claimant told him he had received the Division's January 22, 2009 deadline notice, which the Claimant adamantly denied at the beginning of the hearing, and then later admitted.

## PRINCIPLES OF LAW

This case involves the denial of an application for benefits. When an application is denied, the applicant has the burden of proof<sup>1</sup> by a preponderance of the evidence.<sup>2</sup>

The State of Alaska provides a limited monthly cash benefit payment, known as Interim Assistance, to eligible Adult Public Assistance applicants while they are waiting for the Social Security Administration to process their Supplemental Security Income application. 7 AAC 40.170(a) and (b); 7 AAC 40.375; AS 47.25.455.

In order to qualify for Interim Assistance, in addition to other criteria, the applicant must be examined by a physician who is a current enrolled medical provider in the Medicaid program and who submits the examination results on an agency form. 7 AAC 40.180(a). The agency must then review the completed medical exam form in conjunction with any other submitted medical evidence and if it finds the applicant meets a list of criteria, including Social Security disability criteria, then the applicant would be eligible for Interim Assistance. 7 AAC 40.180(b) and (c).

The Division requires the physician's medical examination results, as reported on the agency form, to process the application: "(b) [t]he department will make a determination of whether the applicant is disabled based on . . . (4) a review of the written results of the psychiatrist's or other physician's examination under (a) of this section." 7 AAC 40.180(b)(4). The Division "may postpone an eligibility decision for an additional 30 days" in the situation where the examiner does not furnish a report. 7 AAC 40.070(b).

## ANALYSIS

The issue in this case is whether the Division was correct to deny the Claimant's Interim Assistance application because he did not furnish it with the physician's examination report (AD #2) by the February 10, 2009 deadline. Because this is an application, the Claimant has the burden of proof by a preponderance of the evidence.

It is undisputed the Claimant did not supply the Division with the physician's examination report by the February 10, 2009 deadline. The Claimant stated:

1. He was not informed of the February 10, 2009 deadline;

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<sup>1</sup> "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)

<sup>2</sup> Preponderance of the evidence is defined as follows:

Evidence 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 (5<sup>th</sup> Ed. 1979)

2. He called before the deadline to let the Division know the physician's examination report would be late; and
3. He had the completed physician's examination report turned in on March 3, 2009, which was two days before the Division sent him its March 5, 2009 denial notice.

As the Findings of Fact state, the Claimant and his wife were not credible. It is therefore established:

1. The Claimant had notice his physician's examination report was due by February 10, 2009;
2. He did not meet the February 10, 2009 deadline;
3. He did not notify the Division he would be unable to provide the physician's examination report to it by the February 10, 2009 deadline; and
4. He did not turn in the physician's examination report on March 3, 2009.

The regulation gives the Division discretion to delay its eligibility decision for 30 days when a physician's examination report is overdue: the Division "may postpone an eligibility decision for an additional 30 days" in the situation where the examiner does not furnish a report. 7 AAC 40.070(b). The use of the term "may" indicates this is discretionary with the Division. Nothing in the facts indicates the Division abused its discretion. It did not know there was a problem with the Claimant obtaining a completed physician's examination report, because the Claimant did not call and let the Division know there would be a delay. Further, the Claimant did not furnish the Division with the completed physician's examination report within 30 days of the February 10, 2009 deadline, i.e. by March 12, 2009. *See* Findings of Fact 10 and 11 above.

Without the physician's examination report, the Division was unable to process the Claimant's Interim Assistance application. The Claimant did not meet the Division's deadline for furnishing the completed physician's examination report. The Claimant had the burden of proof by a preponderance of the evidence in this case. He did not meet it. He did not justify his failure to meet the Division's deadline, and he did not demonstrate that the Division abused its discretion when it denied his Interim Assistance application.

The Division was therefore correct when it denied the Claimant's December 8, 2008 application for Interim Assistance because he did not furnish the Division with a physician's examination report (AD #2) by February 10, 2009.

### **CONCLUSIONS OF LAW**

1. The Claimant did not satisfy his burden of proof by the preponderance of the evidence to show that he was not properly advised of the deadline to submit his completed physician's examination report, or that he submitted his completed physician's examination report in a timely manner.

2. The Division was therefore correct when it denied the Claimant's December 8, 2008 application for Interim Assistance because he did not furnish the Division with a physician's examination report (AD #2) by February 10, 2009.

**DECISION**

The Division was correct when it denied the Claimant's December 8, 2008 Interim Assistance 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, 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 \_\_\_ day of July 2009.

Larry Pederson  
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this \_\_\_ day of July 2009, true and correct copies of the foregoing was sent:  
By First Class Mail, Certified, Return Receipt Request to the Claimant;  
and to the following by electronic mail:

[REDACTED], Division Hearing Representative  
[REDACTED], Director  
[REDACTED], Admin Asst. II  
[REDACTED], Policy & Program Development  
[REDACTED], Policy & Program Development  
[REDACTED], Staff Development & Training

\_\_\_\_\_  
J. Albert Levitre, Jr., Law Office Assistant I