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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-315
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) was a recipient of Adult Public Assistance (APA) and Medicaid benefits (Exs. 1, 2). The Division of Public Assistance (DPA or Division) scheduled an eligibility review for the Claimant for April 1, 2009 (Ex. 2). On March 3, 2009 DPA mailed eligibility review forms to the Claimant to be completed, signed, and returned (Ex. 3). The transmittal letter sent with these forms stated that they needed to be returned by March 18, 2009 or the Claimant's benefits might be reduced or terminated. *Id.* The Division did not receive the forms back from the Claimant and on April 8, 2009 mailed the Claimant a notice of termination of her APA and Medicaid benefits (Ex. 5). The Claimant requested a fair hearing contesting the termination of her benefits on May 4, 2009 (Ex. 6.1). This office has jurisdiction to resolve this case pursuant to 7 AAC 49.010.

A hearing was held on June 25, 2009 before Hearing Officer Jay Durych. The Claimant appeared by telephone, represented herself, and testified on her own behalf. DPA Public Assistance Analyst [REDACTED] appeared in person to represent and testify on behalf of the Division. All testimony and exhibits offered by the parties were received into evidence. At the end of the hearing on June 25, 2009 the record was closed and the case was submitted for decision.

ISSUE

Was the Division correct to terminate the Claimant's Adult Public Assistance and Medicaid benefits on April 8, 2009 based on the Claimant's failure to timely provide information requested by the Division for the purposes of determining continued program eligibility?

FINDINGS OF FACT

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

1. The Claimant applied for Adult Public Assistance (APA) and Medicaid benefits and began receiving them in 2007 (Exs. 1, 2). The Claimant was not receiving Supplemental Security Income from the Social Security Administration at any time relevant to this case (Exs. 4, 5).
2. The Division of Public Assistance (DPA or Division) scheduled a routine eligibility review for April 1, 2009 (Ex. 2).
3. On March 3, 2009 the Division of Public Assistance mailed certain forms to the Claimant to be completed, signed, and returned (Ex. 3). The transmittal letter sent with these forms stated that they needed to be returned by March 18, 2009 or the Claimant's benefits might be reduced or terminated. *Id.*
4. The Division did not receive the forms back from the Claimant (Ex. 5). The Division mailed the Claimant a notice of termination of her APA and Medicaid benefits on April 8, 2009 (Ex. 5). That notice stated in relevant part as follows:

We closed your [APA] case because we did not receive the items or proof we asked for. These items [disability review forms] are listed at the bottom of this notice. Your APA payment will stop after April 30, 2009. Medicaid benefits will also stop after the above date If you want to receive APA again, you will need to reapply with a new application and provide the information listed below. This action is supported by APA Manual Section 400-4.
5. The Claimant received the DPA's benefit termination notice and requested a hearing contesting the benefit termination on May 4, 2009 (Ex. 6.1). Her stated reason for contesting the DPA's termination of benefits was that she did not receive the DPA's March 3, 2009 information request (Exs. 6.0, 6.1).
6. The Claimant was advised of the time and date of her hearing via notice dated May 11, 2009. At the hearing of June 25, 2009 the Claimant testified telephonically that she:
 - a. Is normally good about completing and returning paperwork on a timely basis. However, she sometimes suffers from severe migraine headaches which prevent her from driving.

- b. Has another individual (hereafter “agent”) who runs errands for her when she is unable to drive due to the migraines.
- c. During the period that DPA had sent its informational request (i.e. during March and early April of 2009) she was suffering from migraines and had asked her agent to pick up her mail. Her agent failed to pick up her mail during this period.
- d. Subsequently obtained a different person to pick up her mail. Since that time she has had no problems receiving her mail.
- e. Acknowledged that she was ultimately responsible for making sure that she provided the information requested by the agency.
- f. Will be submitting a new application as soon as possible.

7. At the hearing of June 25, 2009 the DPA hearing representative testified that the Claimant completed, signed and submitted the necessary forms after the DPA’s termination of her benefits on April 8, 2009. However, because the termination of benefits occurred prior to the DPA’s receipt of the Claimant’s forms, the Claimant is required to submit new application forms in order to re-establish her benefits.

PRINCIPLES OF LAW

I. Burden of Proof and Standard of Proof.

This case involves a termination of benefits. The Division therefore has the burden of proving its assertions ¹ by a preponderance of the evidence. ²

II. The Adult Public Assistance Program.

The Adult Public Assistance (APA) Program was established to furnish financial assistance to needy aged, blind, and disabled persons and to help them attain self-support or self-care. See A.S. 47.25.590(b); see also DPA website at <http://health.hss.state.ak.us/dpa/programs/apa/> (date accessed July 31, 2009). People who receive APA financial assistance are over 65 years old or have severe and long term disabilities that impose mental and physical limitations on their day-to-day functioning. *Id.*

¹ “Ordinarily the party seeking a change in the status quo has the burden of proof.” *State of Alaska Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985). Here the Division is seeking to change the existing status quo by terminating the Claimant’s benefits.

² The “preponderance of the evidence” standard is the normal standard of proof in an administrative proceeding. *Amerada Hess Pipeline v. Alaska Public Utilities Commission*, 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 (West Publishing, Fifth Edition, 1979).

APA regulation 7 AAC 40.190 provides in relevant part as follows:

(b) An otherwise eligible applicant found to be disabled by the division of vocational rehabilitation under 7 AAC 40.170(c) may be subject to periodic reviews of his or her disability at intervals determined necessary by that division.

APA regulation 7 AAC 40.450(c) provides in relevant part as follows:

(c) For non-SSI recipients, the division shall require each recipient or person acting on the recipient's behalf to complete a review application and furnish documentation to support it at least annually.

Alaska Adult Public Assistance Manual Section 400-4A provides in relevant part as follows:

An individual must satisfy many eligibility requirements to be determined eligible to receive APA benefits. The client must provide proof that he or she meets each factor of eligibility

Alaska Adult Public Assistance Manual Section 400-4B provides in relevant part as follows:

If a particular factor of eligibility must be verified so that a decision can be made on a client's eligibility for assistance, the case worker shall provide the client with a written notice that states what evidence is needed and gives a reasonable amount of time (at least 10 days) to submit the necessary proof If the client fails, without good cause, to respond to the notice within the amount of time allowed, eligibility for assistance does not exist.

Alaska Adult Public Assistance Manual Section 400-4C provides in relevant part as follows:

Eligibility does not exist if an applicant or recipient fails to provide necessary verification or refuses to allow the agency to verify information relevant to his or her eligibility for benefits.

Alaska Adult Public Assistance Manual Section 400-4D provides in relevant part as follows:

The client is always responsible for providing whatever verification is necessary to establish his or her own eligibility for benefits

Alaska Adult Public Assistance Manual Section 425-4B provides in relevant part as follows:

State-only decisions are subject to periodic review by the state. The DDS is the agency responsible for conducting these blindness and disability reviews. The frequency of state-only blindness or disability reviews is set by the DDS

Alaska Adult Public Assistance Manual Section 480-1C provides in relevant part as follows:

A case worker may also require a special review application at any time if he or she considers it necessary

Alaska Adult Public Assistance Manual Section 480-1G provides in relevant part as follows:

If a review application is received by the last day of the month following the month a case is closed for failure to submit a review application, the review application will be accepted as the individual's reapplication

III. The Medicaid Program.

Medicaid is an entitlement program created by the federal government. See DOA website at <http://health.hss.state.ak.us/dpa/programs/medicaid/> (date accessed July 31, 2009). It is the primary public program for financing basic health and long-term care services for low-income Alaskans. *Id.* It is funded fifty percent by federal funds and fifty percent by State general funds. *Id.* The program focuses on coverage for low-income children, pregnant women, families, the elderly, blind and the permanently disabled. *Id.*

The Medicaid program is administered in Alaska by the Division of Health Care Services (DHCS). *Id.* While DHCS is responsible for program and policy development, the Division of Public Assistance (DPA) is responsible for determining the eligibility of individuals and families in need of Medicaid benefits. *Id.* The majority of Medicaid recipients are beneficiaries of other programs and services administered and delivered by DPA. *Id.* Almost 70,000 Alaskans receive medical benefits through the Medicaid Program. *Id.*

State Medicaid regulation 7 AAC 100.400(a) makes APA regulation 7 AAC 40.190 (quoted above) applicable to many Medicaid eligibility determinations, including the Medicaid category at issue here.

State Medicaid regulation 7 AAC 100.410(b) provides in relevant part as follows:

(b) An individual who is eligible for and receiving APA is eligible for Medicaid under 7 AAC 100.002(d) (1) and this subsection.

State Medicaid regulation 7 AAC 100.016 provides in relevant part as follows:

(a) The department will verify whether an applicant or recipient meets eligibility requirements.

(b) The department will request in writing that an applicant or recipient provide documentation that the applicant or recipient meets eligibility requirements if the required documentation is not readily available to the department from any alternative source or the information needed cannot be verified from an alternative source readily available to the department. Except as provided in 7

AAC 100.030, an applicant or a recipient who refuses to provide the department with documentation under this section will be determined ineligible for Medicaid by the department.

State Medicaid regulation 7 AAC 100.020 provides in relevant part as follows:

(a) Except as provided in (h) of this section, at least once every 12 months, the department will require a recipient who is eligible for Medicaid under the following sections to submit a review application on a form provided by the department and furnish the documentation requested by the department to support continued eligibility (3) individuals with a disability or 65 years of age or older eligible under 7AAC 100.002(b) or (d).

(d) The department will notify a recipient or a known person acting on the recipient's behalf that a review of the recipient's eligibility is required and the date on or before which the recipient must submit the recipient's review application. In the notice, the department will state that failure to submit a review application on or before the date stated in the notice will result in the recipient's loss of eligibility under (e) of this section.

(e) Except as provided in [inapplicable], if a recipient fails to submit a review application on or before the date indicated in the notice under (d) of this section, the recipient will lose Medicaid eligibility.

State Medicaid regulation 7 AAC 100.022 provides in relevant part as follows:

(a) A timely review application is one that is received on or before the date requested If the requested documentation is not received on or before the due date, the department will send the recipient a notice that, starting the first day of the month immediately after the date of that notice, the recipient will no longer be eligible for Medicaid.

ANALYSIS

Neither the facts nor the law applicable to this case are disputed. The Claimant was receiving Adult Public Assistance (APA) and Medicaid benefits from the State of Alaska (Exs. 1-2). The Claimant was not receiving Supplemental Security Income from the Social Security Administration (Exs. 4, 5). Accordingly, the Claimant remained eligible for Medicaid only so long as she remained eligible for APA. See 7 AAC 100.002(d)(1) and 7 AAC 100.410(b).

The Division of Public Assistance (DPA or Division) scheduled a routine eligibility review for April 1, 2009 (Ex. 2). DPA has the legal authority to conduct such a review. See 7 AAC

40.190; 7 AAC 40.450(c); and Alaska Adult Public Assistance Manual Sections 425-4B and 480-1C (APA program); see 7 AAC 100.016; 7 AAC 100.020; and 7 AAC 100.400(a) (Medicaid program).

On March 3, 2009, pursuant to the above regulations, the Division of Public Assistance mailed certain forms to the Claimant to be completed, signed, and returned (Ex. 3). Alaska Adult Public Assistance Manual Section 400-4B required that the Claimant be given at least ten (10) days to respond. The transmittal letter sent with these forms stated that they needed to be returned by March 18, 2009 or the Claimant's benefits might be reduced or terminated (Ex. 3). Thus, the Claimant was given 15 days to respond, which is five (5) days more than the minimum required by Section 400-4B.

The Division did not receive the forms and information back from the Claimant by the March 18, 2009 deadline (Ex. 5). The Division waited until April 8, 2009 (approximately 24 days longer than the legally required response period) for the Claimant to return her forms and information (Ex. 5; Section 400-4B). On April 8, 2009 the Division, having received no response from the Claimant, mailed the Claimant a notice of termination of her APA and Medicaid benefits (Ex. 5). The Division had the legal authority to terminate the Claimant's benefits under these circumstances. See Alaska Adult Public Assistance Manual Sections 400-4A – 400-4D; 7 AAC 100.016.

During the period that DPA sent its informational request (i.e. during March and early April of 2009) the Claimant's mail was being picked up by an agent of the Claimant (Claimant hearing testimony). The Claimant's agent failed to pick up the Claimant's mail on a timely basis during this period, and so the Claimant did not receive the DPA's informational request on a timely basis (Claimant hearing testimony). However, the Claimant never asserted that her failure to receive DPA's informational request on a timely basis was due to any failure on the part of the DPA or the United States Postal Service. Rather, the Claimant acknowledged that (1) she was ultimately responsible for providing the information requested by DPA on a timely basis, and that (2) she failed to do so in this instance (Claimant hearing testimony).

The Claimant eventually completed, signed and submitted the necessary forms and information at some time *after* the DPA's termination of her benefits on April 8, 2009 (DPA hearing representative testimony). May 31, 2009 was the last day that the Claimant's forms and information could be accepted as a reapplication pursuant to Alaska Adult Public Assistance Manual Section 480-1G. There was no evidence in the record indicating that the Claimant's forms and information were received by May 31, 2009. Accordingly, the Claimant's submissions must be treated as a new application. See Section 480-1G.

In summary, DPA is legally required to periodically re-verify a claimant's eligibility for benefits. DPA attempted to do so in this case and requested certain information from the Claimant. The Claimant was given more time than the regulations require to respond to the DPA's request. However, the Claimant failed, without legal justification, to respond to DPA's informational request on a timely basis. Accordingly, DPA was legally required to terminate the Claimant's APA and Medicaid benefits due to her failure to provide the information requested.

CONCLUSIONS OF LAW

The Division carried its burden and proved, by a preponderance of the evidence, that:

1. It is legally required to periodically re-verify a claimant's eligibility for benefits.
2. It requested certain information from the Claimant in order to re-verify the Claimant's eligibility for Adult Public Assistance and Medicaid benefits.
3. It allowed the Claimant more time than legally required to respond to the request for information.
4. The Claimant failed, without legal justification, to respond to the Division's informational request on a timely basis.
5. Accordingly, the Division was legally required to terminate the Claimant's Adult Public Assistance and Medicaid benefits on April 8, 2009 based on the Claimant's failure to provide, on a timely basis, the information requested by the Division for the purposes of determining her continued program eligibility.

DECISION

The Division was correct when it terminated the Claimant's Adult Public Assistance and Medicaid benefits on April 8, 2009 based on the Claimant's failure to provide information requested by the Division, for the purpose of determining continued program eligibility, on a timely basis.

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.

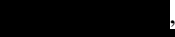
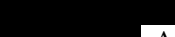
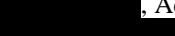
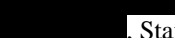
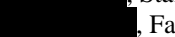

DATED this _____ day of August, 2009.

Jay Durych
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this _____ day of August 2009 true and correct copies of the foregoing document were sent to the Claimant via U.S.P.S. mail, and to the remainder of the service list by e-mail, as follows:

Claimant – Certified Mail, Return Receipt Requested

, Director
, Policy & Program Development
, Administrative Assistant II
, Eligibility Technician I
, Staff Development & Training
, Fair Hearing Representative

J. Albert Levitre, Jr.
Law Office Assistant I