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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-328
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) applied for Interim Assistance (IA) benefits on March 13, 2009 (Exs. 2.0 – 2.9). On May 1, 2009 the Division of Public Assistance (DPA or Division) mailed the Claimant a notice stating that her application for IA benefits had been denied for failure to provide the forms requested (Ex. 6). The Claimant requested a fair hearing contesting the denial of her application on May 11, 2009 (Ex. 7.0). This office has jurisdiction to resolve this case pursuant to 7 AAC 49.010.

A hearing was held on July 7, 2009 before Hearing Officer Claire Steffens.¹ The Claimant attended in person, represented herself, and testified on her own behalf. [REDACTED], a Case Manager with Anchorage Community Mental Health, attended in person and testified on the Claimant's 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 July 7, 2009 the record was closed and the case was submitted for decision.

¹ Following the hearing this case was reassigned to Hearing Officer Jay Durych. Mr. Durych reviewed the digital recording of the hearing, and reviewed the case file, prior to preparing and issuing this decision.

ISSUE

Was the Division correct to deny the Claimant’s application for Interim Assistance benefits on May 1, 2009 based on the Claimant’s failure to timely provide information requested by the Division for the purpose of determining program eligibility?

FINDINGS OF FACT

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

1. The Claimant applied for Interim Assistance benefits on March 13, 2009 (Ex. 2.0).
2. The Division held a telephonic eligibility interview with the Claimant on April 6, 2009 (Ex. 3). During the interview the Division requested that the Claimant provide it with a copy of a photographic identification card, a completed *Interim Assistance Reimbursement Authorization* (IAR) form, a completed *Preliminary Examination for Interim Assistance* form (Form AD-2), and completed medical release forms (Ex. 3).
3. The Division’s records indicate that on April 7, 2009 the Division of Public Assistance mailed the Claimant a “pend” notice reminding her that it could not process her application for Interim Assistance benefits until it received the identification and completed forms referenced above (Ex. 4). The notice further stated that the requested items needed to be returned by April 22, 2009 or the Claimant’s application might be denied. *Id.* The Division’s computer record of this notice does not indicate whether the Division enclosed copies of the IAR and AD-2 forms.
4. The Division did not receive the forms back from the Claimant (Ex. 5). On May 1, 2009 the Division mailed the Claimant a notice stating that her application for Interim Assistance benefits was denied for failure to provide the information requested (Ex. 6). The notice stated in relevant part as follows:

Your application . . . is denied. We asked you to give us information and proofs by 28 April 2009 to determine your eligibility We did not receive the items listed at the bottom of this notice.

* * * * *

This action is supported by APA Manual Section 400-4 and Aged, Disabled and [Long Term Care] Medicaid Manual Section 520-E.

Items we needed but did not get: (1) Completed AD-2 form filled out by your doctor; (2) A completed Interim Assistance Reimbursement Authorization form; (3) A medical release form for each of your doctors; (4) A copy of your picture ID.

I did not receive the above information, I extended your pend date until 28 April 2009 and still did not receive your information so your application has been denied [Ex. 6].

5. The Claimant requested a hearing contesting the benefit denial on May 11, 2009 (Ex. 7.0). Her stated reason for contesting the DPA's denial of benefits was that she "was wrongfully denied assistance based on incomplete paperwork [but] paperwork was not received in a timely manner by me to return to [DPA]."

6. The Claimant was advised of the time and date of her hearing via notice dated May 22, 2009. At the hearing of July 7, 2009 the Claimant testified in relevant part that:

a. She has resided at the [REDACTED] at [REDACTED] Avenue in [REDACTED], Alaska since January 15, 2009. She receives mail at that address.

b. She was told by the DPA representative at the eligibility interview of April 6, 2009 that he would mail her the necessary forms.

c. She waited for approximately 2 weeks after the date of the eligibility interview of April 6, 2009 (i.e. until approximately April 20, 2009) for the forms to come in the mail, but they never arrived.

d. She then called DPA to advise that she had not yet received the forms. A man told her that he would send them out.

e. She waited an indeterminate amount of time for the forms to come in the mail, but they never arrived. She then went in person to the DPA office to check on the status of the forms. She was then advised by a DPA representative that her application had been denied for failure to provide the forms and information requested.

7. DPA's "Fair Hearing Position Statement" and DPA's Exhibits 1-13 were mailed to the Claimant by DPA on June 23, 2009 but were not received by the Claimant prior to the hearing. The documents were sent to the Claimant's correct address, but for some reason the United States Postal Service returned the mailing to DPA with the notation "not deliverable as addressed – unable to forward" (see also Ex. 14).

8. The Claimant reviewed the DPA's "Fair Hearing Position Statement" and DPA's Exhibits 1-13 during a recess in the hearing and then indicated that she understood the documents and wished to proceed with the hearing.

9. At the hearing of July 7, 2009 [REDACTED], a Case Manager with Anchorage Community Mental Health, testified that:

a. She worked with the Claimant to submit the Claimant's current Application for Interim Assistance.

- b. She attended the Claimant's telephonic eligibility interview. They initially waited for a phone call from DPA for 15-20 minutes. They then called the DPA office and were told that the assigned Eligibility Technician was out sick, but that another Eligibility Technician would cover the interview. DPA Eligibility Technician [REDACTED] conducted the interview. He told the Claimant that the Claimant needed to provide certain forms and information to DPA (i.e. those referenced in Paragraphs 2 and 4, above). He stated that he would mail those forms to the Claimant.
- c. She repeatedly followed-up with the Claimant as to whether the Claimant had received the DPA forms in the mail. The Claimant repeatedly reported that the forms had not yet been received.
- d. She placed a call to DPA just prior to April 18, 2009 to request that the necessary forms be re-sent.
- e. She was told by the Claimant that AWAIC received the forms from DPA on April 24, 2009. However, these forms were lost or misplaced by either [REDACTED], the Claimant, or Ms. Jacobson.
- f. She subsequently printed the necessary forms from the DPA's web site and she and the Claimant then submitted a new application to DPA.
10. At the hearing of July 7, 2009 DPA Public Assistance Analyst [REDACTED] testified that:
- a. All notices were sent by first class mail to the Claimant at her address of record.
- b. Other than the DPA's "Fair Hearing Position Statement" and the DPA's Exhibits 1-13 (mailed by DPA on June 23, 2009 and discussed above), none of DPA's other 2009 mailings to the Claimant were returned to DPA by the United States Postal Service.
- c. Because of the three week delay between the date of the Claimant's submission of her application on March 13, 2009 and the date of the telephonic eligibility interview on April 6, 2009, DPA gave the Claimant six (6) additional days to provide the requested information.

PRINCIPLES OF LAW

I. Burden of Proof and Standard of Proof.

This case involves an application for Interim Assistance benefits. When an application is denied, the applicant has the burden of proof ² by a preponderance of the evidence. ³

² "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). In this case, the Claimant is attempting to change the status quo by obtaining benefits. The Claimant therefore bears the burden of proof in this case.

II. Overview of the Adult Public Assistance and Interim Assistance Programs.

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.*

Interim Assistance is a benefit provided by the State to Adult Public Assistance applicants while they are waiting for the Social Security Administration to approve an application for Supplemental Security Income. AS 47.25.255; 7 AAC 40.170(a) and (b). The criteria which must be satisfied in order to qualify for Interim Assistance are set forth in 7 AAC 40.180.^{3a} These criteria are equivalent to, and incorporate by reference, the criteria which must be satisfied in order to qualify for Social Security Supplemental Security Income (SSI) disability benefits pursuant to Title 20 of the Code of Federal Regulations (CFR).

III. Authorities Concerning A Claimant's Duty To Timely Provide Information.

The Division has the authority to request the Claimant's timely submission of evidence relevant to a Claimant's application for benefits. See APA regulation 7 AAC 40.050, Alaska Adult Public Assistance Manual Section 400-4A, Alaska Adult Public Assistance Manual Section 400-4B, Alaska Adult Public Assistance Manual Section 400-4C, Alaska Adult Public Assistance Manual Section 400-4D, Alaska Adult Public Assistance Manual Section 410, and Alaska Adult Public Assistance Manual Section 481-3.

IV. Alaska Adult Public Assistance Manual Provisions Regarding Pended Applications.

Alaska Adult Public Assistance Manual Section 410-5(C) provides in relevant part as follows:

When the office needs the applicant to submit a complete application form, or provide information needed to determine eligibility, the application is pended, and a notice is sent. The notice clearly informs the applicant what is needed to complete the application. Applicants will be given at least 10 days, but no more

³ Preponderance of the evidence is the standard of proof generally applicable in administrative proceedings. *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Commission*, 711 P.2d 1170 (Alaska 1986). The regulations applicable to this case do not specify any particular standard of proof. Accordingly, the "preponderance of the evidence" standard is the standard of proof applicable to this case. 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* at 1064 (West Publishing, 5th Edition, 1979).

^{3a} Because 7 AAC 40.180 sets forth the substantive disability criteria for receiving Interim Assistance benefits, and because the Claimant's application in this case was denied based on procedural grounds rather than on the merits of her disability claim, it is not necessary to quote or discuss 7 AAC 40.180 (a lengthy regulation) in this decision.

than 30 days, from the date of this notice to provide the verification (1) Applicants failing to provide all necessary verification at the interview will be sent a pend notice no later than 30 days after the application filing date requesting the required verification. (2) Applicants contacting the agency within the pend period expressing difficulty in obtaining required verification will be offered assistance. The caseworker should extend the pend period if additional time is needed to obtain the information. A new pend notice should be sent

V. Court Cases Involving “The Mailbox Rule.”

The so-called “mailbox rule” provides that the proper and timely mailing of a document raises a rebuttable presumption that the document has been received by the addressee in the usual time. *See Rosenthal v. Walker*, 111 U.S. 185, 193, 4 S. Ct. 382, 28 L. Ed. 395 (1884); *Hagner v. United States*, 285 U.S. 427, 430, 52 S. Ct. 417, 76 L. Ed. 861 (1932); *Lewis v. United States*, 144 F.3d 1220, 1222 (9th Cir. 1998). The mailbox rule is a settled feature of the federal common law. *Id.*

The Alaska Supreme Court has likewise held that when properly addressed and properly stamped mail is deposited in the United States mail, it is presumed that this mail has been delivered. *Jefferson v. Spenard Builder’s Supply, Inc.*, 366 P. 2d 714, 717 (Alaska 1961); *Martens v. Metzgar*, 524 P.2d 666 (Alaska 1974).

Courts have also stated that the fact that the United States Postal Service fails to return a piece of first class mail to the sender creates a rebuttable presumption that the mail was received by the addressee. *See N.L.R.B. v. J & W Drywall, Lather & Plastering Co., Inc.*, 19 F.3d 1433 (6th Cir. 1994); *Clarke v. Nicholson*, 21 Vet. App. 130 (Vet. App. 2007).

For the mailbox rule to overcome rebuttal evidence, however, there must be credible evidence (such as a sworn statement) by the sender that the item was properly mailed. *See Lewis v. United States*, 144 F.3d 1220, 1223 (9th Cir. 1998).

Numerous courts have held that credible testimony by the addressee that he or she did not receive the allegedly mailed item rebuts the mailbox rule’s presumption of delivery. *See Williams v. Gelt Fin. Corp.*, 237 B.R. 590, 595 (E.D.Pa.1999); *Williams v. BankOne, N.A. (In re Williams)*, 291 B.R. 636, 648 (Bankr.E.D.Pa.2003); and *Stutzka v. McCarville*, 420 F.3d 757, 762 (8th Cir. 2005).

ANALYSIS

Introduction.

Based on the Claimant’s hearing testimony it is clear that the Claimant does not dispute that DPA has the authority to request the Claimant’s timely submission of evidence relevant to the Claimant’s application for benefits. Further, there is ample legal authority supporting DPA on this issue. *See Principles of Law*, above. Accordingly, the Division’s authority to request the

Claimant's timely submission of evidence relevant to the Claimant's application for benefits has been established.

Instead, the Claimant asserts that she did not timely receive the Division's forms in a timely manner and therefore cannot be expected to have returned them within the required period. The Division asserts that it timely provided the Claimant with the necessary forms. Thus, what is at issue in this case is what happened during the period that the Claimant's application was pending. This is a factual issue on which the Claimant bears the burden of proof (see Principles of Law, above).

I. The Claimant Proved That The Division Failed To Satisfy Its Obligations Under Alaska Adult Public Assistance Manual Section 410-5(C).

Alaska Adult Public Assistance Manual Section 410-5(C) provides in relevant part as follows:

. . . . (1) Applicants failing to provide all necessary verification at the interview will be sent a pend notice no later than 30 days after the application filing date requesting the required verification. (2) Applicants contacting the agency within the pend period expressing difficulty in obtaining required verification will be offered assistance. The caseworker should extend the pend period if additional time is needed to obtain the information. A new pend notice should be sent

In this case the eligibility interview was held on April 6, 2009 (Ex. 3). The Division's records indicate that it sent a pend notice to the Claimant on April 7, 2009 (Ex. 4). The pend notice stated that the Claimant's application might be denied if the requested information was not received by April 22, 2009.

The Division's records indicate that the pend notice was sent within the 30 day period required by Alaska Adult Public Assistance Manual Section 410-5(C). However, ██████████ testified that she placed a call to DPA just prior to April 18, 2009 to request that the necessary forms be re-sent because the Claimant advised her that the forms had not been received. Similarly, the Claimant testified that she waited for approximately 2 weeks after the date of the eligibility interview of April 6, 2009 for the forms to come in the mail, but they never arrived. She testified that she then called DPA circa April 20, 2009 to advise that she had not yet received the forms, and a man told her that he would send them out.

The exhibits submitted by the Division show no record of the April 18 and April 20 telephone calls to which the Claimant and ██████████ testified. Accordingly, either (1) the Claimant and ██████████ never called DPA during this time and are both incorrect in their testimony; (2) the Division received their calls and mailed a new pend notice and set of forms but made no note of this; or (3) the Division received their calls but did nothing.

The Claimant's testimony was somewhat vague. Further, the Claimant obviously has a financial interest in the outcome of the case. Accordingly, the Claimant's testimony, by itself, should not be afforded great weight. However, ██████████ has no financial interest in the outcome of the case and has only a professional relationship with the Claimant. ██████████ thus has no

inherent bias or motive to be untruthful. Further, ██████████'s testimony was specific and direct. ██████████'s testimony is therefore credible.

In summary, the Claimant's evidence regarding the events of April 18-20 is not overwhelming. However, it is credible based on the strength of ██████████'s testimony. Further, ██████████'s testimony was not rebutted by the Division. Accordingly, the Claimant has proven, by a preponderance of the evidence, that the Division failed to meet its obligations under Alaska Adult Public Assistance Manual Section 410-5(C) because, when the Claimant and ██████████ "contact[ed] the agency within the pend period expressing difficulty in obtaining required verification," they were not "offered assistance" and "the caseworker" did not "extend the pend period" given that "additional time [was] needed to obtain the information." Because the Claimant might have timely submitted the required forms had DPA acted as required by Alaska Adult Public Assistance Manual Section 410-5(C), the Division was incorrect when it denied the Claimant's application for Interim Assistance benefits on May 1, 2009.

II. The Claimant Proved That The Division Did Not Timely Send Her The Application Forms Based On "The Mailbox Rule."

The "mailbox rule" provides that when properly addressed and properly stamped mail is deposited in the United States mail, it is presumed that this mail has been delivered. *See* cases cited in Principles of Law, above. This rule would initially seem to require the conclusion that DPA sent the forms at issue to the Claimant and the Claimant simply failed to timely return them.

However, where (as here) rebuttal evidence of non-delivery exists, the party seeking to invoke the mailbox rule must present credible evidence (such as a sworn statement) that the item was properly mailed. *See Lewis v. United States*, 144 F.3d 1220, 1223 (9th Cir. 1998). In this case, the Division's hearing representative provided computer records which indicated that the initial "pend notice" (Ex. 4) had been mailed to the Claimant. However, the Division presented no firsthand, non-hearsay evidence that the "pend notice" was properly addressed, properly stamped, and placed in the mail. Accordingly, the Division has not established the facts prerequisite to invocation of the mailbox rule.

Further, numerous courts have held that credible testimony by the addressee that he or she did not receive the allegedly mailed item rebuts the mailbox rule's presumption of delivery. *See Williams v. Gelt Fin. Corp.*, 237 B.R. 590, 595 (E.D.Pa.1999); *Williams v. BankOne, N.A. (In re Williams)*, 291 B.R. 636, 648 (Bankr.E.D.Pa.2003); and *Stutzka v. McCarville*, 420 F.3d 757, 762 (8th Cir. 2005). As previously noted, the Claimant's testimony, by itself, does not carry much weight because it was somewhat vague and because the Claimant obviously has a financial interest in the outcome of the case. However, because ██████████ has no reason to be biased, and because her testimony was specific and direct, ██████████'s testimony is credible and supports a finding that the forms allegedly mailed by DPA were not timely received by the Claimant.

Finally, it is clear from Exhibit 14 and from the Claimant's supporting testimony that although the DPA's "Fair Hearing Position Statement" and Exhibits 1-13 were mailed to the Claimant by

DPA on June 23, 2009, and although the documents were sent to the Claimant's correct address, the United States Postal Service (for reasons unknown) returned the mailing to DPA with the notation "not deliverable as addressed – unable to forward" (see also Ex. 14). The fact that there were obviously problems on the part of the postal service with delivery of this particular parcel makes it more likely that there were also problems with the postal service's delivery of other items mailed by DPA to the Claimant at that same address. This incident reinforces the testimony of the Claimant and of [REDACTED] that the forms allegedly mailed by DPA were not timely received by the Claimant.

In summary, the Division failed to present the facts necessary to invoke "the mailbox rule." For this reason, the mailbox rule's presumption of delivery is not applicable here. The Claimant and her witness provided credible evidence that they did not timely receive the application forms which the Division's eligibility technician agreed to send. This testimony was not rebutted by the Division. The Claimant could not timely complete and submit her application forms unless the Division first provided the forms to the Claimant on a timely basis. Accordingly, the Division was not correct when it denied the Claimant's application for Interim Assistance benefits on May 1, 2009 based on the Claimant's failure to timely provide the necessary program eligibility information.

CONCLUSIONS OF LAW

The Claimant carried her burden and proved, by a preponderance of the evidence, that:

1. The Division represented that it would provide her with the forms necessary to apply for the Interim Assistance program.
2. The Division did not provide her with the forms necessary to apply for the Interim Assistance program on a timely basis.
3. The Division was therefore not correct when it denied the Claimant's application for Interim Assistance benefits on May 1, 2009 based on the Claimant's failure to timely provide the necessary program eligibility information.

DECISION

The Division erred when it denied the Claimant's application for Interim Assistance benefits on May 1, 2009 based on the Claimant's failure to timely provide the necessary program eligibility information.

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.

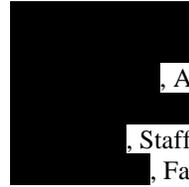
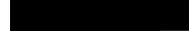
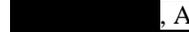
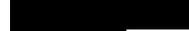
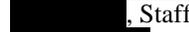
DATED this _____ day of August, 2009.

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