

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-372
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

Mr. [REDACTED] (Claimant) receives Alaska Public Assistance, Medicaid, and Food Stamp benefits.¹ (Ex. 1) Claimant was notified his eligibility to receive these benefits was subject to annual review. (Exs. 2.0; 2.1) The re-application forms enclosed with the notice of annual review were not received by the Division. ([REDACTED] testimony) The Division ceased issuing benefits to Claimant from all three programs and closed Claimant's case on February 28, 2009. (Ex. 1)

Claimant requested a Fair Hearing on June 10, 2009.² (Exs. 4.0; 4.1) The Fair Hearing was held on August 20, 2009. Claimant appeared in person and testified. Claimant's

¹ Claimant is again receiving benefits under all three programs as of August 10, 2009, based on his re-application of July 21, 2009. (Claimant testimony) The fair hearing concerned the Division's termination of benefits from all three programs on February 28, 2009. Accordingly, this decision applies to the benefit period from March 1, 2009 through August 9, 2009.

² On June 19, 2009, the Division petitioned for denial of Claimant's fair hearing request on grounds it was not timely requested. On July 23, 2009, Claimant's request for a fair hearing was granted by Hearing Officer Larry Pederson based on genuine issues of fact, including some concern whether the fair hearing

mother, Ms. [REDACTED], also appeared in person and testified on behalf of Claimant. Ms. [REDACTED], Public Assistance Analyst representing the Division of Public Assistance, appeared in person and testified for the Division.

This Office of Hearings and Appeals has jurisdiction under authority of 7 AAC 49.020(3).

ISSUE

Was the Division correct to deny continuing benefits, after February 28, 2009, to Claimant from the Adult Public Assistance, Medicaid and Food Stamp programs after he failed to submit a recertification application?³

FINDINGS OF FACT

The following facts have been proven by a preponderance of the evidence:

1. Claimant received Food Stamp and Medicaid benefits since September 25, 2006. (Ex. 1) Claimant received Adult Public Assistance (APA) benefits since October 1, 2006, first as Interim Assistance and beginning on March 1, 2007 as adult disability benefits. (Ex. 1)
2. Claimant has been receiving Supplemental Security Income (SSI) since at least 2007. (Ex. 1) The record contains no evidence Claimant's SSI was ever discontinued or suspended.
3. On January 16, 2009, the Division sent Claimant a notice that his eligibility for Adult Public Assistance and Medicaid program benefits were subject to a mandatory annual review and that he was required to complete the "review application" supplied with the notice, send certain proofs of income, and return the application "to our office" by the "5th day of next month." (Ex. 2.0) The notice stated that if the review application was received between February 5 and February 28, 2009, the APA and Medicaid benefits could be delayed. This notice also stated that if the Division "did not get" the application by February 28, 2009, the Adult Public Assistance benefits would stop on that date. This notice did not state Claimant's Medicaid benefits would stop. (Ex. 2.0) The notice did not mention Claimant's right to a pre-termination of benefits hearing. (Ex. 2.0)

request pertained to the Division's action on February 28, 2009 or Claimant's alleged filing of a recertification application in March. During the fair hearing, it became clear the Division did not receive Claimant's March submissions and the hearing pertained to the Division's February 28, 2009 termination of benefits.

³ The Division believed Claimant failed to submit the requested documents but later learned he had twice mailed them but the Division did not receive them. The issue is re-stated in the Analysis section to reflect these facts.

4. On January 16, 2009, the Division also sent Claimant a separate notice titled "Food Stamp Recertification." (Ex. 2.1) This notice stated "a review form"⁴ was enclosed with the notice and stated Claimant's food stamp benefits case would "close" at the end of February 2009 if he did not return the form by February 15, 2009. (Ex. 2.1) This notice expressly stated that Claimant was to check the box at the top of the "application to show you are reapplying for food stamps." (Ex. 2.1)

5. On Feb. 17, 2009, the Division sent a second notice, titled "APA Review Due - Second Notice." (Ex. 3) This notice stated Claimant's Adult Public Assistance would terminate at the end of February because the Division had not received Claimant's "review application as requested in a letter we sent to you last month." (Ex. 3) This notice also stated "[i]f you get Supplemental Security Income (SSI) benefits, your Medicaid will stay open for as long as you get SSI." The notice also requested Claimant send "your review application" with certain proofs of income and that he should "check the 'ADULT PUBLIC ASSISTANCE REVIEW' box at the top of the application to show that the application is for your APA review." (Ex. 3) This notice did not mention termination of Medicaid program benefits and did not mention Claimant's right to a pre-termination of benefits hearing. (Ex. 3)

6. The Division did not receive either the Adult Public Assistance review application or the Food Stamp review form/application. (██████ testimony) As a consequence, the Division terminated Claimant's benefits from all three programs on February 28, 2009. (Ex. 1; ██████ testimony)

7. Claimant requested a fair hearing review of the Division's termination of benefits from all three programs. (Ex. 4.1) Claimant stated he wanted a fair hearing because he had mailed the review applications to the Division on two occasions. (Ex. 4) Claimant sent the second mailing on March 14th, 2009 after he had telephoned the Division to learn why he had not received his benefit check in March and had been told the Division had not received his previously mailed review application. (Claimant testimony)

8. At the fair hearing, the Division representative testified there was no record of receipt of Claimant's review applications or of Claimant's telephone inquiry in March 2009 concerning why he had not received his March benefit check. (██████ testimony) If Claimant's inquiry (concerning not receiving his March benefit check) was answered as a clerical check, there would not be any record in Claimant's file of his inquiry or of the Division's response. (██████ testimony)

9. Claimant, a physically disabled person, appeared personally at the hearing. At the hearing, Claimant acknowledged he received the January 16 and February 17 notices requesting his APA review application and the January 16, 2009 notice requesting his

⁴ This notice first identifies a "review form" which later is called an "application." Exhibit 2.1

recertification application for the Food Stamp program. (Exs. 2.0; 2.1; 3; Claimant testimony)

10. Also at the hearing, Claimant testified concerning unsatisfactory mail conditions at his apartment. Claimant's mail box is not secure and he is required to clip outgoing mail to the outside of his mail box for the postal person to pick up. Claimant learned he has suffered the loss of various types of mail, both incoming and outgoing, only after he was notified that "at least four reviews" which he had mailed had not been received. Another tenant in the apartment building where Claimant lives appears to be tampering with Claimant's mail. (Claimant testimony)

11. When Claimant did not receive his benefit check in April, he believed his benefits had been terminated on grounds he no longer was eligible for them and did not realize the Division had not received the review application he had mailed a second time. (Claimant testimony) As a result of this belief, Claimant's mental/emotional health then suffered to the point that Claimant spent two weeks in the hospital. (Claimant testimony)

12. Claimant learned from a hospital social worker he could, and should, request a fair hearing concerning termination of his benefits and also re-apply for benefits from all three programs. (Claimant testimony) Claimant requested a fair hearing on June 10, 2009, while he was hospitalized. (Ex. 4.0, 4.1)

13. During the period Claimant was denied public assistance benefits, Claimant was unable to pay for his needs and had to borrow \$1,000 to pay for them. (Claimant testimony) Based on Claimant's July 21, 2009 application, the Division restored his benefits from all three programs, effective August 10, 2009. (Ex. 7.0-7.11; Claimant testimony)

PRINCIPLES OF LAW

I. Burden of Proof

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).

II. Standard of Proof

The regulations applicable to this case specify the standard of proof is by a preponderance of the evidence. A 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 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 (5th Ed. 1979)

III. Food Stamp Program

Food Stamp recertification applications are new and independent eligibility determinations, and the Claimant therefore has the burden of proof in those proceedings. *Banks v. Block*, 700 F.2d 292, 296-297 (6th Cir. 1983).

Federal Regulation 7 CFR 273.14(a) sets forth the Division's authority to require recertification applications of Food Stamp recipients. This regulation states:

[N]o household may participate beyond the expiration of the certification period assigned in accordance with 273.10(f) without a determination of eligibility for a new period. The State agency must establish procedures for notifying households of expiration dates, providing application forms, scheduling interviews, and recertifying eligible households prior to the expiration of certification periods. Households must apply for recertification and comply with interview and verification requirements.

IV. Medicaid Program

The Medicaid Program (Program) is a federal program administered by the states. 42 U.S.C. §1396a(a)(10)(1)(i). A recipient of Supplemental Security Income for the Aged, Blind and Disabled⁵ (SSI) automatically is eligible for Medicaid as long as the recipient receives SSI. 42 U.S.C. §1396a(a)(10)(1)(i); 7 AAC 100.410.

V. Public Benefits are property rights protected by due process requirements inherent in the Fifth Amendment of the United States Constitution.

It has long been decided by the United States Supreme Court that individuals eligible for public benefits have a right to them and this right is a property interest protected by the Fifth Amendment of the Federal Constitution. *Goldberg v. Kelly*, 397 U.S. 254, 262(1970), 90 S.Ct. 1011, 25 L.Ed.2d 287 (*Goldberg*). This principle of law has been followed by the Alaska Supreme Court.⁶

⁵ 42 U.S.C. §1381-1383 (Title XVI of the Social Security Act, as amended).

ANALYSIS

I. Issue

Was the Division correct to deny continuing benefits to Claimant from the Adult Public Assistance⁷, Medicaid and Food Stamp programs effective February 28, 2009 because it failed to receive Claimant's review application and recertification form?

II. Burden of Proof

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).

Food Stamps

Claimant bears the burden of proving the Division erred because Food Stamp benefits cease by operation of law at the time the period of certification for benefits expires. 7 CFR §273.14(a). To continue receiving benefits, Claimant has the burden of proving he is eligible for the Food Stamp program and did reapply.

Medicaid

The Division changed the status quo by terminating the issuance of Medicaid benefits to Claimant. Accordingly, the Division has the burden of proving it acted correctly in terminating Claimant's Medicaid Program benefits on February 28, 2009.

Undisputed Facts

⁶ The Alaska Court has cited *Goldberg* in *Allen v. State, Dep't of Health & Soc. Servs., Div of Pub. Assistance*, 203 P.3d 1155 (Alaska 2009)(*Allen*)when it ruled that the Department of Health and Social Services failed to give adequate notice to a recipient of food stamps. It quoted *Goldberg* approvingly stating "proper notice is necessary to protect claimants against proposed agency action 'resting on incorrect or misleading factual premises or on misapplication of rules or policies to the facts of particular cases.'" *Goldberg* at 268. See also, *Heitz v. State, Dep't of Health & Soc. Servs., Office of Children's Servs.*, No. 6407, slip op. at 8 (Alaska, August 28, 2009) (citing *Goldberg* at 267-68: "[d]ue 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.'")

⁷ Analysis of the issue pertaining to Claimant's Adult Public Assistance benefit is reserved for issuance at a future date, anticipated as September 30, 2009.

This case consists entirely of undisputed facts and the decision rests on the application of law to these facts. The undisputed facts are recited in the Findings of Fact. These facts are summarized as:

a. Claimant, a person deemed disabled under state and federal laws, had received several years of public assistance benefits including federal Supplemental Security Income, Food Stamps, Medicaid and Adult Public Assistance;

b. Claimant's eligibility for state public assistance benefits was due for annual review by the Division;

c. On January 16 and February 17, 2009, the Division requested a review application and information from Claimant, who submitted it twice, the first time before March and the second time on March 14, 2009, but the information never reached the Division;

d. Therefore the Division terminated all of Claimant's benefits under the Food Stamp, Adult Public Assistance and Medicaid programs as of February 28, 2009; and

e. Claimant reapplied for all benefits on July 21, 2009 and began receiving benefits from all three programs as of August 10, 2009.

III. Food Stamps

Claimant had been receiving Food Stamp benefits on the basis of an annual recertification period since September 25, 2006. (Ex. 1; ██████████ testimony). The Division notified Claimant on January 16, 2009 (Ex. 2.1) that his Food Stamp certification period would terminate on February 28, 2009 unless he filed a review form and checked the "Food Stamp Recertification Application" box at the top of the form. (Ex. 2.1) This notice gave him until February 15, 2009 to return the form. (Ex. 2.1) It is undisputed that Claimant twice submitted the review form for recertification of his food stamp benefits but the Division never received the form. (Claimant testimony; ██████████ testimony)

Regulation 7 CFR §273.14 "Recertification" makes clear that eligibility for food stamp benefits terminates periodically and "[n]o household may participate beyond the expiration of the certification period assigned...."

Regulation 7 CFR §273.2(c)(1) provides that households must file food stamp applications by submitting the forms to the food stamp office. The federal regulations are clear that once an application has been received, the agency is obligated to assist the household in verifying eligibility. This is true for initial applications and when eligibility is being recertified. See 7 CFR §273.2(c)(5), (d)(1), and (f)(5) and 7 CFR §273.14(b)(4).

Therefore, an application is required, at minimum, to give the Division notice that its legal obligations have been initiated.

As stated above, Claimant has the burden of proving he is eligible for the Food Stamp program and that he did reapply. In this case it is undisputed Claimant mailed the recertification form twice but did not effectively submit it to the Food Stamp office because the Division never received it. Without receiving Claimant's application for food stamp benefits, the Division's obligation to assist Claimant in verifying eligibility did not arise.

In effect, the Division did not know that Claimant was applying for food stamp benefits, had no obligation to assist him in verifying his eligibility for them and could not lawfully issue benefits to him. Therefore, the Division did not err in allowing his food stamp benefits to terminate at the end of the prior certification, which expired on February 28, 2009.

Claimant has not met his burden of proving the Division erred in terminating his Food Stamp benefits on February 28, 2009.

IV. Medicaid program

As stated above, the Division has the burden of proving it did not err when it terminated Claimant's Medicaid benefits. A person who is receiving Supplemental Security Income is automatically eligible for Medicaid benefits. 7 AAC 100.002.

Claimant was receiving Supplemental Security Income (SSI) and consequently had been receiving Medicaid benefits until February 28, 2009, when the Division terminated his benefits. (Exs. 1; 7.14; Claimant testimony) There is no evidence that Claimant's receipt of, or eligibility for, SSI benefits ceased before February 28, 2009 or any time thereafter relevant to this case. Accordingly, on February 28, 2009, Claimant was eligible for Medicaid benefits because he was receiving SSI. Therefore, it was contrary to state and federal law to terminate Claimant's Medicaid benefits while he received SSI. 42 U.S.C. §1396a; AS 47.07.020.

Also, the Division was aware of Claimant's continuing eligibility for Medicaid benefits:

- a) its January 16, 2009 notice stated Claimant's "Medicaid benefits may be delayed" if Claimant failed to timely return the review application; (Ex. 2.0) and

b) the Division's notice of February 17, 2009 *expressly stated that Claimant's Medicaid benefits would continue as long as he receives SSI.* (Ex. 3.0)⁸

Nonetheless, the Division terminated Claimant's Medicaid benefits on February 28, 2009. (Ex. 1; Gagne testimony)

This termination is contrary to the express statement in the February 17, 2009 notice to Claimant that *he would receive Medicaid benefits as long as he received SSI.* (Ex. 3.0; *see also* footnote 6 herein) Therefore, the Division improperly terminated Claimant's Medicaid benefits on grounds it did not receive Claimant's APA review application by February 28, 2009.

The Division did not meet its burden of proof that it was correct to terminate Claimant's Medicaid benefits on February 28, 2009.

V. Adult Public Assistance

The analysis of the issue pertaining to Claimant's Adult Public Assistance is withheld for issuance at a future date, anticipated as September 30, 2009.

CONCLUSIONS OF LAW

1. Claimant did not meet his burden of proving by a preponderance of the evidence that the Division improperly terminated his Food Stamp benefits at the expiration of his certification period on February 28, 2009 because it failed to receive his recertification application.
2. The Division failed to meet its burden of proving it correctly terminated Claimant's Medicaid benefits as of February 28, 2009 because, as a matter of law, Claimant is entitled to receive Medicaid benefits so long as he receives SSI and his failure to file a review application required by the Adult Public Assistance program did not affect his receipt of SSI.

⁸ The January 16, 2009 notice, although it stated "[y]our Adult Public Assistance (APA) and Medicaid case must be reviewed once a year...", did not give Claimant notice that the Division might terminate his Medicaid benefits if it did not receive his Adult Public Assistance review application. (Ex. 2) Neither the January 16th or the February 17th notice gave any indication that Claimant's Medicaid benefits would be terminated or cease if his Adult Public Assistance ceased, or if the Division failed to receive his Adult Public Assistance eligibility review application. Also, neither notice informed Claimant he was entitled to a pre-termination of benefits hearing. *See* Footnote 6 herein.

DECISION

The Division properly denied Claimant of Food Stamp benefits on February 28, 2009 because Claimant failed to re-establish his eligibility for them.

The Division improperly terminated Claimant's Medicaid benefits on February 28, 2009 because, as a matter of law, Claimant is entitled to receive Medicaid benefits so long as he receives SSI.

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
P.O. Box 110640
Juneau, AK 99811-0640

If the Claimant appeals, the 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 September 9, 2009

Claire Steffens
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this ___day of September, 2009 true and correct copies of the foregoing were sent to Claimant (via U.S.P.S.):
Claimant, Certified Mail, Return Receipt Requested.

and to other listed persons (via e-mail), as follows:

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

Al Levitre, Law Office Assistant I