

Office of Hearings and Appeals  
3601 C Street, Suite 1322  
P. O. Box 240249  
Anchorage, Alaska 99524-0249  
Phone: (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-525  
 )  
 Claimant. ) DPA Case No. [REDACTED]  
 \_\_\_\_\_ )

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

[REDACTED] (Claimant) began receiving Interim Assistance benefits from the State of Alaska in August 2005 (Ex. 1). On September 11, 2009 the Division of Public Assistance (DPA or Division) mailed a written notice to the Claimant stating that his Interim Assistance benefits would end on September 30, 2009 (Ex. 3.9). The Claimant requested a fair hearing on September 11, 2009 (Ex. 3.6).

The Claimant's hearing began on November 24, 2009 and was concluded on January 6, 2010. The Claimant participated in the hearings by telephone, represented himself, and testified on his own behalf. [REDACTED], Public Assistance Analyst with the Division, attended the hearings in person and represented and testified on behalf of the Division. [REDACTED], also of the Division, attended the first hearing as an observer. All of the parties' testimony was received and all of the parties' exhibits were admitted into evidence. At the end of the second hearing the record was closed and the case was submitted for decision.

This Office has jurisdiction to resolve this case pursuant to 7 AAC 49.010.

**ISSUE**

Was the Division correct to terminate the Claimant's Interim Assistance benefits on or after September 30, 2009 because the United States Social Security Administration Appeals Council had denied the Claimant's application for Supplemental Security Income?

## FINDINGS OF FACT

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

1. The Claimant has been receiving Interim Assistance benefits since August 2005 (Ex. 1).
2. The record does not reflect the date that the Claimant initially applied to the United States Social Security Administration (SSA) for Supplemental Security Income (SSI). However, because filing an application for SSI with SSA is a prerequisite to receipt of Interim Assistance benefits (see discussion in Principles of Law, below), the Claimant must have applied for SSI at some time during or prior to August 2005.
3. The Social Security Administration denied the Claimant's application for Supplemental Security Income at the Appeals Council level on May 8, 2009 (Ex. 2). The Claimant requested reconsideration of the Appeals Council's denial on June 1, 2009. *Id.* The Appeals Council denied the Claimant's request for reconsideration on either August 8, 2009 (per Ex. 3.2) or on August 14, 2009 (per Ex. 2). The Claimant subsequently requested, and was granted, an extension of time to appeal to federal district court (Ex. 3.2).
4. On September 10, 2009 the Social Security Administration informed the Division that the Claimant's application for SSI had been denied at the Appeals Council level (Ex. 2). On September 11, 2009 the Division mailed to the Claimant a written notice which stated in relevant part as follows (Ex. 3.9):

. . . . Interim Assistance benefits end on September 30, 2009 . . . . This is because the Social Security Administration denied your appeal . . . . This action is based on APA Manual Section 426-5.<sup>1</sup> [Separate paragraphs consolidated for brevity].

Interim assistance rules allow clients to continue eligibility for interim assistance as long as they continue to have active appeals with the Appeals Council for Social Security disability. Once Social Security denies the appeal

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1 Adult Public Assistance Manual Section 426-5 provides in relevant part as follows:

Interim Assistance continues until Social Security issues its **final SSI** eligibility decision regarding disability . . . . Once an individual has exhausted the SSI appeal process, he or she may choose to appeal the SSI decision to the federal district court; **Interim Assistance is not available pending an appeal to the court** . . . . Once Interim Assistance is approved, it is continued until the client is approved for **SSI**, receives an adverse **SSI** decision and does not appeal it to the next appeals level, withdraws or abandons an appeal at any level, or receives an adverse decision from the Appeals Council . . . . [bold emphasis added; separate paragraphs consolidated for brevity].

at the final level of Appeals Council the only recourse left is an appeal through the federal district court.

*Interim Assistance is not available pending an appeal to the court.* Therefore your interim assistance for this application closes. [Emphasis added].

You may reapply with a new disability claim to both Social Security and our agency if you would like to pursue potential future interim assistance benefits.

5. On September 11, 2009 the Claimant requested a hearing concerning the Division's termination of his Interim Assistance benefits (Ex. 3.6). The Claimant also requested that his Interim Assistance benefits be continued pending the issuance of a decision in this case. *Id.* The Division mailed a notice to the Claimant granting these requests on September 16, 2009 (Ex. 4).

## **PRINCIPLES OF LAW**

### I. Applicable Burden of Proof and Standard of Proof.

This case involves the Division's termination of the Claimant's previously existing Interim Assistance benefits. The Division therefore bears the burden of proof<sup>2</sup> by a preponderance of the evidence.<sup>3</sup>

### II. Appeals Process in Supplemental Security Income Cases.

The Social Security Administration provides four levels of review for applications for Supplemental Security Income. See SSA Publication No. 05-10041 (January 2008). These levels of review, following an initial adverse determination, are: (1) reconsideration; (2) hearing before an administrative law judge; (3) review by the Appeals Council; and (4) appeal to the federal district court. *Id.*

### III. The Interim Assistance Program – Relevant Provisions.

Interim Assistance is a benefit provided by the State of Alaska to Adult Public Assistance applicants while those applicants are waiting for the Social Security Administration to approve their Supplemental Security Income applications. See AS 47.25.455(a) ("the

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<sup>2</sup> "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).

<sup>3</sup> 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 at page 1064 (West Publishing, Fifth Edition, 1979).

department shall pay . . . [interim] assistance under this chapter while the eligibility of the person for [SSI] benefits . . . is being determined”); see also 7 AAC 40.170(b). The substantive disability criteria which must be satisfied in order to qualify for Interim Assistance are set forth in 7 AAC 40.180.

7 AAC 40.375(a) states in relevant part as follows:

(a) An applicant who is eligible for interim assistance . . . may receive interim assistance *while the individual's eligibility for SSI is being determined by the Social Security Administration.* [Emphasis added].

7 AAC 40.190(a) provides in relevant part as follows:

(a) . . . . Interim assistance will end upon the division's receipt of notification of the Social Security Administration's final determination of eligibility or ineligibility for SSI benefits. *An applicant will continue to receive interim assistance until the applicant (1) is approved for SSI; (2) receives an adverse SSI decision and fails to appeal it to the next appeal level; (3) withdraws or abandons an appeal at any level; or (4) receives a notice of dismissal or an adverse decision from the Social Security Appeals Council.* [Emphasis added].

In *Moore v. Beirne*, 714 P.2d 1284 (Alaska 1986) the Alaska Supreme Court stated:

The purpose of interim assistance is to alleviate hardship on applicants for SSI during the application period.

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In sum, considering the text of AS 47.25.455(a), its purpose, and its legislative history, we hold that the [interim assistance statute] requires state payment of interim assistance *through the SSI appeals process until a final SSI eligibility determination is made administratively.* [Emphasis added].

### ANALYSIS

The relevant facts in this case are not disputed. The Claimant has received Interim Assistance benefits from the State of Alaska since August 2005, while his application with the Social Security Administration for Supplemental Security Income was being processed. The Social Security Administration denied the Claimant’s Supplemental Security Income application at the Appeals Council level on either August 8, 2009 (per Ex. 3.2) or on August 14, 2009 (per Ex. 2). When the Division found out that the Claimant’s Supplemental Security Income application had been denied at the Appeals Council level, it notified the Claimant that it was terminating his Interim Assistance benefits on or after September 30, 2009 (Ex. 3.9).

Because the relevant facts are not in dispute, this case presents a purely legal issue. That issue, stated in simple terms, is: was the Division correct to terminate the Claimant's Interim Assistance benefits because the Claimant's Supplemental Security Income application was denied by the Social Security Administration's Appeals Council?

The Alaska statutes and regulations regarding the effect of the denial of an application for Supplemental Security Income by the Social Security Administration at the Appeals Council level are clear and unambiguous. AS 47.25.455(a) provides in relevant part that "the department shall pay . . . [interim] assistance under this chapter while the eligibility of the person for [SSI] benefits . . . is being determined." 7 AAC 40.375(a) narrows the more general language of the above statute by clearly stating that Interim Assistance is only provided "while the individual's eligibility for SSI is being determined *by the Social Security Administration*" (emphasis added).<sup>4</sup> 7 AAC 40.190(a) is more explicit still and states that an interim assistance recipient "will continue to receive interim assistance until the [recipient] . . . (4) receives . . . *an adverse decision from the Social Security Appeals Council*" (emphasis added).

Neither AS 47.25.455(a), 7 AAC 40.375(a), or 7 AAC 40.190(a) contain any exception to the benefit termination requirement for cases in which a recipient appeals his or her adverse Appeals Council decision to federal district court. This fact was confirmed by the Alaska Supreme Court in *Moore v. Beirne*, 714 P.2d 1284 (Alaska 1986). See discussion of that decision in the Principles of Law, above.

In summary, the statutes, regulations, and judicial decisions relevant to the issue together mandate that Interim Assistance benefits be terminated upon an adverse decision by the Social Security Appeals Council. Accordingly, the Claimant's eligibility for state Interim Assistance benefits ended when the Social Security Administration's Appeals Council denied his application for Supplemental Security Income on either August 8, 2009 (per Ex. 3.2) or on August 14, 2009 (per Ex. 2). The Division was therefore required to terminate the Claimant's Interim Assistance benefits on or after September 30, 2009 pursuant to AS 47.25.455(a), 7 AAC 40.375(a), 7 AAC 40.190(a), and the Alaska Supreme Court's decision in *Moore v. Beirne*, 714 P.2d 1284 (Alaska 1986).

## CONCLUSIONS OF LAW

1. The Division was required by the explicit terms of state regulation 7 AAC 40.190(a)(4), and the Alaska Supreme Court's decision in *Moore v. Beirne*, 714 P.2d 1284 (Alaska 1986), to terminate the Claimant's Interim Assistance benefits when the Social Security Administration's Appeals Council denied the Claimant's Supplemental Security Income application in August 2009.

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<sup>4</sup> The fact that 7 AAC 40.375(a) states that Interim Assistance is only provided "while the individual's eligibility for SSI is being determined *by the Social Security Administration*" necessarily implies that Interim Assistance is *not* provided while the individual's eligibility for SSI is on appeal to (i.e. is "being determined by") a federal district court.

2. The Division was therefore correct when, on September 11, 2009, it notified the Claimant that his Interim Assistance benefits would end on September 30, 2009.

### DECISION

The Division was correct when, on September 11, 2009, it notified the Claimant that his Interim Assistance benefits would end on September 30, 2009.

### 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 [20<sup>th</sup>] day of January, 2010.

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Jay Durych  
Hearing Authority

### CERTIFICATE OF SERVICE

I certify that on this [20<sup>th</sup>] day of January 2010 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  
[REDACTED], Director  
[REDACTED], Policy & Program Development  
[REDACTED], Administrative Assistant II  
[REDACTED], Eligibility Technician I  
[REDACTED], Staff Development & Training  
[REDACTED], Fair Hearing Representative

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J. Albert Levitre, Jr.  
Law Office Assistant I