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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-542
)
 Claimant.) Division Case No. [REDACTED]
_____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) was a child care provider receiving Child Care Assistance for the children in her care. The Division denied payment for June 2009 Child Care Assistance benefits on August 27, 2009. (Ex. 5d)

The Claimant, on September 2, 2009, requested that the Division administratively review its denial of her request for child care payment. (Ex. 9b) On September 21, 2009, after its administrative review, the Division upheld its original determination denying the Claimant's request for payment. (Ex. 11b) The Division received the Claimant's fair hearing request on September 25, 2009. (Ex. 11a) This office has jurisdiction pursuant to 7 AAC 41.440(c) and 7 AAC 49.010.

Pursuant to the Claimant's request, a hearing was held on December 1, 2009. The Claimant appeared in person, represented herself and testified on her own behalf. [REDACTED], a Program Coordinator with the Division's Child Care Assistance office, attended in person; she represented the Division and testified on its behalf.

ISSUE

Was the Division correct to deny the Claimant's June 2009 Child Care Assistance payment because she failed to submit her Billing Report Form in a timely and correct manner?

FINDINGS OF FACT

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

1. The Claimant provides child care to families that qualify for the Child Care Assistance Program. On July 6, 2009, the Claimant submitted a Child Care Assistance Program Monthly Billing Report Form for services provided during June 2009. (Ex. 3a) On the form in bold letters is the statement: "Do Not Use Correction Fluid or Erase On This Form." (Ex. 3a) On the form, the Claimant billed for two children: S.R. and C.C. S.R.'s last name was obliterated by correction fluid. (Ex. 3a)
2. On July 6, 2009, the Division mailed a notice to Claimant stating the Division was returning her Billing Report Form for the following reasons: "the child and/or parent name not indicated" and "white out." (Ex. 3b and 4a). If S.R.'s name would have just been empty, the Division would have paid for the care Claimant had given to C.C., but the correction fluid invalidated the entire form. (Testimony of ██████████)
3. The Claimant testified she put a corrected form in the Division drop box sometime in July 2009, because she knew the form was due by the end of the month.
4. The Division did not receive another Billing Report Form from the Claimant during the month of July 2009. The Division is not aware of documents submitted to the drop box getting lost. (Testimony of ██████████)
5. On August 21, 2009, the Claimant submitted another Billing Form for the June 2009 services to the Division. This form was complete. (Ex. 5a).
6. On August 27, 2009, the Division returned the August 21, 2009 Billing Form to the Claimant for the following reason: "Billing was submitted late."
7. The Division's fiscal year ends on June 30, 2009. (Testimony of ██████████)
8. The Claimant was aware she was required to submit the Billing Form to the Division by July for services she provided in the month of June. This finding is based on the following:
 - a. She testified at hearing she knew the deadline for submitting the Billing Form. She knew that services provided in June must be billed for by July 31st.
 - b. On June 1, 2009, she signed a Division form titled: "Information Providers Need to Know." This form, in part, states: "For months May and June, the monthly billing report must be submitted no later than July 31st or payment will be denied." (Ex. 7b)

PRINCIPLES OF LAW

In an administrative proceeding, the party who seeks to change the status quo has the burden of proof. *State, Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985). Preponderance of the evidence is the standard of proof. *Amerada Hess Pipeline v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986). “Where one has the burden of proving asserted facts by a preponderance of the evidence, he must induce a belief in the minds of the triers of fact that the asserted facts are probably true.” *Robinson v. Municipality of Anchorage*, 69, P.3d 489, 493 (Alaska 2003).

Child Care Assistance is a program that assists in paying day care costs for qualifying individuals and households. AS 47.25.001. The Division authorizes a provider to participate in the program. 7 AAC 41.200 An aggrieved party who is adversely affected by the Division’s, or its agent’s, action may request an administrative review of the action. 7 AAC 41.435(a). If the administrative review finds against the aggrieved party, regulations 7 AAC 49 and 7 AAC 41.440(c) allow that party to request a fair hearing.

The Division has billing requirements and deadlines, as set forth in 7 AAC 41.250, which states:

(a) Except for a provider subject to 7 AAC 41.370, participating provider shall submit billing statements and any corrections to those statements to the department or to the designee, as determined by the department, as follows: . . .

(2) for the last two months of a state fiscal year, no later than 31 days after the end of the fiscal year.

(b) Payment will not be made for a billing statement or a correction to a billing statement that is submitted later than the applicable deadline set in (a)(1) or (2) of this section.

ANALYSIS

This case involves the issue of whether or not the Division was correct to deny the Claimant’s June 2009 Child Care Assistance payment because she failed to submit her Billing Report Form in a timely and correct manner.

The Claimant provided child care during June of 2009. Regulation 7 AAC 41.250 is clear, for the last two months of the state fiscal year, a provider must submit billing statements and any corrections to those statements to the Division no later than 31 days after the end of the fiscal year. The Division’s fiscal year ends on June 30th. (Testimony of ██████████) Therefore, Claimant was required to have a correct Billing Form for June 2009 services to the Division by July 31, 2009. Claimant knew she was required to have her Billing Form to the Division by that date.

Initially, Claimant submitted first a Billing Form on July 6, 2009 for services she provided in June. However, the Claimant used correction fluid on that form, despite the warning in bold on

the form not to do so. This use of correction fluid is what caused the Division to deny payment. (Testimony of [REDACTED]) The Division was correct to deny the Claimant's request for payment because the form was not submitted correctly. Particularly given the fact the form had a statement, in bold, prohibiting the use of correction fluid.

Claimant claims she submitted a corrected form in July 2009 by placing it in the Division drop box. Division personnel testified the Division did not receive another Billing Report Form from the Claimant during the month of July 2009. Furthermore, the Division does not have a problem with lost submissions. (Testimony of [REDACTED]) Both parties had credible testimony. However, the Claimant has the burden of proof in this case. Because of the Division's credible testimony regarding its failure to receive the form, Claimant has failed to overcome her burden by a preponderance of the evidence that she submitted an additional Billing Form during the month of July.

Claimant did not provide a corrected Billing Form to the Division until August 21, 2009. However, this date was after the July 31, 2009 deadline. Pursuant to 7 AAC 41.250(b), the Division will not make payment for any Billing Form submitted later than the July 31, 2009 deadline.

The Division was therefore correct to deny the Claimant's request for payment for her child care for the month of June 2009.

CONCLUSIONS OF LAW

1. The Claimant's incorrect submission on July 6, 2009, for her Billing Form for child care provided in June 2009 did not meet the requirements of 7 AAC 41.250.
2. The Claimant's late submission of her Billing Form on August 21, 2009, for child care provided in June 2009 did not meet the requirements of 7 AAC 41.250.
3. The Claimant failed to prove her case by a preponderance of the evidence. The Division was therefore correct to deny the Claimant's request for payment for child care provided in June 2009.

DECISION

The Division was correct to deny the Claimant's request for payment for child care provided in June 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, 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 12th day of December, 2009.

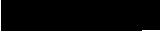
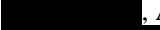
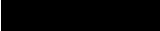
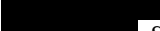
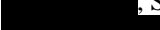

Patricia Huna-Jines
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 12th day of December, 2009, true and correct copies of the foregoing were sent to:

Claimant by USPS First Class Certified Mail, Return Receipt Requested.

And to the following by email:

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

J. Albert Levtre, Jr., Law Office Assistant I