

Office of Hearings and Appeals  
3601 C Street, Suite 1322  
P. O. Box 240249  
Anchorage, AK 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-555  
 )  
 Claimant. ) DPA Case No. [REDACTED]  
 \_\_\_\_\_ )

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

[REDACTED] (Claimant) was a recipient of Food Stamp and Family Medicaid benefits (Ex. 1). On August 26, 2009 the Division of Public Assistance (DPA or Division) mailed a notice to the Claimant requesting certain information regarding the Claimant's change in employment status (Exs. 5.0, 5.1). The notice further stated that if the information requested was not received by DPA by September 8, 2009 the Claimant's benefits might be reduced or terminated. *Id.*

On September 21, 2009 the Division mailed to the Claimant two notices stating that her Food Stamp and Medicaid cases had been closed for failure to provide the requested information, and that the Claimant would receive no further benefits after September 30, 2009 (Exs. 7.0, 7.1). The Claimant requested a fair hearing contesting the termination of her benefits on or about October 9, 2009 (Exs. 8.1 – 8.3).

On October 22, 2009 the Division mailed a notice to the Claimant advising that her hearing had been scheduled for December 9, 2009 (Ex. 25). A hearing was held on December 9, 2009 before Hearing Officer Jay Durych. The Claimant attended in person, represented herself, and testified on her own behalf. DPA Public Assistance Analyst [REDACTED] attended the hearing in person to represent and testify on behalf of the Division. DPA Public Assistance Analyst [REDACTED] attended

the hearing as an observer. All testimony and exhibits offered by the parties were received into evidence. At the end of the hearing the record was closed and the case was submitted for decision.<sup>1</sup>

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

### ISSUE

Was the Division correct to close the Claimant's Food Stamp and Family Medicaid cases, and to cease payment of benefits after September 30, 2009, based on the Claimant's alleged failure to timely provide information and/or documentation requested by the Division for the purpose of determining continued program eligibility and/or benefit levels?

### FINDINGS OF FACT

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

1. The Claimant began receiving Food Stamp and Family Medicaid benefits on November 17, 2008 (Ex. 1). The Claimant's Food Stamp certification period was six (6) months or longer. *Id.*
2. On April 20, 2009 the Division of Public Assistance (DPA or Division) mailed to the Claimant a notice reminding of her responsibility to report various changes in her household's circumstances to DPA within ten (10) days (Ex. 2).
3. On August 19, 2009 DPA received a letter from the Claimant notifying DPA that the Claimant had become employed in August 2009 (Exs. 3.0 – 3.1). The Claimant advised that she worked 25 hours per week and that she was paid \$9.00 per hour. *Id.* The Claimant also provided contact information for herself *and her new employer*, including the employer's name, address and telephone number. *Id.*
4. On August 26, 2009 DPA mailed a notice to the Claimant requesting certain additional information regarding the Claimant's employment and earnings (Exs. 5.0, 5.1). The notice stated in relevant part as follows:

Information needed: Proof *from your employer* about your new job which must include:

---

<sup>1</sup> Pursuant to 7 AAC 49.080, the Division is generally required to issue a notice of hearing within 10 days of the date that the Division receives a claimant or recipient's hearing request. In this case the Division noticed the hearing 13 days after receiving the Claimant's hearing request.

Pursuant to 7 CFR 273.15, this Office (the Office of Hearings and Appeals) is required to issue a decision in Food Stamp cases no later than 60 days after the date that the Division receives a claimant or recipient's request for a hearing. However, this Office cannot prepare its decision until after the hearing is actually held. In this case, because the Division scheduled the Claimant's hearing on a date 61 days after the day the Claimant's hearing request was received, the period within which this Office is required to issue its decision expired one (1) day prior to the hearing date. It was therefore not possible for this Office to issue its decision within the 60 day period specified by regulation. Accordingly, even though this decision was issued within 41 days of the hearing, the decision is technically late.

- Employer's name and daytime phone number.
- The date the job started.
- Number of hours you are anticipated to work weekly.
- Hourly rate of pay.
- The date of your first paycheck and the gross amount of earnings.
- How often [you are] paid and when.
- If you receive tips, give us an anticipated weekly amount.
- copies of all paystubs you have gotten by the time you turn in this information.
- If health insurance is available, give us the name of the insurance company. . . .
- Note: an employment statement is being mailed to you in a separate envelope for your convenience. However, any proof from the employer that gives us the above information, whether by phone or in writing is acceptable.* [Emphasis added].

The notice further stated that if the information requested was not received by DPA by September 8, 2009 the Claimant's benefits might be reduced or terminated. *Id.*

5. DPA did not attempt to contact the Claimant's employer to obtain any of the required information directly from the employer (Ex. 8.14; Claimant's testimony; DPA Hearing Representative's testimony). DPA will only contact an employer directly in that situation if the Claimant advises DPA that the Claimant is having difficulty obtaining the required information and documentation from the employer (DPA Hearing Representative's testimony).

6. At the time the Claimant received DPA's request for information in late August 2009 it was her understanding that she was due for recertification of her Food Stamp case within the next month or so (Claimant testimony). For this reason she could not understand why DPA was requesting the information and documentation at issue in late August 2009, instead of just waiting for her to supply the information in the next 30-40 days in conjunction with her recertification application. *Id.*

7. On September 18, 2009 DPA reviewed the status of the Claimant's cases and determined that the Claimant had not provided the information and documentation previously requested (Ex. 6; DPA Hearing Representative's testimony).

8. On September 21, 2009 DPA mailed to the Claimant a notice stating that her Food Stamp benefits were being terminated for failure to provide the information requested (Ex. 7.0). The notice stated in relevant part as follows (Ex. 7.0):

Your Food Stamp case is closed. You will not get Food Stamps after September 30, 2009 because you did not give us the items or proof we asked for . . . . If you want to get Food Stamps Again, you need to reapply with a new application . . . . *This action is based on Food Stamp Manual Sections 601-3 and 604-3F . . . . Items we asked for and did not get: Proof from [your employer] about your new job . . . .* [Emphasis added].

9. On September 21, 2009 DPA also mailed to the Claimant a notice stating that her Medicaid benefits were being terminated for failure to provide the information requested (Ex. 7.1). The notice stated in relevant part as follows (Ex. 7.1):

Your Medicaid case is closed and you will not get benefits after September 30, 2009 . . . Your Medicaid case is closed because . . . [y]ou reported a new job . . . we requested proof from [your employer] about your new job . . . Medicaid Manual Section 5185-1 supports this action. We are unable to determine eligibility without this information . . .

10. The Claimant requested a hearing contesting DPA's termination of her benefits on or about October 9, 2009 (Exs. 8.1 – 8.3). The Claimant indicated that she wanted a hearing as to both the Food Stamp and Medicaid programs. *Id.*

11. In a letter submitted to DPA on October 9, 2009 with the above hearing request, the Claimant indicated that she had provided DPA with the information it requested in its notice dated August 26, 2009 approximately 2-3 weeks prior to the date of that notice (Ex. 8.2).

12. On October 9, 2009 the Claimant also submitted to DPA nine (9) pages of documentation concerning the matters as to which DPA had requested additional information on August 26, 2009 (Exs. 8.4 – 8.12). One of the items submitted by the Claimant at this time was an "Employment Statement" signed by the Claimant's employer (Ex. 8.4).

13. On October 16, 2009 the Claimant requested continued benefits pending the outcome of her hearing (Ex. 8.15). On October 20, 2009 DPA mailed two notices to the Claimant stating that her Food Stamp and Medicaid benefits would be continued pending the hearing (Exs. 8.16 – 8.17).

14. Prior to the hearing, the DPA's Hearing Representative reviewed the Claimant's Food Stamp and Family Medicaid files from the Claimant's letter of August 19, 2009 forward to the date of the hearing (DPA Hearing Representative testimony). The DPA's Hearing Representative also spoke to the eligibility technician who had been working the Claimant's cases during August and September 2009. *Id.* Both the DPA's records, and the eligibility technician, indicated that the Claimant had never contacted DPA to request assistance in obtaining needed information and/or documentation from her employer. *Id.*

15. The Claimant never asserted at the hearing that she had ever contacted DPA to request assistance in obtaining the needed information and documentation from her employer. At the hearing the Claimant asserted that she was always within the Food Stamp and Medicaid programs' income limits, but she admitted that she had "just missed the date" for providing the information and documentation requested by DPA (Claimant testimony).

## **PRINCIPLES OF LAW**

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

This case involves the Division's termination of existing Food Stamp Program and Family Medicaid Program benefits. The party seeking a change in the status quo or existing state of affairs normally has the burden of proof.<sup>2</sup> In this case the Division is attempting to change the status quo

---

or existing state of affairs by terminating existing Medicaid benefits.<sup>3</sup> Accordingly, the Division bears the burden of proof with regard to the termination of Medicaid benefits in this case.

The regulations applicable to this case do not specify any particular standard of proof. Therefore, the “preponderance of the evidence” standard is the standard of proof applicable to this case.<sup>4</sup> This standard is met when the evidence, taken as a whole, shows that the facts sought to be proved are more probable than not or more likely than not.<sup>5</sup>

## II. Overview of the Food Stamp Program.

The Food Stamp program was established by the federal Food Stamp Act of 1977, codified at 7 USC Sections 2011 – 2029. Regulations for this program are codified primarily at 7 CFR Sections 271-274.

The Food Stamp Program has been delegated to the states for administration. 7 CFR Section 271.4. The State of Alaska Department of Health and Social Services administers the Food Stamp Program in Alaska, and has promulgated regulations which adopt the federal regulations (with certain minor variations as allowed by federal law). 7 CFR Section 272.7; 7 AAC 46.010 - 7 AAC 46.990.

## III. Authorities Cited By the Division in its Food Stamp Termination Notice.

Food Stamp Manual Section 601-3, cited by DPA in its Food Stamp benefit termination notice, concerns the conduct of eligibility interviews.

Food Stamp Manual Section 604-3F, also cited by DPA in its Food Stamp benefit termination notice, concerns temporary ineligibility and case suspension.

## IV. Notice of Adverse Action – Requirements for Food Stamp Program.

The minimum requirements for the content of a notice of adverse action sent to a Food Stamp Program applicant or recipient are stated in federal regulation 7 C. F. R. § 273.13. Subsection (a)(2) of this regulation provides in relevant part as follows:

(a) (2) The notice of adverse action shall be considered adequate if it explains in easily understandable language: The proposed action; the reason for the proposed action; the household's right to request a fair hearing; the telephone number of the

---

<sup>2</sup> *State of Alaska Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

<sup>3</sup> Because the Food Stamp portion of this case is resolved on procedural grounds rather than on the merits (see Analysis, below), it is not necessary to discuss the burden of proof applicable to the Food Stamp portion of the case.

<sup>4</sup> A party in an administrative proceeding can assume that preponderance of the evidence is the applicable standard of proof unless otherwise stated. *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Commission*, 711 P.2d 1170 (Alaska 1986).

<sup>5</sup> *Black's Law Dictionary* at 1064 (West Publishing, 5<sup>th</sup> Edition, 1979).

food stamp office (toll-free number or a number where collect calls will be accepted for households outside the local calling area) and, if possible, the name of the person to contact for additional information; the availability of continued benefits; and the liability of the household for any over-issuances received while awaiting a fair hearing if the hearing official's decision is adverse to the household. If there is an individual or organization available that provides free legal representation, the notice shall also advise the household of the availability of the service.

The State of Alaska has its own minimum requirements for the content of a notice of adverse action sent to an applicant or recipient of a public benefit program administered by the Department of Health and Social Services. Those requirements, which are *in addition* to those required by the federal regulations, are stated in 7 AAC 49.070. That state regulation states in relevant part:

Unless otherwise specified in applicable federal regulations, written notice to the client must detail the reasons for the proposed adverse action, including *the statute, regulation, or policy upon which that action is based* . . . . [Emphasis added].

7 AAC 49.010(a) makes the notice requirements of 7 AAC 49.070 (above) applicable to Food Stamp cases in Alaska. Thus, in an Alaska Food Stamp case, legally sufficient notice is notice that states the information required by both 7 C. F. R. § 273.13 *and* 7 AAC 49.070 (quoted above).

In *Allen v. State of Alaska Department of Health & Social Services, Division of Public Assistance*, 203 P.3d 1155, 1169 (Alaska 2009), the Alaska Supreme Court indicated that the proper remedy for an **insufficient notice of adverse action under the Food Stamp program** is to require the agency to issue a legally sufficient notice if the agency still intends to proceed with the adverse action. Legally sufficient notice is notice that states the information required by both 7 C. F. R. § 273.13 *and* 7 AAC 49.070.

#### V. Sua Sponte Action on Notice Issues.

Issues may be addressed *sua sponte* (on a court or hearing officer's own motion) when the issue is a "threshold" matter <sup>6</sup> or an issue "antecedent to . . . and ultimately dispositive of" the dispute, even if the parties fail to identify and brief the issue." <sup>7</sup> Specifically, issues pertaining to the sufficiency of notice may be addressed *sua sponte*. <sup>8</sup>

---

<sup>6</sup> *Thomas v. Crosby*, 371 F.3d 782 (11<sup>th</sup> Cir. 2004), *cert. denied* 543 U.S. 1063, 125 S.Ct. 888, 160 L.Ed.2d 793 (2005).

<sup>7</sup> *United States National Bank v. Independent Insurance Agents of America, Inc.*, 508 U.S. 439, 447, 113 S.Ct. 2173, 2178, 124 L.Ed.2d 402 (1993), *quoting* *Arcadia v. Ohio Power Co.*, 498 U.S. 73, 77, 111 S.Ct. 415, 112 L.Ed.2d 374 (1990), *rehearing denied* 498 U.S. 1075, 111 S.Ct. 804, 112 L.Ed.2d 865 (1991).

<sup>8</sup> *Dingess v. Nicholson*, 19 Vet. App. 473 (Vet. App. 2006) (adequacy of notice was considered by the court *sua sponte*).

VI. The Medicaid Program – In General.

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.* The program focuses on coverage for low-income children, pregnant women, families, the elderly, the blind, and the permanently disabled. *Id.*

VII. Medicaid Regulations Pertaining to Verification of Information Provided By Recipients.

Alaska state Medicaid regulation 7 AAC 100.900 provides in relevant part as follows:

(a) A Medicaid recipient eligible under 7 AAC 100.002(a) or (c) must report to the department any change in the household that may affect the household's eligibility within 10 days after the date the recipient knows of the change. Changes affecting a household or individual included in the household that must be reported under this section include . . . (5) starting or stopping a job; (6) a change in salary or wage; (7) a change in employment from part-time to full-time, or from full-time to part-time . . .

\* \* \* \* \*

*(c) If a reported change affects a recipient or a recipient's household, the department may request in writing verification of the change. If a recipient or caretaker relative fails to provide the requested verification within the time frame specified in the department's written request, the department may terminate Medicaid eligibility in accordance with this chapter and 7 AAC 49. [Emphasis added].*

Alaska 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.* [Emphasis added].

Alaska Family Medicaid Eligibility Manual (Manual) Section 5185-1, cited by DPA in its Family Medicaid benefit termination notice, sets forth reporting requirements for recipients of Family Medicaid. Section 5185-1 of the Manual essentially restates the requirements of regulations 7 AAC 100.016 and 7 AAC 100.900, set forth above. Section 5000-4 of the Manual, titled “Verification and Documentation,” provides in relevant part as follows:

\* \* \* \* \*

The applicant has the primary responsibility for providing documentary evidence . . .

. . . . A household cannot be found eligible for Medicaid or Denali KidCare if the applicant *refuses to allow the caseworker* to verify or document information relevant to the eligibility determination.

### VIII. Principles of Interpretation Relevant to Regulations and Policy Manuals.

The Alaska Supreme Court has adopted the well settled rule of construction that no clause, sentence or word of a statute or regulation shall be construed as inoperative or superfluous, void, or insignificant if an interpretation can be found which will give effect to and preserve all of the words of the regulation. *See City of St. Mary's v. St. Mary's Native Corp.*, 9 P.3d 1002, 1008 (Alaska 2000), *Alascom Inc., v. North Slope Borough Board of Equalization*, 659 P.2d 1175, 1178 n.5 (Alaska 1983), 2A C. Sands, *Statutes and Statutory Construction*, § 46.06 (4<sup>th</sup> Edition 1973), and 2A N. Singer, *Sutherland Statutory Construction and Statutory Interpretation*, § 46:6 at 244-47 (6<sup>th</sup> Edition 2002).

When several statutes relate to the same purpose or thing, and one section covers the subject in general terms and the other covers a part of the same subject in more detail, then, if there is any conflict between the statutes, the more specific controls over the general. 2A C. Sands, *Sutherland Statutory Construction* § 51.01 at 449 and § 51.05 at 499 (4<sup>th</sup> Edition 1973); *compare* 1A Norman Singer, *Sutherland Statutory Construction* § 23:9 at 459; 2A Norman J. Singer, *Statutes And Statutory Construction* § 46:05, at 177 (6<sup>th</sup> Edition 2000) (“Where there is inescapable conflict between general and specific terms or provisions of a statute, the specific will prevail.”); *see also Morton v. Hammond*, 604 P.2d 1, 3 n. 5 (Alaska 1979); *Allen v. Alaska Oil & Gas Conservation Commission*, 147 P.3d 664, 668 (Alaska 2006) (“In general, if two statutes conflict ... the specific controls over the general”).

The United States Supreme Court has instructed that “[i]nterpretations such as those . . . contained in policy statements, agency manuals, and enforcement guidelines . . . lack the force of law. . . .” *Christensen v. Harris County*, 529 U.S. 576, 587, 120 S.Ct. 1655, 146 L.Ed.2d 621 (2000).

## ANALYSIS

### I. Food Stamp Program - Sufficiency of Agency’s Notice.

A preliminary issue which must be addressed prior to the merits of this case is the procedural issue of whether the Division’s Food Stamp termination notice of September 21, 2009 is legally sufficient. Even though this issue was not raised by the parties, it is appropriate for this Office to consider this issue on its own motion or initiative (“*sua sponte*”). *See* discussion of *sua sponte* in Principles of Law at page 6, above; *see also Allen v. State of Alaska Department of Health & Social Services, Division of Public Assistance*, 203 P.3d 1155, 1169 (Alaska 2009) (discussed under notice in Principles of Law at page 6, above).

The minimum federal requirements for the content of a notice of adverse action sent to a Food Stamp Program applicant or recipient are clearly stated in federal regulation 7 C. F. R. § 273.13 (quoted in part in the Principles of Law, above). 7 C. F. R. § 273.13(a)(2) requires in part that “the notice of adverse action . . . [explain] . . . the reason for the proposed action . . . .” 7 C. F. R. §



273.13(a)(2) does not require that DPA cite the statute, regulation, or policy provision which supports the proposed adverse action.

However, the State of Alaska has its own minimum requirements for the content of a notice of adverse action sent to an applicant or recipient of a public benefit program administered by the Department of Health and Social Services. Those requirements, which are *in addition* to those required by the federal regulations, are stated in 7 AAC 49.070. That regulation states in relevant part as follows:

Unless otherwise specified in applicable federal regulations, written notice to the client must detail the reasons for the proposed adverse action, *including the statute, regulation, or policy upon which that action is based . . . .* [Emphasis added].

The above regulation is one of the regulations that pertain specifically to the hearing process (see 7 AAC 49) and is applicable to most of the programs administered by the Department of Health and Social Services. This regulation is applicable to the Food Stamp program. 7 AAC 49.010.

On September 21, 2009 DPA mailed to the Claimant a notice stating that her Food Stamp benefits were being terminated for failure to provide the information requested (Ex. 7.0). The notice stated in relevant part as follows (Ex. 7.0):

You will not get Food Stamps after September 30, 2009 because you did not give us the items or proof we asked for . . . . *This action is based on Food Stamp Manual Sections 601-3 and 604-3F . . . .* Items we asked for and did not get: Proof from [your employer] about your new job . . . . [Emphasis added].

The authority cited in the above notice issued by DPA does not support the proposed action of DPA. Specifically, the two Manual sections cited in the notice have nothing to do with change reporting requirements or requirements for third-party verification of information provided by recipients. Food Stamp Manual Section 601-3, cited in the Food Stamp benefit termination notice, concerns the conduct of eligibility interviews. In addition, the second Manual Section cited in the notice (604-3F) concerns temporary ineligibility and case suspension. Thus, the two cited Manual sections do not address the subject at issue – termination of the Claimant’s benefits based on an alleged failure to provide information.

Based on the foregoing it is clear that, although DPA’s Food Stamp termination notice of September 21, 2009 advised the Claimant of DPA’s proposed adverse action, it did not accurately advise the Claimant of “*the statute, regulation, or policy upon which that action [was to be] based*” as required explicitly by 7 AAC 49.070. Accordingly, the Division’s Food Stamp termination notice of September 21, 2009 is legally not sufficient. The next issue which must be addressed is the *appropriate remedy* for cases in which inadequate notice is given to a claimant.

In *Allen v. State of Alaska Department of Health & Social Services, Division of Public Assistance*, 203 P.3d 1155, 1169 (Alaska 2009), the Alaska Supreme Court indicated that the proper remedy for an insufficient notice of adverse action under the Food Stamp program is to require the agency to issue a new, legally sufficient notice if the agency still intends to proceed with the adverse action.

Accordingly, pursuant to *Allen*, this Office may not render a decision on the merits of the Food Stamp case. If the Division still wishes to terminate the Claimant's Food Stamp benefits after September 30, 2009 on the grounds it has asserted in this case, it must first issue to the Claimant a new notice which accurately states the statute(s), regulation(s), and/or Policy Manual provision(s) supporting DPA's proposed action. If DPA does not issue such a new denial notice, then it may not terminate the Claimant's Food Stamp benefits based on the grounds asserted in this case.

## **II. On the Merits: Family Medicaid Program.**

### **A. Statement of Undisputed Facts; Definition of Issue.**

DPA asserts that it properly terminated the Claimant's Medicaid benefits because the Claimant did not timely provide the information and/or documentation, requested by DPA in its notice dated August 26, 2009, regarding the Claimant's new employment and earnings (Exs. 5.0, 5.1). Based on DPA's assertion, the following are the relevant facts:

1. At the hearing, the Claimant conceded that she "just missed the date" for providing the information and documentation requested by DPA. Thus, it is not disputed that the information and/or documentation requested by DPA was not timely provided by the Claimant.
2. Both the DPA's records and the eligibility technician involved in this case indicated that the Claimant had never contacted DPA to request assistance in obtaining needed information and/or documentation from her employer (see Findings of Fact at paragraph 13). The Claimant likewise never asserted at the hearing that she had ever contacted DPA to request assistance in obtaining the information and documentation from her employer.
3. DPA admitted that it did not attempt to contact the Claimant's employer to obtain any of the required information and/or documentation directly from the employer (Ex. 8.14; DPA Hearing Representative's testimony).

Based on these undisputed facts, the resulting issue is whether DPA had a duty, in the absence of any request by the Claimant, to render assistance in obtaining verification of the information previously reported by the Claimant. If DPA had such a duty, then its termination of Medicaid benefits would not have been proper. If DPA had no such duty, then DPA's actions were correct.

The Division is attempting to change the status quo by terminating the Claimant's Medicaid benefits. Accordingly, DPA bears the burden of proof (see discussion in Principles of Law, above).

### **B. Claimant and DPA Responsibilities for Verification Under Family Medicaid.**

#### **1. The Regulations Are Conflicting.**

The scope of the Division's duty to assist with verification of eligibility information in Family Medicaid cases is addressed by Alaska state Medicaid regulations 7 AAC 100.900(c) and 7 AAC 100.016(a-b). Regulation 7 AAC 100.900(c) provides in relevant part as follows:

(c) If a reported change affects a recipient or a recipient's household, the department may request in writing verification of the change. If a recipient or caretaker relative *fails to provide the requested verification within the time frame specified in the department's written request, the department may terminate Medicaid eligibility* in accordance with this chapter and 7 AAC 49. [Emphasis added].

When read in isolation, Medicaid regulation 7 AAC 100.900(c) (quoted above) appears to place the duty of verifying information solely *on the Claimant*.

The second relevant Medicaid regulation, 7 AAC 100.016(a-b), provides 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*. [Emphasis added].

When read in isolation, Medicaid regulation 7 AAC 100.016(a-b) (quoted above) appears to place the duty of verifying information *on the Division*. Specifically, 7 AAC 100.016(a-b) indicates that the Division will request documentation from the applicant or recipient *only if* the documentation is not readily available, or the information is not readily verifiable, through an alternate source.

## 2. The Policy Manual Does Not Resolve the Conflict Between the Regulations.

The relevant provisions of the Alaska Family Medicaid Eligibility Manual (Manual) do not help to resolve the conflict between the two regulations. Manual Section 5000-4, titled “Verification and Documentation,” states in relevant part that “[a] household cannot be found eligible for Medicaid or Denali KidCare if the applicant *refuses* to allow the caseworker to verify or document information relevant to the eligibility determination” (emphasis added; see Principles of Law, above). This case does not, however, involve an intentional *refusal* to provide information, but rather a failure to provide information, which failure was not necessarily intentional.

Manual Section 5000-4 also states that “the applicant has the *primary* responsibility for providing documentary evidence” (emphasis added; see Principles of Law, above). It could be argued that the use of the word “primary” in Manual Section 5000-4 implies that the Division has only a secondary responsibility for obtaining information and/or documentation. Such an interpretation is not, however, clear enough to over-ride the unequivocal language of 7 AAC 100.016(a-b). Further, in the event of inconsistency, regulations always control over provisions in policy manuals.<sup>9</sup> Accordingly, the quoted language from the Manual does not resolve the conflict between the two regulations.

---

<sup>9</sup> See, for example, *Christensen v. Harris County*, 529 U.S. 576, 587, 120 S.Ct. 1655, 146 L.Ed.2d 621 (2000) (discussed in Principles of Law, above).

### 3. The Two Regulations Can be Harmonized.

Each of the apparently conflicting regulations (7 AAC 100.900(c) and 7 AAC 100.016(a-b)) is clear on its face. There are, however, established rules of interpretation which can help resolve apparent conflicts between different statutes and regulations. One such principle states that no clause, sentence or word of a regulation may be construed as inoperative, superfluous, or insignificant if an interpretation can be found which gives effect to all of the words of the regulation (see discussion in Principles of Law, above). Can the two Medicaid regulations at issue be harmonized so that they can both be given effect?

An interpretation which harmonizes and gives effect to *both* Medicaid regulations construes one of the Medicaid regulations (7 AAC 100.900(c)) as stating *the general rule*, and the other Medicaid regulation (7 AAC 100.016(a-b)) as stating *an exception to that general rule*. Medicaid regulation 7 AAC 100.900(c) states the general rule which allows DPA to request verification from an applicant or recipient and which *requires* that applicant or recipient to provide that verification to DPA. The other Medicaid regulation, 7 AAC 100.016(a-b), states the *exception* to that general rule. This exception requires that *DPA itself* attempt to obtain required information and/or documentation if (and only if) the information and/or documentation is *readily available* to DPA from an alternative source.<sup>10</sup>

7 AAC 100.900(c) thus generally allows DPA to (1) request from claimants verification of changes in circumstances, and (2) deny or terminate benefits, when the requested information and/or documentation is not timely provided by the claimant. 7 AAC 100.016(b), on the other hand, requires that DPA attempt to obtain information and/or documentation from a third party source, prior to denying or terminating benefits, in circumstances where “*the required documentation*” is “*readily available . . . from any alternative source . . .*” [Emphasis added].

Stated more simply, Medicaid regulation 7 AAC 100.900(c) allows DPA to request that claimants verify information and to terminate benefits if that verification is not provided. However, in those circumstances in which the required verification is readily available to DPA from an alternative source, DPA must attempt to obtain verification through that alternative source pursuant to 7 AAC 100.016(b).

As noted in the Statement of Facts, above, the Claimant supplied the name, address, and telephone number of an “alternative source” (i.e. her new employer) in her initial letter (Exs. 3.0 – 3.1). The Claimant’s letter was received by DPA on August 19, 2009 (Ex. 3). This was approximately 20 days prior to the September 8, 2009 deadline for providing the information and/or documentation requested (Exs. 5.0 – 5.1).

In her letter, the Claimant supplied a local address and telephone number for her employer (Exs. 3.0 – 3.1). There is no evidence in the record that the Claimant’s employer would have failed to

---

<sup>10</sup> 7 AAC 100.016(b) is also somewhat more specific than is 7 AAC 100.900(c). Accordingly, the interpretation adopted here is also supported by the rule of construction which states that, when several statutes relate to the same purpose or thing, and one section covers the subject in general terms and the other covers a part of the same subject in more detail, then, if there is any conflict between the statutes, the more specific controls over the more general. See Principles of Law at page 8, above.

respond to an inquiry by the Division. Accordingly, the Claimant's employer ("alternate source") was "readily available" to the Division. Because the Claimant timely supplied contact information for this "alternative source," DPA had the obligation, pursuant to 7 AAC 100.016(b), to attempt to obtain its desired information and/or documentation from the Claimant's employer. It is undisputed that DPA did not attempt to do so. Accordingly, the Division's termination of the Claimant's Family Medicaid benefits, in the absence of such an attempt, was incorrect pursuant to 7 AAC 100.016(b).

Central to the result in this Decision is the fact that the Claimant initially provided the Division with detailed contact information for her employer. Had the Claimant not done so, the employer's information and documentation *would not* have been "readily available" to the Division. Similarly, had the Division requested the information / documentation at issue from the employer, and had the employer then *failed or refused to provide same*, the employer's information and documentation *would not* have been "readily available" to the Division. Under each of these scenarios, the Claimant would have been required to provide the requested information and/or documentation herself or risk the loss of her benefits.

In summary, the Division failed to prove, by a preponderance of the evidence, that it fulfilled its duty to provide assistance to the Claimant in obtaining desired information and/or documentation as required by Medicaid regulation 7 AAC 100.016(b). Accordingly, the Division erred when on September 21, 2009 it mailed to the Claimant a notice stating that her Family Medicaid benefits were being terminated for failure to provide information.

### CONCLUSIONS OF LAW

1. Pursuant to regulation 7 AAC 49.070 and Alaska Supreme court decision *Allen v. State of Alaska Department of Health & Social Services, Division of Public Assistance*, 203 P.3d 1155, 1169 (Alaska 2009), the Division's Food Stamp termination notice dated September 21, 2009 was legally not sufficient.
2. The Division therefore erred when on September 21, 2009 it mailed to the Claimant a notice stating that her Food Stamp benefits were being terminated for failure to provide information. If the Division wishes to terminate the Claimant's Food Stamp benefits after September 30, 2009 based on the events at issue in this case, it must first issue to Claimant a new notice which accurately states the statute(s), regulation(s), and/or Policy Manual provision(s) supporting the Division's proposed adverse action.
3. The Division failed to carry its burden and did not prove, by a preponderance of the evidence, that it fulfilled its duty, as required explicitly by Medicaid regulation 7 AAC 100.016(b), to attempt to obtain required information and/or documentation readily available to the Division from an alternative source (in this case the Claimant's employer).
4. The Division therefore erred when on September 21, 2009 it mailed to the Claimant notice stating that her Family Medicaid benefits were being terminated for failure to provide information.

## DECISION

The Division erred when on September 21, 2009 it mailed to the Claimant notices stating that her Food Stamp and Family Medicaid benefits were being terminated for failure to provide 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 [19<sup>th</sup>] day of January, 2010.

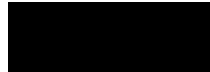
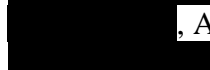
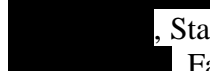

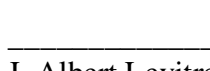
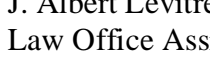
---

Jay Durych  
Hearing Authority

## CERTIFICATE OF SERVICE

I certify that on this [19<sup>th</sup>] day of January 2010 copies of the foregoing document were sent to the Claimant via USPS 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