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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-616  
 )  
 Claimant. ) DPA Case No. [REDACTED]  
 \_\_\_\_\_ )

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

[REDACTED] (Claimant) was an applicant for Adult Public Assistance (APA), Food Stamp, and Medicaid benefits (Ex. 2.0). On September 24, 2009 the Claimant completed and signed an application for Food Stamp and Medicaid benefits (Exs. 2.0-2.7).<sup>1</sup> This application was received by the Division on September 29, 2009 (Ex. 2.0).

On December 8, 2009 the Division mailed to the Claimant a notice stating that her application for APA, Food Stamp, and Medicaid benefits had been denied for failure to provide requested information and/or documentation (Ex. 8). The Claimant requested a hearing with regard to the APA and Medicaid Programs on November 30, 2009 (Exs. 6.0, 6.1).<sup>2</sup>

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

On January 11, 2010 the Division mailed to the Claimant her copy of its Fair Hearing Position Statement and hearing exhibits (file document, Division Hearing Representative's testimony). This was mailed to the Claimant at her Anchor Point address. *Id.*

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<sup>1</sup> The application dated September 24, 2009 did not originally include a request for APA benefits (Ex. 2.0). The request for APA benefits was added later, during the eligibility interview process (Ex. 3).

<sup>2</sup> At the hearing of May 5, 2010 the Claimant clarified that she also wanted a hearing with regard to her application for Food Stamp benefits (Claimant hearing testimony).

The Claimant's hearing began as scheduled on January 26, 2010. However, at that hearing the Claimant stated that she had not yet received her copy of the Division's Fair Hearing Position Statement and hearing exhibits. She requested a continuance. The Division did not oppose the Claimant's request for a continuance, and the continuance was granted. The hearing was rescheduled for February 24, 2010.

On February 22, 2010 the Claimant requested a second hearing continuance on the basis that an attorney with whom she had consulted would not be able to get back to her until March 1, 2010. The Division did not oppose the Claimant's request for a continuance, and the continuance was granted. The hearing was rescheduled for March 24, 2010.

On March 24, 2010 the Claimant's hearing began as scheduled. However, the Claimant was not available by phone. Accordingly, the Claimant's case was deemed abandoned and an order dismissing the Claimant's case was issued.

On April 2, 2010 this Office received a letter from the Claimant requesting that her case be reinstated. She claimed that on March 15, 2010 she advised the Division of her new telephone number and new mailing address in Sterling, Alaska. On April 6, 2010 the Division opposed the Claimant's reinstatement request. On April 22, 2010 this Office entered an order setting-aside its prior abandonment order, reinstating the Claimant's case, and rescheduling the Claimant's hearing for May 5, 2010.

The Claimant's hearing began as scheduled on May 5, 2010 before Hearing Examiner Jay Durych. The Claimant participated by telephone, represented herself, and testified on her own behalf. The Claimant's Care Coordinator, [REDACTED], also participated by phone 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 the record was closed and the case was submitted for decision.

On May 10, 2010 the Division received a telephone call from the Claimant advising that she had just discovered that certain unspecified documents, which she thought had been introduced as hearing exhibits by the Division, had actually not been introduced by the Division. On May 13, 2010 the Division advised this Office that it did not object to re-opening the record to allow the Claimant to submit whatever missing documents she felt were relevant to her case.

On May 19, 2010 this Office issued an order re-opening the record until June 4, 2010 to allow the Claimant to submit her additional documents. On June 3, 2010 the Claimant faxed 41 pages of additional documentation to this Office (Exs. C-1 – C-41).

## **ISSUE**

Was the Division correct when, on December 8, 2009, it denied the Claimant's application for Adult Public Assistance, Food Stamp, and Medicaid benefits dated September 24, 2009, based on the assertion that the Claimant had failed to timely provide information and/or documentation requested by the Division for the purpose of determining program eligibility?

## SUMMARY OF DECISION

On October 20, 2009 the Division gave the Claimant six (6) days to respond to a request for information and/or documentation. The Claimant failed to provide the requested information and/or documentation within that six (6) day period, and on December 8, 2009 the Division denied the Claimant's application. However, the applicable regulations and policy manual provisions require that the Division provide a Claimant with a minimum of ten (10) days to respond to an informational request prior to denying an application. Accordingly, the Division was not correct when, on December 8, 2009, it denied the Claimant's application for Adult Public Assistance, Food Stamp, and Medicaid benefits dated September 24, 2009 because it failed to provide legally sufficient notice to the Claimant prior to denying her application.

## FINDINGS OF FACT

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

1. On September 24, 2009 the Claimant completed and signed an application for Food Stamp and Medicaid benefits (Exs. 2.0-2.7).<sup>3</sup> This application was received by the Division on September 29, 2009 (Ex. 2.0).<sup>4</sup>
2. On October 7, 2009 the Division mailed to the Claimant a notice advising that her application had been received and that an eligibility interview had been scheduled for October 16, 2010 (Ex. C-24). The Division's mailing contained a one page list of information and documentation that the Claimant would need to bring to the interview (Ex. C-22).
3. On October 16, 2009 the Claimant participated in an eligibility interview with a DPA representative (Ex. 3). At this time APA benefits were added to the Claimant's application. *Id.* During this interview the Claimant was asked about her living situation. *Id.* She initially stated that she was homeless. *Id.* She then stated that she was living with her brother in a mobile home in Anchor Point, but that she would need to leave that situation in a few days. *Id.* Upon further inquiry she stated that she was temporarily living with a "██████" in a house in Soldotna. *Id.*
4. During the October 16, 2009 eligibility interview, the Claimant was advised that the Division still needed (1) verification of her physical address and living arrangements; (2) a recent bank statement; (3) verification of information concerning her retirement accounts with General Electric and General Dynamics; and (4) the names and phone numbers of two persons who could serve as collateral contacts to verify her information (Ex. 3).

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<sup>3</sup> The application dated September 24, 2009 did not originally include a request for APA benefits (Ex. 2.0). The request for APA benefits was added later, during the eligibility interview process (Ex. 3).

<sup>4</sup> The Claimant had previously submitted an application for APA and Medicaid benefits on August 17, 2010 (Ex. C-23). This application was denied on September 23, 2010. *Id.* The application was denied due to the Claimant's failure to provide the Division with information pertaining to a U.S. Bank account, a General Electric retirement account, and a General Dynamics retirement account. *Id.*

5. On *October 20, 2009* the Division mailed to the Claimant a notice stating that her application for APA, Food Stamp, and Medicaid benefits had been pended (Ex. 4). That notice stated in relevant part as follows:

Your Adult Public Assistance (APA), Medicaid, and Food Stamp application received on September 29, 2009 is being held because we need more information or proof. Please give us the items listed below *by October 26, 2009 . . .* or your application will be denied. [Emphasis added].

\* \* \* \* \*

This action is supported by APA Manual Section 400-2 and Food Stamp Manual Sections 601-7 and 601-8 . . . . Items needed:

1. Verification of where you are physically living right now.
  2. Verification of who you are living with. How many persons live in the home where you are living right now?
  3. We need information regarding your bank accounts. Please provide the most recent bank statements for all accounts you have.
  4. We need information regarding your retirement accounts with General Electric and General Dynamics. Please provide proof of the accessibility of the funds or provide [account numbers] and phone numbers so we may contact them directly.
  5. Please provide at least two names and phone numbers of persons who can verify your situation.
6. On November 30, 2009 the Claimant met in person with a DPA representative (Ex. 6.1). She advised that she was living alone in a cabin located at [REDACTED] in Sterling, Alaska, and that she was receiving her mail at the Sterling Senior Center. *Id.*<sup>5</sup> She stated that she had previously provided DPA with this information. *Id.*
7. During the November 30, 2009 meeting the Claimant advised that she had been trying to get the account numbers and contact information for her retirement accounts but had not yet succeeded (Ex. 6.1). She stated that her account records were in storage in California and could not be accessed. *Id.* She stated that she was contacting former co-workers to obtain the information. *Id.* She requested a hearing with regard to the APA and Medicaid Programs

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<sup>5</sup> On this date the Claimant listed her mailing address as [REDACTED], Sterling, Alaska 99672 (Ex. 6.0).

because she did not think it fair for DPA to require information to which she could not gain access (Exs. 6.0, 6.1).<sup>6</sup>

8. On December 1, 2009 the Claimant telephoned the Division regarding her application (Ex. 7). The DPA representative explained that the information previously requested by the Division was still needed. *Id.* The Claimant was asked for contact information to allow DPA to contact General Electric and General Dynamics directly. *Id.* The Claimant advised that she did not have telephone numbers or addresses for either of the retirement funds, so she was unable to provide that information to the Division. *Id.*; see also Claimant's hearing testimony.

9. On December 7, 2009 the Division mailed to the Claimant, at her Anchor Point address, a notice advising that her hearing had been scheduled for January 26, 2010 (file document, Division Hearing Representative's testimony).

10. On December 8, 2009 the Division mailed to the Claimant a notice stating that her application for APA, Food Stamp, and Medicaid benefits had been denied (Ex. 8). That notice stated in relevant part as follows:

Your application for Adult Public Assistance (APA), Medicaid, and Food Stamps received on September 29, 2009 is denied. We asked you to give us information and proofs by 10/26/09 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, Aged, Disabled, and Long Term Care Medicaid Manual Section 520-E, and Food Stamp Manual Chapter 601 . . . .

Items we needed but did not get:

1. Verification of where you are physically living right now.
2. Verification of who you are living with. How many persons live in the home where you are living right now?
3. We need information regarding your bank accounts. Please provide the most recent bank statements for all accounts you have.
4. We need information regarding your retirement accounts with General Electric and General Dynamics. Please provide proof of the accessibility of the funds or provide [account numbers] and phone numbers so we may contact them directly.

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<sup>6</sup> At the hearing of May 5, 2010 the Claimant clarified that she also wanted a hearing with regard to her application for Food Stamp benefits.

5. Please provide at least two names and phone numbers of persons who can verify your situation.

11. A letter from the General Electric Company's Pension Benefits Inquiry Center dated October 30, 2009 (Ex. 9.0) indicates that the Claimant will receive a pension from G.E., but that the Claimant will not begin to receive payments from the pension until she is 60 years old (i.e. after [REDACTED], 2011).

12. A letter from Metropolitan Life Insurance Company dated December 3, 2009 (Exs. 9.1-9.2) indicates that the Claimant is a beneficiary of a group annuity contract based on prior employment with General Dynamics Corp. The letter estimated that the Claimant will receive a monthly benefit of \$166.75 beginning on June 1, 2016. *Id.*

13. The Claimant later provided the Division with most, and possibly all, of the information and/or documentation requested by the Division (Claimant testimony; [REDACTED] testimony; DPA Hearing Representative testimony). However, this information and/or documentation was provided to the Division *after* the December 8, 2009 denial of the Claimant's September 24, 2009 application. *Id.*

## PRINCIPLES OF LAW

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

This case involves an initial application for Adult Public Assistance, Food Stamp, and Medicaid benefits. The Claimant therefore has the burden of proving her factual assertions<sup>7</sup> by a preponderance of the evidence.<sup>8</sup>

### II. 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>9</sup> or an issue "antecedent to . . . and ultimately dispositive of" the dispute,

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<sup>7</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). Here the Claimant is seeking to change the existing status quo by obtaining benefits.

<sup>8</sup> The "preponderance of the evidence" standard is the normal standard of proof in an administrative proceeding. *Amerada Hess Pipeline v. Alaska Public Utilities Commission*, 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* 1064 (West Publishing, Fifth Edition, 1979).

<sup>9</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).

even if the parties fail to identify and brief the issue.”<sup>10</sup> Specifically, issues pertaining to the sufficiency of notice may be addressed *sua sponte*.<sup>11</sup>

### III. The Adult Public Assistance Program – In General.

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.*

### IV. The Adult Public Assistance Program - Minimum Requirements - Notice of Adverse Action.

7 AAC 49.060, a state regulation which applies to several different benefit programs (including the Adult Public Assistance Program), states that “[t]he division shall give written notice to the client at least 10 days before the date the division intends to take action denying, suspending, reducing, or terminating assistance . . .”.

Alaska Adult Public Assistance Manual Section 481 provides in relevant part as follows:

481-3 Requests For Information. To determine a client's eligibility or correct benefit amount, the Division sometimes requires information or documentation that may not be immediately available. The case worker must inform the client, in writing, of what information is necessary and give the client a reasonable amount of time to provide it. A reasonable amount of time is at least 10 days. However, the case worker should give the client more than 10 days if it is unreasonable to expect the client to be able to provide the information within 10 days from the date of mailing.

### V. The Food Stamp Program – In General.

The Food Stamp program was established by the federal Food Stamp Act of 1977, codified at 7 USC Sections 2011 – 2029. The United States Department of Agriculture’s Food and Nutrition Service has promulgated regulations to implement the Food Stamp Act. These regulations 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 Department of Health and Social Services administers the Food Stamp program in

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<sup>10</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>11</sup> *Dingess v. Nicholson*, 19 Vet. App. 473 (Vet. App. 2006) (adequacy of notice considered by the court *sua sponte*).

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.

#### VI. The Food Stamp Program – Minimum Requirements for Notice of Adverse Action.

Federal Food Stamp regulation 7 CFR 273.2(f) provides in relevant part as follows:

(f) Verification. Verification is the use of documentation or a contact with a third party to confirm the accuracy of statements or information. The State agency must give households at least 10 days to provide required verification. Paragraph (i)(4) of this section contains verification procedures for expedited service cases.

7 AAC 49.060, a state regulation which applies to several different benefit programs (including the Food Stamp Program), states that “[t]he division shall give written notice to the client at least 10 days before the date the division intends to take action denying, suspending, reducing, or terminating assistance . . .”.

#### VII. 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.* It is funded fifty percent by federal funds and fifty percent by State general funds. *Id.* The program focuses on coverage for low-income children, pregnant women, families, the elderly, blind and the permanently disabled. *Id.*

The Medicaid program is administered in Alaska by the Division of Health Care Services (DHCS). *Id.* While DHCS is responsible for program and policy development, the Division of Public Assistance (DPA) is responsible for determining eligibility for Medicaid benefits. *Id.*

#### VIII. The Medicaid Program – Minimum Requirements for Notice of Adverse Action.

Federal Medicaid regulation 42 CFR 431.211 provides in relevant part that “[t]he State or local agency must mail a notice at least 10 days before the date of action.”

7 AAC 49.060, a state regulation which applies to several different benefit programs (including the Medicaid Program), states that “[t]he division shall give written notice to the client at least 10 days before the date the division intends to take action denying, suspending, reducing, or terminating assistance . . .”.

### **ANALYSIS**

A preliminary issue which must be addressed prior to the merits of this case is the procedural issue of whether the Division’s pend notice dated October 20, 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.

In this case, the Division mailed to the Claimant its notice, stating that her application for APA, Food Stamp, and Medicaid benefits had been pended, on *October 20, 2009* (Ex. 4). The notice stated in relevant part as follows:

Your Adult Public Assistance (APA), Medicaid, and Food Stamp application received on September 29, 2009 is being held because we need more information or proof. *Please give us the items listed below by October 26, 2009 . . . or your application will be denied.* [Emphasis added].

Thus, the Division gave the Claimant six (6) days from the date its notice was mailed in which to provide the requested information and/or documentation. Was this notice legally sufficient?

7 AAC 49.060 and Alaska Adult Public Assistance Manual Section 481 require that the Division provide an applicant with at least ten (10) days’ written notice prior to any denial of Adult Public Assistance benefits. 7 AAC 49.060 and 7 CFR 273.2(f) require that the Division provide an applicant with at least ten (10) days’ written notice prior to any denial of Food Stamp benefits. Finally, 7 AAC 49.060 and 42 CFR 431.211 require that the Division provide an applicant with at least ten (10) days’ written notice prior to any denial of Medicaid benefits. Accordingly, the Division’s notice dated October 20, 2009 was not legally sufficient under any of the three programs at issue because it gave the Claimant only six (6) days to provide the necessary information and/or documentation instead of the required ten (10) days’ notice.

### **CONCLUSIONS OF LAW**

1. The Division failed to provide legally sufficient notice to the Claimant prior to denying her application for Adult Public Assistance, Food Stamp, and Medicaid benefits.
2. Accordingly, the Division was not correct when, on December 8, 2009, it denied the Claimant’s application for Adult Public Assistance, Food Stamp, and Medicaid benefits dated September 24, 2009, based on the Claimant’s failure to timely provide information and/or documentation requested by the Division for the purpose of determining program eligibility.

### **DECISION**

The Division was not correct when, on December 8, 2009, it denied the Claimant’s application for Adult Public Assistance, Food Stamp, and Medicaid benefits dated September 24, 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 7th day of July, 2010.

(signed)

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Jay Durych  
Hearing Authority

#### CERTIFICATE OF SERVICE

I certify that on this 7th day of July 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], DPA Hearing Representative

[REDACTED], Director, Div. of Public Assistance  
[REDACTED], Policy & Program Development  
[REDACTED], Staff Development & Training  
[REDACTED], Chief of Field Services  
[REDACTED], Administrative Assistant II  
[REDACTED], Eligibility Technician I

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J. Albert Levitre, Jr.  
Law Office Assistant I