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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. 10-FH-14  
 )  
 Claimant. ) DPA Case No. [REDACTED]  
 )  
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**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

[REDACTED] (Claimant) completed and signed an application for Adult Public Assistance (APA) benefits for the blind or disabled, and APA-related Medicaid benefits, on October 10, 2009 (Exs. 2.0 – 2.7). Claimant’s application for APA benefits included an application for Interim Assistance benefits<sup>1</sup> (uncontested hearing testimony). The Claimant’s application was received by the State of Alaska Department of Health and Social Services, Division of Public Assistance (DPA or Division) on October 29, 2009 (Ex. 2.0). On December 9, 2009 the Division mailed to the Claimant a notice stating that her application for APA, Interim Assistance, and APA-related Medicaid benefits had been denied (Ex. 7.0). The Claimant completed and signed a Fair Hearing Request to contest the denial of her application on January 8, 2010 (Ex. 8.1).

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

A hearing was held on February 23, 2010 before Hearing Examiner Jay Durych. The Claimant participated in the hearing by telephone, represented herself, and testified on her own 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 of February 23, 2010 the record was closed and the case was submitted for decision.

The Division had initially denied the Claimant’s application for Adult Public Assistance (APA) benefits and APA-related Medicaid benefits because the United States Social Security Administration (SSA) had not yet approved the Claimant to receive Supplemental Security Income (SSI) (Ex. 7.0).

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<sup>1</sup> The Interim Assistance (IA) program is a sub-program of the Adult Public Assistance Program. See generally 7 AAC 40.170 - 7 AAC 40.190.

The Division had initially denied the Claimant's application for Interim Assistance benefits because the Claimant had not timely provided a completed *Preliminary Examination for Interim Assistance* (Form AD#2) to the Division (Ex. 7.0).

However, immediately *after the hearing* on February 23, 2010, the Division mailed to the Claimant an amended notice regarding her applications for Adult Public Assistance (APA) benefits and APA-related Medicaid benefits (Ex. 26). This notice essentially stated that the Division had erred in characterizing its action on the Claimant's applications for APA benefits and APA-related Medicaid benefits as a denial. *Id.* The new notice clarified that the Division was instead *holding* the Claimant's applications for APA benefits and APA-related Medicaid benefits in a "*pending*" status until such time as SSA approved or denied the Claimant's application for SSI. *Id.*

### ISSUE

The Claimant did not oppose or object to the Division's post-hearing amendment placing the applications for APA and APA-related Medicaid benefits in a "pend" status instead of a "denied" status. Accordingly, the Claimant's applications for APA and APA-related Medicaid benefits are no longer at issue. The only issue now presented is:

Was the Division correct to deny the Claimant's October 29, 2009 application for Interim Assistance benefits based on the Claimant's failure to timely provide documentation requested by the Division (specifically a Preliminary Examination for Interim Assistance or Form AD#2) for the purpose of determining program eligibility?

### FINDINGS OF FACT

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

1. The Claimant completed and signed an application for Adult Public Assistance (APA) benefits for the blind or disabled, Interim Assistance benefits, and APA-related Medicaid benefits, on October 10, 2009 (Exs. 2.0 – 2.7). This application was received by the Division on October 29, 2009 (Ex. 2.0).
2. On October 29, 2009 the Claimant also submitted a letter to the Division (Ex. 2.10). The letter stated in relevant part as follows:

. . . . I need to have a back surgery to address a break and multiple other complications . . . . I have also been through every test available in the state to diagnose an ongoing digestive problem, with no answers: the doctors cannot tell me what is causing these symptoms or what I should do about them . . . . In the process of all the testing and diagnostic measures I lost both of my jobs in the past year and am not an easy hire due to my need for back surgery. I have had help paying the medical expenses with the Providence Charity Care program; all else has been on my own; both my tax return and PFD went to paying for medical care. I still currently need a lot of medical attention and have very limited means of getting that help. Especially now that I am not working, I am dependent upon charity to get my necessary medical attention. I am in the process of applying for [SSI with the SSA] but have no idea when or if I'll qualify . . . .

3. The Division held a telephonic eligibility interview with the Claimant on November 19, 2009 (Ex. 4). During the interview the Division pended the Claimant's application for Interim Assistance benefits awaiting receipt of a completed *Preliminary Examination for Interim Assistance* form (Ex. 4). The Division also pended the Claimant's application for APA benefits and APA-related Medicaid benefits awaiting the SSA's approval or denial of the Claimant's application for SSI. *Id.*

4. On November 20, 2009 the Division mailed to the Claimant a notice titled "APA/Medicaid Pended – Information Needed" (Ex. 5). That notice stated in relevant part as follows:

Your [APA and APA-related Medicaid] application received on October 29, 2009 is being held because we need more information. Please give us the items listed at the bottom of this notice by November 30, 2009 or your application may be denied.

\* \* \* \* \*

Items needed: Per our interview on November 19, 2009 you will not be eligible for APA or Medicaid until [SSA] approves your disability. You have requested Interim Assistance while you wait for [SSA's decision]. *I will need a Preliminary Examination Form completed by your doctor to start this process.* Please provide this by November 30, 2009 . . . . [Emphasis added].

5. A notation on the Division's Electronic Information System (EIS) dated December 8, 2009 (Ex. 6) states in relevant part, "denied IA due to not getting Preliminary Exam Form back as requested by November 30, 2009."

6. The Division did not receive the Preliminary Examination for Interim Assistance Form (AD#2) back from the Claimant by November 30, 2009 (Ex. 6; DPA Hearing Representative's testimony). Accordingly, on December 9, 2009 the Division mailed to the Claimant a notice stating that her application for Interim Assistance benefits had been denied for failure to provide the documentation requested (Ex. 7.0). The notice stated in relevant part as follows:

This action is supported by APA Manual Section 400-4 and Aged, Disabled and [Long Term Care] Medicaid Manual Section 520-E . . . . You are not eligible for Interim Assistance while you wait for [SSA to make] a decision [on your application for SSI] *due to not sending in a completed Preliminary Examination Form from your doctor by November 30, 2009.* You can re-apply at any time . . . . [Emphasis added].

7. The Claimant requested a hearing contesting the Division's denial of her application for benefits on January 12, 2010 (Ex. 8.1). On January 19, 2010 the Division mailed a notice to the Claimant advising that her hearing had been scheduled for February 23, 2010 (Ex. 24).

8. At the hearing of February 23, 2010 the Claimant testified in relevant part that:

a. She recently found out that she has some medical issues. She has had difficulty in obtaining a diagnosis. She has thousands of dollars in medical bills. She needs financial help because of these medical bills.

- b. She has applied to the United States Social Security Administration (SSA) for Supplemental Security Insurance (SSI). However, the SSA has at this point neither approved nor denied her application for SSI.
- c. She is currently seeing three (3) doctors. These are Drs. ██████████ and ██████████ in Kodiak and Dr. ██████████ in Anchorage.
- d. Around Thanksgiving (2009) she sent the Preliminary Examination for Interim Assistance (Form AD#2) to each of her three doctors to fill out and return to DPA. She first faxed these forms, but also hand-delivered one of the forms to Dr. ██████████'s office.
- e. She subsequently followed-up with Dr. ██████████ and Dr. ██████████. However, for whatever reason, none of her doctors ever returned a completed Preliminary Examination for Interim Assistance or Form AD#2 to the Division within the necessary time frame.
- f. She did not request an extension of time to submit her Preliminary Examination for Interim Assistance or Form AD#2 because she did not know that it was possible to obtain an extension of time for filing that document.
- g. She did not recall whether she informed DPA, prior to receipt of her denial notice, that she was having trouble getting the Form AD#2s back from her doctors.

## PRINCIPLES OF LAW

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

This case involves the Division's denial of the Claimant's initial application for Interim Assistance benefits. In cases involving the denial of a Claimant's initial application for benefits, the Claimant or applicant has the burden of proof <sup>2</sup> by a preponderance of the evidence. <sup>3</sup>

### II. Overview of the Adult Public Assistance and Interim Assistance Programs.

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

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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). In this case, the Claimant is attempting to change the status quo by obtaining benefits. The Claimant therefore bears the burden of proof in this case.

<sup>3</sup> Preponderance of the evidence is the standard of proof generally applicable in administrative proceedings. *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Commission*, 711 P.2d 1170 (Alaska 1986). The regulations applicable to this case do not specify any particular standard of proof. Accordingly, the "preponderance of the evidence" standard is the standard of proof applicable to this case. 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 1064 (West Publishing, 5<sup>th</sup> Edition, 1979).

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.*

A person who has been approved for Adult Public Assistance is automatically eligible for Medicaid benefits. 7 AAC 100.002(d)(1); 7 AAC 100.410(b). The category of Medicaid which a person automatically obtains as a result of APA eligibility is known as “APA-related Medicaid.”

Because APA-related Medicaid incorporates the APA Program’s disability requirements by reference, if a person is not eligible for APA benefits, the person is likewise not eligible for APA-related Medicaid benefits. See generally 7 AAC 100.400, 7 AAC 100.410, and 7 AAC 100.412.

Interim Assistance is a benefit provided by the State of Alaska to Adult Public Assistance applicants while they are waiting for the Social Security Administration (SSA) to approve an application for Supplemental Security Income (SSI). AS 47.25.255; 7 AAC 40.170(a - b). The criteria which must be satisfied in order to qualify for Interim Assistance are set forth in 7 AAC 40.180.<sup>4</sup> These criteria are equivalent to, and incorporate by reference, the criteria which must be satisfied in order to qualify for Social Security Supplemental Security Income (SSI) disability benefits pursuant to Title 20 of the Code of Federal Regulations (CFR).

### III. Authorities Concerning A Claimant’s Duty To Timely Provide Information / Documentation.

The Division has the authority to request a benefit applicant or recipient’s timely submission of information and/or documentation relevant to the applicant or recipient’s application for benefits. See APA regulation 7 AAC 40.050 and the Alaska Adult Public Assistance Manual at Sections 400-4A, 400-4B, 400-4C, 400-4D, 410, and 481-3.

7 AAC 40.180(a) provides in relevant part as follows:

- (a) An applicant whose disability is being determined by the department under 7 AAC 40.170(b) must be examined by a psychiatrist or other physician who has entered into a current provider agreement under 7 AAC 43.065. The results of the examination must be provided on a form approved by the department.

7 AAC 40.050, titled “Documentation,” provides in relevant part as follows:

- (a) . . . Whether or not an applicant is interviewed, he shall furnish adequate evidence to demonstrate his eligibility for assistance.

\* \* \* \* \*

- (c) Each applicant for aid to . . . the permanently and totally disabled whose . . . disability is determined . . . under 7 AAC 40.150 or 7 AAC 40.180 must be examined by an appropriate medical professional. The examiner shall furnish a written report of

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<sup>4</sup> Because 7 AAC 40.180 sets forth the substantive disability criteria for receiving Interim Assistance benefits, and because the Claimant’s application in this case was denied based on procedural grounds rather than on the merits of her disability claim, it is not necessary to quote or discuss 7 AAC 40.180 (a lengthy regulation) in this decision.

the examination on a form provided by the division. The division will pay any costs of the examination and necessary transportation to and from the place of examination.

7 AAC 40.070(b) provides in relevant part as follows:

(b) Eligibility for aid to the permanently and totally disabled or aid to the blind will not be denied because the applicant did not have an examination under 7 AAC 40.050 if he was unable to have the examination for reasons beyond his control or because the examiner did not furnish a report to the division. In those circumstances, the division may postpone an eligibility decision for an additional 30 days.

#### IV. Alaska Adult Public Assistance Manual Provisions Regarding Pended Applications.

Alaska Adult Public Assistance Manual Section 410-5(C) provides in relevant part as follows:

When the office needs the applicant to . . . provide information needed to determine eligibility, the application is pended, and a notice is sent. The notice clearly informs the applicant what is needed to complete the application. Applicants will be given at least 10 days, but no more than 30 days, from the date of this notice to provide the verification . . . . (1) Applicants failing to provide all necessary verification at the interview will be sent a pend notice no later than 30 days after the application filing date requesting the required verification. (2) *Applicants contacting the agency within the pend period expressing difficulty in obtaining required verification will be offered assistance. The caseworker should extend the pend period if additional time is needed to obtain the information. A new pend notice should be sent.* (3) *If the applicant does not complete the application process, the application is denied at the end of the period provided in the notice.* [Emphasis added].

#### V. Principles of Interpretation Relevant to Regulations and Policy Manual Provisions.

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).

### **ANALYSIS**

Initially, it should be noted that the Claimant did not dispute the Division's assertion that it never received a completed Preliminary Examination for Interim Assistance (Form AD#2) from the Claimant and/or from her doctors. Accordingly, this crucial fact is not in dispute. All that remains to be determined is the purely legal issue of whether or not the Division was correct to deny the Claimant's application for Interim Assistance benefits when it did not receive the Preliminary Examination for Interim Assistance (Form AD#2) within the time specified in the notice.

It is clear from the pertinent regulations and policy manual provisions that DPA has the authority to request the Claimant's timely submission of information and/or documentation relevant to the Claimant's application for Interim Assistance. *See generally* 7 AAC 40.050(a) and Alaska Adult Public Assistance Manual Sections 400-4A, 400-4B, 400-4C, 400-4D, 410, and 481-3, referenced in the Principles of Law, above. It is also clear that this general authority includes the specific authority to require an applicant's submission of a *Preliminary Examination for Interim Assistance* (Form AD#2). *See* 7 AAC 40.050(c) and 7 AAC 40.180(a), quoted in the Principles of Law, above.

The only regulation on this topic which is not completely clear on its face is 7 AAC 40.070(b) (quoted in the Principles of Law, above). That regulation states that “[e]ligibility for aid to the permanently and totally disabled . . . will not be denied because . . . the examiner did not furnish a report to the division,” and that, “[i]n those circumstances, the division may postpone an eligibility decision for an additional 30 days.”

The two above-quoted portions of the regulation, viewed in isolation, appear to be inconsistent. The first quoted portion of the regulation appears to indicate that an application for Interim Assistance benefits cannot be denied solely because the examining physician failed to submit the *Preliminary Examination for Interim Assistance* (Form AD#2) to the Division. However, the second quoted portion of the regulation appears to indicate that the Division may deny an application for Interim Assistance benefits because the examining physician failed to submit the *Preliminary Examination for Interim Assistance* (Form AD#2), but that the Division has the discretion to give an applicant an additional thirty days to submit the Form AD#2.

There are, however, established rules of interpretation which can resolve apparent conflicts between different 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).

Alaska Adult Public Assistance Manual Section 410-5(C) provides a way to harmonize the two apparently conflicting portions of 7 AAC 40.070(b). Manual Section 410-5(C) provides in relevant part as follows:

. . . . Applicants failing to provide all necessary verification at the interview will be sent a pend notice no later than 30 days after the application filing date requesting the required verification. (2) *Applicants contacting the agency within the pend period expressing difficulty in obtaining required verification will be offered assistance. The caseworker should extend the pend period if additional time is needed to obtain the information . . . .* [Emphasis added].

Construing 7 AAC 40.070(b) and Manual Section 410-5(C) together, it is apparent that the Division may not deny an application for Interim Assistance benefits, based on failure to submit a Form AD#2, without providing an applicant the *opportunity* for a thirty day extension. However, in order to obtain the thirty day extension, *the Claimant must first request the extension / postponement from the Division* (“Applicants contacting the agency within the pend period expressing difficulty in obtaining required verification will be offered assistance”).

In this case, the Claimant did not assert that she ever requested that the Division give her an extension of time to submit the Form AD#2, and there is no evidence in the record that she did so. In the absence of such a request, the Division was correct to deny the Claimant's application for Interim Assistance based on her failure to timely provide the Division with a completed Form AD#2.

### **CONCLUSIONS OF LAW**

1. As an applicant for Interim Assistance benefits, the Claimant had a general duty, pursuant to 7 AAC 40.050(a), and Alaska Adult Public Assistance Manual Sections 400-4A, 400-4B, 400-4C, 400-4D, 410, and 481-3, to timely provide the Division with information and documentation sufficient to prove that the Claimant satisfied all applicable program eligibility requirements.
2. As an applicant for Interim Assistance benefits, the Claimant had a specific duty, pursuant to 7 AAC 40.050(c) and 7 AAC 40.180(a), to timely submit to the Division a *Preliminary Examination for Interim Assistance* (Form AD#2).
3. Pursuant to 7 AAC 40.070(b), the Division may not deny an application for Interim Assistance, based on failure to timely submit a Form AD#2, without first providing an applicant the opportunity for a thirty day extension. However, the Claimant did not assert that she ever requested that the Division give her an extension of time to submit a Form AD#2.
4. Pursuant to 7 AAC 40.070(b) and Alaska Adult Public Assistance Manual Section 410-5(C), the Division was not obligated to provide an extension of time for submitting a Form AD#2 because the Claimant never requested additional time for submission of the form.
5. Accordingly, the Division was correct to deny the Claimant's October 29, 2009 application for Interim Assistance benefits on December 9, 2009 because the Claimant failed to timely provide documentation requested by the Division (specifically a Preliminary Examination for Interim Assistance or Form AD#2) for the purpose of determining Interim Assistance Program eligibility.

### **DECISION**

The Division was correct to deny the Claimant's October 29, 2009 application for Interim Assistance benefits on December 9, 2009 based on the Claimant's failure to timely provide documentation requested by the Division (specifically a Preliminary Examination for Interim Assistance or Form AD#2) for the purpose of determining Interim Assistance Program eligibility.

### **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 9th day of April, 2010.

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*/signed/*  
Jay Durych  
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 9th day of April 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, Division of Public Assistance  
[REDACTED], Policy & Program Development  
[REDACTED], Staff Development & Training  
[REDACTED], Chief of Field Services  
[REDACTED], Administrative Assistant II  
[REDACTED], Eligibility Technician I

\_\_\_\_\_  
J. Albert Levitre, Jr.  
Law Office Assistant I