

Office of Hearings and Appeals
3601 C Street, Suite 1322
P. O. Box 240249
Anchorage, AK 99524-0249
Ph: (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. 10-FH-35
)
 Claimant.) Division Case No. [REDACTED]

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) applied for Adult Public Assistance and Medicaid benefits on December 22, 2009. (Exs. 2.0 – 2.9) On January 25, 2010, the Division of Public Assistance (Division) sent the Claimant written notice his application was denied. (Ex. 5) The Claimant requested a fair hearing on January 26, 2010. (Ex. 6.1)

This office has jurisdiction pursuant to 7 AAC 49.010.

A hearing was held, pursuant to Claimant's request, on March 9, 2010 and April 8, 2010. The Claimant appeared telephonically; he represented himself and testified on his own behalf. [REDACTED], Public Assistance Analyst with the Division, attended in person; she represented the Division and testified on its behalf.

STATEMENT OF ISSUES

Was the Division correct to deny the Claimant's December 22, 2009 Adult Public Assistance and Medicaid application because he did not appear for his scheduled interview?¹

FINDINGS OF FACT

1. The Claimant applied for Adult Public Assistance and Medicaid benefits on December 22, 2009. (Ex. 2 – 2.9)

¹ The Claimant's statements made at hearing indicate that he reapplied for Adult Public Assistance and Medicaid benefits after his December 22, 2009 application was denied. This Decision only addresses the denial of the December 22, 2009 application. It does not discuss or otherwise address any subsequent Adult Public Assistance and/or Medicaid applications.

2. On December 28, 2009, the Division sent the Claimant written notice it had scheduled an interview appointment for him on January 12, 2010² at 10:00 a.m. (Ex. 3) That notice informed the Claimant as follows:

If you do not attend an interview, your application will be denied on the 30th day from the date you gave us your application. If you are not able to come into the office for an interview, please contact us so that other arrangements can be made.

Id.

3. The Claimant did not appear for his January 12, 2010 interview. (Ex. 4; ██████ testimony; Claimant testimony) He did not contact the Division to reschedule his interview. (██████ testimony)

4. The Claimant explained he had to put his grandchildren on the school bus that morning. (Claimant testimony) However, he later stated he could not remember why he did not appear for the interview. *Id.*

5. On January 25, 2010, the Division sent the Claimant written notice that his December 22, 2009 Adult Public Assistance and Medicaid application was denied because he did not attend his interview. (Ex. 5)

PRINCIPLES OF LAW

This case involves the question of whether or not the Division was correct to deny the Claimant's application for Adult Public Assistance and Medicaid benefits. Because this case involves the denial of an application, the Claimant has the burden of proof³ by a preponderance of the evidence.⁴

An individual who wishes to obtain Adult Public Assistance benefits is required to submit an application for benefits. 7 AAC 40.040. Applicants are required to attend an interview: "[e]ach applicant *shall* make himself available for an interview." 7 AAC 40.050(a). (Emphasis supplied). Similarly, applicants for Medicaid benefits "*must* participate" in an interview. 7 AAC 100.014(a). (Emphasis supplied)

² The Division's December 28, 2009 notice contains a clerical error: it states the interview date is "1/12/2009." (Ex. 3)

³ "Ordinarily the party seeking a change in the status quo has the burden of proof." *State, Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985)

⁴ Preponderance of the evidence is the normal standard of proof in an administrative proceeding. *Amerada Hess Pipeline v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986). Preponderance of the evidence is defined as "[e]vidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th Ed. 1979)

The Division is normally required to make an eligibility decision (i.e. approval or denial) on Adult Public Assistance and Medicaid applications within 30 days of the date of the application.⁵ 7 AAC 40.070(a); 7 AAC 100.018(a).

ANALYSIS

The issue in this case is whether the Division was correct when it denied the Claimant's application for Adult Public Assistance and Medicaid benefits. The Claimant has the burden of proof by a preponderance of the evidence.

The facts in this case are not disputed. They are as follows:

1. The Claimant applied for Adult Public Assistance and Medicaid benefits on December 22, 2009.
2. The Claimant was scheduled for an in-person interview with the Division on January 12, 2010, as part of the application process for Adult Public Assistance and Medicaid.
3. The Claimant did not show up for his January 12, 2010 in-person interview. He did not attempt to reschedule his interview.
4. The Division denied the Claimant's December 22, 2009 Adult Public Assistance and Medicaid application on January 25, 2010 because the Claimant did not show up for his interview.

Both the Adult Public Assistance and Medicaid regulations require that an applicant appear for an interview. 7 AAC 40.050(a); 7 AAC 100.014(a). The Adult Public Assistance and Medicaid regulations provide that the Division is normally required to process applications and make an eligibility decision (either approve or deny) within 30 days of the date of the application. 7 AAC 40.070(a); 7 AAC 100.018(a).

In order to prevail in this case, the Claimant needed to prove, by a preponderance of the evidence, that he either appeared for his scheduled interview or rescheduled it. He did not meet his burden of proof. The Claimant undisputedly did not appear for his scheduled January 12, 2010 interview. The Claimant's limited contradictory hearing statements⁶ do not establish good cause for not showing up for his scheduled interview. Further, he did not reschedule the missed interview. Because an interview is required as part of the Adult Public Assistance and Medicaid application process pursuant to 7 AAC 40.050(a) and 7 AAC 100.014(a), the Claimant did not complete his part of the application process.

⁵ The exceptions to this general rule are when the applicant is unable to obtain a required medical examination through no fault of his own, a disability determination is required, or the Division requires additional information from the applicant to process his application. 7 AAC 40.070(b); 7 AAC 100.018(a). None of these exceptions are present in this case.

⁶ The Claimant first stated he had to put his grandchildren on the school bus, which made him unable to show up for his scheduled interview. He later stated he did not remember why he did not show up for his scheduled interview. *See* Finding of Fact 4 above.

On January 25, 2010, when more than 30 days had passed since the Claimant's December 22, 2009 application, the Division denied the Claimant's application because he had not appeared for his interview.

Because the Division was required, pursuant to 7 AAC 40.070(a) and 7 AAC 100.018(a), to either approve or deny the Claimant's application within 30 days of the date of his application, and because the Claimant failed to attend his mandatory interview or to reschedule his mandatory interview within the Division's 30 day application processing time frame, the Division was correct when it denied the Claimant's December 22, 2009 Adult Public Assistance and Medicaid application.

CONCLUSIONS OF LAW

1. The Claimant was required, pursuant to 7 AAC 40.050(a) and 7 AAC 100.014(a), to attend an interview as part of the application process when he applied for Adult Public Assistance and Medicaid benefits.
2. The Claimant had the burden of proof by a preponderance of the evidence to establish that he either attended or rescheduled his January 12, 2010 application interview. He did not meet it; the undisputed evidence shows that he did not attend the January 12, 2010 interview, nor did he reschedule the interview.
3. Because the Claimant did not attend his required interview, or reschedule it within the 30 day time period following his December 22, 2009 application, the Division was required to deny his Adult Public Assistance and Medicaid application, pursuant to 7 AAC 40.070(a) and 7 AAC 100.018(a).
4. The Division was therefore correct when it denied the Claimant's December 22, 2009 application for Adult Public Assistance and Medicaid benefits.

DECISION

The Division was correct to deny the Claimant's December 22, 2009 application for Adult Public Assistance and Medicaid benefits.

APPEAL RIGHTS

If for any reason the Claimant is not satisfied with this decision, the Claimant has the right to appeal by requesting a review by the Director. To do this, send a written request directly to:

Director of the Division of Public Assistance

Department of Health and Social Services
PO Box 110640
Juneau, AK 99811-0640

If the Claimant appeals, the 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.


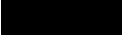
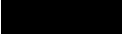
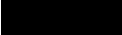
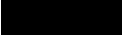
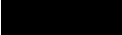

DATED this 30th day of April 2010.

/Signed/
Larry Pederson
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 30th day of April 2010, true and correct copies of the foregoing were sent to:

Claimant by U.S.P.S., Certified Mail
and to the following by e-mail:

, Public Assistance Analyst
, Director
, Policy & Program Development
, Staff Development & Training
, Administrative Assistant II
, Eligibility Technician I
, Chief of Field Services

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