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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-111
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) was receiving Interim Assistance benefits in March 2010. On March 2, 2010, the Division sent the Claimant notice her Interim Assistance benefits would be terminated on March 31, 2010. (Ex. 9) The Division received the Claimant's fair hearing request on April 12, 2010. (Ex. 10.0)

This Office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to the Claimant's request, the hearing was held on July 20, 2010 and August 17, 2010 before Hearing Examiner Jay Durych.¹ The Claimant attended telephonically on both hearing dates; she represented herself and testified on her behalf. [REDACTED], with [REDACTED], [REDACTED], attended the August 17, 2010 portion of the hearing telephonically; she assisted the Claimant with her representation and testified on the Claimant's behalf. [REDACTED], Public Assistance Analyst with the Division, attended in person on both hearing dates; she represented the Division and testified on its behalf.

The record was held open until September 10, 2010 for the parties to submit additional evidence on the status of the Claimant's Supplemental Security Income case. Both parties provided additional information. (Exs. B, 24)

ISSUE

Was the Division correct when it sent the Claimant notice, on March 2, 2010, that her Interim Assistance benefits would be terminated on March 31, 2010?

¹ This case was subsequently reassigned to Hearing Examiner Larry Pederson for all purposes. He reviewed the entire record, including listening to the entire electronic recording from both hearing dates, prior to issuing this decision.

FINDINGS OF FACT

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

1. The Claimant was approved for Interim Assistance benefits on August 13, 2009. (Ex. 4.2)
2. On August 13, 2009, the Division was informed that the federal Social Security Administration denied the Claimant's Supplemental Security Income application on July 23, 2009 and that no appeal had yet been filed. (Ex. 4.2)
3. On August 14, 2009, the Division sent the Claimant two separate notices, as follows:
 - a. Written notice that the Claimant's "Interim Assistance application has been approved and certified thru April 2010." (Ex. 5.0)
 - b. Written notice that the Division had received "verification from Social Security that [her] [Supplemental Security Income] has been denied. In order for [the Claimant's] Interim Assistance of \$280/month to continue, [she] must file an appeal with Social Security." (Ex. 5.1) That same notice asked the Claimant to provide proof by September 14, 2009 that she had filed an appeal with Social Security, and advised her that failure to provide the requested information by the due date could result in her assistance being stopped. (Ex. 5.1)
4. The Claimant did not respond to the August 14, 2009 notice requesting proof of the Supplemental Security Income appeal filing. (██████ testimony)
5. On December 2, 2009, the Division sent the Claimant an additional notice. (Ex. 7) That notice again requested proof of whether the Claimant had filed her Supplemental Security Income appeal. *Id.* The deadline for responding to the request for information was December 14, 2009. *Id.* The notice reads, in pertinent part:

It looks like you were asked to provide proof that you appealed the [Supplemental Security Income] denial (7/09). I don't see where we received this information from you. I'll give you another 10 days to provide this proof, if I don't get proof that your [Supplemental Security Income] is in appeal status, then your Interim Assistance case will be closed eff 12/31/09.

Id.

6. The Division did not receive any proof from the Claimant that she had filed her Supplemental Security Income appeal. (██████ testimony; Ex. 8.0) The Division checked its computer interface with Social Security on March 1, 2010; the March 1, 2010 Social Security interface printout shows that the Claimant's Supplemental Security Income application was denied on July 23, 2009, and had not been appealed. (Ex. 8.1)

7. On March 2, 2010, the Division sent the Claimant written notice that her Interim Assistance benefits would end on March 31, 2010 because she had not appealed her Supplemental Security Income denial. (Ex. 9)

8. Ms. ██████ assists the Claimant with her public assistance issues. (██████ testimony) When the Claimant receives public assistance notices, the Claimant brings her those documents and they discuss how to respond. *Id.* When the Claimant received her Interim Assistance approval and began receiving Interim Assistance benefits, they (██████ and the Claimant) assumed that the Division was aware an appeal of the federal Supplemental Security Income denial had been filed. *Id.* The Claimant did not bring ██████ any further notices and they (██████ and the Claimant) were not aware that there was an issue with either the Claimant's Interim Assistance or the Claimant's Supplemental Security Income appeal until they contacted a Division caseworker in March 2010 about a different matter and were informed that the Claimant's Interim Assistance case was closed. *Id.*

9. The Claimant did appeal her Supplemental Security Income denial on July 24, 2009. (██████ testimony) Appeal documents were faxed to the Social Security office on July 24, 2009. (Exs. A-4 – A-18) However, the Social Security Administration did not have a record of the Supplemental Security Income appeal having been timely filed. (██████ testimony)

10. The Claimant was subsequently able to have her Supplemental Security Income appeal accepted. (██████ testimony; Ex. B)

11. The Claimant did not testify regarding whether or not she received the Division's December 2, 2009 notice asking for information regarding the Supplemental Security Income appeal.

PRINCIPLES OF LAW

A party who is seeking a change in the status quo has the burden of proof by a preponderance of the evidence. *State, Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985); *Amerada Hess Pipeline v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986). "Where one has the burden of proving asserted facts by a preponderance of the evidence, he must induce a belief in the minds of the [triers of fact] that the asserted facts are probably true." *Robinson v. Municipality of Anchorage*, 69 P.3d 489, 495 (Alaska 2003).

An applicant for Adult Public Assistance benefits is required to apply for and qualify for Supplemental Security Income benefits from the Social Security Administration.² 7 AAC 40.030; 7 AAC 40.060. The State of Alaska provides a limited monthly cash benefit payment, known as Interim Assistance, to eligible Adult Public Assistance applicants while they are waiting for the Social Security Administration to process their Supplemental Security Income application. 7 AAC 40.170(a) and (b); 7 AAC 40.375; AS 47.25.455.

² While there are some exceptions to this rule, they do not apply in this case.

If the Social Security Administration denies an Interim Assistance recipient's Supplemental Security Income application, and the recipient has waived or exhausted her Social Security administrative appeals, the Division is required to terminate the recipient's Interim Assistance benefits:

Interim assistance will end upon the division's receipt of notification of the Social Security Administration's final determination of eligibility or ineligibility for SSI benefits. An applicant will continue to receive interim assistance until the applicant

- (1) is approved for SSI;
- (2) receives an adverse SSI decision and fails to appeal it to the next appeal level;
- (3) withdraws or abandons an appeal at any level; or
- (4) receives a notice of dismissal or an adverse decision from the Social Security Appeals Council.

7 AAC 40.160(a).

The Alaska Adult Public Assistance regulations provide the Division with the authority to request information from Adult Public Assistance applicants:

The division will, in its discretion, require each applicant for aid to the permanently and totally disabled to submit evidence concerning his education and training, work experience, activities before and after onset of the claimed disability, efforts to engage in gainful employment, and other related matters.

7 AAC 40.050(d). When the Division requests information from an Interim Assistance (Adult Public Assistance) applicant, it is required to "provide the client with a written notice that states what evidence is needed and [give] a reasonable amount of time (at least 10 days) to submit the necessary proof." *Alaska Adult Public Assistance Manual* §400-4(B).

The Alaska Supreme Court has held that when properly addressed and properly stamped mail is deposited in the United States mail, it is presumed that this mail has been delivered. *Jefferson v. Spenard Builder's Supply, Inc.*, 366 P. 2d 714, 717 (Alaska 1961); *Martens v. Metzgar*, 524 P.2d 666 (Alaska 1974).

Courts have also stated that the fact that the United States Postal Service fails to return a piece of first class mail to the sender creates a rebuttable presumption that the mail was received by the addressee. See *N.L.R.B. v. J & W Drywall, Lather & Plastering Co., Inc.*, 19 F.3d 1433 (6th Cir. 1994); *Clarke v. Nicholson*, 21 Vet. App. 130 (Vet. App. 2007).

Numerous courts have held that credible testimony by the addressee that he or she did not receive the allegedly mailed item rebuts the mailbox rule's presumption of delivery. See *Williams v. Gelt Fin. Corp.*, 237 B.R. 590, 595 (E.D.Pa.1999); *Williams v. BankOne, N.A. (In re Williams)*, 291 B.R. 636, 648 (Bankr.E.D.Pa.2003); and *Stutzka v. McCarville*, 420 F.3d 757, 762 (8th Cir. 2005).

ANALYSIS

The issue in this case is whether the Division was correct when it sent the Claimant notice, on March 2, 2010, that her Interim Assistance benefits would be terminated on March 31, 2010. Because the Division is the party seeking to change the status quo by terminating the Claimant's existing Interim Assistance benefits, it has the burden of proof by a preponderance of the evidence.

The following facts are not disputed:

1. The federal Social Security Administration denied the Claimant's Supplemental Security application on July 23, 2009. *See* Finding of Fact 2 above.
2. The Division sent the Claimant two separate notices, one on August 14, 2009, and the other on December 2, 2009. Both of those notices asked the Claimant to submit proof she had appealed the denial of her Supplemental Security Income application, and gave her over 10 days to supply the requested proof. *See* Findings of Fact 3(b) and 5 above.
3. The Claimant did not respond to either notice. *See* Findings of Fact 4 and 6 above.
4. As of March 1, 2010, the Division's Social Security interface showed the Claimant's Supplemental Security Income application was denied on July 23, 2009, and had not been appealed. *See* Finding of Fact 6 above.
5. The Claimant faxed appeal documents to the federal Social Security Administration on July 24, 2009. However, the federal Social Security Administration did not have a record of receiving those appeal documents. *See* Finding of Fact 9 above.

If an Interim Assistance recipient is denied for Supplemental Security Income benefits, and fails to appeal that denial, that recipient is no longer eligible to receive Interim Assistance benefits. 7 AAC 40.160(a)(2). Pursuant to regulation 7 AAC 40.050(d), the Division is authorized to require verification from Interim Assistance recipients about matters related to their eligibility. Because finding out if the Claimant had appealed her Supplemental Security Income denial was essential to determining the Claimant's continuing eligibility for Interim Assistance benefits, the Division was entitled to ask the Claimant for verification that she had filed an appeal from her Supplemental Security Income denial. The record is also clear that the Division was not able to obtain the information from its Social Security interface, because that interface, as recently as March 1, 2010, showed the Claimant had not appealed her Supplemental Security Income denial.

It is undisputed that the Claimant did not respond to either of the Division's requests for information about the Claimant's Supplemental Security Income denial. The Claimant was undoubtedly aware of the first notice asking for information (August 14, 2009), given Ms. [REDACTED]'s explanation she and the Claimant assumed the Division knew the Supplemental Security Income denial was appealed since the Claimant was approved for and receiving Interim Assistance benefits. *See* Finding of Fact 8 above.

The Claimant implicitly argued she did not receive the Division's second information request (December 2, 2009). The support for this implicit argument is Ms. [REDACTED]'s testimony that the Claimant brings her Public Assistance paperwork to her for assistance and that they were not aware that there was an issue with either the Claimant's Interim Assistance or the Claimant's Supplemental Security Income appeal until they contacted a Division caseworker in March 2010 about a different matter and were informed that the Claimant's Interim Assistance case was closed. *See* Finding of Fact 8 above.

While there is no reason to doubt Ms. [REDACTED]'s credibility, her testimony fails to establish that the Claimant did not receive the Division's December 2, 2009 notice. The Claimant is the person with the actual knowledge of whether she received the Division's December 2, 2009 notice. She did not testify she did not receive that notice. There is a legal presumption that the Division's notices mailed to the Claimant were also received by her. *Jefferson v. Spenard Builder's Supply, Inc.*, 366 P. 2d 714, 717 (Alaska 1961); *Martens v. Metzgar*, 524 P.2d 666 (Alaska 1974). Because the Claimant, as the intended recipient of the December 2, 2009 notice, did not rebut that presumption by testifying she did not receive that notice, she is therefore presumed to have received it.

The Claimant did not respond to the Division's December 2, 2009 notice. That notice specifically warned her that if she did not respond and provide "proof that [her] [Supplemental Security Income] is in appeal status, then [her] Interim Assistance case will be closed eff 12/31/09." The Claimant was therefore advised of the consequences of her failure to provide the requested information. The Division then waited several months and rechecked its Social Security interface on March 1, 2010; that interface showed the Claimant still had not appealed her Supplemental Security Income denial. At that point, because the Claimant had been asked to show the Division she had appealed her Supplemental Security Income and had not done so, the Division was justified in terminating her Interim Assistance benefits. The fact that the Claimant was later able to have her Supplemental Security Income appeal accepted does not excuse her not responding to the Division's requests for information.

The Division has therefore met its burden of proof by a preponderance of the evidence and shown that it was justified in terminating the Claimant's Interim Assistance benefits, on March 31, 2010

CONCLUSIONS OF LAW

1. The Division had the burden of proof in this case by a preponderance of the evidence. It met its burden of proof as shown by the following:
 - a. In order to determine if the Claimant was eligible to continue receiving Interim Assistance benefits, the Division was required to find out the status of the Claimant's Supplemental Security Income appeal. *See* 7 AAC 40.160(a)(2).
 - b. The Division asked the Claimant twice (August 14, 2009 and December 2, 2009) in writing for information about the status of her Supplemental Security Income appeal, and warned her about the consequences of not providing the information. The Claimant did not respond to either of the Division's requests for information.

c. Because the Claimant did not respond to the Division's requests for information and because the Social Security interface on March 1, 2010 showed the Claimant had not filed an appeal from her Supplemental Security Income denial, the Division was justified in terminating the Claimant's Interim Assistance benefits on March 31, 2010.

2. The Division was therefore correct when it sent the Claimant notice, on March 2, 2010, that her Interim Assistance benefits would be terminated on March 31, 2010.

DECISION

The Division was correct when it sent the Claimant notice, on March 2, 2010, that her Interim Assistance benefits would be terminated on March 31, 2010.

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

An appeal request must be filed within 15 calendar days from the date of receipt of this Decision. Filing an appeal with the Director could result in the reversal of the Hearing Authority's decision.

DATED this 21st day of October, 2010.

/Signed/
Larry Pederson
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 21st day of October 2010, true and correct copies of the foregoing were sent to:

Claimant – Certified Mail, Return Receipt Requested.

[REDACTED], Fair Hearing Representative - email
[REDACTED], Director - email
[REDACTED], Director's Office - email
[REDACTED], Policy & Program Development - email
[REDACTED], Policy & Program Development - email
[REDACTED], Staff Development & Training – email
[REDACTED], Chief of Field Services-email

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