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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-205
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) applied for Adult Public Assistance and Medicaid benefits on February 28, 2007. (Ex. 1) While she was waiting for her Adult Public Assistance and Medicaid application, which had been placed on hold pending the results of her application for federal Social Security Supplemental Security Income benefits, she was receiving Interim Assistance benefits. On June 3, 2010, the Division sent the Claimant notice her application for Adult Public Assistance and Medicaid benefits was denied and that her Interim Assistance benefits would be terminated on June 30, 2010. (Ex. 4) The Division received the Claimant's fair hearing request on June 15, 2010. (Exs. 4 – 4.1)

This Office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to the Claimant's request, the hearing began on July 22, 2010 before Hearing Examiner Jay Durych. The Claimant attended the hearing telephonically and represented herself. [REDACTED], Public Assistance Analyst with the Division, attended in person and represented the Division. At the Claimant's request, the hearing was continued until August 19, 2010.

This case was subsequently reassigned to Hearing Examiner Larry Pederson. He listened to the electronic recording of the July 22, 2010 hearing and conducted the August 19, 2010 hearing. The Claimant appeared in person at the August 19, 2010 hearing; she represented herself and testified on her own behalf. [REDACTED], Public Assistance Analyst with the Division, attended the August 19, 2010 hearing in person; he represented the Division and testified on its behalf.

ISSUES

1. Was the Division correct when it sent the Claimant notice, on June 3, 2010, that her February 28, 2007 Adult Public Assistance and Medicaid application was denied?

2. Was the Division correct when it sent the Claimant notice, on June 3, 2010, that her Interim Assistance benefits would be terminated on June 30, 2010?

FINDINGS OF FACT

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

1. The Claimant applied for Adult Public Assistance and Medicaid benefits on February 28, 2007. (Ex. 1) She was receiving Interim Assistance benefits in June 2010. (Exs. 2 – 4)
2. On June 2, 2010, the federal Social Security Administration notified the Division it had denied the Claimant's Supplemental Security Income application. (Exs. 2 – 3) That denial occurred on May 27, 2010. (Ex. 3)
3. On June 3, 2010, the Division sent the Claimant written notice that her February 28, 2007 application for Adult Public Assistance and Medicaid benefits had been denied. (Ex. 4) That same notice informed her that her Interim Assistance benefits would "end on 6/30/2010." *Id.* The notice stated the reason for the denial/termination was "because the Social Security Administration denied your application for Supplemental Security Income (SSI) on 5/27/2010 and you did not appeal that decision within sixty days." *Id.*
4. The reason the Claimant's Supplemental Security Income application was denied was Social Security code "N31," capacity for substantial gainful activity. (Ex. 2)
5. The Claimant experiences a blood clotting disorder, and has an inoperable blood clot in her Vena Cava. (Claimant testimony) She cannot afford transportation to obtain medical treatment. *Id.*
6. As of August 19, 2010, the last hearing date in this case, the Claimant had not appealed the Social Security Administration's denial of her Supplemental Security Income application. (Claimant testimony; ██████ testimony)

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.¹ 7 AAC 40.030; 7 AAC 40.060. A person who is eligible to receive Social Security Supplemental Security Income benefits is also eligible

¹ While there are some exceptions to this rule, they do not apply in this case.

to receive Adult Public Assistance and Medicaid benefits from the State of Alaska, if she also satisfies other State of Alaska eligibility criteria. 7 AAC 40.030. “An applicant must meet the eligibility requirements of the SSI program.” 7 AAC 40.030(a).

A person who is receiving Supplemental Security Income or who has been approved for Adult Public Assistance is automatically eligible for Medicaid benefits. 7 AAC 100.002(b)(1) and (d)(1); 7 AAC 100.410(a) and (b).

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.

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).

A Supplemental Security Income applicant has 60 days, from the date of a decision on her Supplemental Security Income application, to file an appeal from that decision. 20 CFR 416.1468(a). A decision which is not appealed is final. 20 CFR 416.1455.

ANALYSIS

The relevant facts in this case are not disputed. The Claimant applied for Supplemental Security Income benefits. The Social Security Administration denied her Supplemental Security Income application on May 27, 2010. As of August 19, 2010, which was more than 60 days after May 27, 2010 – the date her Supplemental Security Administration denied her application, the Claimant had not appealed her decision.

It should be noted that the Division’s action on the Claimant’s case was premature. It sent her the Adult Public Assistance and Medicaid denial and Interim Assistance termination notice on June 3, 2010. This was only 7 days after the Social Security Administration denied her Supplemental Security

Income application on May 27, 2010, i.e. the Claimant still had 53 more days to appeal her Supplemental Security Income denial.

As the facts are not in dispute, this case presents two purely legal issues:

1. Was the Division correct to deny the Claimant's February 28, 2007 Adult Public Assistance and Medicaid application?
2. Was the Division correct to terminate the Claimant's Interim Assistance benefits at the end of June 2010?

1. Adult Public Assistance and Medicaid Application.

The Alaska regulation on Adult Public Assistance program eligibility is clear. "An applicant must meet the eligibility requirements of the SSI program." 7 AAC 40.030(a). This means that the Claimant had to be eligible to receive Supplemental Security Income benefits in order to receive Adult Public Assistance benefits. Because the Social Security Administration found the Claimant was not eligible for Supplemental Security Income benefits on the basis she had a capacity for substantial gainful activity (i.e., she could work), the Claimant was also not eligible for Adult Public Assistance benefits.

When the Claimant did not appeal the Social Security Administration's May 27, 2010 decision within 60 day appeal period, this meant that decision became final at the end of the appeal period. *See* 20 CFR 416.1455; 20 CFR 416.1468(a). In other words, when the Claimant did not appeal the Social Security decision in a timely manner (by July 26, 2010), that decision became binding on the State of Alaska and required the State to deny her Adult Public Assistance application. *See* 7 AAC 40.030(a).

The Claimant testified about her medical conditions. However, this Office only has jurisdiction to hear and decide State of Alaska Department of Health and Social Services cases. It does not have the legal ability to review and overrule decisions made by the Social Security Administration, a federal agency. As a result, because the Alaska Adult Public Assistance program regulation explicitly requires that an applicant/recipient "must meet the eligibility requirements of the SSI program," the Division is required to follow the Supplemental Security Income decision, even if the Claimant believes that decision was made in error and regardless of the Claimant's medical needs.

The Claimant's eligibility for Medicaid coverage required her to be a recipient of either State Adult Public Assistance or Supplemental Security Income benefits. She does not receive Supplemental Security Income benefits, as decided by the Social Security Administration. Nor, as discussed above, is she eligible to receive Adult Public Assistance because the Social Security Administration denied her Supplemental Security Income application. When the Claimant's application for Supplemental Security Income was denied, and her Adult Public Assistance application was consequently denied, her Medicaid application also had to be denied.

While, as noted above, the Division sent out a premature notice of denial on June 3, 2010, the premature nature of the notice does not invalidate the Division's action. This is because the Claimant has never received Adult Public Assistance and/or Medicaid benefits as a result of her February 28,

2007 application. She therefore never became entitled to receive those benefits, because her eligibility for those benefits was entirely dependent upon her being approved for Supplemental Security Income benefits, which did not occur.

The Division was therefore correct when it denied the Claimant's February 28, 2007 application for Adult Public Assistance and Medicaid.

2. Interim Assistance.

The Alaska regulation regarding the effect of a Supplemental Security Income application denial that is not appealed is clear and unambiguous:

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;

7 AAC 40.160(a).

As discussed above, the Claimant did not appeal her Supplemental Security Income denial as of August 19, 2010. She therefore falls into subsection 2 of the above regulation. She "receive[d] an adverse SSI decision and fail[ed] to appeal it to the next appeal level." 7 AAC 40.160(a)(2). As a result, the regulation required the Division to terminate her Interim Assistance benefits.

However, as discussed above, the Division's termination notice was premature. It was sent out on June 3, 2010, only 7 days after the date (May 27, 2010) the Claimant's Supplemental Security Income application was denied. At that point, per federal regulation 20 CFR 416.1468(a), the Claimant still had 53 more days to file an appeal with the Social Security Administration, i.e. the Supplemental Security Income denial was not yet final. The Division was premature to terminate the Claimant's Interim Assistance benefits on June 30, 2010, which was before the time to appeal her Supplemental Security Income denial had run. As a result, the Division was not correct to terminate the Claimant's Interim Assistance benefits on June 30, 2010.

CONCLUSIONS OF LAW

1. The Division was required by its regulation, 7 AAC 40.030(a), to deny the Claimant's February 28, 2007 Adult Public Assistance application because her application for Supplemental Security Income was denied.

2. Because the Claimant's eligibility for Medicaid coverage depended on her being eligible for either Adult Public Assistance or Supplemental Security Income, the Division was correct when it also denied her February 28, 2007 Medicaid application.

3. The Division's June 3, 2010 notice terminating the Claimant's Interim Assistance benefits on June 30, 2010 was defective. This was because it was premature; it terminated her Interim Assistance benefits before the 60 day time frame to appeal her May 27, 2010 Supplemental Security Income denial had run. *See* 20 CFR 416.1468(a)

4. The Division was therefore not correct to terminate the Claimant's Interim Assistance benefits on June 30, 2010.

DECISION

1. The Division was correct when it sent the Claimant notice, on June 3, 2010, that her February 28, 2007 Adult Public Assistance and Medicaid application was denied.
2. The Division was not correct when it sent the Claimant notice, on June 3, 2010, that her Interim Assistance benefits would be terminated on June 30, 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 11th day of October, 2010.

/Signed/

Larry Pederson
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 11th 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

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