

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS
ON REFERRAL BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of:)
)
 K L. X)
_____)

OAH No. 13-0087-APA
DPA Case No.

DECISION

I. Introduction

The issue in this appeal is whether the Department of Health and Social Services, Division of Public Assistance (DPA) was correct to terminate K L. X' Interim Assistance benefits because the Social Security Administration denied her application for Supplemental Security Income at the Appeals Council level.

Ms. X requested a hearing on December 20, 2012. Her hearing was held on February 25, 2013. The hearing was recorded. Ms. X participated in the hearing by telephone and testified on her own behalf. DPA Public Assistance Analyst Terri Gagne, who also participated by telephone, represented the division.

Based on the evidence in the record, DPA was correct to terminate Ms. X' Interim Assistance benefits after November 30, 2012.

II. Facts

There are no relevant facts in dispute. At some time prior to 2011, Ms. X applied for Supplemental Security Income (SSI) with the United States Social Security Administration (SSA).¹ On April 12, 2012, she applied for and began receiving Interim Assistance (IA) benefits from the State of Alaska.² On November 16, 2012, DPA learned that Ms. X' application for SSI had been denied by the SSA Appeals Council on August 26, 2011.³ On November 16, 2012, the DPA notified Ms. X that her IA benefits would end on November 30, 2012.⁴

¹ Exh. 5.

² Exh. 1-1.2. Filing an application for SSI with SSA is a legal prerequisite to receipt of Interim Assistance benefits from the State of Alaska. *See* Adult Public Assistance Manual Section 426-2 B, AS 47.25.455, and 7 AAC 40.375(a).

³ Exh. 2. The DPA concedes that Ms. X was granted IA benefits in error because her application for SSI had already been denied by the SSA Appeals Council. Apparently the DPA either did not check the SSA interface or the denial was not noted. In any event, the fact that Ms. X received IA benefits for several months in error is not at issue in this appeal.

⁴ Exh. 3.

III. Discussion

Interim Assistance is a monthly payment in the amount of \$280 provided by the State of Alaska to Adult Public Assistance applicants while those applicants' eligibility for Supplemental Security Income (SSI) is being determined by the Social Security Administration.⁵

Initially, it is important to note that the SSA has its own appeal process for reviewing SSI decisions, and that the SSA's process is separate from the process under Alaska law for reviewing Interim Assistance decisions made by the DPA. Federal regulations provide a three step process for appealing disability determinations. If the applicant disagrees with SSA's initial determination, he or she has a right to request reconsideration.⁶ If dissatisfied with the reconsideration decision, the applicant can request a hearing before an SSA administrative law judge (ALJ).⁷ Finally, if the hearing before the ALJ is not favorable, the applicant can ask the Appeals Council to review the ALJ's decision.⁸ This is the final step in the SSA's administrative review, and the Appeals Council's decision is the final agency decision.⁹ After this step, the only appeal from a denial of SSI is to the United States District Court.¹⁰

According to regulation 7 AAC 40.190(a), DPA must continue to pay interim assistance while a person's application for SSI is pending. The regulation states in relevant part:

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* [emphasis added].

The DPA regulations also state what occurs when an application for Supplemental Security Income is denied by the Social Security Administration at the Appeals Council level. Pursuant to 7 AAC 40.160(a), an Interim Assistance recipient "will continue to receive interim assistance until the [recipient] . . . (4) receives . . . an adverse decision from the Social Security Appeals Council." This regulation (7 AAC 40.160(a)) is clear and unambiguous. It does not

⁵ AS 47.25.455; 7 AAC 40.170(a) and (b); 7 AAC 40.375(a).

⁶ 20 CFR § 416.1400(a)(2).

⁷ 20 CFR § 416.1400(a)(3).

⁸ 20 CFR § 416.1400(a)(4).

⁹ 20 CFR § 416.1481.

¹⁰ 20 CFR § 416.1400(a)(5).

contain any exception to the termination requirement for cases in which a recipient appeals his or her adverse Appeals Council decision to federal district court.¹¹

In this case, Ms. X' appeal of her adverse SSI ruling was denied by the SSA Appeals Council. Although she filed an administrative appeal of the termination of her IA benefits, Ms. X has not alleged here that the SSA Appeals Council's denial was made in error or that the DPA should not have terminated her IA benefits. Rather, her appeal discussed the financial hardship that has resulted from losing her monthly interim assistance benefits.

IV. Conclusion

Ms. X' eligibility for state Interim Assistance benefits ended when the Social Security Administration's Appeals Council denied her application for SSI on August 26, 2011. Under applicable Alaska law, the division has no discretion and was required to stop paying IA benefits to Ms. X upon receiving notice of the SSA Appeals Council's denial. Accordingly, the DPA was correct to terminate her IA benefits after November 30, 2012.

Dated this 15th day of March, 2013.

Signed

Kay L. Howard
Administrative Law Judge

¹¹ In *Moore v. Beirne*, 714 P.2d 1284 (Alaska 1986), the Alaska Supreme Court held "that the [interim assistance statute] requires state payment of interim assistance *through the SSI appeals process until a final SSI eligibility determination is made administratively* [emphasis added]."

Adoption

The undersigned, by delegation from the Commissioner of Health and Social Services, adopts this Decision, under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 28th day of March, 2013.

By: Signed _____
Name: Kay L. Howard
Title: Administrative Law Judge

[This document has been modified to conform to the technical standards for publication.]