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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. 11-FH-87
)
 Claimant.) Division Case No. [REDACTED]
_____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) applied for Interim Assistance benefits on January 11, 2011. (Exs. 2 – 2.9) On February 14, 2011, the Division sent the Claimant notice her Interim Assistance application was denied. (Ex. 6) The Division received the Claimant’s fair hearing request on March 3, 2011. (Exs. 7 – 7.1)

This Office has jurisdiction pursuant to 7 AAC 49.010.

The Claimant’s hearing was held on April 12, 2011. The Claimant attended the hearing telephonically; she represented herself and testified on her own behalf. [REDACTED], Public Assistance Analyst with the Division, attended in person; he represented the Division and testified on its behalf.

After the hearing was concluded, the Claimant had a completed Preliminary Examination for Interim Assistance form (form AD-2) faxed to this Office on April 12, 2011. (Ex. A)

ISSUE

Was the Division correct when it, on February 14, 2011, denied the Claimant’s January 11, 2011 Interim Assistance application?

FINDINGS OF FACT

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

1. The Claimant applied for Interim Assistance benefits on January 11, 2011. (Exs. 2 – 2.9)

2. On January 28, 2011, Division Eligibility Technician “██████” mailed the Claimant a Medicaid coupon, a Preliminary Examination for Interim Assistance form (form AD-2) to fill out, a reimbursement form, and a medical release form. (Exs. 3 – 3.1)

3. On January 31, 2011, the Division mailed the Claimant notice that she needed to return the completed Preliminary Examination for Interim Assistance form (form AD-2) and the reimbursement and medical release forms to the Division by February 10, 2011 or her “application may be denied.” (Ex. 4) The notice was prepared by Eligibility Technician “██████.” *Id.*

4. The Claimant did not return the completed Preliminary Examination for Interim Assistance form (form AD-2), or the reimbursement and medical release forms to the Division by February 10, 2011. (██████ testimony; Ex. 5) The reimbursement and medical release forms were not returned to the Division until March 3, 2011.

5. The Division denied the Claimant’s Interim Assistance application and mailed her notice of the denial on February 14, 2011. (Ex. 6) The denial was made by Eligibility Technician “██████,” who prepared the February 14, 2011 denial notice mailed to the Claimant. (Exs. 5, 6)

6. The Claimant receives her mail at a post office box in ██████████, Alaska. (Ex. 2) She lives “out in the woods” some distance from the post office and does not check her mail every day. (Claimant testimony) She did not receive the Medicaid coupon and Preliminary Examination for Interim Assistance form (form AD-2) until either the end of the first week of February or the beginning of the second week of February. *Id.*

7. The Claimant testified that she was unable to get an appointment to see a doctor and have the Preliminary Examination for Interim Assistance form (form AD-2) completed and that she tried to telephone “██████” but was unable to reach her because “██████” was on leave. The Claimant believes she did not try to contact “██████” until after the February 10, 2011 deadline. (Claimant testimony)

8. On April 12, 2011, after the evidentiary hearing was completed, the Claimant faxed a copy of a completed Preliminary Examination for Interim Assistance form (form AD-2) dated April 5, 2011 to this Office. (Ex. A)

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. 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.

As part of the Interim Assistance (Adult Public Assistance) process, the applicant is required to be examined “by an appropriate medical professional” and “the examiner shall furnish a written report of the examination on a form approved by the division.” 7 AAC 40.050(c).

The Alaska Adult Public Assistance regulations provide the Division with the authority to request information from Interim Assistance (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, “the case worker shall 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). “If the client responds to the notice and indicates that he or she is either unable to provide the necessary evidence or unable to understand what is being asked for, the client must be provided with help in understanding the requirement and getting the necessary proof.” *Id.*

The Division is normally required to process and issue an eligibility decision on Interim Assistance (Adult Public Assistance) applications “within 30 days after receipt of the application.” 7 AAC 40.070(a). However, an application “will not be denied because the applicant did not have an examination . . . 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.” 7 AAC 40.070(b).

ANALYSIS

The issue in this case is whether the Division was correct when it, on February 14, 2011, denied the Claimant’s January 11, 2011 Interim Assistance application. Because Claimant is an applicant for benefits, she is the party seeking to change the status quo. The Claimant therefore has the burden of proof by a preponderance of the evidence.

¹ While there are some exceptions to this rule, they do not apply in this case. *See e.g.* 7 AAC 40.170(c) and (3).

The undisputed facts in this case are as follows:

1. The Claimant applied for Interim Assistance (Adult Public Assistance) benefits on January 11, 2011. *See* Finding of Fact 1 above.
2. The Division mailed the Claimant the Preliminary Examination for Interim Assistance form (form AD-2) and reimbursement and medical release forms on January 28, 2011. *See* Finding of Fact 2 above.
3. On January 31, 2011, the Division mailed the Claimant notification that she had to have the Preliminary Examination for Interim Assistance form (form AD-2) and the reimbursement and medical release forms completed and returned to the Division by February 10, 2011 or her “application may be denied.” *See* Finding of Fact 3 above.
4. On February 14, 2011, the Division denied the Claimant’s Interim Assistance (Adult Public Assistance) application because she did not return her Preliminary Examination for Interim Assistance form (form AD-2) or the reimbursement and medical release forms by the February 10, 2011 deadline. *See* Findings of Fact 4 and 5 above.
5. All of the actions above (mailing of the forms, notice of the February 10, 2011 deadline, and denial of the Claimant’s application) were taken by Division Eligibility Technician “[REDACTED].” *See* Findings of Fact 2 – 5 above.

The Claimant testified that she does not check her mail every day and that she did not receive the Medicaid coupon and Preliminary Examination for Interim Assistance form (form AD-2) until either the end of the first week of February or the beginning of the second week of February. *See* Finding of Fact 6 above. She stated that she was unable to get an appointment to see a doctor and have the Preliminary Examination for Interim Assistance form (form AD-2) completed and that she tried to telephone “[REDACTED]” but was unable to reach her because “[REDACTED]” was on leave. *See* Finding of Fact 7 above.

The Claimant argued the February 10, 2011 deadline imposed by the Division to submit the completed Preliminary Examination for Interim Assistance form (form AD-2) was unreasonable. However, all the forms (Preliminary Examination, reimbursement and medical release forms) were sent to the Claimant on January 28, 2011. The Claimant was advised by a January 31, 2011 notice of the February 10, 2011 deadline. Not counting the day of mailing, the Claimant had a total of 10 days (February 1 – February 10) to have the complete Preliminary Examination for Interim Assistance form (form AD-2) and the reimbursement and medical release forms completed and returned.

The 10 days provided the Claimant to submit the completed Preliminary Examination for Interim Assistance form (form AD-2) and the reimbursement and medical release forms complied with the minimum notice requirements contained in the Division’s *Adult Public Assistance Manual*; “the case worker shall 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).

On its face, the Division's February 14, 2011 action in denying the Claimant's application was consistent with its January 31, 2011 written notice warning the Claimant her application could be denied if she did not submit the completed Preliminary Examination for Interim Assistance form (form AD-2) and the reimbursement and medical release forms by February 10, 2011, because the Claimant had a full 10 days notice of the February 10, 2011 deadline.

The applicable regulation, 7 AAC 40.070(b), however, states an application "will not be denied because the applicant did not have an examination . . . 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." 7 AAC 40.070(b). The Claimant testified she could not obtain an appointment and have the Preliminary Examination for Interim Assistance form (form AD-2) completed by February 10, 2011 deadline. The Claimant testified she tried to speak to "[REDACTED]" but that "[REDACTED]" was on leave.

Looking at the evidence as a whole leads to the conclusion that the Claimant did not try to contact "[REDACTED]" about the Preliminary Examination for Interim Assistance form (form AD-2) until sometime after the February 14, 2011 denial. This conclusion is based upon the following facts:

1. "[REDACTED]" sent the Claimant the Preliminary Examination for Interim Assistance form (form AD-2) on January 28, 2011. *See Finding of Fact 2 above.*
2. "[REDACTED]" sent the Claimant the notice of the February 10, 2011 deadline on January 31, 2011. *See Finding of Fact 3 above.*
3. The Claimant's testimony that she did not even receive the Preliminary Examination for Interim Assistance form (form AD-2) until either the end of the first week or the beginning of the second week in February 2011, and that she did not believe she tried to contact "[REDACTED]" until after the February 10, 2011 deadline. *See Finding of Fact 7 above.*
4. "[REDACTED]" denied Claimant's application on February 14, 2011. *See Finding of Fact 5 above.*

While the applicable regulation, 7 AAC 40.070(b), reads that an application "will not be denied because the applicant did not have an examination . . . if he was unable to have the examination for reasons beyond his control," that regulation must be read in context. The regulation provides the Division with discretion; it "may postpone an eligibility decision for an additional 30 days." 7 AAC 40.070(b). This, however, cannot be construed to provide an applicant with an automatic extension, because the use of the discretionary term "may" implies that the Division is not required to automatically provide an extension. There must be an event that triggers the Division's discretion on providing an extension, e.g. the Claimant contacting the Division **before** a deadline to discuss the problems in obtaining the necessary examination.

The *Alaska Adult Public Assistance Manual* states that if an applicant is having difficulty providing requested information, such as a completed Preliminary Examination for Interim Assistance form

(form AD-2), the Claimant needs to ask for help. "If the client responds to the notice and indicates that he or she is either unable to provide the necessary evidence or unable to understand what is being asked for, the client must be provided with help in understanding the requirement and getting the necessary proof." *Alaska Adult Public Assistance Manual* §400-4(B). However, in this case, the Claimant did not contact the Division until **after** the February 10, 2011 deadline for providing the completed Preliminary Examination for Interim Assistance form (form AD-2) was past.

Regardless of the Claimant's testimony that she was not able to obtain a doctor's appointment and have the Preliminary Examination for Interim Assistance form (form AD-2) completed by the deadline, she does not have a similar excuse for not providing the other requested documents by the deadline. She did not submit the reimbursement and medical release forms to the Division by the February 10, 2011 deadline. The fact that she did not supply those documents to the Division until March 3, 2010, alone supports the Division's denial of the Claimant's January 11, 2011 Interim Assistance (Adult Public Assistance) application.

In summary, the facts of this case show the Claimant did not comply with the February 10, 2011 deadline to submit her completed Preliminary Examination for Interim Assistance form (form AD-2) and the reimbursement and medical release forms. The Claimant was properly and timely notified of the deadline. She undisputedly did not comply with the deadline. She did not have any justification for not providing the reimbursement and medical release forms in a timely manner.

With regard to the Preliminary Examination for Interim Assistance form (form AD-2), she was not able to comply with the deadline. However, she did not contact the Division and inform it of her inability to comply until **after** the deadline passed. The fact she sent the completed AD-2 form to this Office after the hearing was conducted is not relevant to this Decision. The Division denied the Claimant's application on February 14, 2011, and this was the issue for the present hearing. Considering these facts, the Claimant did not meet her burden of proof and demonstrate that the Division improperly denied her January 11, 2011 application for Interim Assistance (Adult Public Assistance).

CONCLUSIONS OF LAW

1. The Claimant had the burden of proof in this case by a preponderance of the evidence to demonstrate that the Division was not correct when it denied her January 11, 2011 application for Interim Assistance (Adult Public Assistance).
2. The Claimant did not satisfy her burden of proof, because she did not provide the Division with her reimbursement and medical release forms and completed Preliminary Examination for Interim Assistance form (form AD-2) by the Division's February 10, 2011 deadline,

DECISION

The Division was correct when it, on February 14, 2011, denied the Claimant's January 11, 2011 Interim Assistance application.

