

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

In the Matter of)	
)	OAH No. 13-0201-APA
S T)	Division No.
_____)	

DECISION

I. Introduction

S T is an Adult Public Assistance (APA) benefit recipient. The Division of Public Assistance (DPA) lowered his monthly APA benefit amount to \$100 beginning in December 2012 because the DPA was notified he was moving into an assisted living home (ALH). His benefits were increased to back to \$362 beginning with March 2013 because he did not move into an ALH. Mr. T requested a hearing to contest the reduction of his APA benefits for December 2012 through February 2013.

Mr. T's evidentiary hearing was held on May 9, 2013. N L-N, who holds Mr. T's power of attorney, represented Mr. T and testified on his behalf. A M, Mr. T's care coordinator, also testified on his behalf. Mr. T did not participate in the hearing. Public Assistance Analyst Terri Gagne represented DPA and testified on its behalf.

The reduction in Mr. T's monthly APA benefit occurred because he was scheduled to move to an ALH. Although he did not move to an ALH, DPA was not properly notified of that fact until February 2013. The Division's action reducing Mr. T's APA benefits to \$100 for December 2012 through February 2013 is affirmed.

II. Facts

Mr. T is a disabled adult who was receiving Social Security Administration Supplemental Security Income (SSI) benefits and \$362 in APA benefits per month.¹ DPA is the Department of Health and Social Services' division that administers the APA program. He applied for Medicaid Home and Community-based Waiver (Medicaid Waiver) benefits preparatory to moving into an ALH. Ms. L-N was handling his affairs and dealing with the Division of Senior and Disabilities Services (DSDS) on his Medicaid Waiver application.²

¹ Ex. 2.14

² L-N testimony.

Ms. L-N telephoned DPA on November 13, 2012 and informed it that Mr. T would be moving to an ALH. DPA then reduced Mr. T's monthly APA benefit amount to \$100, effective December 2012, and notified him of that change on November 14, 2012.³

DSDS informed Ms. L-N that Mr. T's application for Medicaid Waiver benefits was denied. Mr. T did not move to the ALH because he could not afford to live there without receiving Medicaid Waiver benefits. Ms. L-N phoned DSDS on November 16, 2012 and informed it that Mr. T was not moving to an ALH. She thought she was notifying DPA and that Mr. T would have his APA benefit amount raised to its previous level.⁴ DPA did not restore Mr. T's monthly APA benefit amount to \$362.⁵

On February 4, 2013, Mr. T's care coordinator telephoned DPA and notified it that Mr. T had not moved to an ALH, but had continued to live in his home. DPA then raised Mr. T's monthly APA benefit amount to \$362 beginning with March 2013.⁶

III. Discussion

The APA program provides cash payments to financially eligible persons who are over 65, blind, or disabled.⁷ The payment amount is normally based upon a recipient's income.⁸ However, the monthly APA payment for a SSI recipient who resides in an assisted living facility is \$100.⁹

The issue in this case, however, is not whether DPA was correct when it initially reduced Mr. T's monthly APA benefit to \$100 beginning with December 2012. It is whether DPA should have reinstated his benefit amount to \$362 beginning with December 2012, because Ms. L-N informed DSDS on November 16, 2012 that Mr. T did not move into an ALH. The APA regulation that deals with reporting changes is 7 AAC 40.440. It specifically provides that

³ Exs. 2.0, 2.3.

⁴ L-N testimony; Ex. B.

⁵ Ex. 2.14.

⁶ Exs. 2.5 – 2.6.

⁷ AS 47.25.430; 7 AAC 40.120.

⁸ 7 AAC 40.370(b).

⁹ 7 AAC 40.395. *Adult Public Assistance Manual*, § 452-5D, Addendum 1.

changes are to be reported “to the nearest office of the division.”¹⁰ In this regulation, “division” means the “division of public assistance.”¹¹

It is undisputed that Ms. L-N initially informed DPA that Mr. T was moving to an ALH. However, her subsequent report that the move did not occur was not made to DPA. Instead, the report was made to DSDS. Under the APA regulations, the report needed to be made to DPA. If the report had been made to DPA, then DPA should have restored Mr. T’s APA benefit amount to \$362 beginning with December 2012. However, DPA cannot be faulted for failing to act upon the report of change because it was made to the wrong division. Notice to DSDS did not constitute notice to DPA.¹² As a result, Mr. T is not entitled to have his APA benefits restored to \$362 per month beginning with December 2012.

IV. Conclusion

The Division’s reduction of Mr. T’s monthly APA benefit to \$100 for December 2012, January 2013, and February 2013 is affirmed.

DATED this 30th day of May, 2013.

Signed

Lawrence A. Pederson
Administrative Law Judge

¹⁰ 7 AAC 40.440(a).

¹¹ 7 AAC 40.900(4).

¹² 7 AAC 40.440(a). *See USA v. Minnesota Trust Company*, 59 F.3d 87, 91 n. 4 (8th Cir, 1995) (“ [N]otice to one government office does not necessarily constitute notice to another, even if the offices are within the same agency.” Citations omitted).

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 13th day of June, 2013.

By: *Signed* _____

Name: Lawrence A. Pederson

Title/Agency: Admin. Law Judge, DOA/OAH

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