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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-125
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) was approved on March 4, 2011 to receive Chronic and Acute Medical Assistance (CAMA) benefits for the time period from March 1, 2011 through the end of August 2011. (Ex. 4) On March 18, 2011, the Division of Public Assistance (Division) sent the Claimant written notice that his CAMA case would be “closed as of March 31, 2011.” (Ex. 6) The Claimant requested a Fair Hearing on March 22, 2011. (Ex. 7) On May 3, 2011, before the scheduled hearing, the Division sent the Claimant a corrective notice stating his CAMA case was “closed as of March 31, 2011.” (Ex. 13)

This Office has jurisdiction pursuant to 7 AAC 49.010.

The Claimant’s hearing was held on May 3, 2011. The Claimant attended the hearing telephonically; he represented himself and testified on his own behalf. [REDACTED], Public Assistance Analyst with the Division, attended the hearing in person; she represented the Division and testified on its behalf.

The record was left open after the close of the May 3, 2011 hearing until May 10, 2011 for the Claimant to furnish additional documentation, and for the Division to submit its written response. The Claimant’s records were received on May 4, 2011. (Ex. A) The Division did not submit a response.

STATEMENT OF ISSUES

Was the Division correct when it sent the Claimant written notice, on March 18, 2011 and May 3, 2011, that his CAMA case was closed as of March 31, 2011?

FINDINGS OF FACT

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

1. The Claimant applied for CAMA benefits on February 24, 2011. (Ex. 2)
2. The Claimant was approved to receive CAMA benefits on March 4, 2011 for the time period from March 1, 2011 through the end of August 2011. (Ex. 4)
3. On March 17, 2011, the Division received notice from the Social Security Administration that the Claimant had been approved for monthly Social Security payments in the amount of \$1,657 per month. (██████ testimony) The Division then determined, on March 17, 2011, that the Claimant was not financially eligible for CAMA benefits due to his Social Security income. (██████ testimony; Ex. 5.0) The Claimant's monthly Social Security payments were scheduled to begin at the end of April 2011. (Ex. A)
4. On March 18, 2011, the Division of Public Assistance (Division) sent the Claimant written notice that his CAMA case would be "closed as of March 31, 2011." (Ex. 6) The notice informed the Claimant his case was closed because "your income now exceeds the CAMA limit. Your new Social Security income of \$1657.00 is being counted." *Id.* The notice further informed the Claimant that "930 is the CAMA Manual Section that supports this action." *Id.*
5. On May 3, 2011, immediately before the Claimant's scheduled May 3, 2011 hearing, the Division issued a corrective denial notice to the Claimant. (Ex. 13) That notice stated the Claimant's CAMA case was closed as of March 31, 2011 and that "[t]his is a corrective notice. This replaces the one issued to you on 3/18/11. In that notice, the incorrect manual section supporting our action was given. The manual section quoted was 930. The correct manual section is 940, financial eligibility." *Id.*
6. The Claimant testified he had not received his Social Security payments as of the date of the hearing, May 3, 2011. On May 4, 2011, the Claimant provided a written statement that "[a]s I stated at the end of the hearing, I would call to see if funds were deposited. I did call and they were." (Ex. A, p. 1)

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, Alcoholic 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).

The Chronic and Acute Medical Assistance (CAMA) program provides limited medical coverage to individuals. AS 47.08.150; 7 AAC 48.500; 7 AAC 48.525(b). CAMA has stringent financial eligibility requirements; if a single person household makes more than \$300 per month net income, that single

person household is not eligible for CAMA benefits. 7 AAC 48.540; 7 AAC 47.150(b); 7 AAC 47.155; *Chronic and Acute Medical Assistance Manual* section 940-4 (2nd Ed. 2002). In addition, if a single person household owns more than \$500 in countable resources, that single person household is not eligible for CAMA benefits. 7 AAC 48.535; 7 AAC 47.160(a); *Chronic and Acute Medical Assistance Manual* section 940-2 (2nd Ed. 2002).

Further, if an applicant/recipient has third party resources (health insurance coverage, or is living with a legally responsible relative who is financially able to pay for the applicant/recipient's medical coverage), the applicant/recipient is not eligible for CAMA benefits. 7 AAC 48.530; *Chronic and Acute Medical Assistance Manual* section 930 (2nd Ed. 2002).

Alaska "Fair Hearings" regulation 7 AAC 49.060 requires that the Division provide a public assistance applicant/recipient "written notice . . . at least 10 days before the date the division intends to take action denying, suspending, reducing, or terminating assistance." "Fair Hearings" regulation 7 AAC 49.070 provides in relevant part that, "[u]nless otherwise specified in applicable federal regulations, written notice to the client must detail the reasons for the proposed adverse action, *including the statute, regulation, or policy upon which that action is based.*" [Emphasis added].

"Administrative agencies are bound by their regulations just as the public is bound by them." *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010).

In *Baker v. State, Dept. of Health & Social Services*, 191 P.3d 1005, 1009 (Alaska 2008), the Alaska Supreme Court held that a Medicaid Personal Care Assistant (PCA) services reduction notice was defective because it failed to provide the recipients with adequate notice: "due process demands that recipients facing a reduction of their public assistance benefits be provided a meaningful opportunity to understand, review, and where appropriate, challenge the department's action." *Id.* at 1011. In *Baker*, the Department was required to include the assessment form (PCAT) with its benefit reduction notices. *Id.* at 1012.

In *Allen v. State, Dept. of Health & Social Services*, 203 P.2d 1155, 1168 – 1170 (Alaska 2009), the Alaska Supreme Court held that before the Division could require repayment of allegedly overpaid Food Stamp benefits from a recipient, the Division was required to send the recipient notice containing its detailed calculations and the reasons for the repayment. In its decision the *Allen* court stated (203 P. 3d at 1168):

If a major purpose served by benefit change or denial notices is protecting recipients from agency mistakes, then it stands to reason that such notices should provide sufficient information to allow recipients to detect and challenge mistakes.¹

¹One of the cases cited by the Alaska Supreme Court in *Allen* was *Ortiz v. Eichler*, 616 F.Supp. 1046, 1061-1062 (D. Del. 1985), *reargued Ortiz v. Eichler*, 616 F.Supp. 1066 (D. Del. 1985), *affirmed Ortiz v. Eichler*, 794 F.2d 889 (3rd Cir.1986). In *Ortiz* the court stated that, "at a minimum, due process requires the agency to explain, *in terms comprehensible to the claimant*, exactly what the agency proposes to do and why the agency is taking this action" (emphasis added). The court explained that "this detailed information is needed to enable claimants to understand what the agency has decided, so that they may assess the correctness of the agency's decision, make an informed decision as to whether to appeal, and be prepared for the issues to be addressed at the hearing." *Id.*

A benefit denial or reduction notice must stand on its own; the Division may not rely on supplemental notices or the hearing process to supply information which should have been provided in the first instance. *See Allen*, 203 P.2d 1155 at 1169.

ANALYSIS

The issue in this case is whether the Division was correct when it, on March 18, 2011 and May 3, 2011, notified the Claimant his CAMA case was closed as of March 31, 2011. Because the Division was terminating benefits, it was the party seeking to change the status quo. The Division therefore has the burden of proof, by a preponderance of the evidence.

However, before reaching the merits of this case, it is first necessary to resolve the purely legal issue of whether the Division's March 18, 2011 CAMA termination notice satisfied minimum procedural due process requirements.

The Division's March 18, 2011 CAMA termination notice informed the Claimant his case was closed because "your income now exceeds the CAMA limit. Your new Social Security income of \$1657.00 is being counted." (Ex. 6) The notice further informed the Claimant that "930 is the CAMA Manual Section that supports this action." *Id.*

Section 930 of the CAMA manual is the section that states if an applicant/recipient has third party resources (health insurance coverage, or is living with a legally responsible relative who is financially able to pay for the applicant/recipient's medical coverage), the applicant/recipient is not eligible for CAMA benefits. *Chronic and Acute Medical Assistance Manual* section 930 (2nd Ed. 2002).

Section 940 of the CAMA manual is the section that states if a single person household makes more than \$300 per month net income, that single person household is not eligible for CAMA benefits. *Chronic and Acute Medical Assistance Manual* section 940-4 (2nd Ed. 2002).

It is therefore clear that the Division cited the wrong portion of the CAMA manual in its March 18, 2011 termination notice. Because the stated factual basis for the Division's termination of the Claimant's CAMA benefits was his Social Security income, the notice should have cited the income section of the CAMA manual. The income eligibility section of the CAMA manual is 940-4, not section 930, which deals with third-party resources.

On its face, the Division's March 18, 2011 termination notice was defective as a matter of law. It failed to comply with the regulatory requirement, contained in 7 AAC 49.070, which mandates that the Division's notices "must detail the reasons for the proposed adverse action, *including the statute, regulation, or policy upon which that action is based.*" [Emphasis added]. This is not optional for the Division; the regulation contains the term mandatory word "must." "Administrative agencies are bound by their regulations just as the public is bound by them." *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010).

In addition, the notice was confusing. On one hand, it told the Claimant his benefits were being terminated because of his income. On the other hand, it told the Claimant its action was supported by CAMA manual section 930, the section dealing with third party resources eligibility issues, not the section dealing with income eligibility. As the Alaska Supreme Court stated in *Allen*, notices should provide sufficient information to allow recipients to detect and challenge mistakes. *Allen* at 1168. Because the Division's March 18, 2011 termination notice was confusing, it failed to satisfy the procedural due process requirements established in *Allen*.

As the Alaska Supreme Court ruled in the *Allen* case, the Division may not rely on a legally defective notice to take action against a public assistance recipient. On its face, the Division was not correct to terminate the Claimant's CAMA benefits as of March 31, 2011, because its March 18, 2011 termination notice was legally inadequate for two independent reasons:

- a. The Division failed to comply with its own regulatory requirement that its written notices must include "*the statute, regulation, or policy upon which that action is based.*" 7 AAC 49.070 (Emphasis supplied).
- b. The Division's notice was confusing and failed to satisfy the procedural due process requirements as set forth in *Allen*.

It must be noted that the Division recognized its mistake and issued a corrective notice on May 3, 2011, immediately before the Claimant's hearing, which stated "[t]his is a corrective notice. This replaces the one issued to you on 3/18/11. In that notice, the incorrect manual section supporting our action was given. The manual section quoted was 930. The correct manual section is 940, financial eligibility." (Ex. 13) This corrective notice, however, did not correct the Division's March 18, 2011 defective notice for two independent reasons:

- a. The notice must be sent a minimum of 10 days *before* the adverse action. *See* 7 AAC 49.060. This means that the Division, according to its own regulations, cannot use a May 3, 2011 notice to retroactively notify the Claimant of the termination of his CAMA benefits as of March 31, 2011.
- b. The Alaska Supreme Court, in *Allen*, was clear that the Division may not rely on supplemental notices or the hearing process to supply information which should have been provided in the first instance. *See Allen*, 203 P.2d 1155 at 1169.

In summary, the Division's March 18, 2011 written notice, that told the Claimant his CAMA benefits would be terminated as of March 31, 2011, was invalid as a matter of law. This was because it referred to the wrong CAMA policy manual provision. It therefore failed to comply with the regulatory requirement that the notice include the "statute, regulation or policy upon which [its] action [was] based." It was further deficient because the notice was confusing on its face, and as a result did not comply with procedural due process requirements as set forth in *Allen*. Finally, the Division's May 3, 2011 corrective notice could not, as a matter of law, cure the defective March 18, 2011 notice and retroactively legitimate the Division's action terminating the Claimant's CAMA benefits. As a result, the Division was not correct to terminate the Claimant's CAMA benefits as of March 31, 2011.

The Claimant should be aware that this Decision does not completely resolve this case, because it is based solely upon the Division's defective notices. In the *Allen* case, the Alaska Supreme Court did not automatically find in favor of the claimant because of the defective notice. Instead, the Court allowed the Division to correct its defective notice by completely reissuing it. *Allen* at 1169. Accordingly, in this case the Division must likewise be given the option of issuing a legally sufficient benefit termination notice to the Claimant.

If the Division, following receipt of this order, again issues a benefit termination notice, and if, after receipt of the new notice, the Claimant still disagrees with the Division's action, the Claimant is entitled to request a new hearing within 30 days of the Division's action (7 AAC 49.040).

CONCLUSIONS OF LAW

1. The Division's CAMA benefit termination notice dated March 18, 2011 was defective for the following two independent reasons:
 - a. The Division failed to comply with its own regulatory requirement that its written notices must include "*the statute, regulation, or policy upon which that action is based.*" 7 AAC 49.070 (Emphasis supplied).
 - b. The Division's notice was confusing and failed to satisfy the procedural due process requirements as set forth in *Allen*.
2. The Division's CAMA benefit termination notice dated May 3, 2011 was defective for the following two independent reasons:
 - a. The notice must be sent a minimum of 10 days *before* the adverse action. *See* 7 AAC 49.060. This means that the Division, according to its own regulations, cannot use a May 3, 2011 notice to retroactively notify the Claimant of the termination of his CAMA benefits as of March 31, 2011.
 - b. The Alaska Supreme Court, in *Allen*, was clear that the Division may not rely on supplemental notices or the hearing process to supply information which should have been provided in the first instance. *See Allen*, 203 P.2d 1155 at 1169.

DECISION

The Division was not correct when it sent the Claimant written notice, on March 18, 2011 and May 3, 2011, that his CAMA case was closed as of March 31, 2011.

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. If the Claimant appeals, the request must be sent within 15 days

from the date of receipt of this Decision. Filing an appeal with the Director could result in the reversal of this Decision. To appeal, 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

DATED this 27th day of June, 2011.

/Signed/
Larry Pederson
Hearing Authority

Certificate of Service

I certify that on this 27th day of June, 2011, true and correct copies of the foregoing were sent to:

Claimant by U.S.P.S First Class Certified Mail, Return Receipt Requested and to the following by secure e-mail:

██████████, Public Assistance Analyst
██████████, Public Assistance Analyst
██████████, Policy & Program Development
██████████, Staff Development & Training
██████████, Administrative Assistant II
██████████, Eligibility Technician I

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