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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-193
)
 Claimant.) Division Case No. [REDACTED]

FAIR HEARING DECISION

STATEMENT OF THE CASE

Mr. [REDACTED] (Claimant) applied for Interim Assistance through the Adult Public Assistance Program on November 22, 2010. (Ex. 1) On May 6, 2011, the Division of Public Assistance (Division), Department of Health and Social Services (Department), sent Claimant a notice it denied his application. (Ex. 3) Claimant requested a fair hearing on May 10, 2011. (Ex. 4.1)

This Office has jurisdiction pursuant to 7 AAC 49.010.

A hearing was held on June 30, 2011. Claimant attended the hearing in person, represented himself and testified on his behalf. Mr. [REDACTED], Public Assistance Analyst with the Division, attended the hearing in person, and testified on behalf of the Division. Mr. [REDACTED], the Division's Interim Assistance Medical Reviewer, appeared telephonically and testified on behalf of the Division. Ms. [REDACTED], Supervisor of the Office of Hearings and Appeals, appeared in person as an observer. All offered exhibits were admitted. The evidentiary record closed on June 30, 2011.

ISSUE

On May 6, 2011, was the Division correct when it denied Claimant's November 22, 2010 application for Interim Assistance benefits on grounds he was not likely to meet Social Security disability requirements because his application for SSI had been denied and he had not appealed the denial?

FINDINGS OF FACT

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

1. On November 22, 2010, Claimant applied for Adult Public Assistance seeking Interim Assistance benefits (Application) pending final determination of his application for Supplemental Security Income (SSI) from the federal Social Security Administration (SSA). (Ex. 1)
2. On March 11, 2011, the SSA denied Claimant's application for SSI. (Ex. 3.1) On March 17, 2011, Claimant appealed the SSA denial of Supplemental Security Income (SSI). (Ex. 3.1)
3. On May 6, 2011, the Division of Public Assistance (Division) sent Claimant a written notice informing Claimant his November 22, 2010 Application was denied.¹ (Ex. 3.0) The reason for denial was that the Division had been informed the SSA had denied Claimant's application for SSI because "you are not blind or disabled," and because Claimant had not appealed the SSI denial.² (Ex. 3.0) The notice also stated "since your SSI was denied and your interim assistance was denied by the medical reviewer³ your adult public assistance has been denied." (Ex. 3.0)
4. On May 10, 2011, Claimant requested a Fair Hearing to dispute the Division's denial of his November 22, 2010 Application. (Ex. 4.1) Claimant also submitted documentary proof he had appealed the SSA's denial of SSI eligibility on March 17, 2011. (Ex. 4)
5. During the Fair Hearing on June 30, 2011, Claimant and the Division's Hearing Representative agreed that on March 17, 2011 Claimant had appealed the SSA's denial of his SSI application. (Ex. 3.1; parties' testimonies)

¹ The notice stated Alaska's denial action was based on 7 AAC 40.140 and 7 AAC 40.170 and APA Manual Sections 425-2C and 426-5. (Ex. 3.0)

² During the hearing, and on the Division's Position Statement, the Division represented it sent a notice to Claimant on March 24, 2011 (Ex. 3) and that Claimant requested a Fair Hearing on March 30, 2011. (Ex. 4-4.1) No such documents bearing these dates are in the evidentiary record and the exhibits referenced have dates of May 6, 2011 and May 10, 2011, respectively. Therefore, the correct dates are May 6, 2011 and May 10, 2011, respectively.

³ These words in the notice did not provide Claimant with information different than the rest of the notice. Specifically, Claimant was led to believe the medical reviewer denied for the reason(s) stated in the notice. In fact, the medical reviewer had determined Claimant's alleged impairment did not meet the durational requirement, which is a pre-requisite to being "likely to be found disabled" by SSA (7 AAC 40.180(b)) or as required by 7 AAC 40.180(c)(5). This decision does not reach the issue of the legal defects in the May 6, 2011 notice, nor whether the medical reviewer's determination was correct. *See* footnote 5, hereinafter.

PRINCIPLES OF LAW

A. Burden of Proof and Standard of Proof

“Ordinarily the party seeking a change in the status quo has the burden of proof.” *State, Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985). Therefore, Claimant bears the burden of proving he is eligible to receive the public assistance for which he has applied.

The standard of proof in an administrative proceeding is a “preponderance of the evidence,” unless otherwise stated. *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Comm’n*, 711 P.2d 1170, 1183 (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).

B. *Moore v. Beirne*, 714 P.2d 1284 (Alaska 1986).

The Alaska Supreme Court, in the case of *Moore v. Beirne*, 714 P.2d 1284 (Alaska 1986), considered the payment of Adult Public Assistance benefits while an individual’s “eligibility for federal Supplemental Security Income benefits ‘is being determined.’” *Moore* at 1284. In *Moore*, the individual was receiving interim assistance as a presumptively disabled person entitled to the benefits. The court held that once an individual is receiving Interim Assistance, “Alaska Statute 47.25.455(a) requires payment of interim assistance until a final determination has been made.” *Moore* at 1285.

In reaching this holding, the court interpreted the legislature’s intent as to when an SSI application has been finally “determined.” *Moore* at 1286. The court considered the “lengthy process of appeals from initial determinations of SSI ineligibility.” *Id.* The court concluded that the legislature intended that a person receiving interim assistance would continue to receive the payments until “a final SSI eligibility decision was made” and specifically held that a final determination occurred when “a final SSI eligibility determination is made administratively” by the Social Security Administration. *Id.* at 1286-1287. By so holding, the Alaska Supreme Court established that eligibility for SSI continued until the SSA appeals process was concluded.

The impact of the *Moore* case to applicants for Interim Assistance is to establish that potential eligibility for Interim Assistance likewise continues through to final administrative determination by the SSA. Because potential eligibility for SSI endures through the final SSA administrative determination, the Division may not deny an application for Interim Assistance merely because the SSA initially has denied SSI eligibility when the SSA appeals process has not concluded. However, if the individual has not appealed the initial denial of SSI eligibility by the SSA, then administrative finality has been reached and the Division may deny an application solely because of the SSA denial. The *Moore* decision does not go so far as to make each applicant for interim assistance eligible; it does establish when a decision concerning SSI eligibility is administratively final and eligibility for SSI is no longer possible.

C. Interim Assistance is Paid only to Eligible Persons.

Alaska Interim Assistance regulation 7 AAC 40.170(a) provides, in part: “[a]n applicant for aid to the permanently and totally disabled ... must be found by the Social Security Administration to meet the definition of disability....” for the SSI program. Regulation 7 AAC 40.170(b) provides, in part: “[a]n applicant ... may receive interim assistance ... if the department determines that the applicant is disabled under 7 AAC 40.180.”

In addition to financial eligibility requirements, regulation 7 AAC 40.180 requires the Division to determine if an applicant for Interim Assistance is “likely to be found disabled” by the SSA for SSI. A number of requirements must be met before medical eligibility can be determined. 7 AAC 40.180.

ANALYSIS

Issue

On May 5, 2011, was the Division correct when it denied Claimant’s November 22, 2010 application for Interim Assistance benefits because SSA had denied Claimant’s SSI application and Claimant had not appealed the denial?

Burden of Proof; Standard of Proof.

Claimant applied for Interim Assistance benefits. Therefore, Claimant bears the burden of proving he is eligible to receive the public assistance for which he has applied.⁴

The standard of proof in an administrative proceeding is a “preponderance of the evidence,” unless otherwise stated. *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Com’n*, 711 P.2d 1170, 1183 (Alaska 1986) Therefore, Claimant must prove he is eligible for Interim Assistance benefits by a preponderance of the evidence.

A. The Division’s Denial of Claimant’s Application was Legally Incorrect

On March 11, 2011, the SSA denied Claimant’s application for SSI. On March 17, 2011, Claimant appealed the SSA denial.

On May 6, 2011, Claimant was sent written notice the Division had denied his November 22, 2011 Application for Interim Assistance because the SSA had denied his SSI application and he had not appealed it. The notice explained “since your SSI was denied and your interim assistance was denied by the medial reviewer your adult public assistance has been denied.”

⁴ “Ordinarily the party seeking a change in the status quo has the burden of proof.” *State, Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

The May 6, 2011 notice was the only notice (in the evidentiary record) sent by the Division to Claimant. Therefore, the only information Claimant was given by the notice was that his Application for Interim Assistance had been denied because the SSA had denied his SSI and he had not appealed the denial.

Claimant proved he had appealed the SSA denial of his SSI application on the same day he filed his Fair Hearing request, that is, May 10, 2011. The date of his SSI appeal was March 17, 2011. At the Fair Hearing on June 30, 2011, the parties agreed that Claimant had appealed the denial of his SSI claim. This fact is undisputed. There is no evidence that Claimant's SSA appeal had been resolved by the date the Division sent Claimant its notice his application had been denied, i.e., May 6, 2011. Therefore, Claimant's eligibility for SSI had not been finally determined administratively by the SSA as of May 6, 2011.

Under the reasoning of *Moore v. Beirne*, 714 P.2d 1284 (Alaska 1986), (discussed above in Principles of Law) the Division may not deny an application for Adult Public Assistance Interim Assistance for the sole reason that the SSA initially has denied the Claimant's SSI eligibility when the initial denial is not the final administrative determination by the SSA.

According to the May 6, 2011 notice, Claimant's Interim Assistance Application was denied by the Division, solely because the Division believed Claimant had not appealed the SSA's denial of his SSI application. The Division's belief was proved incorrect and mistaken: Claimant had appealed the SSI denial. Therefore, the Division was incorrect to deny Claimant's Application of November 22, 2011 on grounds that Claimant had been denied SSI and had not appealed.

B. Legal Effect of the Division's Erroneous Denial of Claimant's November 22, 2011 Application.

The Division's legally incorrect denial did not terminate Claimant's November 22, 2011 Application. The Division is required to consider the likelihood that Claimant will be found disabled by the Social Security Administration (SSA) by 7 AAC 40.180.⁵

⁵ There is evidence in the record, and in the hearing testimonies, that Claimant did not meet the durational requirement which is part of the SSI eligibility requirements (20 C.F.R. § 416.920(a)(4)(ii) and of the Interim Assistance eligibility requirements (7 AAC 40.180(c)(5)). For example, the Division's Interim Assistance Medical Reviewer determined that Claimant's application of November 22, 2010 was denied for failure to meet the durational requirement, implying, but not stating, that Claimant was not "likely to be found disabled" by the SSA for failure to meet this requirement. However, the May 6, 2011 notice informing Claimant of the denial did not mention this basis for denying his Application.

If this decision had not determined the Division was incorrect to deny the Application as stated, this decision would have found the Division's denial of Claimant's Application incorrect for failing to meet due process notice requirements in its May 6, 2011 notice. The May 6, 2011 notice would have been determined to not meet due process notice requirements because it failed to inform Claimant that the medical reviewer's reason for denying the application was that Claimant's alleged impairment did not meet the durational requirement. Claimant had to be informed of that reason in order to be able to respond; if Claimant did not know this was the medical reviewers reason for denial, Claimant was deprived of the essence of a hearing, that is, the opportunity to dispute the Division's reasoning. Otherwise stated, due process notice requirements were not met by the May 6, 2011 notice because it stated only that Claimant had been denied by the medical review but did not tell Claimant why. Of

CONCLUSIONS OF LAW

1. Claimant met his burden of proving by a preponderance of the evidence that the Division incorrectly denied his November 22, 2010 Application for Interim Assistance because it was mistaken in believing he had not appealed the SSA denial of his SSI application.
2. Because Claimant had appealed the SSA's denial, Claimant's application for Supplemental Security Income had not been finally determined by the administrative Social Security Administration process. *See, Moore v. Beirne*, 714 P.2d 1284 (Alaska 1986). Therefore, the Division's denial of Claimant's November 22, 2010 Application for Adult Public Assistance Interim Assistance was legally incorrect.
3. The conclusion that the Division was incorrect to deny Claimant's Application, because he had appealed the SSA's denial, does not result in a finding of eligibility for Interim Assistance. The Division is required by 7 AAC 40.180 to determine Claimant's eligibility for Interim Assistance.

DECISION

On May 6, 2011, the Division was not correct when it denied Claimant's November 22, 2010 Application for Interim Assistance on grounds that Claimant had not appealed the Social Security Administration's denial of Claimant's Supplemental Security Income application.

APPEAL RIGHTS

If for any reason Claimant is not satisfied with this decision, Claimant has the right to appeal by requesting a review by the Director. An appeal 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, Claimant must send a written request directly to:

Director of the Division of Public Assistance

course, references to Alaska statutes, regulations and Adult Public Assistance manual sections must also be correct and informative if they are to serve to inform Claimant of the basis for the Division's decision.

Due process requires the Division to give notice to Claimant with sufficient detail to inform him of its reasoning so that he can fairly meet the Division's reasons for denying his Application. *Allen v. State of Alaska Department of Health & Social Services*, 203 P.2d 1155 (Alaska 2009). Therefore, if, after receiving this decision, the Division still determines Claimant is not eligible for Interim Assistance and denies his Application, the notice the Division issues must provide sufficient detail about why it made that determination so that Claimant can address the Division's reasoning at a Fair Hearing, should he request one. In this way, the Division could address the due process deficiencies of its May 6, 2011 notice.

Department of Health and Social Services
PO Box 110640
Juneau, AK 99811-0640

DATED this August 5, 2011.


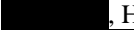
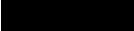
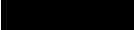
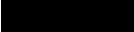
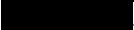
/signed/
Claire Steffens
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on August 5, 2011 true and correct copies of the foregoing were sent to:

Claimant, Certified Mail, Return Receipt Requested.

and to other listed persons (via e-mail), as follows:

, Hearing Representative
, Hearing Representative
, Chief, Policy & Program Dev.
, Administrative Assistant II
, Eligibility Technician I
, Staff Development & Training

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