

Office of Hearings and Appeals
3601 C Street, Suite 1322
P. O. Box 240249
Anchorage, AK 99524-0249
Telephone: (907)-334-2239
Fax: (907)-334-2285

STATE OF ALASKA
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
OFFICE OF HEARINGS AND APPEALS

In the Matter of)
)
 [REDACTED],) OHA Case No. 11-FH-341
)
 Claimant.) Division Case No. [REDACTED]

FAIR HEARING DECISION

STATEMENT OF THE CASE

Mr. [REDACTED] (Claimant) was a recipient of Interim Assistance through the Adult Public Assistance Program since June 1, 2002. (Ex. 1) On September 20, 2011, the Division of Public Assistance (Division), Department of Health and Social Services (Department), sent Claimant a notice it would terminate payment of Interim Assistance on September 30, 2011. (Ex. 3) Claimant requested a fair hearing on September 22, 2011. (Ex. 4.0-4.2)

This Office has jurisdiction pursuant to 7 AAC 49.010.

A Fair Hearing began on October 13, 2011 and continued on November 17, 2011. Claimant participated at the hearing by telephone, represented himself and testified on his own behalf. Claimant was assisted by Mr. [REDACTED], a friend, who participated telephonically and testified on Claimant's behalf. Ms. [REDACTED], Public Assistance Analyst with the Division, attended the hearing in person, and testified on behalf of the Division. All offered exhibits were admitted. The evidentiary record closed on November 17, 2011.

ISSUE

On September 20, 2011, was the Division correct to terminate Claimant's Interim Assistance benefits because his application for SSI had been denied at the conclusion of the SSA administrative hearing process?

FINDINGS OF FACT

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

Facts Concerning Alaska Interim Assistance Benefits

1. Claimant applied for and received Interim Assistance benefits from the Alaska Adult Public Assistance program beginning June 1, 2002. (Ex. 1; *see also* Ex. D, pp. 6, 12)
2. On September 19, 2011, the Division of Public Assistance (Division) received information the Social Security Administration (SSA) had issued a “unfavorable” decision in Claimant’s appeal of the denial of his application for Supplemental Security Income (SSI). (Ex. 2) The SSA coded Claimant’s status as “T51.” (Exs. 2, 2.1) The code “T51” means “systems generated termination (no previous payment made),” indicating Claimant had never received SSI and his application for SSI had been terminated by the SSA. (Ex. 2.2) The Division learned Claimant’s SSI application had been denied by the Social Security Appeals Council. (Ex. 3)
3. On September 20, 2011, the Division of Public Assistance (Division) sent Claimant a written notice informing him his Interim Assistance benefits would end on September 30, 2011. (Ex. 3) The Notice explained his benefits would end because “[y]our SSI appeal was denied at the appeals council review level.” (Ex. 3)
4. On September 22, 2011, Claimant requested a Fair Hearing challenging the termination of his benefits on grounds he had “appealed his case to the federal court.”¹ (Exs. 4.0-4.1)

Facts Concerning Social Security Administration Actions

5. On September 12, 2007, the Social Security Administration (SSA) denied Claimant’s application for Supplemental Security Income (SSI). (Ex. 2.1) The reason for this denial was coded N31. (Ex. 2.1) On September 21, 2007, Claimant appealed the denial. (Ex. D, p. 1) On December 7, 2007, Claimant was notified by the SSA it had received his request for a hearing before an Administrative Law Judge. (Ex. D, p. 2)
6. On May 14, 2009, Claimant filed another appeal of his SSI application. (Ex. D, p. 3)
7. On or about April 29, 2011, the SSA denied Claimant’s appeal. (Claimant’s testimony) In May 2011, Claimant was notified by the SSA that his appeal of the denial of his SSI application had ended unfavorably. (Claimant’s testimony)

¹ Claimant’s written Fair Hearing request also states he “does not feel he was notified timely.” (Ex. 4.1) This statement is not considered an issue in this case because of the undisputed facts concerning timely notice. Those facts are that the Division became informed of the SSA’s action on September 19, 2011, notified Claimant the next day, and Claimant requested a Fair Hearing two days later. *See* Exs. 2.0; 3; 4.0-4.1. Therefore, the Division promptly notified Claimant after it learned of the denial of his appeal.

8. On May 10, 2011, Claimant filed a Complaint in federal District Court. (Ex. D, pp. 4-5, 17; Ex. B, pp. 1-2)

9. Claimant believes the fact he filed a case in the federal District Court nullified the jurisdiction of the social security appeals council review to deny his SSI application. (Claimant's testimony; Ex. D, p. 17)

10. On November █, 2011, Claimant provided the Division and this Office of Hearings and Appeals with a copy of the U.S. District Court Civil Docket for his case, █, Case No. █. (Ex. B, pp. 1-2; see also Ex. D, pp.4-5) This Exhibit shows a Complaint was filed on May 10, 2011. (Ex. B, p. 1) This Exhibit shows an order dated July 19, 2011 directing Claimant to file an opening brief requesting summary judgment by September 6, 2011 or show cause why the case should not be dismissed for lack of prosecution. (Ex. B, p. 2) The last entry on this Exhibit shows that on September 28, 2011, Claimant filed a letter concerning Alaska's termination of his Interim Assistance benefits with attachments. (Ex. B, p. 2)

11. At the time of the Fair Hearing on November 17, 2011, Claimant did not supply current information concerning his District Court case. On November 15, 2011, additional documents consisting of Claimant's case file with the Alaska Division of Public Assistance were submitted as evidence.² (Ex. C)

PRINCIPLES OF LAW

I. Burden of Proof and Standard of Proof

“Ordinarily the party seeking a change in the status quo has the burden of proof.” *State, Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985). When the Division seeks to terminate interim assistance benefits, it is the party seeking to change the status quo and therefore bears the burden of proving its action is correct.

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).

II. Interim Assistance Program: Alaska Laws

A. Statutes and Regulations: Eligibility

The State of Alaska, through the Division of Public Assistance (Division), Adult Public Assistance Program³, may pay a monthly cash benefit to an eligible applicant while the applicant awaits the Social

² Much of the documentation concerned applications for public assistance that are not related to Claimant's Interim Assistance case. For administrative convenience, all documents relating to Claimant's Interim Assistance or SSI were segregated and marked Exhibit D.

Security Administration's (SSA) final decision whether the applicant is eligible to receive Supplemental Security Income (SSI). AS 47.25.455; 7 AAC 40.170(b). Alaska's monthly payment is called Interim Assistance. AS 47.25.455.

An applicant for Interim Assistance is required to apply for Supplemental Security Income (SSI) benefits from the Social Security Administration (SSA).⁴ 7 AAC 40.060. An individual may apply for Interim Assistance from Alaska by alleging permanent and total disability. 7 AAC 40.170.

To obtain Interim Assistance benefits, an applicant must be determined by the Division of Public Assistance (Division) to be eligible for Adult Public Assistance. AS 47.25.455(a). 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 particular, the Division is required to base its determination of eligibility due to disability, in part, on whether it believes the applicant will "likely to be found disabled by the Social Security Administration." 7 AAC 40.180.

The receipt of Interim Assistance benefits are based on the Division's expectation the SSA will find an applicant disabled and on the SSA's actions in regard to the individual's SSI application. Regulation 7 AAC 40.190(a) provides that once the SSA's administrative process has reached a final determination whether or not an individual is disabled or not, the Interim Assistance terminates.

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.

7 AAC 40.190(a)

B. Judicial Interpretation

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 when the receipt of interim assistance payments terminates in context of the period 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.

³ The Alaska statute authorizing Adult Public Assistance states, in relevant part: "[f]inancial assistance shall be given under AS 47.25.430-47.25.615 so far as practicable under appropriations made by law, to every aged, blind, or disabled needy resident who has not made a voluntary assignment or transfer of property to qualify for assistance." AS 47.25.430(a).

⁴ While there are some exceptions to this rule, they do not apply in this case. *See e.g.* 7 AAC 40.170(c).

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." *Id.* at 1286-1287. The court 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 through the administrative process.

Therefore, once SSA administrative finality has been reached, the Division may deny an application for Interim Assistance solely because of the SSA's denial of an SSI application.

III. Social Security Administration (SSA) Appeals Process for Supplemental Security Income (SSI) Applications

Federal regulations at 20 C.F.R. § 416.1400 - § 416.1619 pertain to the SSA administrative review process and SSA determinations. Regulation 20 C.F.R. § 416.1400 explains the administrative review process. First, an application is subject to "initial determination" which may be reconsidered upon request by the applicant if he or she is dissatisfied. Regulation 20 C.F.R. § 416.1400(a)(1),(2). After reconsideration, if the applicant is dissatisfied with the "reconsideration determination" the applicant may request a hearing before an administrative law judge. Regulation 20 C.F.R. § 416.1400(a)(3). If the applicant is dissatisfied with the decision of the administrative law judge, the applicant may request review by the Appeals Council. Regulation 20 C.F.R. § 416.1400(a)(4).

When the Appeals Council review has been concluded, the administrative process is at its end and the applicant then may request judicial review by filing an action in a Federal district court. Regulation 20 C.F.R. § 416.1400(a)(5).

ANALYSIS

Issue

On September 20, 2011, was the Division correct to terminate Claimant's Interim Assistance benefits because his application for SSI had been denied at the conclusion of the SSA administrative hearing process?

Burden of Proof; Standard of Proof.

Claimant was receiving Interim Assistance benefits. Therefore, the Division bears the burden of proving it properly terminated his benefits because it is the party changing the status quo. *See Principles of Law*, above.

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 Correct

Claimant received Interim Assistance during the entire period that the Social Security Administration considered his Supplemental Security Insurance application. Each time the SSA denied his application, Claimant appealed the denial. *See* Finding of Fact 5-7. The final administrative denial occurred on or about April 29, 2011 when the SSA appeals council denied Claimant's application. *See* Finding of Fact 3, 7.

Alaska regulation 7 AAC 40.190(a) expressly provides

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.

The Alaska Supreme Court has interpreted the termination of interim assistance benefits as described in 7 AAC 40.190(a) to be correct. *Moore v. Beirne*, 714 P.2d 1284 (Alaska 1986) (discussed above in Principles of Law).

The Division learned of the SSA's denial of Claimant's SSI application by the SSA Appeals Council on September 19, 2011. The Division properly notified Claimant the next day, September 20, 2011 and informed Claimant his Interim Assistance benefit would end on September 30, 2011. According to the September 20, 2011 notice, Claimant's Interim Assistance benefits were terminated because the Division of Public Assistance had been informed by the SSA that Claimant's application for SSI had been denied.

B. Claimant's Argument

Claimant argued that filing a complaint in the federal district court somehow undid the unfavorable review by the SSA Appeals Council. Claimant provided no legal or evidentiary support for his claim.

This argument has no merit in light of 7 AAC 40.190(a), which provides that Interim Assistance terminates upon a finding of eligibility or ineligibility for SSI at the conclusion of the SSA administrative process.

CONCLUSIONS OF LAW

1. The Division was correct to terminate Claimant's Interim Assistance benefits as of September 30, 2011 because Claimant had exhausted his administrative appeals with the Social Security Administration and his application for Supplemental Security Income had been denied. 7 AAC 40.190(a); *Moore v. Beirne*, 714 P.2d 1284 (Alaska 1986).

DECISION

On September 20, 2011, the Division was correct to terminate Claimant's Interim Assistance benefits effective on September 30, 2011.

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

DATED this January 25, 2012.

/signed/
Claire Steffens
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on January 25, 2012 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