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

In The Matter Of:)	
)	
J A. J,)	OHA Case No. 11-FH-470
)	
Claimant.)	DPA Case No.
_____)	

FAIR HEARING DECISION

STATEMENT OF THE CASE

Ms. J A. J (Claimant) has received Interim Assistance benefits from the State of Alaska since March 2004 (Exs. 1, 3). On October 20, 2011 the Division of Public Assistance (DPA or Division) mailed a notice to the Claimant stating that her Interim Assistance benefits would end after October 31, 2011 (Exs. 3, 30). The Claimant requested a hearing on this issue by letter dated November 20, 2011 and received by the Division on November 21, 2011 (Exs. 27.1 – 27.3). The Claimant also requested a hearing by telephone on December 7, 2011 (Exs. 8, 31). This Office has jurisdiction to decide this case pursuant to 7 AAC 49.010.

On December 12, 2011 the Division filed a motion to dismiss the Claimant’s hearing request on the grounds that it was untimely. The Claimant opposed the Division’s motion by letter dated December 19, 2011 and received by this Office on December 23, 2011 (Exs. 26.1, 26.2). The Division withdrew its motion to dismiss by letter dated December 22, 2011 and received by this Office on December 23, 2011. An order confirming that the case would go forward on its merits was issued by this office on December 28, 2011.

The Claimant’s hearing began as scheduled on January 18, 2012 before Hearing Examiner Jay Durych. The Claimant participated in the hearing by telephone, represented herself, and testified on her own behalf. Jeff Miller, a Public Assistance Analyst with the Division, attended the hearing in person and represented and testified on behalf of the Division. All testimony was received and all of the parties’ exhibits were admitted into evidence.

The hearing could not be completed within the one hour period allotted. Accordingly, the hearing was continued to March 7, 2012. However, on February 17, 2012 this Office received a

letter from the Claimant which requested, among other things, that the March 7, 2012 hearing date be vacated and that the case be decided based on the testimony and exhibits already in the record (Ex. 24). The Division initially opposed this request, but subsequently withdrew its opposition on February 23, 2012. This Office issued an order vacating the scheduled hearing and closing the record on February 23, 2012. ¹

ISSUE

Was the Division correct to terminate the Claimant's Interim Assistance benefits after October 31, 2011 based on information that the United States Social Security Administration had denied the Claimant's application for Supplemental Security Income at the Appeals Council level?

FINDINGS OF FACT

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

1. The Claimant initially applied to the United States Social Security Administration (SSA) for Supplemental Security Income (SSI) in 1997 (Claimant testimony). The Claimant applied for Interim Assistance benefits from the State of Alaska in 2004 and has been receiving Interim Assistance since March 2004 (Ex. 1). ²
2. The Social Security Administration provides four levels of review for applications for Supplemental Security Income. *See* SSA Publication No. 05-10041 (January 2008). These levels of review, following an initial adverse determination, are: (1) reconsideration; (2) hearing before an administrative law judge; (3) review by the Appeals Council; and (4) appeal to the federal district court. *Id.*
3. On September 18, 2009 SSA issued a letter to the Claimant, titled "Notice of Appeals Council Action," which stated in relevant part as follows (Ex. 17.1 - separate paragraphs consolidated for brevity):

This is about your request for review of the Administrative Law Judge's decision dated February 4, 2009. We have denied your request for review. We found no reason under our rules to review the Administrative Law Judge's decision This means that the Administrative Law Judge's decision is the final decision of the Commissioner of Social Security in your case.

¹ On February 29, 2012 this Office received a letter from the Claimant objecting that her hearing had not been held as promptly as required by the applicable regulations. However, the Claimant's hearing was held well within the 90 day period specified by Alaska Fair Hearings regulation 7 AAC 49.180. Further, although this decision is being issued outside the timeframe specified by 7 AAC 49.180, the Claimant has not been prejudiced because, pursuant to her request (Ex. 31), she was provided with continuing Interim Assistance benefits pending the issuance of this decision pursuant to 7 AAC 49.190.

² Filing an application for SSI with SSA is a legal prerequisite to receipt of Interim Assistance benefits from the State of Alaska (*see* discussion in Principles of Law, below).

4. On November 16, 2009 the Claimant filed a document with SSA challenging the Appeals Council's decision of September 18, 2009 (referenced above) (Ex. 17.5). This caused the Claimant's SSI case to remain on the Appeals Council's docket for approximately 25 months after issuance of the Appeals Council's decision. *Id.*

5. On or about October 19, 2011, upon receiving an inquiry from DPA, SSA reviewed its docket and realized that the Claimant's filing of November 16, 2009 did not affect the finality of the prior Appeals Council decision and that the Claimant's SSI case had actually been concluded approximately two years prior and was no longer active (Ex. 2). Accordingly, on October 19, 2011 the Social Security Administration informed the Division that the Claimant's application for SSI had been denied at the Appeals Council level (Ex. 2).

6. On October 20, 2011 the Division mailed a notice to the Claimant which stated in relevant part as follows (Ex. 3 - separate paragraphs consolidated for brevity):

Interim Assistance [benefits] will end on October 31, 2011. We denied your application because [the Social Security Administration] determined that you are not blind or disabled and denied your application for Supplemental Security Income (SSI).

7. On October 25, 2011 SSA issued a letter to the Claimant which stated in relevant part as follows (Ex. 17.5):

We have advised the State of Alaska [Division of] Public Assistance that you have no active claim with our agency. Up to this point, there was consideration that an appeal filed by you on 11/16/09 needed to be acted upon by the Appeals Council. However, that 11/16/09 filing was erroneous – you were no longer in an appeals period. We have recently received a judgment from our regional office that all appeal actions related to your past filings expired 65 days after the determination of your second hearing rendered 09/18/09.

....

Any further hearings or appeals filed by you in relation to the past actions on your case will be ignored.

Your only option concerning your past filings [is] to file suit in the federal courts .

...

You may also file a new disability claim at any time which will be effective only from the date of the new filing forward.

8. On November 21, 2011 the Claimant filed a new application for SSI with SSA (Ex. 15.1). She also filed a separate request with SSA (Exs. 12.1, 28) asking that SSA reconsider its denial of her prior application for Supplemental Security Income (SSI). On November 23, 2011 SSA issued a letter to the Claimant which stated in relevant part as follows (Ex. 17.7):

On 11/21/11 you submitted a reconsideration request concerning your previous applications and appeals for SSI disability benefits. As we advised you in our previous correspondence, you have exhausted all appeal rights on those previous claims and any new reconsiderations, hearings, or appeals council request you submit related to your previous filings will not be processed . . . Please do not submit any further paperwork to SSA concerning your prior filings for SSI.

9. The Claimant requested a hearing with regard to the Division's termination of her Interim Assistance benefits by letter dated November 20, 2011 (received by the Division on November 21, 2011) (Exs. 27.1 – 27.3). The Claimant also requested a hearing by telephone on December 7, 2011 (Exs. 8, 31), at which time she requested continuing Interim Assistance benefits pending the issuance of this Office's decision in this case.

10. At the hearing of January 18, 2012 the Claimant testified in relevant part as follows:

a. She originally applied to SSA for SSI benefits in 1997.

b. The Social Security Administration Appeals Council denied her application based on its finding that one of her filings with that agency was untimely. However, this was incorrect; her documents were timely filed. Accordingly, she has filed a Motion for Reconsideration with the Social Security Administration Appeals Council.

c. She appealed the Social Security Administration's final (Appeals Council) decision to the U.S. District Court for the District of Alaska on November 30, 2011.

d. She has always had problems with SSA and DPA not promptly providing her with copies of relevant documents.

e. In her view, her SSI application is still "in limbo" with SSA, and for that reason DPA should not terminate her Interim Assistance benefits.

PRINCIPLES OF LAW

I. Applicable Burden of Proof and Standard of Proof.

This case involves the Division's termination of the Claimant's previously existing Interim Assistance benefits. The Division therefore bears the burden of proof³ by a preponderance of the evidence.⁴

³ "Ordinarily the party seeking a change in the status quo has the burden of proof." *State of Alaska Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

⁴ Preponderance of the evidence is the normal standard of proof in an administrative proceeding. *Amerada Hess Pipeline v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986). Preponderance of the evidence is defined as "[e]vidence which is of greater weight or more convincing than the evidence which is offered

II. The Interim Assistance Program – Relevant Provisions.

Interim Assistance is a benefit provided by the State of Alaska to Adult Public Assistance applicants while those applicants are waiting for the Social Security Administration to approve their Supplemental Security Income applications. *See* AS 47.25.455(a) and 7 AAC 40.170(a-b). The substantive disability criteria which must be satisfied in order to qualify for Interim Assistance are set forth in 7 AAC 40.180.

Adult Public Assistance regulation 7 AAC 40.170 states in relevant part as follows:

- (a) An applicant for aid to the permanently and totally disabled whose income is within SSI income standards must be found by the Social Security Administration to meet the definition of disability contained in Title XVI of the Social Security Act, as amended (42 U.S.C. 1382c(a)(3)).
- (b) An applicant described in (a) of this section may receive interim assistance under 7 AAC 40.375 if the department determines that the applicant is disabled under 7 AAC 40.180.

Adult Public Assistance regulation 7 AAC 40.190 states in relevant part as follows:

- (a) 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. *An applicant will continue to receive interim assistance until the applicant* (1) is approved for SSI; (2) receives an adverse SSI decision and fails to appeal it to the next appeal level; (3) withdraws or abandons an appeal at any level; or (4) *receives a notice of dismissal or an adverse decision from the Social Security Appeals Council.* [Emphasis added].

Adult Public Assistance regulation 7 AAC 40.375(a) states in relevant part as follows:

- (a) An applicant who is eligible for interim assistance . . . may receive interim assistance while the individual's eligibility for SSI is being determined by the Social Security Administration.

Adult Public Assistance regulation 7 AAC 40.450 states in relevant part as follows:

- (a) Upon receipt of information from any source that indicates that a change in circumstances affecting an applicant's eligibility or amount of assistance may have occurred, the division shall investigate and, if necessary, adjust the amount of assistance or suspend or terminate assistance in accordance with 7 AAC 49.060.

in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black’s Law Dictionary at page 1064 (West Publishing, Fifth Edition, 1979).

Adult Public Assistance regulation 7 AAC 40.460 states in relevant part as follows:

(b) If the division determines that an applicant who has been receiving assistance is ineligible for assistance and that the cause of ineligibility appears to be of uncertain or indefinite duration, it will terminate assistance. The applicant must complete a new application and provide documentation that he meets all factors of eligibility to again receive assistance.

In *Moore v. Beirne*, 714 P.2d 1284 (Alaska 1986) the Alaska Supreme Court stated:

The purpose of interim assistance is to alleviate hardship on applicants for SSI during the application period.

....

In sum, considering the text of AS 47.25.455(a), its purpose, and its legislative history, we hold that the [interim assistance statute] requires state payment of interim assistance *through the SSI appeals process until a final SSI eligibility determination is made administratively*. [Emphasis added].

ANALYSIS

The relevant facts in this case are not disputed. The Claimant began receiving Interim Assistance benefits from the State of Alaska in March 2004 after filing an application for Supplemental Security Income with the Social Security Administration (Exs. 1, 3). The Social Security Administration denied the Claimant's Supplemental Security Income application at the Appeals Council level on September 18, 2009 (Ex. 17.1). Due to what appears to have been a docketing error by SSA (Ex. 17.5), the Division did not find out that the Claimant's Supplemental Security Income application had been denied by SSA at the Appeals Council level until approximately two years later (Exs. 2, 17.5). As soon as the Division found out that the Claimant's Supplemental Security Income application had been denied by SSA at the Appeals Council level, it notified Claimant that it was terminating her Interim Assistance benefits on or after October 31, 2011 (Ex. 3).

Because the relevant facts are not in dispute, this case presents a purely legal issue. That issue is: was the Division legally correct to terminate the Claimant's Interim Assistance benefits because the Claimant's Supplemental Security Income application was denied by the Social Security Administration's Appeals Council?

The Claimant argued at the hearing in this case that the actions of the SSA in dismissing her SSI appeal were incorrect. She essentially asks this Office to re-examine SSA's findings and to find that they were incorrect. However, the law prevents this Office from doing so for two reasons.

First, the State of Alaska's "Fair Hearings" regulations, which define the jurisdiction of this Office, do not give this Office the authority to second-guess the findings and conclusions of a federal agency. *See* 7 AAC 49.020, 7 AAC 49.100, and 7 AAC 49.170.

Second, the Supremacy Clause of the United States Constitution (Article VI, Section 2) generally operates to prevent a state agency from attacking the findings of a federal agency. *See*, for example, *Mancusi-Ungaro v. Caldwell*, 205 S.E.2d 58 (Ga.App. 1974) (the findings of a federal agency are final and conclusive on a state agency).⁵

The Alaska Interim Assistance regulations regarding the effect of the denial of an application for Supplemental Security Income by the Social Security Administration at the Appeals Council level are clear and unambiguous. Pursuant to 7 AAC 40.160(a), an Interim Assistance recipient "will continue to receive interim assistance until the [recipient] . . . (4) receives . . . an adverse decision from the Social Security Appeals Council." This regulation (7 AAC 40.160(a)) does not contain any exception to the termination requirement for cases in which a recipient appeals his or her adverse Appeals Council decision to federal district court.

The foregoing interpretation of the Interim Assistance statutes and regulations was confirmed by the Alaska Supreme Court in *Moore v. Beirne*, 714 P.2d 1284 (Alaska 1986). *See* discussion in Principles of Law, above.

In summary, the Claimant's eligibility for state Interim Assistance benefits ended when the Social Security Administration's Appeals Council denied her application for Supplemental Security Income on September 18, 2009 (Ex. 17.1). Because of an apparent docketing error by SSA, this information was not communicated to the Division for over two years (Exs. 2, 17.5). Thus, the Claimant actually received Interim Assistance benefits for at least two years after the time when her Interim Assistance benefits should have been terminated. Accordingly, the Division was correct when, on October 20, 2011, it terminated the Claimant's Interim Assistance benefits, effective October 31, 2011, pursuant to AS 47.25.455(a), 7 AAC 40.375(a), 7 AAC 40.190(a), and *Moore v. Beirne*, 714 P.2d 1284 (Alaska 1986).⁶

CONCLUSIONS OF LAW

1. The Division was required by the explicit terms of state regulation 7 AAC 40.160(a)(4) to terminate the Claimant's Interim Assistance benefits upon becoming aware in October 2011 that the Social Security Administration's Appeals Council had denied the Claimant's Supplemental Security Income application in September 2009.

2. The Division was therefore correct when on October 20, 2011 it notified the Claimant that her Interim Assistance benefits would end after October 31, 2011.

⁵ This principle does not apply, however, between a final SSA determination and either a subsequent new SSA application, or a subsequent new Interim Assistance application, because the later involve subsequent time frames during which the medical condition of the applicant may have worsened.

⁶ The Claimant is, however, free to submit a new application for Interim Assistance benefits at any time.

DECISION

The Division was correct when on October 20, 2011 it notified the Claimant that her Interim Assistance benefits would end after October 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 31st day of May, 2012.

/signed/
Jay Durych
Hearing Authority

CERTIFICATE OF SERVICE

On May 31, 2012 copies of the foregoing decision were sent to the Claimant via U.S.P.S. Mail, and to the remainder of the service list via secure / encrypted e-mail, as follows:

Claimant – Certified Mail, Return Receipt Requested

Terri Gagne, DPA Hearing Representative
Jeff Miller, DPA Hearing Representative
Erin E. Walker-Tolles, Public Assistance Program Officer
Joy Dunkin, Training Specialist III
Kari L. Lindsey, Administrative Assistant II
Courtney Wendel, Administrative Assistant II

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