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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. 10-FH-330
)
 Claimant.) Division Case No. [REDACTED]

FAIR HEARING DECISION

ORDER ON REQUEST FOR RECONSIDERATION

The Decision in this case was issued January 7, 2011. On January 26, 2011, the Office of Hearings and Appeals received a Request for Reconsideration (Request) from the Division of Public Assistance. On January 27, 2011, Claimant was informed of the Request and offered an opportunity to respond. On February 3, 2011, Claimant’s Opposition to Agency Request for Reconsideration was received by the Office of Hearings and Appeals.

The Division’s Request argues: 1) regulations 7 AAC 47.160(a) and (c)(4) had been overlooked in reaching the decision; and 2) regulation 7 AAC 47.060 was mis-construed in reaching the decision. The request to consider these two arguments is granted.

The Request for Reconsideration argues in support that: “[t]he fact the mortuary agreed to provide services through the use of a signed agreement with no immediate requirement of payment meets the criteria outlined in (c)(4) of [7 AAC 47.160(c)(4)].” This argument was not raised at any time in this case prior to the Request for Reconsideration. This argument is not properly brought after the hearing because it does not permit Claimant the opportunity to address it during the hearing.

However, Claimant’s Opposition did address the Division’s argument, in part. Claimant’s Opposition asserted there was no expectation of credit or granting of credit by the Funeral Home. Claimant re-asserted, as she did during the hearing, that all parties contracting for the Funeral Home’s services expected decedent’s life insurance policy to pay the entire charges.

The arguments in the Division’s Request for Reconsideration have been considered. The request for a change in the Decision issued January 7, 2011 is DENIED.

I. Authority to Address Requests for Reconsideration.

The Department of Health and Social Services regulations governing Fair Hearings are found at 7 AAC 47.010-.900. These regulations do not provide a procedure or requirement pertaining to motions for

reconsideration of decisions issued by the Office of Hearings and Appeals. Clearly, there may be occasions when a party, in good faith and in the interests of justice, may seek reconsideration of one or more points of law embodied in a decision issued by a Hearing Authority.

Motions for reconsideration are addressed in the Alaska Rules of Civil Procedure (ARCP) that are applicable to actions in the Alaska civil courts. *See*, Alaska Rule of Civil Procedure 7(k)(1).¹ The Division's Request asserts the Hearing Authority overlooked a regulation and mis-construed another regulation. The agency's Request asserts a new legal theory not heretofore raised: i.e., that the funeral home extended credit, which credit constituted a resource available to Claimant at the time of her application. A Request for Reconsideration is not a forum for asserting new facts or previously unasserted legal theory(ies). *See*, footnote 2.

Generally, the request meets the requirements of ARCP 77(k)(1). In the absence of a regulation directly addressing requests for reconsideration by the Office of Hearings and Appeals, the Alaska Rules of Civil Procedure may be applied. Therefore, the Request is granted and the Division's arguments are considered below.

II. Regulations 7 AAC 47.160(a) and (c)(4).

The Request asserts regulations 7 AAC 47.160(a) and (c)(4) first, support the agency's original decision and second, were overlooked. Regulation 7 AAC 47.160(a) states, in relevant part:

General Relief ... may not be granted if the *applicant*, despite an excess of need over income, has ...personal resources in excess of \$500 as described in (c) of this section. (Emphasis added.)

Regulation 7 AAC 47.160(c) states, in relevant part: "Personal resources include...(4)credit sufficient to directly or indirectly meet the specified need."

1) Regulations 7 AAC 47.160(a) and (c)(4) do not support the Division's original decision.

The Division first asserts regulations 7 AAC 47.160(a) and (c)(4) "supports the agencies [sic] original decision." This argument fails because the agency, i.e., the Division, never evaluated *Claimant's* financial circumstances. The Division's Eligibility Technician denied the application immediately after learning the Decedent had been buried and that *Decedent* had a life insurance policy which had paid out money. The Eligibility Technician did not request any financial information from Claimant which could constitute investigating *Claimant's* resources available to "directly or indirectly meet the specific need."

2) Regulation 7 AAC 47.160(a) and (c)(4) did not apply and were not overlooked.

Claimant was the applicant for General Relief Assistance. Because the agency *never inquired* concerning Claimant's financial resources, regulations 7 AAC 47.160(a) and (c)(4) did not apply to the facts of the case.

3) The [REDACTED] Funeral Chapel did not extend credit to Claimant.

¹ Alaska Rule of Civil Procedure 77(k)(1) provides, in relevant part: (1) A party may move the court to reconsider a ruling previously decided if, in reaching its decision: (i) The court has overlooked, misapplied, or failed to consider a statute, decision or principle directly controlling; or (ii) The court has overlooked or misconceived some material fact or proposition of law; or (iii) The court has overlooked or misconceived a material question in the case; or (iv) the law applied in the ruling has been subsequently changed by court decision or statute.

The agency argues that because the Funeral Home provided services for the Decedent and did not refuse them, then credit must have been extended to Claimant. The Division's argument is not supported by the facts.

That the [REDACTED] Funeral Chapel (Funeral Home) did not extend credit to Claimant is proven by the Funeral Home's "Statement." The Funeral Home presented a "Statement" on September 10, 2010 which was signed by Claimant's brother, not Claimant. (Exhibit 12, p. 2) A portion of the "Statement" consists of "Acknowledgment and Agreement" which states:

I (we) authorize this funeral home to perform services, furnish goods, and incur outside charges specified on this Statement. I (we) acknowledge that I (we) received a General Price List, a Casket Price List and an Outer Burial Container Price List.

Terms _____ Full payment is due no later than _____. If any payment is not paid when due, an unanticipated LATE CHARGE of _____% per month (ANNUAL PERCENTAGE RATE ____%) on the unpaid balance will be due. I (we) have read (or been read) the above, accept and approve same, and jointly and severally promise to make full payment. Receipt of a copy of this Statement is acknowledged.

Signed [by [REDACTED]]

First, the "Statement" is blank in all the portions pertaining to giving credit for the services provided by the funeral home or to delaying payment on the "Statement." Therefore, it is clear the parties did not contemplate a credit or installment payment arrangement.

Second, the Funeral Home contracted with Claimant's brother, not Claimant. Therefore, even if the debt became *de facto* credit upon the failure to pay, the credit would have been extended to Claimant's brother, not Claimant. The Division did not ascertain what resources Claimant or Claimant's brother had available before it denied Claimant's application. Therefore, the Division *could not have denied the application based on a belief that Claimant had credit* sufficient to pay Decedent's burial costs.

Third, the Division's Eligibility Technician noted in his September 24, 2010 case note "the funeral director ... stated she was *entirely clear* with daughter whom [sic] promised her the \$4700...." (Exhibit 3.0) This notation supports the fact the Funeral Home was expecting immediate payment of its Statement and was not extending credit to anyone.

Finally, regulations 7 AAC 47.160(a) and (c)(4) were not included in the analysis of the case or the Decision because the regulations do not apply under the circumstances, and as noted above. First, the Funeral Home did not extend credit but demanded immediate payment and second, the Division did not conduct any inquiry into the resources of Claimant, or any other legally responsible relative.

III. Regulation 7 AAC 47.060 Period of Eligibility.

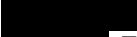
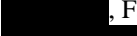
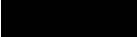
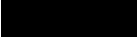
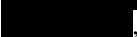

The Request for Reconsideration also asserts regulation 7 AAC 47.060 was mis-construed as authorizing an allegedly untimely submission of Claimant's Application for General Relief. The Request states, in part: "The Hearing Officer is using this section to justify the delay in *application submission*." (Emphasis added.) Request at 2.

CERTIFICATE OF SERVICE

I certify that on this 8th day of February, 2011, true and correct copies of the foregoing were sent to:

Claimant, by U.S. Post, Certified Mail, Return Receipt Requested.

And by email to:

, Fair Hearing Representative
, Fair Hearing Representative
, DPA Director's Office
, Eligibility Technican I
, Policy & Program Development
, Staff Development & Training

J. Albert Levitre, Jr.
Law Office Assistant I