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

In the Matter of	)	
	)	
<span style="background-color: black; color: black;">[REDACTED]</span> ,	)	OHA Case No. 10-FH-332
	)	
Claimant.	)	Division Case No <span style="background-color: black; color: black;">[REDACTED]</span>
_____	)	

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

[REDACTED] (Claimant) was receiving Child Care Assistance benefits from the State of Alaska in June 2010. (Ex. 3a) Her Child Care Assistance benefits expired on the last day of July 2010. *Id.* The Municipality of Anchorage, Department of Health and Human Services<sup>1</sup> (Municipality), received the Claimant's Child Care Assistance renewal application on June 1, 2010. (Ex. 4) The Municipality sent the Claimant written notice that her June 1, 2010 Child Care Assistance renewal application was denied on August 16, 2010. (Ex. 10)

On August 23, 2010, the Claimant requested an administrative review of the Municipality's denial of her June 1, 2010 Child Care Assistance renewal application. (Ex. 15a) On September 8, 2010, the State of Alaska, Department of Health and Social Services, Division of Public Assistance Child Care Program Office (Division), upheld the Municipality's denial of the Claimant's June 1, 2010 Child Care Assistance renewal application. (Exs. 17a – b.) The Claimant requested a fair hearing on September 22, 2010. (Ex. 18a) This office has jurisdiction pursuant to 7 AAC 49.010.

The Claimant's hearing was held on November 2, 2010. The Claimant attended the hearing in person and represented herself. [REDACTED], a Program Coordinator with the Division's Child Care Assistance office, attended in person and represented the Division.

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<sup>1</sup> The Division of Public Assistance delegates day to day administration of the Child Care Assistance program to local government entities, including the Municipality of Anchorage's Department of Health and Human Services. *See* 7 AAC 41.015(a). In other words, the Municipality is the Division's agent.

Per the agreement of the parties, the record was held open after the hearing until November 12, 2010 for the Claimant to submit additional documentary evidence and for the Division's written response. The Claimant's evidence was received on November 2, 2010. The Division's written response was late filed on November 16, 2010. Both the Claimant's evidence and the Division's response were admitted into evidence.

### **ISSUE**

The Division's agent, the Municipality, denied the Claimant's June 1, 2010 Child Care Assistance application on August 16, 2010 because the Claimant did not complete an interview by June 25, 2010. (Ex. 10) The Division argued that the Municipality sent the Claimant a notice she was required to schedule and complete an interview by June 25, 2010 and that her failure to schedule and attend the interview required it to deny her application. The Claimant argued that she never received the notice informing her about the required interview, and that as a result her application should not have been denied.

The resulting issue is:

Was the Division's agent, the Municipality, correct to deny the Claimant's June 1, 2010 Child Care Assistance application on August 16, 2010 because she did not schedule and complete an interview by June 25, 2010?

### **FINDINGS OF FACT**

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

1. The Claimant was approved to receive Child Care Assistance benefits for the time period from February 1, 2010 through July 31, 2010. (Ex. 3a – 3b)
2. On June 1, 2010, the Claimant filed a Child Care Assistance renewal application with the Municipality of Anchorage, Department of Health and Human Services (Municipality). (Ex. 4a – 4i)
3. The Municipality's Child Care Assistance records contain a June 14, 2010 notice addressed to the Claimant informing her that her June 1, 2010 Child Care Assistance application was incomplete and that she needed to "schedule and complete an interview by June 25, 2010" or her application could be denied. (Ex. 6) That notice was authored by a caseworker by the name of [REDACTED] *Id.* [REDACTED] did not testify at hearing.
4. The Claimant's mailing address on the June 14, 2010 notice was correct. (Claimant testimony)
5. The Claimant testified that she normally does not have problems receiving her mail. However, she stated that she did not receive the Municipality's June 14, 2010 notice. There was nothing in the Claimant's demeanor or testimony to suggest that her testimony on this point was not credible.

6. The Claimant did not contact the Municipality to schedule an interview by the June 25, 2010 deadline. (██████████ testimony)

7. The Claimant's Child Care Assistance file does not contain the June 14, 2010 notice returned to the Municipality by the Post Office.

8. The Claimant's Child Care Assistance benefits expired on July 31, 2010. (██████████ testimony) The Claimant found out from her Child Care provider she was no longer receiving Child Care assistance benefits. (Claimant testimony)

9. The Municipality sent the Claimant written notice on August 16, 2010 that her June 1, 2010 Child Care Assistance application was denied. (Ex. 10)

### **PRINCIPLES OF LAW**

A party to an administrative hearing, who is seeking a change in the status quo, has the burden of proof by a preponderance of the evidence. *State, Alcohol 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).

Child Care Assistance is a program that assists in paying child daycare costs for qualifying individuals and households. AS 47.25.001. Administration of the program may be delegated to a municipal government. 7 AAC 41.015(a). An individual who is adversely affected by the Division's, or its agent's, action may request an administrative review of the action. 7 AAC 41.435(a). If the administrative review finds against the individual, that individual may request a fair hearing under 7 AAC 49. 7 AAC 41.440(c).

"A family participating in the child care assistance program . . . shall . . . (5) renew the child care authorization in a manner timely enough to provide for continuity of care." 7 AAC 41.320(c). Eligibility for the Child Care Assistance program is determined "at least once every six months." 7 AAC 41.305(a). An applicant is required to participate in an interview. *Alaska Child Care Assistance Policy and Procedure Manual* Section 305, p. 2.<sup>2</sup> If an applicant does not complete an interview, the application is denied. *Id.*, Section 305, p. 5.

The Child Care Assistance regulations, 7 AAC 41.300 – 370, do not contain processing deadlines for Child Care Assistance applications. However, the *Alaska Child Care Assistance Policy and Procedure Manual* provides that the action must be taken on "the application to pend for more information, approve or deny with 30 days of when the application was received." *Alaska Child Care Assistance Policy and Procedure Manual* Section 305, p. 5.

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<sup>2</sup> [http://www.hss.state.ak.us/dpa/programs/ccare/files/ccpp\\_manual.pdf](http://www.hss.state.ak.us/dpa/programs/ccare/files/ccpp_manual.pdf)

When properly addressed and properly stamped mail is deposited in the United States mail, it is presumed that this mail has been delivered. *Jefferson v. Spenard Builder's Supply, Inc.*, 366 P. 2d 714, 717 (Alaska 1961); *Martens v. Metzgar*, 524 P.2d 666 (Alaska 1974).

The fact that the United States Postal Service fails to return a piece of first class mail to the sender creates a rebuttable presumption that the mail was received by the addressee. See *N.L.R.B. v. J & W Drywall, Lather & Plastering Co., Inc.*, 19 F.3d 1433 (6<sup>th</sup> Cir. 1994); *Clarke v. Nicholson*, 21 Vet. App. 130 (Vet. App. 2007).

The presumption of delivery can be rebutted by credible testimony. *Stutzka v. McCarville*, 420 F.3d 757, 762 (8th Cir. 2005) (borrower's testimony sufficiently rebuts the presumption of delivery to raise a trial worthy issue of fact); *Jones v. Novastar Mortgage, Inc. (In re Jones)*, 298 B.R. 451, 459 (Bankr. D. Kan.2003) (same); *Williams v. BankOne, N.A. (In re Williams)*, 291 B.R. 636, 648 (Bankr. E. D. Pa.2003) (debtor's trial testimony sufficiently credible to rebut the presumption of delivery); *Williams v. Gelt Fin. Corp.*, 237 B.R. 590, 595 (E. D. Pa.1999) (same).

### ANALYSIS

The issue in this case is whether the Division's agent, the Municipality, was correct to deny the Claimant's June 1, 2010 Child Care Assistance application on August 16, 2010 because she did not schedule and complete an interview by June 25, 2010.

This case involves a renewal application for Child Care Assistance. Because this case involves an application, the Claimant has the burden of proof by a preponderance of the evidence.

The undisputed facts in this case show that the Claimant applied to renew her Child Care Assistance benefits on June 1, 2010. This was well before the time her Child Care Assistance benefits were due to expire on July 31, 2010. The Division's agent, the Municipality sent her notice on August 16, 2010 that her June 1, 2010 Child Care Assistance application was denied.

The Division maintains that its agent, the Municipality, mailed the Claimant notice on June 14, 2010 that she was required to schedule and attend an interview by June 25, 2010. The Claimant testified she never received the June 14, 2010 notice. She undisputedly did not schedule and attend her interview. The Municipality's records do not contain a returned June 14, 2010 notice from the Post Office.

Under the standard rules for mailed notices, if a properly mailed notice is sent and that mailed notice is not returned to the sender, there is a rebuttable presumption that the mail was received by the addressee, in this case the Claimant. See *Jefferson v. Spenard Builder's Supply, Inc.*, 366 P. 2d 714, 717 (Alaska 1961); *Martens v. Metzgar*, 524 P.2d 666 (Alaska 1974); *N.L.R.B. v. J & W Drywall, Lather & Plastering Co., Inc.*, 19 F.3d 1433 (6<sup>th</sup> Cir. 1994); *Clarke v. Nicholson*, 21 Vet. App. 130 (Vet. App. 2007).

In this case, the presumption of receipt does not arise. [REDACTED] was the Claimant's caseworker who prepared the June 14, 2010 notice. [REDACTED] did not testify in this case. The Division, therefore, did not present any testimony that the June 14, 2010 notice was actually mailed to the

Claimant. This means the Division failed to show the June 14, 2010 notice was mailed to the Claimant.

The Claimant credibly testified that she did not receive the June 14, 2010 notice. Because she credibly testified that she did not receive the notice, even if the presumption of delivery had arisen, she rebutted the presumption. She, therefore, proved, by a preponderance of the evidence, that she did not receive the Municipality's June 14, 2010 notice informing her she was required to schedule and complete an interview with regard to her June 1, 2010 Child Care Assistance application. Consequently, the Municipality was not correct to deny the Claimant's June 1, 2010 renewal application for Child Care Assistance.<sup>3</sup>

### **CONCLUSIONS OF LAW**

1. The Division did not present evidence that its agent, the Municipality, mailed the Claimant the July 14, 2010 notice advising the Claimant she was required to schedule and attend an interview by June 25, 2010 or possibly face denial of her June 1, 2010 Child Care Assistance application.

2. The Claimant met her burden of proof, by a preponderance of the evidence, and established that she did not receive the Municipality's June 14, 2010 notice.

3. The Division's agent, the Municipality, was therefore not correct when it denied the Claimant's June 1, 2010 Child Care Assistance application on August 16, 2010.

### **DECISION**

The Division's agent, the Municipality, was not correct when it denied the Claimant's June 1, 2010 Child Care Assistance application on August 16, 2010.

### **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. To do this, the Claimant must send a written request directly to:

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<sup>3</sup> The facts of this case also show that the Municipality failed to comply with the application processing deadlines contained in the Alaska *Child Care Assistance Policy and Procedure Manual*. The *Manual* provides that the action must be taken on "the application to pend for more information, approve or deny with 30 days of when the application was received." Alaska *Child Care Assistance Policy and Procedure Manual* Section 305, p. 5. In this case, the Claimant filed her application on June 1, 2010. The Claimant's deadline, if she had received the June 14, 2010 notice, to schedule and complete her interview was June 25, 2010. The Municipality should have known of the Claimant's alleged failure to comply by the end of June 2010. It could have sent the Claimant a denial notice by July 1, 2010, the 30<sup>th</sup> day following the Claimant's June 1, 2010 application. This would have given the Claimant time to reapply for Child Care Assistance before her benefits expired at the end of July 2010. Instead, the Municipality waited until August 16, 2010 to send the Claimant her denial notice, which was both after the *Manual's* 30 day time limit for processing her June 1, 2010 application, and after the Claimant's Child Care Assistance benefits had expired.

Director of the Division of Public Assistance  
Department of Health and Social Services  
PO Box 110640  
Juneau, AK 99811-0640

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.


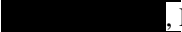
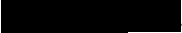
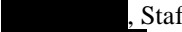
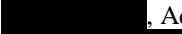
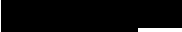
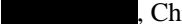
DATED this 28th day of December 2010.

/Signed/  
Larry Pederson  
Hearing Authority

Certificate of Service

I certify that on this 28th day of December 2010, true and correct copies of the foregoing were sent to:

Claimant by U.S.P.S., Certified Mail  
and to the following by e-mail:

, Child Care Program Office  
, Director  
, Policy & Program Development  
, Staff Development & Training  
, Administrative Assistant II  
, Eligibility Technician I  
, Chief of Field Services

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J. Albert Levitre, Jr.  
Law Office Assistant I