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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-395
)
 Claimant.) Division Case No. [REDACTED]
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) was approved to receive Child Care Assistance benefits for the time period from March 1, 2010 through August 31, 2010. (Ex. 6a – 6c) Her Child Care Assistance benefits expired on the last day of August 2010. *Id.* On September 9, 2010, the Municipality of Anchorage, Department of Health and Human Services, Child Care Assistance Office¹ (Municipal Child Care Assistance Office) sent the Claimant written notice that her CCA benefits expired on August 31, 2010 because the Municipal Child Care Assistance Office did not receive her Child Care Assistance benefits renewal application before those benefits expired on August 31, 2010.² (Ex. 13)

On October 7, 2010, the Claimant requested an administrative review of the Municipal Child Care Assistance Office's closing of her CCA case. (Ex. 20a) On October 21, 2010, the State of Alaska, Department of Health and Social Services, Division of Public Assistance, Child Care Program Office (Division), upheld the Municipal Child Care Assistance Office's closure of the Claimant's CCA case. (Ex. 21a – c)

The Claimant requested a fair hearing on November 12, 2010. (Ex. 22a - d) This Office has jurisdiction pursuant to 7 AAC 41.440(c) and 7 AAC 49.010.

¹ 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.

² The Claimant did not receive the Municipality's September 9, 2010 notice. It was returned to the Municipality by the Postal Service on September 17, 2010. (Ex. 15)

The Claimant's hearing was held on December 14, 2010 and January 21, 2011. The Claimant attended the hearing in person; she represented herself and testified on her own behalf.

██████████, a Program Coordinator with the Division's Child Care Assistance office, attended the hearing in person; she represented the Division and testified on its behalf. ██████████, ██████████, and ██████████, all of whom are employed by the Municipal Child Care Assistance Office, attended the January 21, 2011 portion of the hearing telephonically, and testified on behalf of the Division.

Per the agreement of the parties, the record was held open after the January 21, 2011 hearing until January 24, 2011 for the Division to report on whether the Claimant's case file contained any reports of contacts between the Claimant and the Municipal Child Care Assistance Office during the time period from September 17, 2010 to September 29, 2010. The Division's report was received on January 21, 2011. (Ex. 23)

ISSUE

Was the Division's agent, the Municipal Child Care Assistance Office, correct to close the Claimant's Child Care Assistance application on August 31, 2010 because the Municipal Child Care Assistance Office did not receive the Claimant's Child Care Assistance benefits renewal application before those benefits expired on August 31, 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 March 1, 2010 through August 31, 2010. (Ex. 6a – 6c)
2. On July 20, 2010, the Municipal Child Care Assistance Office mailed the Claimant written notice informing her that her "authorization for child care assistance will expire on the last day of August 2010. To avoid a loss in continued child care coverage with the Child Care Assistance Program, you must submit a completed application and necessary documents by August 09, 2010." (Ex. 9, emphasis in original)
3. The Claimant received the Municipal Child Care Assistance Office's July 20, 2010 notice. (Claimant testimony)
4. Ms. ██████████ is a family services counselor employed by the Municipal Child Care Assistance Office. (██████████ testimony). She testified as follows:
 - a. The Claimant's case file does not contain any record of the Municipal Child Care Assistance Office having received a Child Care Assistance renewal application from the Claimant before September 28, 2010.
 - b. She sent the Claimant a notice on September 9, 2010 that her case had been closed on August 31, 2010 due to a failure to renew. (Ex. 13)

- c. The September 9, 2010 closure notice was returned to the Municipal Child Care Assistance Office as undeliverable.
 - d. The normal procedure is that the envelope, returned to the Municipal Child Care Assistance Office as undeliverable, is to be retained in the Claimant's case file. That procedure was not followed in this case and the envelope was not retained by the Municipal Child Care Assistance Office.
5. The Claimant testified as follows:
 - a. She completed and mailed a stamped renewal application for Child Care Assistance benefits to the Municipal Child Care Assistance Office on or about August 8, 2010.
 - b. The Child Care Assistance renewal application she mailed on or about August 8, 2010 was not returned to her by the U.S. Postal Service.
 - c. She did not find out that her Child Care Assistance benefits had not been renewed until her child care provider asked her about them towards the end of September 2010. She called the Municipal Child Care Assistance Office and was told that her Child Care Assistance case had been closed because she had not applied to renew her benefits.
 - d. She came into the Municipal Child Care Assistance Office on September 28, 2010, which was a day or two after her telephone call with the Municipal Child Care Assistance Office, when she found out her case had been closed, and hand filed a new application.
6. The Claimant was a credible witness as determined by an observation of her demeanor during her in person testimony. In addition, her testimony was internally consistent, and her answers to questions were direct and not evasive.
7. The Claimant's September 28, 2010 Child Care Assistance application was approved effective September 28, 2010. (Ex. 19a)
8. The Municipal Child Care Assistance Office's case file is supposed to contain a record of any contact between the Claimant and the Municipal Child Care Assistance Office staff. (██████████ testimony) The Municipal Child Care Assistance Office's case file for the Claimant's Child Care Assistance case does not contain "documentation in the case notes regarding contact with [Claimant] and MOA Child Care Assistance Program staff from September 17, 2010 to September 29, 2010." (Ex. 23)
9. The Municipal Child Care Assistance Office has the Claimant's correct mailing address. (Claimant testimony)
10. Incoming mail for the Municipal Child Care Assistance Office first goes to the City Hall main mail area. It is then sorted and sent to Municipal Dept. of Health and Human Services,

where it is sorted again, and then retrieved by the Municipal Child Care Assistance Office. ([REDACTED] testimony)

PRINCIPLES OF LAW

A party who is seeking a change in the status quo has the burden of proof by a preponderance of the evidence. *State, Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985); *Amerada Hess Pipeline Corp. 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) (quoting from *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964)).

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).

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 (6th 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 Municipal Child Care Assistance Office, was correct to close the Claimant’s Child Care Assistance case on August 31, 2010 because the Municipal Child Care Assistance Office did not receive the Claimant’s Child Care Assistance benefits renewal application before her benefits expired on August 31, 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.

This case involves a factual dispute. The Claimant maintains that she mailed her Child Care Assistance renewal application to the Municipal Child Care Assistance Office on or about August 8, 2010. The Division maintains that its agent, the Municipal Child Care Assistance Office, did not receive the Claimant's renewal application. The Division argues, as a result, it was correct to close the Claimant's Child Care Assistance case on August 31, 2010.

The Claimant credibly testified she mailed the Child Care Assistance renewal application to the Municipal Child Care Assistance Office on or about August 8, 2010 and that the Post Office did not return her application to her. *See* Findings of Fact 5 and 6 above.

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 Municipal Child Care Assistance Office. *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 (6th Cir. 1994); *Clarke v. Nicholson*, 21 Vet. App. 130 (Vet. App. 2007).

In this case, the presumption of receipt arises because the Claimant was a credible witness. In other words, the Claimant's credible testimony creates a rebuttable presumption that her properly mailed August 8, 2010 Child Care Assistance renewal application was received by the Municipal Child Care Assistance Office.

In order for the Division to rebut the presumption that the Claimant's Child Care Assistance renewal application was received by the Municipal Child Care Assistance Office, it must present credible testimony that it did not receive the renewal application. *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).

While there is no reason to disbelieve the Division's witnesses, who testified that the Claimant's August 8, 2010 Child Care Assistance renewal application was not in the Municipal Child Care Assistance Office's files, the facts of this case show that there was substantial room for error in how the Municipal Child Care Assistance Office processed incoming applications, as follows:

1. Incoming mail is handled in a two step process. It is sorted at City Hall, and then sorted again at the Municipal Department of Health and Human Services before it is routed to the Municipal Child Care Assistance Office. *See* Finding of Fact 10 above.

2. The Municipal Child Care Assistance Office did not follow its own procedures in how the Claimant's returned September 9, 2010 closure notice was handled. The normal procedure is that return envelopes are retained in the Office case files. That was not done in the Claimant's case. *See Findings of Fact 4(b) – (d) above.*
3. The Claimant credibly testified she telephoned the Municipal Child Care Assistance Office towards the end of September 2010, and then submitted a new Child Care Assistance application one or two days later on September 28, 2010. *See Findings of Fact 5 and 6 above.* The Claimant is a credible witness and it makes sense she would first call the Municipal Child Care Assistance Office before submitting a new application. Normal procedure dictates that the Municipal Child Care Assistance Office would keep a record of her telephone contact, which occurred one or two days before she submitted her September 28, 2010 Child Care Assistance application. *See Finding of Fact 8 above.* However, the Municipal Child Care Assistance Office's records do not contain a record of the Claimant's telephonic contact. *Id.*

Because of the way the Municipal Child Care Assistance Office processed the Claimant's case, which did not comply with its own procedures, combined with the way the Municipality's mail is handled – which allows room for error, the Division failed to rebut the presumption the Municipal Child Care Assistance Office received the Claimant's August 8, 2010 Child Care Assistance application.

The reason the Municipal Child Care Assistance Office closed the Claimant's Child Care Assistance benefit case after August 31, 2010 was because it did not receive her Child Care Assistance renewal application. (Ex. 13) However, the Claimant proved, by a preponderance of the evidence, that she mailed the Municipal Child Care Assistance Office a Child Care Assistance renewal application on or about August 8, 2010 and that the Municipal Child Care Assistance Office received that application. As a result, the Municipal Child Care Assistance Office was not correct to close the Claimant's Child Care Assistance benefit case after August 31, 2010.

CONCLUSIONS OF LAW

1. The Claimant had the burden of proof in this case by a preponderance of the evidence. She satisfied her burden of proof and established that she mailed the Municipal Child Care Assistance Office her Child Care Assistance renewal application on or about August 8, 2010, and established a rebuttable presumption that the Municipal Child Care Assistance Office received that application.
2. The Division did not rebut the presumption that the Municipal Child Care Assistance Office received the Claimant's August 8, 2010 Child Care Assistance renewal application.
2. Because Municipal Child Care Assistance Office received the Claimant's August 8, 2010 Child Care Assistance renewal application, the Division's agent, the Municipal Child Care

Assistance Office, was not correct when it closed the Claimant's Child Care Assistance benefit case on August 31, 2010.

DECISION

The Division's agent, the Municipal Child Care Assistance Office, was not correct when it closed the Claimant's Child Care Assistance benefit case on August 31, 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:

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 3rd day of March 2011.

/Signed/

Larry Pederson
Hearing Authority

Certificate of Service

I certify that on this 3rd day of March 2011, 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:

[REDACTED], DPA/CCPO Fair Hearing Representative
[REDACTED], Administrative Assistant to Director
[REDACTED], Policy & Program Development
[REDACTED], Staff Development & Training
[REDACTED], CCAP Program Director
[REDACTED], CCPO Program Manager
[REDACTED], Social Services Coordinator

J. Albert Levitre, Jr.
Law Office Assistant I