BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES

In the Matter of	)	
	)	
E H JR.	)	OAH No. 13-1106-APA
	)	Agency No.

DECISION

I. Introduction

This case was presented as an appeal of an initial denial of Mr. H's application for Interim Assistance (IA) benefits. A hearing was held on September 4, 2013. Mr. H appeared, and was assisted in presenting his case by Ms. E C. The Division of Public Assistance (division) was represented by Ms. Terri Gagne.

At the hearing, Mr. H asserted that he had been receiving IA benefits through May of 2013, and that those benefits were terminated without any notice. According to the division, his last public assistance benefit was issued in November of 2009. It is unclear what type of benefit he had received then, but the division asserted it had no record of Mr. H receiving any benefits after that date.

The parties were given an opportunity to submit additional documents, which have now been received.[1] The division now agrees that it has records showing Mr. H had received IA benefits through May of 2013. Those records establish that his IA benefits should not have been terminated. However, the division does not agree that Mr. H should be allowed to contest the wrongful termination of his IA benefits. Instead, the division asks that its decision denying benefits based on its recent review of his medical records be upheld.

Because the division did not have a complete picture of Mr. H's benefit history at the time of the hearing, it was not possible to fully explore the factual issues in dispute. Accordingly, this matter is remanded to the division to review Mr. H's complete case history, and to issue a new determination.

---

[1] The division's supplemental documents have been marked as exhibits 11 through 28. Mr. H's documents have been marked as exhibits 29 through 33.

II. Facts

Mr. H had been receiving IA benefits since at least March of 2012.[2] On March 19, 2013, the division printed a notice stating that his benefits would terminate because the Social Security Administration (SSA) had denied his appeal.[3] On April 19, 2013, a new notice was printed, reinstating Mr. H's benefits.[4] This notice states that the prior decision was in error, as SSA had not denied his claim at the Appeals Council Level. This notice also says "A separate notice will be sent to you explaining what we need to determine your eligibility for June interim assistance."[5] That separate notice was also printed on April 19, 2013. This notice is somewhat contradictory. It starts by stating that the division is placing his April 20, 2010 application on hold because the division needs more information, but says his IA was incorrectly closed.[6] This notice goes on to say that Mr. H has thirty days to appeal the SSA's most recent ruling and that his June benefits will be "pended" until the division receives proof that he has appealed that decision.[7]

Four days later the division again terminated Mr. H's IA benefits, for the same reason listed in its March 19, 2013 notice.[8] The division had previously acknowledged, however, that the reason listed in its March 19, 2013 notice was not factually correct.[9]

It is not clear from the record whether Mr. H actually applied again for benefits; yet, the division wrote to Mr. H that it was considering his March 28, 2013 application for IA benefits.[10] On August 9, 2013, a computer printout was generated denying Mr. H's March 28 application,[11] though the denial date is also shown in the record as June 1, 2013.[12] Mr. H appealed that denial.[13]

At the hearing, Mr. H testified that he had never received notice that his IA benefits would be terminated. As of September 4, 2013, SSA had still not made a final

---

2 Exhibit 12. This exhibit consists of one page, but there is an indication of one or more additional pages which might show earlier IA payments.
3 Exhibit 16.
4 Exhibit 17.
5 *Id.* (All capital letters in original).
6 Exhibit 18.
7 *Id.*
8 Exhibit 19.
9 Exhibits 17 and 18.
10 Exhibit 20. There is no application in the exhibits submitted by either party.
11 Exhibit 24.
12 Exhibit 1.
13 Exhibit 2.67.

determination concerning Mr. H's eligibility of disability benefits.[14] His SSA hearing on that issue is currently scheduled for September 30, 2013.[15]

III. Discussion

A. Introduction

Interim Assistance is a benefit available to individuals while they are waiting for the SSA to approve an application for Supplemental Security Income (SSI).[16] Among other requirements, to receive Interim Assistance an applicant must be "likely to be found disabled by the Social Security Administration."[17] Once the division determines that an applicant is likely to be found disabled by the SSA, he receives IA benefits without further review of that disability determination.[18] IA benefits only end when the applicant:

(1) is approved for SSI;

(2) receives an adverse SSI decision and fails to appeal it to the next 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.[19]

It is now undisputed that Mr. H was receiving IA benefits in March of 2013. Accordingly, it is more likely than not true that the division had previously determined that he was likely to be found disabled by the SSA. Accordingly, his disability status could not be reviewed by the division.[20] He was entitled to continue receiving benefits until such time as he was either approved for SSI, or he had abandoned or exhausted all of his administrative remedies seeking SSI approval.[21] As of the date of this hearing, his application was still being considered by the SSA.

The March 28, 2013 application for IA benefits is not in the record. Assuming such an application was made, it should not have been considered by the division. By April 19, 2013, the division was aware that it had incorrectly terminated his IA benefits in March, and had reinstated those benefits.

---

14 Exhibit 13.
15 Testimony of Mr. H.
16 7 AAC 40.170(b); 7 AAC 40.375.
17 7 AAC 40.180(b)(1).
18 7 AAC 40.190(a). A person found to be disabled by the Division of Vocational Rehabilitation is subject to periodic review, however. 7 AAC 40.190(b). Subsection 190(b) does not appear to apply in this case.
19 7 AAC 40.190(a).
20 *Id.*
21 *Id.*

Unfortunately, on April 23, 2013, the division issued a new notice, stating in part:

> E: This is a corrected notice. Because we missed the final denial on your previous SSI application we continued interim payments to you in error. Those benefits end May 2013.[22]

With this new notice, the division repeated the mistake made in the March notice. It had not "missed" the final denial because there had been no final denial of Mr. H's SSI application at that time, or at any time since.[23]

Although the preponderance of the evidence shows the division should not have terminated Mr. H's benefits, it did terminate those benefits. The division then reviewed Mr. H's medical records and concluded he was not likely to be found disabled by the SSA.[24] The division appears to have reached this conclusion without knowing that it had previously reached the opposite conclusion from what might have been the exact same medical records.

B. This appeal cannot be resolved on the current record

The division must provide written notice ten days in advance before denying an application or terminating benefits.[25] The April 23, 2013, notice was generated *seven* days before Mr. H's benefits were terminated. Based on this notice, Mr. H would have had thirty days to appeal the termination.[26] This time requirement may be extended in limited circumstances:

> A hearing request may be accepted after the time limit under this section only if the administrative law judge finds, based on the evidence submitted, that the request for a hearing could not be filed within the time limit.[27]

Mr. H testified that he had never received notice that his benefits might be terminated. It is unclear from the testimony, however, whether this is because he never received a notice, or because the contradictory notices sent by the division were too confusing to understand. At the time of the hearing, neither the ALJ nor the division were aware that the division had sent any of the notices in March and April,[28] so Mr. H was not questioned about the termination notice.

---

22 Exhibit 19 (the original text was printed in all capital letters).
23 Exhibit 13; testimony of Mr. H.
24 Exhibit 2.1.
25 7 AAC 49.060.
26 7 AAC 49.030(a).
27 *Id.*
28 Exhibits 16 – 19.

Similarly, because it was unaware that Mr. H had previously been receiving benefits, the division did not present evidence to show that the termination notice was in fact mailed to him ten days in advance of that termination.

At the hearing, both parties focused on different issues. Mr. H focused on his claim that he had not received any notice of the termination. The division focused on whether he was likely to be found disabled by SSA, but that decision was made without knowing of the division's prior disability determination.

At this time, there is one fact that is undisputed: SSA has not yet made a final decision on Mr. H's application for SSI benefits. Based on this fact, the reason given on April 23, 2013 for terminating his benefits is incorrect. Many other facts, however, are still unresolved. Was the April 23, 2013 notice sent to Mr. H, and if so, did he have a good reason for not appealing that determination? Did Mr. H submit a new application in March of 2013? If he did, should the division have accepted and considered that application, given that his SSI application had not been denied at the Appeals Council level?[29] Can the division reconsider whether Mr. H is likely to be found disabled by SSA, given its prior determination that he is likely to be found disabled? If it can reconsider, should that determination be made in isolation, without reconciliation with the prior determination?

One option at this time would be to reopen the record and take additional evidence before issuing a final decision concerning whether Mr. H's IA benefits should be reinstated. In this case, however, the preferred option is to remand this matter to the division.[30] At this time there are more questions than answers. It also appears there may be procedural defects that could be cured were the division to start over. Remanding the matter allows the division to review the entire history of Mr. H's IA case, and make its own determination of what should be done concerning his eligibility for IA benefits. That determination, if negative, could be served on Mr. H, avoiding any need to address whether prior notice was procedurally correct. If the division determines Mr. H is no longer eligible for IA benefits, he would have the ability to file an appeal, in writing, within thirty days of the division's

---

[29] *See* Exhibit 17.

[30] Based on the evidence currently in the record, Mr. H did not receive prior notice that his IA benefits would terminate, and thus would have the right to appeal that termination. In addition, based on the current evidence, the division's decision to terminate his benefits was wrong, and would be reversed. However, because the division's records were in disarray at the time of the hearing, it is preferable to give the division a second opportunity to review the entire case history.

notice. Depending on the division's determination, the issues on appeal at that time could include all or some of the issues identified in this decision, and could potentially include new issues that might arise based on the division's review.

IV. Conclusion

This case is remanded to the Division of Public Assistance with instructions to reconsider Mr. H's Interim Assistance case in light of the issues raised above. The division shall issue a new determination promptly, and provide Mr. H notice of that determination.

Dated this 12th day of September, 2013.

Signed
Jeffrey A. Friedman
Administrative Law Judge

Adoption

The undersigned, by delegation from of the Commissioner of Health and Social Services, adopts this Decision, under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 9th day of October, 2013.

By: *Signed*
Name: Ree Sailors
Title: Deputy Commissioner, DHSS

[This document has been modified to conform to the technical standards for publication.]