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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. 11-FH-214  
 )  
 Claimant. ) Agency Case No. [REDACTED]  
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**FAIR HEARING DECISION and ORDER OF DISMISSAL**

**STATEMENT OF THE CASE**

[REDACTED] (Claimant) was receiving Senior Benefits in May 2011. (Ex. 1) He submitted a renewal application for Senior Benefits on May 3, 2011. (Exs. 2 – 2.3) The Division of Public Assistance (Division) initially denied his application on May 26, 2011. (Ex. 4) After speaking to the Claimant on June 2, 2011, the Division reconsidered its denial and approved the Claimant's Senior Benefits application. (Ex. 5.0) The Claimant requested a Fair Hearing on June 2, 2011 for the purpose of receiving retroactive Senior Benefits. *Id.*

This Office has jurisdiction pursuant to AS 47.45.306, 7 AAC 47.559, and 7 AAC 49.010.

The Claimant's hearing was held on July 12 and August 16, 2011. The Claimant attended the hearing telephonically; he represented himself and testified on his own behalf. [REDACTED] [REDACTED], a Public Assistance Analyst with the Division, attended the hearing in person; she represented the Division and testified on its behalf.

**ISSUE**

The Claimant requested a Fair Hearing on June 2, 2011. He argued that he had been improperly denied and underpaid Senior Benefits in the past, and that the Division should pay him those previously denied and underpaid Senior Benefits for the period from mid 2007 through April 2011.<sup>1</sup>

<sup>1</sup> The Claimant did not argue that his current level of Senior Benefits payments, i.e. \$175 per month from May 2011 forward, was incorrect. However, he was quite clear that he felt that he had been both underpaid Senior Benefits and improperly denied Senior Benefits in the past. This Hearing Examiner has construed the Claimant's argument and issue broadly to include the time period from his June 28, 2007 Senior Benefits application, through his \$125 per month Senior Benefits payment received in April 2011.

The Division argued that the Claimant was not entitled to retroactive Senior Benefit payments, because its decisions as to the Claimant's previous eligibility for Senior Benefit payments and amount of previously issued Senior Benefit payments were based upon information that the Claimant had provided in his previous applications.

This Office raised, on its own initiative ("*sua sponte*"),<sup>2</sup> the issue of whether the Claimant was entitled to a hearing for the purpose of obtaining retroactive benefits, when his hearing request was not filed in a timely manner.

The resulting issue is:

Is the Claimant entitled to an award of retroactive Senior Benefit payments for the period from mid 2007 through April 2011?

### **FINDINGS OF FACT**

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

1. The Claimant applied for Senior Benefits on June 28, 2007.<sup>3</sup> (Ex. 5.19 – 5.22) That application was approved as shown by the Claimant's May 30, 2008 Senior Benefits application showing that he was then receiving Senior Benefits in the amount of \$125 per month.<sup>4</sup> (Exs. 5.11 – 5.14)
2. The Claimant reapplied for Senior Benefits on May 30, 2008. (Exs. 5.11 – 5.13) That application was denied as shown by the Claimant's May 28, 2009 Senior Benefits application showing that he was not then receiving any Senior Benefit income.<sup>5</sup> (Exs. 5.7 – 5.10)
3. The Claimant applied for Senior Benefits on May 28, 2009. (Exs. 5.7 -5.10) That application was denied as shown by the Claimant's April 26, 2010 Senior Benefits application showing that he was not then receiving any Senior Benefit income.<sup>6</sup> (Exs. 5.3 – 5.6)

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<sup>2</sup> A matter considered or determined "*sua sponte*" is a matter considered or determined on a court's (or other judicial or quasi-judicial entity's) "own will or motion . . . without prompting or suggestion" by either party. *Black's Law Dictionary* at 1277 (West, 5th Edition, 1979). "[A] court may consider an issue 'antecedent to ... and ultimately dispositive of' the dispute before it, even an issue the parties fail to identify and brief." *United States National Bank v. Independent Insurance Agents of America, Inc.*, 508 U.S. 439, 447, 113 S.Ct. 2173, 2178, 124 L.Ed.2d 402 (1993), quoting *Arcadia v. Ohio Power Co.*, 498 U.S. 73, 77, 111 S.Ct. 415, 112 L.Ed.2d 374 (1990), *rehearing denied* 498 U.S. 1075, 111 S.Ct. 804, 112 L.Ed.2d 865 (1991).

<sup>3</sup> The record also contains an early Senior Benefits application dated May 16, 2007. (Exs. 5.15 – 5.18) It is not clear what action, if any, the Division took with regard to this application.

<sup>4</sup> The record does not indicate the date when the Claimant began receiving his 2007 Senior Benefits payments.

<sup>5</sup> The record does not indicate the date when the Division notified the Claimant his May 30, 2008 Senior Benefits application was denied.

<sup>6</sup>The record does not indicate the date when the Division notified the Claimant his May 28, 2009 Senior Benefits application was denied.

4. The Claimant applied for Senior Benefits on April 26, 2010. (Exs. 5.3 – 5.6) That application was approved and the Claimant began receiving Senior Benefits beginning in May 2010 in the amount of \$125 per month.<sup>7</sup> (Exs. 1, 2.1)

5. The Claimant reapplied for Senior Benefits on May 3, 2011. (Exs. 2 – 2.5) The Division initially denied his application on May 26, 2011. (Ex. 4) After speaking to the Claimant on June 2, 2011, the Division reconsidered its denial and approved the Claimant's Senior Benefits application. (Exs. 5.0, 6) The Division increased the Claimant's monthly Senior Benefit payment to \$175 per month beginning with the month of May 2011. *Id.*

6. The Claimant requested a hearing on retroactive Senior Benefits on June 2, 2011. (Ex. 5.0)

### **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, 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).

The Alaska Senior Benefits Payment Program (Senior Benefits) is a cash assistance program that pays a monthly cash benefit to eligible Alaska residents who are 65 years of age or older. AS 47.45.301 – 302. The amount of an applicant's monthly Senior Benefits payment is based upon an applicant's annual gross income. 7 AAC 47.549(a). The monthly Senior Benefits payment amount is:

(1) \$250 if the individual's household income does not exceed 75 percent of the federal poverty line for Alaska;

(2) \$175 if the individual's household income does not exceed 100 percent but is above 75 percent of the federal poverty line for Alaska;

(3) \$125 if the individual's household income does not exceed 175 percent but is above 100 percent of the federal poverty line for Alaska.

AS 47.45.302(b).

The Division is normally required to make and send a Senior Benefits applicant "a written eligibility decision" on his application within 30 days of the date his application is received. 7 AAC 47.557(a).

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<sup>7</sup> The record does not indicate exactly when the Division notified the Claimant his April 26, 2010 Senior Benefits application was approved.

This Office's jurisdiction includes Senior Benefit cases. AS 47.45.306, 7 AAC 47.559, and 7 AAC 49.010. It may only hear those cases under certain circumstances:

**7 AAC 49.020. Opportunity for hearing**

An opportunity for a hearing must be granted to a client whose

- (1) request for an application is denied;
- (2) claim to financial, food, or medical assistance, contained in his application, is denied or is not acted upon with reasonable promptness;
- (3) receipt of benefits the division intends to modify or terminate; or
- (4) request for a covered Medicaid service is denied.

A Claimant has a 30 day time limit within which to request a hearing:

**7 AAC 49.040. Time limit on availability.** A hearing is available upon request only for those clients who make or mail and oral or written request within 30 days after receipt of notice of the division action by which they are aggrieved.

**ANALYSIS**

The issue in this case is whether the Claimant is entitled to an award of retroactive Senior Benefit payments. The Claimant has the burden of proof in this case by a preponderance of the evidence, because he is requesting a change from the status quo: his request for payment of retroactive benefits.

The Claimant was approved for Senior Benefits in May 2010 and has been receiving them continuously since that time period. *See* Findings of Fact 4 and 5 above. He applied to renew his Senior Benefits in May 2011, and after an initial denial, had his benefits renewed. *See* Finding of Fact 5 above. On renewal, his monthly Senior Benefit amount was increased from \$125 to \$175 effective May 2011. *Id.*

The Claimant is not challenging his current level of benefits. Instead, the Claimant is seeking retroactive benefits. The Claimant presented a very broad claim for retroactive benefits. He argued that he should have been approved for benefits in the past and was not. He also argued that when he had received benefits in the past, he did not receive the full amount to which he was entitled.

The record shows the Claimant received Senior Benefits, prior to his current approval, as follows:

- a. From mid 2007 through mid 2008 in the amount of \$125 per month;
- b. No benefits from mid 2008 through mid 2010 (i.e. his May 30, 2008 and May 28, 2009 Senior Benefits applications were denied); and
- c. From May 2010 through April 2011 in the amount of \$125 per month;

See Findings of Fact 1 through 4 above.

The Alaska Fair Hearing regulations, 7 AAC 49.010 *et. seq.*, only provide Claimants with hearings when benefits have been denied, terminated, or modified **and** when the Claimant requests a hearing **within 30 days** of the date he is notified that his benefits will be denied, terminated or modified. 7 AAC 49.020 and 7 AAC 49.040.

The record does not contain the exact date that the Division notified the Claimant of its approval or denial of his June 28, 2007 (approval \$125 per month), May 30, 2008 (denial), May 28, 2009 (denial), and April 26, 2010 (approval \$125 per month) Senior Benefits applications. The Claimant did not argue or present any evidence that he did not receive notice from the Division of its approval/denial of his June 28, 2007 (approval \$125 per month), May 30, 2008 (denial), May 28, 2009 (denial), and April 26, 2010 (approval \$125 per month) Senior Benefits applications. Given the lack of any evidence from the Claimant on this point, it is a reasonable assumption that the Division would have complied with the applicable regulation, 7 AAC 47.557(a), and notified the Claimant of the approval or denial of his applications within 30 days of the date they were received.

The Claimant also did not argue or present any evidence that he requested a hearing with regard to any of the June 28, 2007 (approval \$125 per month), May 30, 2008 (denial), May 28, 2009 (denial), and April 26, 2010 (approval \$125 per month) Senior Benefits applications before June 2, 2011. The Claimant has the burden of proof in this case by a preponderance of the evidence. He did not meet it. It is therefore established that the Claimant did not request a hearing with regard to any of the June 28, 2007 (approval \$125 per month), May 30, 2008 (denial), May 28, 2009 (denial), and April 26, 2010 (approval \$125 per month) Senior Benefits applications before June 2, 2011.

On a purely legal basis, the regulation's, 7 AAC 49.040, requirement that a Claimant must request a hearing within 30 days of the date he is notified that his benefits will be denied, terminated, or modified results in the following:

- a. The Claimant cannot now challenge the amount of Senior Benefits he received (\$125 per month) as a result of his June 28, 2007 Senior Benefits application because he would have been notified of the amount of his monthly Senior Benefits payment in mid 2007, i.e. his June 2, 2011 hearing request is approximately four years too late.
- b. The Claimant cannot now challenge the denial of his May 30, 2008 Senior Benefits application because he would have been notified of that denial in mid 2008, i.e. his June 2, 2011 hearing request is approximately three years too late.
- c. The Claimant cannot now challenge the denial of his May 28, 2009 Senior Benefits application because he would have been notified of that denial in mid 2009, i.e. his June 2, 2011 hearing request is approximately two years too late.

- d. The Claimant cannot now challenge the amount of Senior Benefits he received (\$125 per month) as a result of his April 26, 2010 Senior Benefits application because he would have been notified of the amount of his monthly Senior Benefits payment in mid 2010, i.e. his June 2, 2011 hearing request is approximately one year too late.

In summary, the Claimant is time-barred, by regulation 7 AAC 49.040, from requesting a hearing challenging the Division's approval or denial of his June 28, 2007 (approval \$125 per month), May 30, 2008 (denial), May 28, 2009 (denial), and April 26, 2010 (approval \$125 per month) Senior Benefits applications. The Claimant's request for retroactive benefits is therefore DENIED.<sup>8</sup>

### CONCLUSIONS OF LAW

1. The Claimant did not meet his burden of proof by a preponderance of the evidence; he did not prove:

- a. That the Division did not notify him of its approval or denial of his June 28, 2007 (approval \$125 per month), May 30, 2008 (denial), May 28, 2009 (denial), and April 26, 2010 (approval \$125 per month) Senior Benefits applications within 30 days of the date of each application was received, i.e. roughly mid 2007, mid 2008, mid 2009, and mid 2010 respectively;
- b. That he requested a hearing with regard to any of his June 28, 2007 (approval \$125 per month), May 30, 2008 (denial), May 28, 2009 (denial), and April 26, 2010 (approval \$125 per month) Senior Benefits applications before June 2, 2011.

2. If the Claimant wanted to obtain a hearing to challenge the Division's approval or denial of his June 28, 2007 (approval \$125 per month), May 30, 2008 (denial), May 28, 2009 (denial), and April 26, 2010 (approval \$125 per month) Senior Benefits applications, he was required to request a hearing within 30 days of the date he was notified of each of the Division's actions. *See* 7 AAC 49.040. Consequently, his June 2, 2011 hearing request for retroactive Senior Benefits was untimely because it was made substantially more than 30 days after of the date he was notified of the approval or denial of each of the above-referenced applications.

3. The Claimant is therefore not entitled to a hearing regarding his June 28, 2007, May 30, 2008, May 28, 2009, and April 26, 2010 Senior Benefit applications, regardless of whether it concerns the amount of benefits issued or the denial of those applications, because his June 2, 2011 hearing request was untimely for each of those applications.

4. The case is therefore dismissed and, as a result, the Claimant may not recover retroactive Senior Benefit payments for the period from mid 2007 through April 2011.

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<sup>8</sup> Because this case is dismissed as time-barred, it is not necessary to address either the Claimant's or the Division's arguments concerning whether the Division's actions regarding the Claimant's June 28, 2007, May 30, 2008, May 28, 2009, and April 26, 2010 Senior Benefits applications were correct.

