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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. 12-FH-123
)
 Claimant.) DPA Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION and ORDER

I. Introduction

This case concerns whether the Division of Public Assistance (Division) was correct to suspend [REDACTED]'s (Claimant) Alaska Adult Public Assistance benefit payments because her Social Security payments had been suspended.

On March 8, 2012, the Division sent the Claimant written notice it was suspending her monthly Adult Public Assistance payments.¹ The Division received the Claimant's fair hearing request on March 13, 2012.²

The Office of Hearings and Appeals held a hearing on May 1, 2012. The Claimant's daughter [REDACTED] appeared in-person; she represented the Claimant and testified on the Claimant's behalf. The Claimant also appeared in-person and testified briefly. [REDACTED], Public Assistance Analyst with the Division, appeared in-person; she represented the Division and testified on its behalf. The hearing was recorded.

Based upon the record as whole, the Division was not legally justified in suspending the Claimant's Adult Public Assistance case. The Division's decision to suspend the Claimant's Adult Public Assistance benefits is REVERSED.

¹ Ex. 3.

² Exs. 4.1 – 4.2.

II. Facts

The Claimant receives Adult Public Assistance and Social Security Supplemental Security Income (SSI) benefits.³ She has had a court ordered guardian since 2007.⁴ Her daughter [REDACTED] is her current guardian.⁵ The Division has been aware of her guardianship appointment since August 2011.⁶

On February 29, 2012, the Division checked the status of the Claimant's SSI benefit case on a Social Security Administration computer interface and found that the Claimant's SSI payments had been suspended since January 24, 2012.⁷ The computer printout showed that the Claimant's SSI payments were in a "S08" status, which stands for "[r]epresentative payee development pending."⁸

On March 8, 2012, the Division sent the Claimant notice that her Adult Public Assistance payments were being suspended because the Social Security Administration had suspended her SSI payments. The notice reads:

[The Claimant] is still out of pay status with SSI. Therefore we must suspend her Adult Public Assistance cash benefit. It appears SSI is requesting you have a new payee for your benefits. Since it is in non-pay status we must suspend your Adult Public Assistance.⁹

On March 13, 2012, the Division received the Claimant's request for a fair hearing.¹⁰

On April 16, 2012, the Division sent the Claimant a supplemental notice advising her that she needed to provide it with the name of her payee and that she needed to verify that her SSI case was no longer suspended.¹¹ That same notice told the Claimant that if she did not comply, her Adult Public Assistance case would be closed, and not merely suspended, effective July 1, 2012.¹²

III. Discussion

The issue in this case is whether the Division was correct when it suspended the Claimant's Adult Public Assistance payments. The Division's notice stated that it was required

³ Exs. 1, 2.1.

⁴ Ex. J; [REDACTED] testimony.

⁵ *Id.*

⁶ Ex. C, p. 3.

⁷ Exs. 2.0 – 2.1.

⁸ Exs. 2.1 – 2.2.

⁹ Ex. 3.

¹⁰ Exs. 4.1 – 4.2.

¹¹ Ex. 10.

¹² *Id.*

to suspend the Claimant's Adult Public Assistance payments because her SSI payments were suspended ("in a non-pay status").¹³ At hearing, the Division clarified the issue and argued that it was required to suspend the Claimant's Adult Public Assistance payments until she had a new approved payee for her SSI benefits.

The Adult Public Assistance program provides a monthly cash payment to financially eligible adults, who are blind, disabled, or have reached 65 years of age.¹⁴ Many people who receive Adult Public Assistance benefits also receive SSI benefits.¹⁵

When the Social Security Administration requires that an SSI recipient have a designated payee to receive her SSI payments, the Division has the discretion to appoint a payee to receive Adult Public Assistance benefits for the recipient: "[t]he division may make payment to a third party when the Social Security Administration requires a third party to receive an applicant's Social Security payment on the applicant's behalf."¹⁶ The Division would normally select the same payee as the Social Security Administration, but if the Social Security Administration's payee cannot be selected (if "good cause" exists not to select the Social Security Administration's payee) and the Division does not select an alternate payee, the Division is required to suspend the Adult Public Assistance payments: "assistance . . . will be withheld until an alternative payee is selected by the Division."¹⁷ However, the Adult Public Assistance regulation specifically state that "[i]f a court authorizes a third party to serve as guardian or conservator to conduct the financial affairs of an applicant, payment **will** be made to the third party unless the third party or the court directs otherwise." 7 AAC 40.400(e) (emphasis supplied).

In this case, the Claimant has a court appointed guardian. Pursuant to 7 AAC 40.400, the Division was required to make her Adult Public Assistance payments to that guardian unless directed otherwise by the guardian or the court.¹⁸ This is true regardless of whether the SSA requires that the Claimant have a designated payee or if the SSA suspends payments while determining the designated payee. Accordingly, the Division was not correct when it suspended the Claimant's Adult Public Assistance case simply because her SSI case was suspended.

¹³ Ex. 3.

¹⁴ See AS 47.25.430; 7 AAC 40.120. Also see 7 AAC 40.380(a) and (b).

¹⁵ See, e.g. 7 AAC 40.030(a).

¹⁶ 7 AAC 40.400(b).

¹⁷ *Id.*

¹⁸ 7 AAC 40.400(e).

IV. Conclusion

The Division’s decision to suspend the Claimant’s Adult Public Assistance benefit payments is REVERSED.¹⁹

V. Appeal Rights

The Claimant has the right to appeal this decision 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: June 8, 2012.

/Signed/
Larry Pederson
Hearing Authority

Certificate of Service

I certify that on this 8th day of June, 2012, true and correct copies of the foregoing were sent to:
██████████, Guardian for Claimant by U.S.P.S First Class Certified Mail, Return Receipt Requested
and to the following by secure e-mail:
██████████, Public Assistance Analyst
██████████, Public Assistance Analyst
██████████, Policy & Program Development
██████████, Staff Development & Training
██████████, Administrative Assistant II
██████████, Policy & Program Development

J. Albert Levitre, Jr.
Law Office Assistant I

¹⁹ The Division is advised that this Decision’s holding, that the suspension was incorrect, affects its April 16, 2012 determination that the Claimant’s Adult Public Assistance case is subject to closure effective July 1, 2012 because the Division cannot “suspend benefits longer than a three month period.” (Ex. 10). Because the suspension is reversed, the Division’s April 16, 2012 determination regarding potential closure due to the suspension, is also reversed as a consequence of this Decision.