

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

In the Matter of: )  
 )  
 O H ) OAH No. 14-0237-APA  
 ) DPA Case No.  
\_\_\_\_\_ )

**DECISION AND ORDER OF DISMISSAL**

**I. Introduction**

The issue in this case is whether O H requested a hearing concerning the denial of his application for Interim Assistance within the 30 day period required by regulation. This decision concludes that Mr. H did not satisfy his burden of proving, by a preponderance of the evidence, that his hearing request was filed on a timely basis. Accordingly, decision of the Division of Public Assistance (DPA or Division), which found Mr. H's hearing request to be untimely, must be affirmed. Mr. H may file a *new* application for benefits at any time, and if his new application is denied, he will be entitled to a hearing *on that application* as long as he requests a hearing on a timely basis. However, Mr. H is not entitled to a hearing on the merits of his Interim Assistance application of September 11, 2013 because his request for a hearing on the Division's denial *of that particular application* was untimely. Accordingly, this case is dismissed.

**II. Facts**

Mr. H applied for Adult Public Assistance (which includes Interim Assistance), Food Stamps, and Medicaid on September 11, 2013.<sup>1</sup> On December 9, 2013 the Division generated a notice denying Mr. H's request for Interim Assistance.<sup>2</sup> The Division mailed its denial letter to Mr. H by regular, first class mail on December 9, 2013.<sup>3</sup> The denial letter was mailed to Mr. H at P.O. Box 00000, No Name, AK 99000.<sup>4</sup> This has been Mr. H's correct mailing address at all times relevant hereto.<sup>5</sup> On February 11, 2014 Mr. H faxed a written hearing request to the Division.<sup>6</sup> The hearing request did not indicate that there had been any delay in Mr. H's receipt of the Division's denial notice.<sup>7</sup>

---

<sup>1</sup> Exs. 1, A.  
<sup>2</sup> Exs. 3, C, K.  
<sup>3</sup> Terri Gagne hearing testimony.  
<sup>4</sup> Exs. 3, C, K.  
<sup>5</sup> O H hearing testimony.  
<sup>6</sup> Exs. D, M.  
<sup>7</sup> Exs. D, M.

On February 18, 2014 the Office of Administrative Hearings (OAH) mailed a notice to Mr. H stating that the hearing he had requested had been scheduled for March 6, 2014.<sup>8</sup> On February 24, 2014 the Division mailed its position statement and hearing exhibits to Mr. H and to OAH. These documents were received by OAH two days later, on February 26, 2014.

Mr. H's hearing began as scheduled on March 6, 2014. Mr. H participated in the hearing by phone, represented himself, and testified on his own behalf. DPA Public Assistance Analyst Terri Gagne participated in the hearing by phone, represented the Division, and testified on its behalf. The Division's request to dismiss the case due to untimeliness was addressed prior to hearing the merits of Mr. H's case. The Division's request to dismiss based on untimeliness was granted, and so the case was not heard on its merits.

Mr. H's argument at hearing was that he had never received the Division's denial notice of December 9, 2013, that the time period for requesting a hearing had therefore never begun, and that his hearing request of February 11, 2014 was therefore timely. The Division's argument was that it had mailed its notice to Mr. H at his proper address, and that Mr. H had presented no credible evidence that he had *not* received the notice.<sup>9</sup>

### III. Discussion

Under 7 AAC 49.030, a request for hearing in a public benefits case of this type must ordinarily be made "not later than 30 days after the date of the [required] notice." The regulations of the Department of Health and Social Services allow consideration of a hearing request made *after* the time limit "only if the administrative law judge finds . . . that the request for a hearing *could not* be filed within the time limit."<sup>10</sup>

In this case, a preponderance of the evidence indicates that the Division's denial notice was mailed to Mr. H, at his correct address, on December 9, 2013. Thirty days from that date was January 8, 2014. Mr. H's hearing request was not made until February 11, 2014, 34 days later. Accordingly, *if* Mr. H timely received the Division's denial notice, then, absent extraordinary

---

<sup>8</sup> Ex. F.

<sup>9</sup> The proper mailing of a document creates a presumption of delivery. *See Hagner v. United States*, 285 U.S. 427, 430 (1932) ("The rule is well settled that proof that a letter properly directed was placed in a post office creates a presumption that it reached its destination in usual time and was actually received by the person to whom it was addressed"); *see also Jefferson v. Spenard Builder's Supply, Inc.*, 366 P. 2d 714, 717 (Alaska 1961) and *Martens v. Metzgar*, 524 P.2d 666 (Alaska 1974) (when properly addressed and properly stamped mail is deposited in the United States mail, it is presumed that this mail has been delivered).

<sup>10</sup> 7 AAC 49.030(a) (italics added).

circumstances not asserted here, his hearing request was untimely. The question in this case is thus whether Mr. H timely received the Division's denial notice.

At hearing, Mr. H stated that he had not been aware that the Division had denied his application for Interim Assistance until he received the Division's position statement and exhibits of February 24, 2014. However, Mr. H's hearing request was filed on February 11, 2014, ten days prior. Mr. H must therefore have received notice of the Division's denial of his application some time prior to that date; otherwise, he would not have known he needed to submit a hearing request. The only question is when that notice was received.

In cases where the date of delivery is disputed or unknown, many courts apply a rebuttable presumption that the mailing was delivered / received three to seven days after the date it was mailed.<sup>11</sup> In this case, neither party was able to specify the exact date, between December 9, 2013 and February 11, 2014, that Mr. H received the Division's December 9, 2013 denial notice. Because neither party could provide evidence as to the actual date of receipt, it is appropriate to apply this legal presumption.

Based on a presumed receipt date seven days after mailing (i.e. on December 16, 2013), the 30 day response period specified by 7 AAC 49.030 ended on January 15, 2014. The Division did not receive Mr. H's hearing request until February 11, 2014. This was 27 days after the 30 day deadline specified by 7 AAC 49.030.

#### **IV. Conclusion and Order**

In summary, the preponderance of the evidence indicates that Mr. H's hearing request with regard to his application for Interim Assistance was not filed within the 30 day period specified by 7 AAC 49.030. The Division's request to dismiss this case must therefore be granted, and this matter is therefore dismissed pursuant to 7 AAC 49.100(5). However, Mr. H is free to file a new

---

<sup>11</sup> See *Ocasio v. Fashion Inst. of Tech.*, 9 Fed. Appx. 66, 68 (2nd Cir. 2001) (applying the "usual presumption that the letter was received within three days after mailing"); *Seitzinger v. Reading Hosp. & Med. Ctr.*, 165 F.3d 236, 239 (3rd Cir. 1999) (same). In the absence of a known date of delivery, the Fifth U.S. Circuit Court of Appeals applies a presumption that a notice was received within three to seven days after mailing. See *Morgan v. Potter*, 489 F.3d 195, 196 (5th Cir. 2007) (citing *Bowers v. Potter*, 113 F. App'x 610, 612-13 (5th Cir. 2004); *Martin v. Alamo Cmty. Coll. Dist.*, 353 F.3d 409, 411 (5th Cir. 2003). In *Coen v. Riverside Hosp.*, 2 Fed. Appx. 449, 450-51 (6th Cir. 2001), the Sixth U.S. Circuit Court of Appeals applied a presumption that a notice was received within five days following mailing. See also *Loyd v. Sullivan*, 882 F.2d 218, 218 (7th Cir. 1989) (stating, in a social security case, that "receipt date [of notice] is presumed to be five days from the mailing date"); *Lozano v. Ashcroft*, 258 F.3d 1160, 1167 (10th Cir. 2001) (presuming receipt no more than five days after mailing date); *Legille v. Tegtmeyer*, 382 F.Supp. 166, 169 (D.D.C. 1974) (presuming mail was received within five days); *Crude Oil Corp. v. Commissioner*, 161 F.2d 809, 810 (10th Cir. 1947) (same).

application for benefits at any time,<sup>12</sup> and if his new application is denied, he will be entitled to a hearing on that application as long as he requests a hearing on a timely basis.

**Notice of Appeal Rights**

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 7<sup>th</sup> day of March, 2014.

*Signed* \_\_\_\_\_

Jay Durych

Administrative Law Judge

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

---

<sup>12</sup> Mr. H stated at hearing that he has in fact already submitted another application for benefits.