

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

In the Matter of:)	
)	
E J)	OAH No. 14-0700-APA
_____)	DPA Case No.

DECISION

I. Introduction

E J was receiving Adult Public Assistance and Medicaid benefits in April 2014. The Division of Public Assistance (Division) notified him that he would not receive either Adult Public Assistance or Medicaid benefits after April 2014 because his resources exceeded the Adult Public Assistance resource limit.¹ Mr. J requested a hearing on April 30, 2014.² The Division subsequently issued a remedial notice on May 23, 2014 which notified Mr. J that his benefits would be terminated effective the end of June 2014.³

Mr. J’s hearing was held on July 1, 2014. Mr. J was represented by L T and S W. Jeff Miller represented the Division.

The Division’s May 23, 2014 termination notice complied with procedural due process requirements. Because eligibility for Social Security Supplemental Security Income (SSI) benefits is a prerequisite to eligibility for Adult Public Assistance benefits, the Division's decision to terminate Mr. J’s Adult Public Assistance benefits is affirmed. However, because the Division did not investigate whether Mr. J might be eligible for non-Adult Public Assistance and non-SSI categories of Medicaid assistance, its termination of Mr. J’s Medicaid benefits is reversed.

II. Facts

Mr. J receives Adult Public Assistance and Adult Public Assistance related Medicaid benefits. He is a former Social Security Supplemental Security Income (SSI) recipient. The SSA terminated his benefits in January 2014 because it determined that he owned resources valued at \$9,999, specifically, a trust.⁴

¹ Ex. 5.
² Ex. 5.1.
³ Ex. 4.1.
⁴ Exs. 3.1 – 3.2, 6 – 6.11.

The Division sent Mr. J notice on April 17, 2014 that his Adult Public Assistance and Medicaid benefits would be terminated after the end of April. The notice stated that Mr. J's countable resources were \$2,001, and that:

Our office has followed the same process a[s] the SSI office: your (sic) are ## over resources. . . should reapply must verify what the resources are that SSI office is counting. . . . And how you resolve this matter of over resources.^[5]

Mr. J requested a hearing on May 5, 2014.⁶

After the Division received Mr. J's hearing request, it sent him a supplemental notice on May 23 that notified him that his Adult Public Assistance and Medicaid cases would be closed as of June 30, 2014. This notice explained the reason for closure as follows:

This is a revised notice informing you that the Social Security Office had notified our agency that your SSI case had closed due to being over SSI's resource limit. You no longer meet the criteria for APA and ME. This action is supported by 7 AAC 40.060, 7 AAC 100.410, 7 AAC 100.400 and 7 AAC 40.210.^[7]

Mr. J has made several attempts to appeal his SSI termination.⁸

The trust in question is entitled the "E P. J Jr. Trust." It was created on April 30, 1990 and approved by the Alaska Superior Court on May 10, 1990. It provides that Mr. J is severely disabled, unlikely to significantly improve, and it places the proceeds from a court approved settlement into the trust.⁹

III. Discussion

There are three issues. The first is whether the Division's notice is legally adequate. The second is whether Mr. J's APA benefits should be terminated. The third is whether Mr. J's Medicaid benefits should be terminated. The Division has the burden of proof because it is seeking to terminate benefits.¹⁰

A. Notice

A notice terminating public assistance benefits must be sent to the recipient no "later than 10 days before the date the department intends to take action."¹¹ The notice must

⁵ Ex. 5.
⁶ Exs. 5 – 5.1.
⁷ Ex. 4.1.
⁸ Exs. 7.1 – 8.11.
⁹ Ex. A, August 8, 2014 Supplemental Filing.
¹⁰ 7 AAC 49.135.
¹¹ 7 AAC 49.060.

contain “the reasons for the proposed action, including the statute, regulation, or policy upon which that action is based.”¹²

The Division issued two termination notices. The first was dated April 17, 2014 and terminated Mr. J’s benefits at the end of April 2014. The second was dated May 23, 2014 and terminated his benefits at the end of June 2014.

The first question to be answered is whether the Division could issue a supplemental notice in this case. The normal rule is that a defective notice cannot be cured by providing a recipient with supplemental information during the course of the administrative fair hearing process. In *Allen v. State, Department of Health and Social Services*,¹³ the Alaska Supreme Court addressed a similar situation, in which the agency had issued a notice of a decision to recoup Food Stamp overpayments, but had neglected to include information about how the claim was calculated and about rights that the recipient had under law, both of which were required by the regulation governing notices.¹⁴ Although the missing information had arguably been supplied in later notices and the recipient was actually aware of her rights, the court nonetheless held that the notice defects “were not cured” because “giving notice that complies with the regulations is prerequisite” to the regulatory action.¹⁵ The court required the agency to start over.¹⁶

This case, however, is distinguishable from *Allen* in that the Division sent a subsequent notice that gave Mr. J well over 10 days advance notice of the termination: it was sent on May 23, 2014 and terminated his benefits at the end of the next month, June 2014. Because it changed the termination date, it was a completely new notice. Given these facts, the Division’s second notice properly replaced the first notice.¹⁷

The next question to be answered is whether the Division’s second notice complied with procedural due process requirements. It notified Mr. J that his SSI case was closed by the SSA

¹² 7 AAC 49.070.

¹³ 203 P.3d 1155 (Alaska 2009).

¹⁴ *Id.* at 1166-68.

¹⁵ *Id.* at 1169.

¹⁶ *Id.* (“If the Agency wishes to pursue its recoupment claims . . . , it must issue . . . notices that comply with the . . . regulation”).

¹⁷ To hold otherwise could potentially create the anomalous situation where Mr. J’s appeal of termination provided for in the first notice could result in a reversal due to defective notice, but result in Mr. J not being able to challenge the subsequent termination provided for in the second notice, because Mr. J did not timely request a hearing to challenge that termination. See 7 AAC 49.030(a) (a hearing must be requested in writing within 30 days of the Division’s adverse action notice).

due to being over the resource limit, and that as a result he did not “meet the criteria” for Adult Public Assistance and Medicaid. It then referred him to four regulations: 7 AAC 40.060, which requires that when the SSA terminates a person’s SSI benefits, the Division is required to terminate Adult Public Assistance benefits “regardless of whether the applicant files an appeal with the Social Security Administration;” 7 AAC 100.410, which provides that a person who is receiving either SSI or Adult Public Assistance is eligible for Medicaid; 7 AAC 100.400, which contains the general financial eligibility requirements for Medicaid; and 7 AAC 40.210, which refers to a denial of Adult Public Assistance benefits if a person fails, without good cause, to obtain medical treatment that might alleviate his or her condition. Although the notice cites to 7 AAC 40.210, which appears to have no relevance whatsoever, it clearly places Mr. J on notice that the Division terminated his Adult Public Assistance benefits due to the closure of his SSI benefits, that his Medicaid benefits were contingent upon his being eligible for Adult Public Assistance or SSI, and what financial requirements applied. The notice therefore complied with the applicable notice requirements.

B. Adult Public Assistance Termination

A person who is eligible to receive SSI benefits is also eligible to receive Adult Public Assistance benefits from the State of Alaska, if he or she also satisfies other State of Alaska eligibility criteria.¹⁸ If a recipient of both Adult Public Assistance benefits and SSI benefits has his or her SSI benefits terminated by the Social Security Administration, the State of Alaska is required to terminate Adult Public Assistance benefits. Alaska’s regulation, 7 AAC 40.060(c), states as follows:

(c) If an applicant is receiving SSI benefits and is determined by the Social Security Administration to be ineligible, except as provided in (d) and (e) of this section, the division will terminate assistance in accordance with 7 AAC 49.060, regardless of whether the applicant files an appeal with the Social Security Administration.

The exceptions to the termination rule contained in 7 AAC 40.060(c) refer to Supplemental Security Income termination due to either excess income or a disposal of resources for less than fair market value (*see* 7 AAC 40.060(d) and (e)). Because Mr. J had his SSI benefits terminated due to excess resources, not excess income or a resource transfer, those exceptions are not applicable here.

¹⁸ 7 AAC 40.030.

Mr. J argues that the SSA made an error and that the trust is not a countable resource for SSI eligibility determination purposes. However, the Alaska regulation pertaining to the “domino effect” of a Supplemental Security Income benefit termination, 7 AAC 40.060(c), is clear. The termination of Mr. J’s SSI benefits requires that his Adult Public Assistance benefits be terminated. Even if the SSA’s decision to terminate his SSI benefits is wrong or under appeal with the SSA, the Division does not have discretion to ignore the termination requirement.¹⁹

C. Medicaid Termination

The Division terminated Mr. J’s Adult Public Assistance related Medicaid benefits. As conceded by the Division at hearing, it did not first seek to determine whether he might be eligible for other types of Medicaid coverage that do not require either SSI or Adult Public Assistance eligibility. When a Medicaid agency, such as the Division, terminates a recipient’s Medicaid coverage under one category, it is required to determine whether he or she is eligible under any other categories: “[t]he agency must . . . (b) Continue to furnish Medicaid regularly to all eligible individuals until they are found to be ineligible.”²⁰ Because Mr. J is severely disabled, he may be eligible for other categories of Medicaid which do not follow the Adult Public Assistance eligibility rules. The Division may not terminate his Medicaid coverage without first investigating other coverage categories.²¹

IV. Conclusion

The Division’s May 23, 2014 termination notice was due process compliant. The Division’s termination of Mr. J’s Adult Public Assistance benefits is affirmed. Its termination of his Medicaid benefits is reversed.

Dated this 15th day of September, 2014.

Signed _____
Lawrence A. Pederson
Administrative Law Judge

¹⁹ “Administrative agencies are bound by their regulations just as the public is bound by them.” *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010).

²⁰ 42 C.F.R. § 435.930; *In re R.B.*, OAH No. 12-0371-CMB (Comm’r of Health & Social Services, adopted by delegation Oct. 11, 2012) (<http://aws.state.ak.us/officeofadminhearings/Documents/CMB/CMB120371.pdf>).

²¹ This decision ventures no opinion regarding whether Mr. J meets categorical, medical, or financial eligibility requirements for other types of Medicaid coverage.

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 26th day of September, 2014.

By: *Signed* _____

Name: Lawrence A. Pederson

Title/Agency: Admin. Law Judge, DOA/OAH

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