

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

In the Matter of:)
) OAH No. 15-0645-APA
 L T) DPA Case No.
)
_____)

DECISION

I. Introduction

The issue in this case is whether L T timely provided the Division of Public Assistance (DPA or Division) with certain documentation requested by the Division in order to process Mr. T's application for Adult Public Assistance (APA), APA-related Medicaid, and Interim Assistance.¹ Mr. T asserts that he hand-delivered the requested documentation to the Division's Muldoon Road field office, but he does not remember the date he did so, and he did not keep a copy of the documents. The Division asserts that it has looked everywhere for Mr. T's documents, but cannot find the documents or any evidence that they were received.

This decision concludes that Mr. T's testimony regarding his delivery of the documents at issue was credible, but that the testimony of the Division's witnesses, concerning the Division's non-receipt of the same documents, was equally credible. However, under applicable law, Mr. T bears the burden of proof on the issue. Where the factual assertions of both parties are equally credible, the party bearing the burden of proof must lose. Accordingly, based on the evidence before me, the Division was correct to deny Mr. T's application for Adult Public Assistance, APA-related Medicaid, and Interim Assistance based on Mr. T's failure to timely provide the documents requested.² The Division's decision, denying Mr. T's application for the benefit programs at issue, is therefore affirmed.³

II. Facts

Mr. T is 56 years old.⁴ He is a veteran of the U.S. military.⁵ On January 16, 2015 he completed and signed an application for Adult Public Assistance.⁶

¹ Exs. 12, 13.4.

² To be clear, I *do not* believe that Mr. T testified falsely. Rather, I find only that his testimony, and that of the Division's witnesses, are equally believable, and that, since Mr. T bears the burden of proof, he must lose. Thus, this case exemplifies the old adage that the truth, and what you can prove in court, are sometimes two different things.

³ Of course, Mr. T is free to reapply for the programs at issue at any time. In fact, immediately following the hearing in this case, Mr. T left the documents necessary to reapply for the three programs at issue with the Office of Administrative Hearings (OAH), and OAH then forwarded those documents on to the Division.

⁴ Ex. 1.

⁵ Ex. 3.

Mr. T's application was received by DPA on February 5, 2015.⁷ On February 20, 2015 Mr. T attended an eligibility interview with a DPA eligibility technician (ET).⁸ The ET collected various items of information from Mr. T, and at the end of the interview the ET gave Mr. T four DPA forms to be completed and returned.⁹ The four forms were the Disability and Vocational Report form (APA-4), Preliminary Examination for Interim Assistance form (AD-2), Authorization for Reimbursement for Interim Assistance From Initial Retroactive SSI Payment form (GEN-142), and Authorization for Release of Protected Health Information form (GEN-150). The notices stated that, if the completed forms were not received by the Division by March 25, 2015, Mr. T's application would be denied.

On March 24, 2015 the Division mailed another notice to Mr. T requesting that he provide proof of the status of his appeal of the Social Security Administration's denial of his application for Supplemental Security Income (SSI).¹⁰ This information was provided by Mr. T, and is not at issue in this case.

As of May 13, 2015 the Division had no record that it had received the four forms which it had previously requested that Mr. T complete and return.¹¹ Accordingly, on that date the Division mailed a notice to Mr. T which stated in relevant part as follows:¹²

Your application for Adult Public Assistance (APA) and Medicaid received on February 6, 2015 is denied. We asked you to give us information . . . by 3/25/15 to determine your eligibility for APA and Medicaid. We did not receive the [following] items

- (A) Disability and Vocational Report (APA-4)
- (B) Preliminary Examination for Interim Assistance (AD-2)
- (C) Authorization for Release of Protected Health Information (GEN-150)
- (D) Authorization for Reimbursement of Interim Assistance From Initial Retroactive SSI Payment (GEN-142).

On May 19, 2015 Mr. T requested a hearing to contest the Division's denial of his application.¹³ On June 1, 2015 the Division's hearing representative requested that DPA's Mat-Su

⁶ Ex. 2. Although Mr. T did not specifically apply for them, the Division also treated his application as a request for Interim Assistance and for APA-related Medicaid.

⁷ Ex. 2.

⁸ Ex. 3.0.

⁹ Ex. 3.0. The forms given to Mr. T during his eligibility interview were the Division's Form AD-2, Form APA-4, Form GEN-142, and Form GEN-150 (Ex. 3.0).

¹⁰ All factual findings in this paragraph are based on Ex. 7 unless otherwise stated.

¹¹ Rebecca Custer's hearing testimony; Fusi Hola's hearing testimony.

¹² Exs. 12, 13.4. The formatting of the original notice is modified here for purposes of brevity.

¹³ Exs. 13.0, 13.2, 13.3, 13.5.

and Muldoon field offices thoroughly search their records to determine if the four forms at issue had simply been misplaced.¹⁴ Rebecca Custer searched DPA's Mat-Su field office, but failed to find the missing documents; Hola Fusi searched the Division's Muldoon office, but likewise failed to find the documents at issue.

Mr. T's hearing was held on August 3, 2015. Mr. T attended the hearing in person, represented himself, and testified on his own behalf. Jeff Miller, a Public Assistance Analyst employed by the Division, participated in the hearing by telephone, represented the Division, and testified on its behalf. DPA employees Rebecca Custer and Fusi Hola also participated by phone and testified for the Division. All testimony and exhibits offered by the parties were admitted into evidence. At the end of the hearing the record was closed and the case became ripe for decision.

III. Discussion

A. Adult Public Assistance and APA-Medicaid Documentation Requirements

The Adult Public Assistance (APA) program provides cash assistance to needy aged, blind, and disabled Alaskans. APA recipients are also eligible for Medicaid benefits.¹⁵

The two programs at issue in this case, Adult Public Assistance and APA-related Medicaid, each have their own document submission and verification requirements, which have been promulgated as regulations.¹⁶ The APA program's documentation requirements are set forth in 7 AAC 40.050, which provides in relevant part as follows:

- (a) Each applicant shall make himself available for an interview at a district office of the division Whether or not an applicant is interviewed, he shall furnish adequate evidence to demonstrate his eligibility for assistance.

The Medicaid program's documentation requirements are set forth in 7 AAC 100.016, which provides in relevant part as follows:

- (a) The department will verify whether an applicant or recipient meets eligibility requirements.
- (b) The department will request in writing that an applicant or recipient provide documentation that the applicant or recipient meets eligibility requirements if the required documentation is not readily available to the department from any alternative source or the information needed cannot be verified from an alternative source readily available to the department [A]n applicant or a recipient who

¹⁴ All references in this paragraph are based on Exs.14 and 15 unless otherwise stated.

¹⁵ See APA program description on the Division's website at <http://dhss.alaska.gov/dpa/Pages/apa/default.aspx> (accessed on September 30, 2015).

¹⁶ The Interim Assistance program is basically a sub-program of the Adult Public Assistance (APA) program, and so the APA program's documentation and verification requirements also apply to applications for Interim Assistance.

refuses to provide the department with documentation under this section will be determined ineligible for Medicaid by the department.

B. Applicable Burden of Proof

The Division asserts that Mr. T did not submit the four forms at issue within the time period specified in the Division's notice. This is a purely factual issue as to which the burden of proof can become decisive. Under Alaska "Fair Hearing" regulation 7 AAC 49.135, when (as here) an applicant or recipient requests new or additional benefits, he or she bears the burden of proving eligibility for said benefits by a preponderance of evidence. Accordingly, Mr. T bears the burden of proving that he timely provided the Division with the four forms at issue.

C. Does the Preponderance of the Evidence Show that Mr. T Submitted the Requested Forms?

At hearing, Mr. T testified that he delivered the four forms at issue, in a blue folder, to the Division's Muldoon field office in Anchorage. He testified that he did not remember the exact date he delivered the forms, and that he did not keep a copy of the documents.

Rebecca Custer of DPA testified that she searched DPA's Mat-Su field office, but failed to find the documents at issue, and that she telephoned other DPA offices about the documents, but did not find any sign of the documents. Fusi Hola of DPA's Muldoon field office stated that she searched the Muldoon field office could not find evidence that the Division received the forms at issue from Mr. T.

Each of the three witnesses was equally credible, and there were no corroborating circumstances to make one witnesses' testimony more believable than that of another witness. Where (as here) the evidence provided by each party is equally persuasive, the law requires that the party bearing the burden of proof lose. Because Mr. T bears the burden of proof in this case, the Division's denial of his application must be upheld.

IV. Conclusion

Mr. T failed to carry his burden and did not prove, by a preponderance of the evidence, that he timely provided the Division with the forms requested. Accordingly, the Division was correct to deny his application. The Division's determination is therefore affirmed.

DATED this 30th day of September, 2015.

Signed

Jay Durych
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, 2015.

By: Signed
Name: Cheryl Mandala
Title: Administrative Law Judge

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