

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

In the Matter of	)	
	)	OAH No. 15-0856-MDX
F H	)	Division No.
_____	)	

**ORDER OF DISMISSAL**

**I. Introduction**

F H is a Medicaid recipient. Her attempt to refill a prescription was rejected by Medicaid as premature. That prescription was then refilled two days later. Ms. H requested a hearing to challenge the denial of her initial attempt to refill her prescription.

Ms. H’s hearing was held on July 28, 2015. She was represented by her husband, C J. Angela Ybarra represented the Division of Health Care Services (Division). Margaret Brodie, the Division’s director, participated in the hearing.

Prior to hearing, the Division filed a motion to dismiss this case. Ms. H opposed the motion to dismiss, both in writing and at the hearing. Because this case does not present a hearable issue, it is dismissed pursuant to 7 AAC 49.100(1).

**II. Facts**

F H is a Medicaid recipient, who has a prescription for 33 days of Oxycodone. She attempted to refill that prescription on Saturday, June 27, 2015, which would have been on the 30<sup>th</sup> day, *i.e.*, three days before the expiration of her prescription. The Medicaid system denied her a refill of that prescription as being premature. Her pharmacy is closed on Sundays. She was able to refill her prescription on Monday, June 29, 2015, which was on the 32<sup>nd</sup> day of her prescription.<sup>1</sup>

**III. Discussion<sup>2</sup>**

Alaska fair hearing regulation 7 AAC 49.020 states that a fair hearing “must be granted” to a Medicaid recipient whose “request for . . . medical assistance is denied, or is not acted upon

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<sup>1</sup> Ex. D, pp. 4, 6.

<sup>2</sup> Ms. H raised a procedural due process issue. She argued that her right to due process was violated because she was not provided a written notice advising her that her prescription was denied and was then required to request a hearing in writing. *See* Ex. C. This issue is not addressed because this case does not present a hearable issue, as discussed immediately below.

with reasonable promptness.”<sup>3</sup> It is undisputed that Ms. H’s June 27, 2015 attempt to refill her prescription was denied. To the extent that this denial was erroneous, it was rectified in a reasonable time when the prescription was refilled on June 29, 2015.<sup>4</sup> Because Ms. H’s prescription was refilled before its expiration, albeit two days after the initial denial, her request for medical assistance was not denied; nor was it “not acted upon with reasonable promptness.” As such, she does not present a hearable issue. Alaska fair hearing regulation 7 AAC 49.100 mandates that the administrative law judge “shall deny or dismiss a hearing request or terminate a hearing if (1) the issues by which the recipient is aggrieved are not those set out in 7 AAC 49.020.” Because Ms. H does not have a hearable issue under 7 AAC 49.020, this case must be dismissed.

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

The above-entitled matter is dismissed.

***Appeal Rights:*** This is a final order for purposes 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 order.

DATED this 28<sup>th</sup> day of July, 2015.

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

Lawrence A. Pederson  
Administrative Law Judge

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

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<sup>3</sup> 7 AAC 49.020(1).

<sup>4</sup> As explained by Ms. Brodie, the Director of the Division of Health Care Services, there is an override mechanism whereby the pharmacy can phone the Division’s agent, Magellan, to request an override of prescription denials. However, that is an action the pharmacy must initiate. It was apparently not done in this case.