

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

In the Matter of:	)	
	)	OAH No. 15-1616-APA
K A	)	DPA Case No.
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**DECISION**

**I. Introduction**

The issue in this case is whether K A timely provided the Division of Public Assistance (DPA or Division) with certain documentation requested by the Division in order to determine her continuing eligibility for Adult Public Assistance (APA).<sup>1</sup> The Division reviewed Ms. A’s APA case, during a random quality assurance assessment, and realized it did not have certain potentially relevant information concerning a duplex property owned in part by Ms. A.<sup>2</sup> Accordingly, the Division requested certain information from Ms. A pertaining to her income and resources.<sup>3</sup> When Ms. A failed to provide all of the information and documentation requested, by the date specified by the Division, the Division terminated Ms. A’s monthly APA payments.<sup>4</sup> At hearing, Ms. A and her son acknowledged that, due to problems communicating with DPA personnel, they did not provide all of the documentation requested by the Division, by the date specified in the Division's written request.

It is clear that Ms. A’s failure to provide the documentation requested by the Division was not intentional, and could have been due in part to difficulties which DPA personnel may have had in understanding Ms. A’s family's No Name Accent or No Name Dialect. However, as the benefit recipient, Ms. A was obligated to provide the documentation requested by the Division within the time frame specified, or to request additional time to comply. It is undisputed that Ms. A did neither. Accordingly, the Division was correct to terminate Ms. A’s Adult Public Assistance benefits based on Ms. A’s failure to timely provide the documentation requested. The Division's decision is therefore affirmed.<sup>5</sup>

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<sup>1</sup> Ex. 6.  
<sup>2</sup> Ex. 2.  
<sup>3</sup> Ex. 3.  
<sup>4</sup> Ex. 6.

<sup>5</sup> Of course, Ms. A is free to reapply for the program at issue at any time. In fact, during a recess in the hearing in this case, Ms. A left the documents necessary to reapply for the program at issue with the Office of Administrative Hearings (OAH), and OAH then forwarded those documents on to the Division.

## II. Facts

Ms. A is 69 years old.<sup>6</sup> She has been disabled since 2009 and receives Supplemental Security Income (SSI) from the Social Security Administration (SSA).<sup>7</sup> She lives in one unit of a four-plex owned by herself, her son B K-C, and her son J K-C.<sup>8</sup> Her two sons live in another unit, and tenants occupy the third and fourth units.<sup>9</sup> In 2015, the Municipality of Anchorage assessed the tax value of the property at \$315,200.00; since Ms. A and her two sons each own a one-third interest in the property, the interest of each is worth approximately \$105,000.00.<sup>10</sup> Ms. A's sons take care of most of the utility payments for, and some of the management of, the property.<sup>11</sup> Ms. A pays one of the utility bills and devotes 20 hours per week or less towards management of the property.<sup>12</sup>

The four-plex is subject to a mortgage; the balance owed on the mortgage was about \$246,000.00 as of November 2015.<sup>13</sup> Ms. A and her sons make payments of about \$2,400.00 per month on the mortgage.<sup>14</sup> Ms. A and her sons rent two units of the four-plex to tenants; the tenants in these two units each pay \$1,000.00 per month in rent, and Ms. A pays \$600.00 per month in rent for her unit.<sup>15</sup>

Ms. A has received Adult Public Assistance (APA), and APA-related Medicaid, since April 2014.<sup>16</sup> Sometime between March and October 2015, the Division conducted a quality assurance review of Ms. A's APA file.<sup>17</sup> On October 5, 2015, a DPA eligibility technician (ET) telephoned Ms. A to obtain updated information concerning her income and resources. During the telephone conversation, Ms. A provided the ET with most of the information contained in the two preceding paragraphs (above). However, for purposes of verification, the ET determined that it was appropriate to request certain information concerning Ms. A's 2014 income tax return and her four-plex's monthly utility expenses. Accordingly, on October 6, 2015 the Division mailed a notice to

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<sup>6</sup> Ex. 1.

<sup>7</sup> Ex. 10.1.

<sup>8</sup> Ex. 2; Ex. A; B K-C's hearing testimony.

<sup>9</sup> Ex. 2; Ex. A; B K-C's hearing testimony.

<sup>10</sup> Ex. A, B K-C's hearing testimony.

<sup>11</sup> Exs. C, D, E, and F; B K-C hearing testimony; K A hearing testimony.

<sup>12</sup> Ex. 2; Ex. G; B K-C hearing testimony; K A hearing testimony.

<sup>13</sup> Ex. H; B K-C hearing testimony; K A hearing testimony.

<sup>14</sup> Ex. H; B K-C hearing testimony; K A hearing testimony.

<sup>15</sup> Ex. 2. The record does not indicate what amount of rent, if any, is paid by Ms. A's two sons.

<sup>16</sup> Ex. 1.

<sup>17</sup> All factual findings in the remainder of this paragraph are based on Ex. 2 unless otherwise stated.

Ms. A requesting additional information and documentation.<sup>18</sup> The notice stated in relevant part as follows:<sup>19</sup>

Our office has received information about a change in your household's circumstances. We need more information from you to reevaluate your eligibility for cash, food, or medical assistance. The information we need is listed [below]. Please provide it to our office by 11/05/15. If we do not receive this information by this date, your assistance may be stopped . . . . Please call me right away if you have any questions . . . . Information needed:

1. A copy of your 2014 tax [return] that shows your rental property income . . . .
2. Proof that you have contacted [SSA] and let them know that you're receiving rental income.
3. Copies of your current gas, electric, and water statements . . . .

On October 26, 2015, the Division received some, but not all, of the documentation requested from Ms. A.<sup>20</sup> The Division received documentation concerning Ms. A's sale or trade-in of one vehicle and purchase of another; copies of eight-month-old gas, electric, and water/wastewater utility bills; and a statement from SSA stating Ms. A's monthly SSI payment amount. The Division did not, however, receive a copy of Ms. A's 2014 income tax return showing the income from the four-plex, or proof that she had advised SSA of her rental income from the four-plex.

On November 19, 2015, a DPA ET reviewed Ms. A's file and determined that Ms. A had not provided all of the documentation previously requested, and had not contacted the Division to request an extension of time to submit these items.<sup>21</sup> Accordingly, on November 20, 2015, the Division mailed a notice to Ms. A stating that her APA benefits would be terminated, effective November 30, 2015, based on her failure to provide all of the information the Division had requested on October 6, 2015.<sup>22</sup> The termination notice acknowledged that Ms. A had submitted copies of her gas, electric, and water / wastewater utility statements, but stated that Ms. A had not submitted a copy of her 2014 tax return showing rental income from the four-plex, or proof that she had contacted SSA and let them know about the rental income.<sup>23</sup>

On December 7, 2015, Ms. A requested a hearing to contest the Division's termination of her APA benefits.<sup>24</sup> Ms. A's hearing was held on January 11, 2016. Ms. A attended the hearing in

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<sup>18</sup> Ex. 3.

<sup>19</sup> Ex. 3 (some paragraph breaks in the original have been deleted here for purposes of brevity).

<sup>20</sup> All factual findings in this paragraph are based on Ex. 4 unless otherwise stated.

<sup>21</sup> Ex. 5.

<sup>22</sup> Ex. 6.

<sup>23</sup> Ex. 6.

<sup>24</sup> Exs. 8, 9.

person, represented himself, and testified on her own behalf. She was accompanied by her son B K-C, and by W K-C, who testified on her behalf. Sally Dial, a Public Assistance Analyst employed by the Division, participated in the hearing by telephone, represented the Division, and testified on its behalf. All testimony and exhibits offered by the parties were admitted into evidence. The record closed at the end of the hearing.

### **III. Discussion**

#### **A. Adult Public Assistance 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.<sup>25</sup> Eligibility factors include the recipient's financial need with respect to resources, and the recipient's financial need with respect to income.<sup>26</sup>

The Division may review a recipient's continuing eligibility for benefits whenever the Division deems it necessary.<sup>27</sup> The recipient must provide any additional DPA forms and any additional information / verification necessary for the Division to correctly determine the recipient's APA eligibility and benefit amount.<sup>28</sup>

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.

#### **B. Applicable Burden of Proof and Standard of Proof**

The Division asserts that Ms. A did not submit the information / documentation it requested in its notice of October 6, 2015, within the time period specified in the Division's notice (by November 5, 2015). 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) the Division seeks to terminate a recipient's existing benefits, the Division bears the burden of proof. The applicable standard of proof is the "preponderance of the evidence" standard.<sup>29</sup> Accordingly, the Division

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<sup>25</sup> See APA program description on the Division's website at <http://dhss.alaska.gov/dpa/Pages/apa/default.aspx> (accessed on January 21, 2016). Ms. A's APA-related Medicaid benefits are not at issue in this case.

<sup>26</sup> 7 AAC 40.090.

<sup>27</sup> Adult Public Assistance Manual at Section 480-1(C).

<sup>28</sup> Adult Public Assistance Manual at Section 480-1(C).

<sup>29</sup> 7 AAC 49.135.

must prove that it is more probable than not that Ms. A failed to provide all of the information requested within the time period specified by the Division.

***C. Does the Preponderance of the Evidence Show that Ms. A Submitted the Requested Information / Documentation Within the Specified Time?***

The Division requested (1) a copy of Ms. A's 2014 tax documents showing her rental property income; (2) proof that she had contacted SSA and let them know that she was receiving rental income; and (3) copies of Ms. A's current gas, electric, and water utility bills. At hearing, Ms. Dial testified that, although Ms. A provided items (1) and (3) above to the Division *after* her APA benefits were terminated, there is no indication in the Division's records that Ms. A provided any of the information / documentation to the Division *prior to* the November 5, 2015 deadline. Ms. A and her family members did not dispute this at hearing. Rather, they explained that, due to language issues, Ms. A did not understand exactly what the Division's notice required her to do. This is completely understandable. However, courts have generally held that, in the public benefits context, difficulties in communicating in English do not excuse late filings / late performance.<sup>30</sup> Accordingly, while Ms. A was apparently attempting, in good faith, to comply with the Division's request for information / documentation, the Division was legally justified in terminating Ms. A's APA benefits when the Division did not receive the information requested from Ms. A by the deadline stated in its notice.<sup>31</sup>

**IV. Conclusion**

The Division proved, by a preponderance of the evidence, that Ms. A failed to provide the information / documentation it had requested within the time frame specified. Accordingly, the Division was correct to terminate Ms. A's APA benefits on that basis. The Division's determination is therefore affirmed.

DATED this 2nd day of February, 2016.

*Signed*

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Jay Durych

Administrative Law Judge

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<sup>30</sup> See generally *DaLomba v. Director of the Division of Employment Security*, 337 N.E.2d 687 (Mass. 1975); *Hernandez v. Department of Labor*, 416 N.E.2d 263 (Ill. 1981); *Soberal-Perez v. Heckler*, 717 F.2d 36, 43 (2d Cir. 1983).

<sup>31</sup> Note that a different result might entail in a Food Stamp or Medicaid case, because those programs have regulations on the issue of verification which are more lenient than those applicable to the APA program.

## 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 11th day of February, 2016.

By: Signed  
Name: Jay D. Durych  
Title: Administrative Law Judge

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