

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

In the Matter of:)
)
 U L) OAH No. 16-0345-APA
) DPA Case No.

DECISION

I. Introduction

The issue in this case is whether the Division of Public Assistance (DPA or Division) was correct to terminate U L's Adult Public Assistance (APA), and his APA-related Medicaid, due to the fact that the Social Security Administration (SSA) terminated Mr. L's Supplemental Security Income (SSI).¹ It was undisputed that SSA did in fact terminate Mr. L's SSI because SSA determined that Mr. L is not disabled according to its adult disability criteria.² As a matter of law, if SSA determines that a recipient is no longer eligible to receive SSI, the Division is required by regulation 7 AAC 40.060(c) to terminate the recipient's APA and APA-related Medicaid. Accordingly, the Division correctly concluded, based on this "domino effect," that because SSA was terminating Mr. L's SSI, it was required to terminate Mr. L's APA and APA-related Medicaid.

However, the Division erred when it issued its termination notices in this case. The applicable regulations require that the Division provide a benefit recipient with at least 10 days advance notice of any adverse action the Division intends to take concerning the recipient's benefits.³ In this case, the Division's notice of March 22, 2016 provided only nine days advance notice to Mr. L of the Division's intended termination of his benefits.⁴ The Division issued a revised notice on April 12, 2016,⁵ and the Division could have corrected the error in its original notice by specifying a new termination date. However, the Division's revised notice continued to specify March 31, 2016 as the effective date of the termination.

¹ Exs. 3.0, 3.1.

² See SSA Disability Hearing Officer's Decision at Exs. 5.4 - 5.10. Mr. L had previously qualified for SSI as a minor (M L's hearing testimony). When Mr. L reached the age of 18, he had to satisfy the adult disability criteria in order to continue receiving SSI. The disability criteria applicable to minors is somewhat different than the disability criteria applicable to adults (see separate impairment listings at 20 CFR Part 404, Subpart P, Appendix 1). SSA found that although Mr. L had previously satisfied the disability criteria applicable to children, he did not satisfy the disability criteria applicable to adults.

³ See Federal Medicaid regulation 42 CFR 431.211 (applicable to APA-related Medicaid), and DHSS Fair Hearings regulation 7 AAC 49.060 (applicable to both APA and APA-related Medicaid).

⁴ Ex. 3.0.

⁵ Ex. 3.1.

In summary, although the Division was properly following its regulations in seeking to terminate Mr. L's benefits, the Division failed to provide legally sufficient notice of the proposed termination of benefits. Accordingly, the Division's termination of Mr. L's Adult Public Assistance and APA-related Medicaid benefits is reversed. The Division is free to issue a new termination notice at any time. If the Division issues a new termination notice, Mr. L has the right to request a new hearing concerning the new notice.⁶

II. Facts

The facts relevant to this case are not in dispute. Mr. L is 20 years old.⁷ He suffers from polycythemia vera with interstitial fibrosis, splenomegaly, thrombocytosis, morbid obesity, migraine headaches, and dysthymia.⁸ These conditions have, for a number of years, made it difficult for Mr. L to perform his activities of daily living.⁹

In January 2013 Mr. L applied to SSA for SSI "disabled child" benefits.¹⁰ On April 29, 2013 SSA approved Mr. L's application.¹¹ Once Mr. L was found eligible to receive SSI, he applied for, and was found eligible to receive, APA and APA-related Medicaid.¹²

Mr. L became 18 years old in the spring of 2014.¹³ On October 23, 2014 SSA conducted a "Continuing Disability Review" (CDR) and concluded that Mr. L was not disabled according to SSA's adult disability criteria.¹⁴ Mr. L requested that SSA reconsider its decision.¹⁵ On October 4, 2015 a hearing was held before an SSA Disability Hearing Officer.¹⁶ On January 15, 2016 the SSA Disability Hearing Officer issued a decision finding Mr. L not to be disabled and upholding SSA's initial determination.¹⁷ Shortly thereafter Mr. L appealed the Disability Hearing Officer's decision by requesting a formal hearing before an SSA administrative law judge (ALJ).¹⁸

The Division subsequently became aware of SSA's termination of Mr. L's SSI, and on March 22, 2016 the Division mailed a notice to Mr. L stating that his APA and APA-related

⁶ Of course, assuming that the Division's new notice is legally sufficient, it appears that the termination of Mr. L's benefits would be required pursuant to 7 AAC 40.060(c).

⁷ Ex. 1.

⁸ Ex. 5.5.

⁹ Exs. 5.4 - 5.5.

¹⁰ Ex. 5.5.

¹¹ Ex. 5.5.

¹² Ex. 1.1.

¹³ Ex. 1.

¹⁴ Ex. 5.5. Mr. L had turned 18

¹⁵ M L's hearing testimony.

¹⁶ Ex. 5.4.

¹⁷ Exs. 5.2 - 5.11.

¹⁸ Ex. 5.1.

Medicaid benefits would end on March 31, 2016.¹⁹ On April 1, 2016, Mr. L, through his mother and authorized representative M L, requested a hearing to contest the Division's termination of his APA and APA-related Medicaid benefits.²⁰ On April 12, 2016 the Division mailed a revised termination notice to Mr. L; this notice, like the original notice, stated that Mr. L's benefits would terminate on March 31, 2016.²¹

Mr. L's hearing was held on April 27, 2016. Mr. L did not participate, but was represented by his mother, M L, who participated in the hearing by phone, represented her son, and testified on his behalf. Jeff Miller, a Public Assistance Analyst employed by the Division, participated in the hearing by telephone and represented the Division. All testimony and exhibits offered by the parties were admitted into evidence. The record closed at the end of the hearing.

III. Discussion

A. The Adult Public Assistance Program and Its Relationship to SSI Benefits

The Adult Public Assistance (APA) program provides cash assistance to needy aged, blind, and disabled Alaskans. APA recipients are also eligible for Medicaid benefits.²² Eligibility factors include the recipient's financial need with respect to resources, and the recipient's financial need with respect to income.²³

Supplemental Security Income (SSI) is a cash assistance program funded by the federal government and administered by the Social Security Administration (SSA). The program is authorized by Title XVI of the Social Security Act, 42 U.S.C. Sections 1381 - 1383f. Under SSI, there is no minimum age limit for establishing eligibility based on blindness or disability; thus both children and adults may be eligible. As of September 2011, over eight million Americans were receiving SSI benefits.

A person who is eligible to receive SSI from SSA is also eligible to receive APA from the State of Alaska, if he or she also satisfies other State of Alaska eligibility criteria.²⁴ A person who is receiving SSI or who has been approved for APA is automatically eligible for Medicaid

¹⁹ Ex. 3.0.

²⁰ Exs. 4.1, 4.2.

²¹ Ex. 3.1.

²² See APA program description on the Division's website at <http://dhss.alaska.gov/dpa/Pages/apa/default.aspx> (accessed on May 9, 2016).

²³ 7 AAC 40.090.

²⁴ 7 AAC 40.030.

benefits.²⁵ The category of Medicaid which a person automatically obtains as a result of APA eligibility is known as “APA-related Medicaid.”

If a recipient of APA benefits has also been receiving SSI, and the recipient's SSI is terminated by the SSA, the State of Alaska is required to terminate the recipient's APA 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)). Accordingly, those exceptions are not applicable here.

The Alaska regulation pertaining to the "domino effect" of a Supplemental Security Income benefit termination, 7 AAC 40.060(c), is clear. The SSA's termination of Mr. L's Supplemental Security Income automatically requires the State of Alaska to terminate Mr. L's Adult Public Assistance and APA-related Medicaid benefits. Even if the Social Security Administration's decision to terminate Supplemental Security Income benefits is wrong or under appeal with the SSA, the Division does not have the authority to ignore the termination requirement.

B. Notice Requirements Applicable to APA and APA-related Medicaid

The State of Alaska Department of Health and Social Services' “Fair Hearings” regulations apply to both the Adult Public Assistance Program and the Medicaid Program.²⁶ Alaska “Fair Hearings” regulation 7 AAC 49.060 provides in relevant part that “[t]he department will give written notice to the recipient *not later than 10 days* before the date the department intends to take action denying, reducing, suspending, or terminating assistance” [emphasis added].²⁷

Similarly, federal Medicaid regulation 42 CFR 431.211 stated in relevant part that “[t]he State or local agency must mail a notice at least 10 days before the date of action.”

The manner in which days are counted for purposes of the foregoing regulations is specified by A.S. 01.10.080. That statute provides that “[t]he time in which an act provided by law is required to be done is computed by excluding the first day and including the last, unless the last day

²⁵ 7 AAC 100.002, subsections (b)(1) and (d)(1); 7 AAC 100.410, subsections (a) and (b).

²⁶ 7 AAC 49.010(a).

²⁷ 7 AAC 49.060 contains eight listed exceptions, but none of them apply here.

is a holiday, and then it is also excluded.” The Alaska Supreme Court has held that the term “law,” as used in A.S. 01.10.080, also includes regulations.²⁸

In *Allen v. State, Department of Health & Social Services*, 203 P.2d 1155, 1168 – 1170 (Alaska 2009), the Alaska Supreme Court held that notices denying, reducing, or terminating benefits must stand on their own; that defective notice cannot be cured through the hearing process; and that the way to cure a defective notice is to issue a new, legally sufficient notice.²⁹

C. The Division Failed to Provide Mr. L with Legally Sufficient Notice of the Termination of his Benefits, and Cannot Terminate Mr. L's Benefits Until a new, Legally Sufficient Notice has been Issued

As indicated in the preceding section, federal Medicaid regulation 42 CFR 431.211 requires that the Division provide at least 10 days notice of adverse action; this rule applies to Mr. L's APA-related Medicaid benefits. Alaska “Fair Hearings” regulation 7 AAC 49.060 also requires that the Division provide at least 10 days notice of adverse action; this rule applies to Mr. L's APA benefits as well as his APA-related Medicaid benefits.

The Division mailed its benefit termination notice to Mr. L on March 22, 2016.³⁰ The notice stated that Mr. L's benefits would close "as of" March 31, 2016.³¹

If the day on which the notice is mailed is counted, there are 10 days between March 22 and March 31 (inclusive). However, under Alaska law, that is not how days are counted. Under A.S. 01.10.080 (quoted in Section III(B), above), *the first day of the counting period is not included*. Counting the days as required by A.S. 01.10.080, there are only nine days between March 22 and March 31. Accordingly, the Division's termination notice, dated March 22, 2016, did not provide legally sufficient notice under 42 CFR 431.211 or 7 AAC 49.060. Further, the Division's revised notice, dated April 12, 2016, did not remedy the notice problem, because it retained the original benefit termination date of March 31, 2016.

Does the insufficient notice provided in this case prevent the Division from *ever* terminating Mr. L's benefits? No. In *Allen v. State, supra*, the Alaska Supreme Court did not automatically find in favor of the benefit recipient because of the defective notice. Rather, the court allowed the Division to correct its defective notice by completely reissuing it (*Allen* at 1169). Accordingly, in this case the Division has the right to issue a new, legally sufficient benefit termination notice to Mr. L. If the Division issues a new benefit termination notice,

²⁸ *Perito v. Perito*, 756 P.2d 895, 898 (Alaska 1988).

²⁹ *See also Baker v. State Department of Health & Social Services*, 191 P.3d 1005, 1009 (Alaska 2008).

³⁰ Ex. 3.0.

³¹ Ex. 3.0.

and if, after receipt of the new notice, Mr. L still disagrees with the Division's action, Mr. L may then request a new hearing within 30 days of the Division's action (7 AAC 49.040). In that event, the Mr. L would be entitled to a new hearing.

IV. Conclusion

As a matter of law, if SSA determines that a recipient is no longer eligible to receive SSI, the Division is required by regulation 7 AAC 40.060(c) to terminate the recipient's APA and APA-related Medicaid. However, the Division erred when it issued its termination notices in this case. The applicable regulations require that the Division provide a benefit recipient with at least 10 days advance notice of any adverse action the Division intends to take concerning the recipient's benefits. In this case, however, the Division provided only nine days advance notice to Mr. L. Accordingly, although the Division was properly following its regulations in *seeking* to terminate Mr. L's benefits, the Division failed to provide legally sufficient notice of the proposed termination of benefits. The Division's termination of Mr. L's Adult Public Assistance and APA-related Medicaid benefits is therefore reversed. The Division is free to issue a new termination notice at any time. However, if the Division issues a new termination notice, Mr. L has the right to request a new hearing concerning the new notice.

DATED this 1st day of June, 2016.

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 10th day of June, 2016.

By: Signed _____
Name: Jay D. Durych
Title: Administrative Law Judge, DOA/OAH

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