

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

In the Matter of)	
)	
T U)	OAH No. 17-0098-APA
_____)	Agency No.

DECISION

I. Introduction

The Division of Public Assistance denied T U’s application for Adult Public Assistance benefits because he had been denied Social Security Disability benefits four months earlier, and had neither appealed that denial nor reapplied. Because applicants who meet the income threshold for Social Security benefits must pursue those benefits in order to receive APA benefits, the Division’s decision is upheld.

II. Facts

The Division of Public Assistance administers the Adult Public Assistance (APA) benefits program. Applicants for and recipients of APA benefits are required to “apply for and diligently pursue” other benefits for which they may be eligible.¹ This requirement specifically includes the requirement to concurrently pursue Social Security Disability Insurance (“SSI”) benefits.²

T U is a 60-year-old resident of No Name, Alaska. According to Mr. U, he previously ran a successful business, but suffered a brain injury as the result of a seizure disorder.³ He is now unemployed and struggles to meet his most basic financial needs.⁴

Mr. U applied for SSI benefits in June 2016.⁵ On July 14, 2016, the Social Security Administration (SSA) denied Mr. U’s application because it had determined that his “household” had too much income to qualify.⁶ SSA’s July 2016 notice informed Mr. U of the denial and the basis for it – including specifically indicating that, because the decision was based on the threshold question of income, the SSA had not reached a determination as to whether or not Mr. U was disabled.⁷ And the notice informed Mr. U that he had 60 days to file an appeal of the

¹ Ex. 8.
² Ex. 9.
³ Testimony of Mr. U.
⁴ Testimony of Mr. U; Ex. 2.
⁵ Ex. 3.1.
⁶ Ex. 3.1-3.6. To reach this determination, the SSA included the income of Mr. U’s estranged wife, from whom he has since become divorced, even though, according to Mr. U, he was not living with his estranged wife or receiving any support from her. Testimony of Mr. U; Ex. 3.1-3.6.
⁷ Ex. 3.2.

denial.⁸ Mr. U did not file an appeal of the SSA denial within the deadline set out in the July 2016 notice.⁹

On October 13, 2016, Mr. U submitted an Application for Services with the Division of Public Assistance. Mr. U checked a box on the application indicating he was requesting “Adult Public Assistance,” and handwrote that he was also requesting “temp help.”¹⁰ In case notes describing his eligibility interview, a Division case worker described Mr. U’s situation as follows: “T has not worked in over 60 days. Applied for SSI. Has been selling camping and fishing gear to survive. Lives in a garage for free.”¹¹

The Division first “pended” and eventually denied Mr. U’s request for Adult Public Assistance because of his failure to actively pursue social security benefits.¹² The Division’s January 5, 2017 denial letter indicated that Mr. U’s request for Adult Public Assistance had been denied because of the SSI denial.¹³

Mr. U requested a fair hearing, noting his poor health, his inability to work, and his ongoing problem with seizures.¹⁴ The hearing on Mr. U’s appeal was held on February 21, 2017. Mr. U appeared in person and represented himself. The Division was represented by fair hearing representative Sally Dial. Ms. Dial reiterated the Division’s position that Mr. U is not currently eligible for APA benefits because he is not receiving Social Security Disability benefits.¹⁵ Ms. Dial explained that the Division has access to an SSA database that displays, by social security number, an applicant’s status with the SSA.¹⁶ The database shows that SSA denied Mr. U’s application in July 2016, and that – as of mid-February 2017 – no appeal has been received.¹⁷ Because the Social Security Administration database shows no record of Mr. U having appealed his SSI denial, the Division contends, his October 2016 application for Adult Public Assistance cannot be granted.

⁸ Ex. 3.3-3.4. The notice also explained that Mr. U has the right to file a new application at any time.

⁹ U testimony; Ex. 3.7.

¹⁰ Ex. 2.1.

¹¹ Ex. 2.

¹² Ex. 2. The eligibility interview notes that in addition to Interim Assistance, Mr. U was also requesting retroactive Medicaid benefits. The Division *approved* Mr. U for Medicaid MAGI benefits – although he apparently did not understand he had been approved for Medicaid until the hearing was held in this appeal. *See* Division position statement and case presentation.

¹³ Ex. 4.

¹⁴ Ex. 5.

¹⁵ While the Division agrees that the basis for the Social Security decision (that Mr. U has too much income to qualify) appears inconsistent with the evidence (that Mr. U has no income), the Division contends that Mr. U’s remedy is to appeal the Social Security denial, or to reapply if his circumstances have changed since his initial application.

¹⁶ Division case presentation; Ex. 3.7.

¹⁷ Ex. 3.7.

Mr. U asserts that he received a second SSA denial letter in October 2016, and filed an appeal of that second denial during the first few days of January 2017. Mr. U says he does not have copies of either of these documents. Mr. U asserts that his appeal of the “second denial” was late by a few days because he could not drive until six months after his most recent seizure – which he describes as happening in October (i.e. only two months before he says he filed the appeal). According to Mr. U, once he was permitted to drive again, he drove to the SSA office to get an appeal form, then walked to the Post Office to mail his completed appeal request.

Mr. U testified that he did not make a copy of the appeal form he says he filed, and that recent conversations with representatives from the SSA confirmed that the SSA has no record of him filing any appeal. Mr. U further testified that he does not plan to file a new application for Social Security, or a new appeal, because he finds this process so upsetting.¹⁸ Mr. U was obviously and genuinely frustrated with his difficulties in obtaining assistance from either the SSA or the Division. Mr. U credibly testified that his brain injury made this process difficult to manage, and that the experience was disheartening.¹⁹

III. Discussion

APA benefits are only available to individuals who meet both the eligibility requirements of the SSI program and the eligibility requirements of the APA regulations themselves.²⁰ Because the APA program is administered concurrently with SSI, an applicant for APA whose income falls within SSI income standards *must* apply for SSI within 30 days of applying for APA.²¹

Mr. U’s income, as he has represented it to the Division, falls within SSI income standards. The fact that SSA apparently concluded otherwise in its July 2016 decision is not controlling, for several interrelated reasons. First, the regulation concerns applicants whose income does in fact fall under the SSI income standards. Given Mr. U’s representations to the Division that he has no income, he undisputedly falls within the category described in the regulation. Second, and relatedly, Mr. U contends – and the Division appears to agree – that SSA erred in its determination to the contrary. Mr. U’s remedy for such an error is to either file an appeal or submit a new application with the SSA, but the appearance of such an error does not override the Division’s obligation to faithfully apply its regulation – which, in this case, clearly

¹⁸ While Mr. U indicated at several points during the hearing that he does not plan to file a new SSA application or a new appeal of the denial, he also indicated at other times that he is in the process of hiring counsel to file on his behalf.

¹⁹ In response to this testimony, Ms. Dial attempted to offer Mr. U information about the Alaska Brain Injury Network, and suggested that organization might be able to be of assistance with these concerns.

²⁰ AS 47.25.430(f); 7 AAC 40.030(a).

²¹ 7 AAC 40.060(a); Ex. 8-9.1.

covers Mr. U. Finally, the question of Mr. U's income for purposes of his October 2016 APA application – the issue in 7 AAC 40.060(a) – concerns his income at that time, not at the time of his June 2016 SSI application. At the time of his October 2016 APA application, Mr. U's income fell within SSI income standards. Accordingly, Mr. U was required to actively pursue SSA benefits in order to pursue his application for APA benefits.²²

At the time he applied for APA benefits, Mr. U did not have an active application pending for SSI benefits. Mr. U's unsupported testimony about having filed an appeal of the SSI denial in January 2017 is not sufficient to overcome the contrary evidence that he has not filed an appeal of the denial. Mr. U's testimony about having received and appealed from a second SSI denial letter was confusing and self-contradictory, but, more significantly, was not supported by the documentation in the record. As noted, Mr. U, who bears the burden of showing that the Division erred in finding him ineligible for APA, did not provide a copy of the second SSA denial letter he claims to have received in October 2016, nor of the subsequent appeal he claims to have filed.

A preponderance of the evidence thus supports the finding that, when Mr. U submitted his APA application in October 2016, he did not have an active SSI application, because his June 2016 application had already been rejected, and he had not timely appealed that rejection.²³ Because he did not have an active SSI application, Mr. U was therefore required to apply for SSI within 30 days of applying for APA benefits. Because he did not do so, the Division correctly denied his application for APA benefits.

IV. Conclusion

Because Mr. U cannot receive APA benefits without having an active SSI application pending or granted, the Division correctly denied his October 2016 application for APA benefits. This decision does not preclude Mr. U from reapplying for APA benefits should he submit a new application for SSI benefits.

DATED: February 28, 2017.

By: Signed
Cheryl Mandala
Administrative Law Judge

²² 7 AAC 40.060(a).

²³ Ex. 3.7.

Adoption

The undersigned, by delegation from 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 14th day of March, 2017.

By: Signed
Name: Lawrence A. Pederson
Title/Agency: Admin. Law Judge/OAH

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