

abundance of incorrect information about the APA program,” together with the contention that he had “maintained contact with the Agency attempting to understand the action taken.”⁴

DPA promptly rejected the January 31 hearing request as untimely.⁵ On February 14, 2017, Mr. J appealed the rejection of his hearing request.⁶ Disregarding the instructions on the Notice of Non-Referral, Mr. J again addressed his appeal directly to the Commissioner of Health and Social Services, using her state email account. This appears to have led to some delay in referring the case to the Office of Administrative Hearings. On April 17, 2017, the case was referred for a hearing on the issue of timeliness. Mr. J’s February 14 appeal request does not add any additional explanation for the lateness of his January 31 appeal, but acknowledges that “I seem to have missed a deadline by eight working days” and says that “I can demonstrate to OAH’s satisfaction why my request for Fair Hearing was filed a little late.”⁷

III. Analysis and Ruling

Under 7 AAC 49.030, a request for hearing in a public benefits case of this type must ordinarily be made “not later than 30 days after the date of the [required] notice.” The Department of Health and Social Services is authorized to entertain a hearing request made after the time limit “only if the administrative law judge finds . . . that the request for a hearing *could not* be filed within the time limit.”⁸ Thus, there are two questions in an appeal such as this one: was the hearing request made 30 or fewer days after the date of the notice and, if not, were the circumstances such that the request could not have been made on time? When an appeal is untimely under 7 AAC 49.030 and does not meet the single exception, department regulations provide no discretion. The appeal must be dismissed.⁹

In the present case, Mr. J admits that the hearing request was late. The request was due on January 6, 2017, and was submitted three-and-a-half weeks after that date.

The exception to the time limit does not apply. The December 7 notice was sent to the right address and Mr. J did receive it. He had it in hand when the appeal deadline expired, and he did not set out any circumstances that would have *prevented* him from acting on time rather than waiting another three-and-a-half weeks. At the hearing Mr. J explained that he did not file

⁴ *Id.*

⁵ Ex. 4. Mr. J is cautioned that if a hearing request were to become misplaced because he submitted it to a cabinet-level official rather than the appropriate address, he might be deemed not to have perfected his appeal, even if it were timely.

⁶ Ex. 5.

⁷ *Id.*

⁸ 7 AAC 49.030(a) (italics added).

⁹ 7 AAC 49.100(5).

the appeal within 30 days because he was seeking resolution of the issue through the commissioner's office and the legislative process. Mr. J has not shown that he *could not* have appealed within 30 days of the notice.

Because the appeal was beyond the 30-day window and the narrow exception to the deadline does not apply in these circumstances, dismissal is mandatory. Mr. J's request for a hearing on the December 7, 2016 reduction of his APA benefits must be dismissed. Under the authority delegated to the administrative law judge by 7 AAC 49.100(5), it is so ordered.

DATED: May 4, 2017.

Signed

Kathryn L. Kurtz

Administrative Law Judge

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.

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