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

In the Matter of	
C J	
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OAH No. 17-0394-APA Agency No.

ORDER OF DISMISSAL FOR UNTIMELINESS

I. Introduction

This matter came to the Office of Administrative Hearings as an appeal of a refusal to refer a *prior* appeal on the basis that the *prior* appeal was untimely. A hearing on the timeliness issue alone was held before Administrative Law Judge Kathryn Kurtz on May 4, 2017. C J participated and testified by telephone. Sally Dial represented the Division of Public Assistance.

The undisputed evidence in this case shows that Mr. J's request for a hearing was not sent until after the 30-day appeal period had expired. Mr. J does not meet the single basis for making an exception to the deadline. His appeal must therefore be dismissed.

II. Facts

On December 5, 2016, C J submitted a review application regarding the Adult Public Assistance (APA) benefits he was receiving.¹ The Division of Public Assistance (DPA) acted on the application two days later, issuing a notice on December 7, 2016 that Mr. J's benefit would change to \$23.00 per month beginning in January 2017.

Mr. J requested a fair hearing regarding the December 7, 2016 determination by means of an email to the Commissioner of Health and Social Services sent January 31, 2017.² In his email he acknowledged that he was making the request more than 30 days after notice of the agency action he was challenging, and at the hearing, he did not argue that the request for hearing was submitted within 30 days. Accordingly, there are no issues in this case regarding delayed notice or other circumstances that might have placed the hearing request within the 30-day window.

Mr. J's hearing request asked "that time restrictions in requesting a hearing be waived for good cause."³ As good cause, he pointed to "the complexity of the issue involved and the

¹ See Ex. 2.

² Ex. 3.

³ *Id.*

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.

<u>Signed</u> 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.]