

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

In the Matter of)	
)	
K E)	OAH No. 17-0700-APA
_____)	Agency No.

DECISION

I. Introduction

K E had been receiving benefits from the Division of Public Assistance’s Adult Public Assistance (APA) program based on her participation in the Supplemental Security Income (SSI) program of the federal Social Security Administration. When the Social Security Administration closed Ms. E’s SSI case, the division closed her APA case. Ms. E appeals the decision to close her APA case.

Because the division has not shown that Ms. E does not meet the eligibility requirements for the APA program, the division’s decision closing Ms. E’s APA case is reversed.

II. Facts

K E and her husband T E currently live in City A. They are from Village B, and still have ties to that community.¹ They have been married for 48 years.² Both are individuals living with disabilities. Ms. E has had recent medical issues, including knee replacement surgery.³ Ms. E recently turned 65.

Ms. E had been participating in both the SSI and Social Security Disability Insurance (SSDI) programs.⁴ In 2016, the Social Security Administration closed her SSI case because her income exceeded the program limit.⁵ The Es believe that the Social Security Administration erred in closing Ms. E’s SSI case and failed to provide her with adequate notice.⁶ They are seeking reinstatement of the SSI benefits.⁷

In April 2017, when the division learned that the Social Security Administration had closed Ms. E’s SSI case, the division notified Ms. E that she needed to apply for SSI, or risk

¹ Exhibit 16.2.
² Testimony of K. E.
³ Testimony of T. E.
⁴ Exhibit 2.1 - 2.1.
⁵ Exhibit 2.1, 17.1 - 17.2.
⁶ Testimony of T. E.
⁷ Exhibit 16.2, Testimony of T. E.

losing her APA benefits.⁸ In June 2017, the division notified Ms. E that her APA application was denied for failure to provide proof that she had applied for SSI.⁹ Ms. E appealed.¹⁰ The agency subsequently rescinded the June closure notice, and in July 2017 sent Ms. E another closure notice.¹¹ The second closure notice explained that APA will be terminated if a recipient becomes ineligible for assistance and it appears that the period of ineligibility will exceed three months or is of uncertain or infinite duration. The notice informed Ms. E that her APA case would be closed as of July 31, 2017.¹²

Ms. E continues to receive SSDI payments.¹³ Although the division closed Ms. E's APA case based on the Social Security Administration's closure of her SSI case, Ms. E still qualifies for Medicaid based on her eligibility for Social Security Disability Insurance (SSDI) benefits.¹⁴

The hearing in this matter was held on October 11, 2017. Ms. E participated, and her husband assisted her in presenting her case. Fair Hearing Representative Jeff Miller presented the division's case.

Mr. E objected to the admission of the division's exhibits because he and his wife felt they were treated rudely when they visited the division's City A office about the second notice of closure Ms. E received, and because the division had admitted it erred in issuing the first notice of closure. The first issue is not legally relevant to the issue of admissibility of the record, but it is understandably of considerable importance to Mr. and Ms. E. It should be noted that Mr. Miller apologized on behalf of the division for the Es' unfortunate experience in the division's City A office. The second issue relates to whether the division's decision to close Ms. E's APA case was legally correct rather than the admissibility of the division's exhibits, and this issue will be discussed below. Whether the division's exhibits are admissible depends on whether they are "evidence of the type on which a reasonable person might rely in the conduct of serious affairs."¹⁵ The division is required by regulation to file a position statement along with copies of the laws and documents it is relying on to support its proposed action.¹⁶ The agency's filing in this case

⁸ Exhibit 2, 4.

⁹ Exhibit 5.

¹⁰ Exhibit 14.

¹¹ Exhibit 11, 15.

¹² Exhibit 11.

¹³ Exhibit 2.2.

¹⁴ See Exhibit 2-2; Testimony of Miller.

¹⁵ 2 AAC 64.290(a).

¹⁶ 7 AAC 49.115.

satisfies that requirement, and the agency's exhibits are relevant to the case. Therefore, the agency's exhibits are admitted into evidence, and considered in the analysis below.

III. Discussion

The APA program provides financial assistance to aged, blind, or disabled needy Alaska residents.¹⁷ For purposes of the program, "aged" means 65 years of age or older.¹⁸ Generally, an applicant for the APA program must meet the eligibility requirements of the SSI program.¹⁹ If an individual is receiving SSI benefits and the Social Security Administration finds the individual ineligible for SSI, "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."²⁰ However, there is an exception for cases where an individual is receiving SSI and is found by the Social Security Administration to be ineligible because the individual's total income exceeds SSI standards. In these cases, "the applicant, if otherwise eligible, remains eligible for assistance if the total income does not exceed the income standards set out in 7 AAC 40.310."²¹

Because this case involves a termination of benefits, the division has the burden of proof.²² Although the division has shown that the Social Security Administration has closed Ms. E's SSI case, having found her income to exceed the limits of the SSI program, the division has not argued or proven that Ms. E does not meet the income standards in 7 AAC 40.310, as adjusted.²³

The division has already conceded that the June closure was erroneous, so the issue here is whether the July closure notice was correct. It is not clear from the record in this case whether the division was correct to find Ms. E ineligible and close her APA case at the end of July 2017.²⁴ Although the Social Security Administration has found that Ms. E is ineligible for SSI based on her income, Ms. E may still be eligible for APA under 7 AAC 49.060(d).

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¹⁷ AS 47.25.430.
¹⁸ AS 47.25.615(1).
¹⁹ 7 AAC 40.030(a).
²⁰ 7 AAC 40.060(c).
²¹ 7 AAC 40.060(d).
²² 7 AAC 49.135.
²³ Division Exhibit 17, 3.1 - 3.2.
²⁴ Division Exhibit 16.

IV. Conclusion

Because the division has not shown that Ms. E is not eligible for APA, the division's decision to close Ms. E's APA case is reversed.

DATED: November 15, 2017.

Signed

Kathryn L. Kurtz
Administrative Law Judge

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 28th day of November, 2017.

By: *Signed*

Name: Kathryn L. Kurtz
Title: Administrative Law Judge

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