

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

In the Matter of)
)
 K Q)
_____)

OAH No. 13-1238-MDS
Agency No.

DECISION AND ORDER OF DISMISSAL

I. Introduction

Through his representatives, in May of 2013 K Q apparently requested an adjustment to his service level authorization for personal care assistant (PCA) services. The Division of Senior and Disability Services (Division) issued a denial of his request in early July of 2013. Through his guardian, D H, Mr. Q in mid-August requested a fair hearing on the denial. The agency denied the hearing request as untimely. Ms. H promptly requested a hearing on this second denial, and the matter was referred to this office for a decision on timeliness.

Because the appeal could have been filed timely and was not, the applicable law requires that this case be dismissed. Mr. Q may reapply (through his representatives) for the adjustment he desires, but he cannot achieve that result through his May request.

II. Facts

K Q filed a Change of Information form on May 6, 2013.¹ On July 9, 2013, the Division generated a letter denying any adjustment of his service level authorization based on the Change of Information.²

The Division mailed its denial letter by certified mail on July 10, 2013.³ The denial letter was mailed to Mr. Q in care of D H, his guardian, at P.O. Box 870000, Wasilla, AK 99654.⁴ This was the exact address provided by Ms. H in three locations in her PCA application form on behalf of Mr. Q.⁵ Ms. H had signed that document, certifying that all of its contents were correct to the best of her knowledge.⁶

¹ Ex. D, p. 4.

² *Id.*

³ Ex. H. Ms. H contended that the letter was mailed on August 14, pointing to the postmark on the envelope at Ex. C, p. 3. However, that envelope almost certainly corresponds to an entirely different letter, dated August 14, which is found at Ex. F.

⁴ Ex. D, p. 4.

⁵ Ex. G.

⁶ *Id.*

The Zip Code 99654 was not the correct code for Ms. H’s post office box.⁷ The copy of the letter sent to Ms. H’s address did not reach her until August 16.⁸ This may be because of the incorrect Zip Code, although it is also possible that the letter was routed correctly and Ms. H, who shares her box with someone else, missed a notice placed in the box on July 11.⁹

In any event, Ms. H received a different copy of the July 9 notice letter from her supervisor on approximately July 25.¹⁰ Ms. H “assumed” she would have 30 days to appeal from the letter beginning on the date she received her own copy in her box.¹¹ Perhaps at the suggestion of her supervisor, she elected to defer filing a request for hearing until after returning from an out-of-town trip.¹² She delivered her request for hearing by e-mail on August 16, 2013.¹³

The letter from which Ms. H was appealing referenced an attached statement of appeal rights, which told her that she had 30 days to from the date of the letter to request a hearing, as provided in 7 AAC 49.030.¹⁴

III. Discussion

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.” In this case, the notice of the Division’s action was distributed to Ms. H, at the exact address she had certified as correct, on July 10, 2013. Thirty days from that date was August 9, 2013. Ms. H’s hearing request was made a week after that date.

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.”¹⁵ This high standard was not met in the present case. Ms. H could have filed a timely hearing request if she had acted on the notice when her supervisor gave it to her on July 25.

⁷ Testimony of Ms. H; Ex. C, p. 1.

⁸ Ex. C, p. 1.

⁹ *Id.*; testimony of Ms. H; Ex. H.

¹⁰ Testimony of B O.

¹¹ Testimony of Ms. H.

¹² Ex. C, p. 2.

¹³ *Id.*

¹⁴ Ex. D, pp. 5-6.

¹⁵ 7 AAC 49.030(a) (*italics added*).

When an appeal is untimely under 7 AAC 49.030, Department of Health and Social Services regulations provide no discretion. The administrative law judge is required to dismiss the appeal.¹⁶

The result might be different if the Division had sent out its notice document on July 10, but used a wrong zip code due to an error the Division itself made. The result could have been that the July 10 mailing was not “notice” at all, and that the 30-day clock would not have begun to run until a later time.¹⁷ Hence Ms. H’s August 16 hearing request might have been timely, without even resorting to the exception for late hearing requests that “could not” be filed timely. In this case, however, the Division’s July 10 distribution of notice was flawless, and the clock did start to run on that date. The clock expired on August 9, and Ms. H—who knew of the Division’s letter by late July—could have acted before that date.

IV. Conclusion and Order

Pursuant to 7 AAC 49.100(5), this matter is dismissed.

DATED this 4th day of November, 2013.

Signed

Christopher Kennedy
Administrative Law Judge

Right to Appeal: 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.]

¹⁶ 7 AAC 49.100(5). Dismissal authority in this situation is delegated by regulation to the administrative law judge; no proposed decision process under AS 44.64.060 is contemplated.

¹⁷ Requests for hearing must be submitted within 30 days of “the date of the notice required under 7 AAC 49.060.” Contrary to what the Division argued at hearing, “the date of the notice required under 7 AAC 49.060” is not the date the Division happens to put on the notice document, nor the date the Division puts the notice document in its own internal file. Instead, it is the date the Division *gives* notice—that is, the date the Division sends the notice document to the person who is entitled to notice. Sending the notice document to the person entitled to notice is typically accomplished by putting the notice document in the mail to the address that person has provided. If the notice document is not put in the mail, there is no notice under 7 AAC 49.060. If the notice document is put in the mail but the Division makes an error in the address, there is no notice under 7 AAC 49.060. But if the notice document is put in the mail to the address the person gave the Division, the 30 day clock begins to run on the date of mailing.