

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

In the Matter of)	
)	OAH No. 13-1270-MDS
M T)	Division No.
_____)	

ORDER OF DISMISSAL¹

I. Introduction

M T receives Medicaid PCA services. The Division of Senior and Disabilities Services (Division) notified her that her PCA hours would be reduced. Ms. T requested a hearing to challenge the reduction. The Division rejected her hearing request as untimely. Ms. T requested a hearing on the timeliness issue.

Ms. T' hearing was held on October 14, 2013. She appeared in person and was assisted by her daughter R T, and by W C with No Name A. L., Inc. Angela Ybarra appeared telephonically and represented the Division.

Ms. T made her request for a hearing on the reduction in her PCA hours on July 3, 2013. That request was made more than 30 days after she was sent notice of the reduction. As a result, Ms. T' hearing request was made after the deadline to request a hearing. This case is therefore dismissed, which means that the Division's reduction in Ms. T' PCA hours is upheld in its entirety.

II. Facts

Ms. T receives Medicaid PCA services. On May 30, 2013, the Division wrote a letter to Ms. T informing her that her PCA hours were being reduced.² The PCA reduction letter was sent to Ms. T by certified mail on May 31, 2013. It was delivered on June 4, 2013.³ Ms. T requested a hearing challenging the reduction in her PCA hours on July 3, 2013.⁴

¹ At the October 14, 2013 hearing, the parties were advised that this Order would be issued as a proposed decision, subject to the right to file proposals for action under AS 44.64.060(e). However, a review of the applicable Fair Hearing regulation, 7 AAC 49.030(a), indicates that issues regarding whether the time limit for requesting a hearing should be relaxed are reserved to the administrative law judge to decide, and are not subject to the proposed decision process. This Order is therefore issued as a final order without providing the parties with an opportunity to file a proposal for action.

² Ex. D, pp. 9 - 18.

³ Ybarra testimony.

⁴ Ex. D, pp. 7 - 8.

II. Discussion

A request for a hearing on Medicaid benefit issues must be requested within 30 days of the date the Division sends a public assistant applicant/recipient notice that it has taken an adverse action on his or her case.⁵

Ms. T was sent notice of the reduction in her PCA hours on May 31, 2013. Her deadline for requesting a hearing was July 1, 2013.⁶ Her hearing request was made two days thereafter on July 3, 2013, *i.e.*, the hearing request was made two days late.

The applicable regulation, 7 AAC 49.030(a), reads as follows:

Unless otherwise provided in federal law, a request for a hearing within the scope of 7 AAC 49.020 must be made to the department in writing by a recipient, or by a legal representative acting on the recipient's behalf, not later than 30 days after the date of the notice required under 7 AAC 49.060. A hearing request may be accepted after the time limit under this section only if the administrative law judge finds, based on the evidence submitted, that the request for a hearing could not be filed within the time limit.

Ms. T did not provide any reasons for the late filing, and instead argued that the filing was timely since it was made within 30 days of June 4, 2013, the date she received the reduction notice.

Ms. T's argument is not persuasive. The regulation is clear that the 30 day time period for requesting a hearing starts from the date of the notice, which would be 30 days from the date of mailing, not from the date she received the notice.⁷ Accordingly, Ms. T' hearing request was late. Because Ms. T did not show that she "could not" file her hearing request within the 30 day time limit, she has not demonstrated a basis for accepting her late filed hearing request.

IV. Conclusion and Order

Ms. T' hearing request was past the thirty day time limit for requesting a hearing. She did not provide any reasons that would justify relaxing the hearing request deadline. As a result, this case is dismissed, which means that the Division's reduction in her PCA hours is upheld in its entirety.

⁵ See 7 AAC 49.010; 7 AAC 49.030(a).

⁶ The 30th day after mailing was June 30, 2013, which fell on a Sunday. Accordingly, the deadline for requesting a hearing fell on the next business day, Monday July 1, 2013. See AS 01.10.080.

⁷ The current version of 7 AAC 49.030 was adopted effective April 4, 2013 (Register 206). An earlier version of the regulations provided that a hearing request could be made "within 30 days after receipt of notice." 7 AAC 49.040 (repealed effective April 4, 2013, Register 206). Because the Division's decision to reduce Ms. T's PCA hours was sent to her on May 31, 2013, the current version of 7 AAC 49.30 controls.

Appeal Rights: This is a final order for purposes of appeal rights. 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 order.

DATED this 29th day of October, 2013.

Signed _____
Lawrence A. Pederson
Administrative Law Judge

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