

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

In the Matter of:)
)
C N) OAH No. 12-0923-ATP
) DPA Case No.
_____)

DECISION

I. Introduction

This appeal asks whether C N can have a new hearing on the same Alaska Temporary Assistance Program (ATAP) eligibility issues as were decided in Mr. N’s prior appeal (OAH No. 12-0364-ATP Dec. 18, 2012).

By motion, the Division of Public Assistance (Division) requested dismissal of this appeal on the ground that Mr. N has raised no hearable issues not already being addressed in the then-pending case OAH No. 12-0364-ATP. Comparison of Mr. N’s hearing request for this appeal with the findings and conclusions in the decision for OAH No. 12-0364-ATP shows that the Division is correct. The Division's motion is therefore granted and this case is dismissed.

II. Facts

A. *The Prior Case*¹

On June 4, 2012 Mr. N and his wife submitted an application for ATAP and other public assistance benefits to the Division of Public Assistance (Division). The Division notified Mr. N on June 8, 2012 that his application for ATAP and other benefits had been approved. Mr. N subsequently failed to timely complete an Employability Assessment (EA) and a Family Self-Sufficiency Plan (FSSP), and beginning in July 2012 the Division imposed a penalty which reduced the amount of Mr. N's monthly ATAP benefit. Mr. N asserted that the Division's notice was legally insufficient and requested a hearing, which was held on October 23, 2012. On November 26, 2012 the undersigned issued a proposed decision recommending that the Commissioner of Health and Social Services, or his delegee, find that Mr. N was given legally sufficient notice but failed to either complete an FSSP or demonstrate exemption from FSSP requirements. The Division's penalty, reducing

¹ Unless otherwise indicated, the “Prior Case” facts are from the December 18, 2012 decision in OAH No. 12-0364-ATP.

the amount of Mr. N's ATAP benefits pending his compliance with ATAP FSSP requirements, was therefore affirmed.

On December 5, 2012 Mr. N filed a Proposal for Action (PFA). The PFA requested that the Commissioner of Health and Social Services or his delegee decline to adopt the administrative law judge's proposed decision, and instead remand the case for a new hearing. Mr. N's PFA was based on the argument that Executive Order 116 was legally ineffective. Executive Order 116, issued by the Governor on January 13, 2012, transferred the hearing functions formerly performed by the Department of Health and Social Services (DHSS) to the Office of Administrative Hearings (OAH). Mr. N's PFA was not successful, and on December 14, 2012 the administrative law judge's proposed decision was adopted by Ree Sailors, Deputy Commissioner of Health and Social Services.

B. The Present Case

On November 26, 2012, Mr. N requested another hearing with regard to his ATAP benefits.² The case was referred to OAH on November 28, 2012. That same day the Division requested that Mr. N's latest hearing request be dismissed because the Division had not taken any negative action against Mr. N other than the July 2012 penalty already being addressed in Mr. N's first case (OAH No. 12-0364-ATP). On November 28, 2012, OAH assigned this case to the undersigned Administrative Law Judge (ALJ) and issued a Notice of Hearing, which scheduled a status conference on December 5, 2012 and a hearing on December 18, 2012.

On December 5, 2012, prior to the scheduled status conference, Mr. N filed a motion to reassign this case to a different ALJ. The motion asserted that the instant case should be reassigned because the undersigned ALJ heard Mr. N's first case and, therefore, might be called as a witness in Mr. N's current case.

Mr. N's motion was addressed at the December 5th status conference. After hearing argument the undersigned ALJ denied Mr. N's motion, which Mr. N clarified was a motion to disqualify the ALJ for cause. Mr. N was advised of his right to have the disqualification issue reviewed by the Chief ALJ. On December 11, 2012, Mr. N filed a request for review of the ALJ's disqualification order with the Chief ALJ. The Chief ALJ upheld the

² The hearing request in this case was submitted on the same day that the proposed decision was issued in OAH No. 12-0364-ATP (Commissioner of Health and Social Services 2012).

undersigned ALJ's denial of Mr. N's disqualification motion in an order dated December 17, 2012.

Mr. N's hearing was held the next day (December 18, 2012) as scheduled. Mr. N could not be reached.³ The ALJ granted the Division's motion to dismiss, which had been pending for 20 days and to which Mr. N had filed no opposition.

III. Discussion

This case comes before the ALJ in the context of the Division's November 28, 2012 motion to dismiss. The Division requests that this case be dismissed based on the assertion that the Division had not taken any negative action against Mr. N other than the July 2012 penalty previously addressed in Mr. N's first case (OAH No. 12-0364-ATP).

The Division's motion is basically a motion for summary adjudication under 2 AAC 64.250 and 2 AAC 64.270. A party may request summary adjudication on one or more issues in an administrative hearing if a genuine dispute does not exist on an issue of material fact.⁴ If a motion for summary adjudication is supported by an affidavit or other documents establishing that a genuine dispute does not exist, the defending party may not rely on mere denials, but instead must demonstrate that a genuine dispute exists on an issue of material fact for which an evidentiary hearing is required.⁵

The Division's motion of November 28, 2012 asserts that the Division has taken no negative action on Mr. N's benefits case since imposition of the June 2012 penalty already at issue in OAH No. 12-0364-ATP. The Division's motion is supported by documentation including case history printouts from the Division's Electronic Information System (EIS).⁶ The case history demonstrates that the Division has not taken any adverse action against Mr. N (i.e. has not denied, terminated, suspended, or reduced benefits) from the time the Division imposed the penalty previously addressed in OAH No. 12-0364-ATP, through the date that Mr. N filed his hearing request in this case.⁷ Mr. N never even attempted to refute this. Instead, Mr. N concentrated his arguments on his motion to disqualify the ALJ, and on his jurisdictional

³ The parties were advised during the December 5th status conference that, unless the Chief ALJ reassigned the case to another ALJ based on Mr. N's motion to disqualify, the Division's pending motion to dismiss would be addressed at the hearing scheduled for December 18th. Mr. N never requested that the hearing of December 18th be postponed.

⁴ 2 AAC 64.250(a).

⁵ 2 AAC 64.250(b).

⁶ Exs. 9, 10.

⁷ Exs. 9, 10.

argument, based on Executive Order 116, which he had unsuccessfully asserted in OAH No. 12-0364-ATP.

The Department's Fair Hearings regulations provide claimants with the right to a hearing only when a *concrete dispute* exists involving a claimant's *right to benefits*. Pursuant to 7 AAC 49.020, an opportunity for hearing is granted only to those claimants whose request for an application is denied; whose claim to financial, food, or medical assistance, contained in an application, is denied or is not acted upon with reasonable promptness; whose receipt of benefits the division intends to modify or terminate; or whose request for a covered Medicaid service is denied. In this case, there is no evidence indicating that the Division has taken any adverse action against Mr. N. Accordingly, Mr. N does not currently qualify for a hearing under 7 AAC 49.020.

Fair Hearings regulation 7 AAC 49.100 states in relevant part that "[t]he hearing authority may deny or dismiss a hearing request or terminate a hearing if (1) the issues by which the client is aggrieved are not those set out in 7 AAC 49.020" As discussed above, in this case Mr. N has not asserted any claim falling within the scope of 7 AAC 49.020. Accordingly, dismissal of this case is appropriate under 7 AAC 49.100.

Dismissal of this case is also appropriate based on the doctrine of *res judicata*. That doctrine generally bars litigation of claims which have already been decided, or which could have been decided, in a prior proceeding.⁸ Mr. N asserted claims related to the Division's imposition of a penalty as to his ATAP benefits in his first case (OAH No. 12-0364-ATP). Mr. N has attempted to raise the same claims as a basis for a hearing in this case. The doctrine of *res judicata* prohibits Mr. N from relitigating claims in this case which were resolved, or which could have been resolved, in his prior case.⁹

⁸ *Commercial Fisheries Entry Commission v. Byayuk*, 684 P.2d 114 (Alaska 1984). In *State v. Baker*, 393 P.2d 893, 896-897 (Alaska 1964), the Alaska Supreme Court defined the application and purpose of *res judicata* as follows:

This doctrine bars a second suit between the same parties on the same subject matter resolving the same issues between the parties in the same capacity or quality. It is founded upon the principle that parties ought not to be permitted to litigate the same issue more than once and that when a right or fact has been judicially determined by a court of competent jurisdiction or an opportunity for such trial has been given, the judgment of the court, so long as it remains unreversed, should be conclusive upon the parties and those in privity with them [footnotes omitted].

⁹ It is well established that the principle of *res judicata* applies in administrative proceedings as well as in court proceedings. See *United States v. Utah Construction and Mining Company*, 384 US 394, 422, 86 S.Ct. 1545, 16 L.Ed.2d 642 (1966); *Jeffries v. Glacier State Telephone Company*, 604 P.2d 4, 8-9 (Alaska 1979); *Sublett v. State*

IV. Conclusion

The Division has taken no adverse action against Mr. N other than the ATAP penalty previously addressed in OAH No. 12-0364-ATP. Mr. N is thus not entitled to a hearing in this case because Mr. N failed to raise an issue hearable under 7 AAC 49.020 and 7 AAC 49.100. In addition, his claims in this case are barred by the related doctrine of *res judicata*. Accordingly, the Division's motion for summary adjudication is granted. This case is dismissed.

Dated this 25th day of January, 2013.

Signed

Jay Durych
Administrative Law Judge

Adoption

The undersigned, by delegation from of 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 8th day of February, 2013.

By: *Signed*

Name: Jay D. Durych
Title: Administrative Law Judge

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

of Alaska Commercial Fisheries Entry Commission, 773 P.2d 952 (Alaska 1989); *Alaska Public Interest Research Group v. State*, 167 P.3d 27 (Alaska 2007).