

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

In the Matter of: )  
 )  
 B H ) OAH No. 13-0881-ATP  
 ) DPA Case No.  
\_\_\_\_\_ )

**DECISION**

**I. Introduction**

This case asks whether B H can have a new hearing on the same Alaska Temporary Assistance Program (ATAP) eligibility issues as were involved in Ms. H's prior case (OAH No. 13-0805-ATP, dismissed on June 13, 2013). By motion, the Division of Public Assistance (Division) requested dismissal of this case on the ground that Ms. H has raised no hearable issue not previously addressed in the prior case (OAH No. 13-0805-ATP). Ms. H did not oppose the Division's motion, and review of the file in this case indicates that no adverse action has been taken by the Division with regard to Ms. H' ATAP benefits since Ms. H withdrew her hearing request in OAH No. 13-0805-ATP. The Division's motion is therefore granted and this case is dismissed.

**II. Facts**

Prior to June 2013 Ms. H was a recipient of ATAP benefits.<sup>1</sup> On May 7, 2013 the Division notified Ms. H that her ATAP benefits would end on May 31, 2013.<sup>2</sup> The notice advised that Ms. H's ATAP benefits were being terminated because she no longer had custody of a child at least 51% of the time, and therefore no longer qualified for ATAP benefits.<sup>3</sup> On June 6, 2013 Ms. H requested a hearing concerning the Division's termination of her ATAP benefits.<sup>4</sup> This request resulted in the opening of OAH Case No. 13-0805-ATP, and a hearing was scheduled for July 23, 2013.<sup>5</sup> However, on June 7, 2013 Ms. H notified the Division, in writing, that she wished to withdraw her hearing request.<sup>6</sup> On June 13, 2013 the Division

---

<sup>1</sup> Ex. 1.  
<sup>2</sup> Ex. 1.  
<sup>3</sup> Ex. 1.  
<sup>4</sup> Ex. 3.  
<sup>5</sup> Ex. 2.  
<sup>6</sup> Ex. 3.

forwarded Ms. H's withdrawal of her hearing request to this Office,<sup>7</sup> and this Office issued an order dismissing the case the next day.<sup>8</sup>

On June 20, 2013 Ms. H contacted the Division and requested a hearing.<sup>9</sup> On June 21, 2013 the Division forwarded the new hearing request to this Office. On June 24, 2013 the Division filed a motion requesting that this case be dismissed on the basis that it involved the same issue or issues as Ms. H's prior case, which she had voluntarily dismissed.<sup>10</sup> On June 26, 2013 an order was issued in the present case explaining that Ms. H had through July 9, 2013 to respond to the Division's motion, and that if she failed to respond, her hearing might be cancelled and her case might be dismissed. Ms. H filed no response.

### **III. Discussion**

This case comes before the administrative law judge in the context of the Division's June 24, 2013 motion to dismiss. The Division requests that this case be dismissed based on the assertion that the Division has not taken any negative action against Ms. H's ATAP benefits other than the termination of benefits at issue in Ms. H's first case (OAH No. 13-0805-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.<sup>11</sup> 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 (in this case Ms. H) must demonstrate that a genuine dispute exists on an issue of material fact for which an evidentiary hearing is required.<sup>12</sup>

The Division's motion of June 24, 2013 asserts that the issue in this case is the same as that in Ms. H's prior case (OAH No. 13-0805-ATP). The Division's motion is supported by documentation including e-mails and case history printouts from the Division's Electronic Information System (EIS). These documents show no evidence that the Division has taken any adverse action against Ms. H's ATAP case (i.e. it has not denied, terminated, suspended, or reduced benefits) since the time the Division terminated Ms. H' ATAP benefits (which termination was the basis for prior OAH Case No. 13-0805-ATP). Ms. H has not even attempted to refute this.

The Department's Fair Hearings regulations provide claimants with the right to a hearing

---

<sup>7</sup> Ex. 3.

<sup>8</sup> Ex. 2.

<sup>9</sup> Ex. 6.

<sup>10</sup> Ex. 10.

<sup>11</sup> 2 AAC 64.250(a).

<sup>12</sup> 2 AAC 64.250(b).

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 financial, food, or medical assistance is denied or is not acted upon with reasonable promptness, or whose financial, food, or other medical assistance benefits are suspended, terminated, or reduced. In this case, there is no evidence indicating that the Division has taken any adverse action against Ms. H since she voluntarily withdrew her prior case. Accordingly, Ms. H 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 administrative law judge shall deny or dismiss a hearing request or terminate a hearing if (1) the issues by which the recipient is aggrieved are not those set out in 7 AAC 49.020 . . . ." As discussed above, in this case there is no evidence that Ms. H has asserted any new 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 re-litigation of claims which have already been decided, or which could have been decided, in a prior proceeding.<sup>13</sup> Ms. H asserted claims related to the Division's termination of her ATAP benefits in her first case (OAH No. 13-0805-ATP). The preponderance of the evidence indicates that Ms. H has attempted to raise the same claims as a basis for a hearing in this case. The doctrine of *res judicata* prohibits Ms. H from re-litigating claims in this case which were resolved, or which could have been resolved, in her prior case.<sup>14</sup>

#### **IV. Conclusion**

There is no evidence that the Division has taken any adverse action against Ms. H's ATAP benefits since the termination of her benefits previously addressed in OAH No. 13-0805-ATP. Ms. H is not entitled to a hearing in this case because Ms. H failed to raise any new issue hearable under 7 AAC 49.020 and 7 AAC 49.100. In addition, her claims in this case are

---

<sup>13</sup> *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].

<sup>14</sup> 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 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).

barred by the related doctrine of *res judicata*. Accordingly, the Division's motion for summary adjudication is granted. This case is dismissed.

Dated this 12th day of July, 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 26<sup>th</sup> day of July, 2013.

By: *Signed* \_\_\_\_\_  
Name: Jay D. Durych  
Title: Administrative Law Judge, DOA/OAH

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