

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

IN THE MATTER OF: )  
 )  
 N S. D ) OAH No. 12-0215-CCA  
 ) Agency No.  
\_\_\_\_\_ )

**DECISION**

**I. Introduction**

N S. D submitted an application for the Child Care Assistance Program (CCAP)<sup>1</sup> on April 24, 2012. On May 25, 2012, the Alaska Family Services Child Care Assistance Office (AFS)<sup>2</sup> denied the application on the basis that Ms. D had failed to provide information necessary to complete her application. She requested a hearing on July 2, 2012.

Ms. D’s hearing was held on August 22, 2012. She appeared by telephone. Cheryl Windham represented the division by telephone. The hearing was recorded.

Based on the record as a whole and after due deliberation, the decision denying Ms. D’s April 24, 2012 application for Child Care Assistance for May 2012 is reversed.

**II. Facts**

Ms. D, her husband, N N, and their daughter, Q, moved to Alaska in early 2012.<sup>3</sup> The family went on temporary assistance<sup>4</sup> and for that purpose, Mr. N’s ability to work had to be evaluated. On March 6, 2012, he was seen at the No Name Health Center (NNHC) by Dr. Hess,<sup>5</sup> who filled out a Health Status Report Form, a blank form used by the division for medical assessments.<sup>6</sup> Dr. Hess listed Mr. N’s medical diagnoses as “asthma, allergies, history of encephalitis,”<sup>7</sup> and stated Mr. N’s ability to work was “unknown at this time.”<sup>8</sup> The doctor further indicated Mr. N would be undergoing evaluations for his encephalitis and that “[r]ight

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<sup>1</sup> The CCAP is a program of the Department of Health and Social Services, Division of Public Assistance (division).

<sup>2</sup> The AFS is the Department’s designee for child care assistance matters. *See* AS 47.25.001(b)(2).

<sup>3</sup> The findings of fact are taken from Ms. D’s hearing testimony unless otherwise stated.

<sup>4</sup> *See* Exh. 9(a).

<sup>5</sup> Exh. 10.

<sup>6</sup> Exh. 10(d)-(e).

<sup>7</sup> Exh. 10(d).

<sup>8</sup> Exh. 10(d).

now his diagnosis and prognosis are unclear.”<sup>9</sup> Finally, Dr. Hess stated that Mr. N was being referred out for additional “neuro [and] neuropsych” consultations.<sup>10</sup>

Mr. N was referred to multiple providers for follow-up evaluations. He had an MRI on March 13, 2012.<sup>11</sup> Thereafter, he was referred to a neurologist for an appointment in mid-April, but it was postponed until April 27, 2012.<sup>12</sup> At that appointment, Mr. N was given a referral for an EEG, which was scheduled for June 7, 2012.<sup>13</sup> He was also referred to a neuropsychologist for an appointment on June 20, 2012, but was told he would not be able to get the results until the follow-up appointment on July 10, 2012.<sup>14</sup> Ms. D and Mr. N attended all of these appointments.

Ms. D obtained a job in March 2012, so the family was terminated from the temporary assistance program.<sup>15</sup> On April 24, 2012, Ms. D submitted an application for child care assistance.<sup>16</sup> On April 30, 2012, the AFS notified Ms. D that the application was still pending and that she needed to provide ID cards for herself and husband, and information regarding her child care provider; participate in an interview; and identify an eligible activity for Mr. N.<sup>17</sup>

Ms. D provided the ID cards and on May 2, 2012, completed the required interview.<sup>18</sup> During the interview, she disclosed to the eligibility technician that her husband was unable to work or care for Q.<sup>19</sup> That same day, AFS notified Ms. D that her application was still incomplete and that by May 14, 2012, she would need to provide a CCAP Health Status Report form documenting why her husband was not able to provide care for Q while Miss D was working.<sup>20</sup>

On May 18, 2012, the CCAP received a letter from Ms. D regarding the difficulties she and Mr. N were having with getting the CCAP Health Status Report form filled out.<sup>21</sup> She stated they had been to the NNHC and had been taking steps to secure a diagnosis and treatment plan

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<sup>9</sup> Exh. 10(e).  
<sup>10</sup> Exh. 10(e).  
<sup>11</sup> Exh. 10(c).  
<sup>12</sup> Exh. 10(c).  
<sup>13</sup> Exh. 10(c).  
<sup>14</sup> Exh. 18(a).  
<sup>15</sup> Exh. 9(a).  
<sup>16</sup> Exh. 3.  
<sup>17</sup> Exh. 4.  
<sup>18</sup> Exh. 6.  
<sup>19</sup> Exh. 6(d).  
<sup>20</sup> Exh. 7.  
<sup>21</sup> Exh. 10(a)-(c).

for Mr. N and to obtain a doctor's signature on the CCAP report form. As an alternative to providing the form required by the child care assistance program, Ms. D submitted the Health Status Report Form filled out by Dr. Hess during his evaluation of Mr. N for their temporary assistance benefits.<sup>22</sup>

On May 25, 2012, AFS denied Ms. D's application for child care assistance. The reason for the denial was that she failed to provide the CCAP Health Status Report form documenting why her husband was not able to provide care for Q while N was at work.<sup>23</sup>

Ms. D submitted another application for child care assistance on June 1, 2012.<sup>24</sup> She indicated that Mr. N would be attending an online community college on a full-time basis.<sup>25</sup> Once again, the division notified her that the application was incomplete and that she needed to provide income verification for April and May 2012, and participate in an interview.<sup>26</sup>

On June 12, 2012, Ms. D submitted a request for an administrative review of the denial of her April 24, 2012, application for child care assistance.<sup>27</sup> Her request was denied on June 19, 2012, because she had not provided Mr. N's CCAP Health Status Report form by the deadline on May 14, 2012.<sup>28</sup>

On June 27, 2012, Ms. D provided additional information for her second child care assistance application regarding her employment and the online classes Mr. N was taking from Richland Community College.<sup>29</sup>

On July 11, 2012, Ms. D submitted a CCAP Health Status Report form regarding Mr. N that was completed by Dr. Russell Cherry on June 20, 2012. The report lists Mr. N's four primary medical diagnoses and states specifically that his physical or mental condition limits his ability to work and that he is permanently unable to provide care for a child in the home.<sup>30</sup>

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<sup>22</sup> See Exh. 10(d)-(e). The two forms are similar but not identical. First, their names are slightly different. Second, both forms inquire into a person's ability to work, although the public assistance version asks more questions on that topic. Finally, in addition to work-related questions, the CCAP Health Status Report form also seeks information regarding the person's ability to care for a child. See Exh. 20.

<sup>23</sup> Exh. 11(a).

<sup>24</sup> Exh. 12.

<sup>25</sup> Exh. 12(b).

<sup>26</sup> Exh. 13.

<sup>27</sup> Exh. 14.

<sup>28</sup> Exh. 17. Ms. D appealed the administrative review decision on July 2, 2012. Exh. 22(a).

<sup>29</sup> Exh. 18.

<sup>30</sup> Exh. 20.

On July 25, 2012, Ms. D's June 1, 2012 application for child care assistance was approved for the period from June 2012 through November 2012.<sup>31</sup>

### III. Discussion

The issue in this case is whether the AFS correctly denied Ms. D's application for child care assistance for the month of May 2012 because she did not provide the CCAP Health Status Report form with evidence Mr. N was incapacitated and unable to care for a child in the home. Ms. D has the burden of proving by a preponderance of the evidence that her application should have been approved.<sup>32</sup>

The Child Care Assistance Program provides assistance with child care expenses for income-eligible families who are working or participating in an education or training program.<sup>33</sup> To be eligible for benefits, parents must be participating in an "eligible activity"<sup>34</sup> such as work, seeking work, education or training.<sup>35</sup> In two-parent households, both must be participating in an eligible activity unless one of them is "incapacitated" and unable to provide care for the child in the home.<sup>36</sup> Whether a parent is incapacitated must be determined by a physician.<sup>37</sup>

CCAP regulations require families that are applying for benefits to cooperate with the program to determine the family's eligibility. That cooperation includes providing all of the information requested by the department or its designee:

(a) A family applying for child care assistance under this chapter shall provide complete, accurate, and current information regarding children, family income, hours of employment or training, work activities, and other factors that would affect eligibility for program benefits. At the time of application, a parent of the family shall read and sign a family responsibilities form prescribed by the department that includes the requirements of this section and contains a statement that the person signing the form has read those requirements, understands them, and agrees to abide by them.

(b) If requested by the department or a designee, a family shall provide documentation to support information provided on the application or family responsibilities form.<sup>[38]</sup>

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<sup>31</sup> Exh. 23(a).  
<sup>32</sup> 2 AAC 64.290(e).  
<sup>33</sup> AS 47.25.001.  
<sup>34</sup> 7 AAC 41.300(a).  
<sup>35</sup> 7 AAC 41.310.  
<sup>36</sup> 7 AAC 41.365(a)-(b).  
<sup>37</sup> 7 AAC 41.365(b).  
<sup>38</sup> 7 AAC 41.320(a)-(b).

In making an eligibility determination in public assistance appeals, the hearing authority considers all evidence available at the time of the hearing that bears on the circumstances that existed at the time of the decision under review. Stated differently, the administrative law judge and the final decisionmaker must consider new evidence that tends to establish eligibility at the time of the original denial, regardless of whether the original caseworker had access to the evidence.<sup>39</sup>

In this case, the new evidence in the record on appeal is the CCAP Health Status Report form that contains Dr. Cherry's medical assessment of Mr. N. The doctor evaluated Mr. N on June 20, 2012, then prepared his report of the assessment and made it available to Ms. D, who submitted the form to AFS on July 11, 2012.<sup>40</sup> The information in the report proves that Mr. N is incapacitated and unable to care for their child in the home.<sup>41</sup> Dr. Cherry's report also indicates Mr. N's condition is permanent, so it is more likely than not that Mr. N's condition existed at the time Ms. D first applied for child care assistance on April 24, 2012.

Ms. D did not provide the report to AFS by the deadline. But she provided all of the information she had available to her at the time her application was being processed. The delay was not due to Ms. D's actions – it was due to her inability to secure a timely appointment for her husband with the appropriate doctor before the stated deadline.

There is no penalty or sanction listed in 7 AAC 41.320(a)-(b) for a family's failure to provide information to AFS in support of an application for child care assistance. The regulation also does not contain any time requirements for supplying requested information.<sup>42</sup> The regulation is designed to secure a family's cooperation in the process of determining its eligibility for program services. Ms. D was fully cooperating in the application process – she submitted information to AFS on numerous occasions in an attempt to establish her family's

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<sup>39</sup> See *Parker v. New Hampshire Department of Health and Human Services*, 969 A.2d 322, 329-30 (N.H. 2009); *Carter v. New Mexico Human Services Department*, 211 P.3d 219, 222-23 (N.M. App. 2009) (citing several prior cases); *Maryland Department of Health and Mental Hygiene v. Brown*, 935 A.2d 1128, 1144-46 (Md. App. 2007); *Albert S. v. Department of Health and Mental Hygiene*, 891 A.2d 402 (Md. App. 2006); cf. *Murphy v. Curtis*, 930 N.E.2d 1228, 1235-36 (Ind. App. 2010) (noting limits on scope of *de novo* inquiry).

<sup>40</sup> See Exh. 20.

<sup>41</sup> Exh. 20. On the basis of the information contained in that report, Alaska Family Services approved Ms. D's second application for child care assistance, which had been filed less than six weeks after her first application. See Exh. 23(a).

<sup>42</sup> The Division's *Child Care Assistance Policy & Procedure Manual* § 305 allows a minimum 10 day time period to respond to a request for information. ([http://dhss.alaska.gov/dpa/Documents/dpa/programs/ccare/files/ccpp\\_manual.pdf](http://dhss.alaska.gov/dpa/Documents/dpa/programs/ccare/files/ccpp_manual.pdf) dated accessed November 8, 2012).

eligibility for child care assistance. She did not refuse to respond to the information request, and kept AFS informed of the reasons for the delay. Had she been able to get an appointment with Dr. Cherry in time for his report to be issued by the AFS deadline, Ms. D's first application for services would have been approved. Because Ms. D did not refuse to provide AFS with the requested information, was actively seeking to obtain the necessary information, provided AFS with Dr. Hess's Health Status Report form, and informed AFS of why she was not able to timely provide the requested information, her application should not have been denied.

#### **IV. Conclusion**

Ms. D met her burden of proving by a preponderance of the evidence that her husband, N, is incapacitated, unable to care for a child in the home, and that his condition existed at the time she initially applied for child care assistance. Ms. D kept AFS informed of her ongoing attempts to provide acceptable medical documentation, so her application should not have been denied because she did not timely provide requested medical information. Thus, the decision by AFS to deny Ms. D's application for child care assistance for May 2012 is REVERSED.

DATED this 9<sup>th</sup> day of November, 2012.

*Signed* \_\_\_\_\_

Kay L. Howard

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 20<sup>th</sup> day of November, 2012.

By: *Signed* \_\_\_\_\_

Name: Kay L. Howard

Title: Administrative Law Judge

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