

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

In the Matter of:	)	
	)	
U P	)	OAH No. 12-0606-CCA
	)	Former OHA Case No. 12-FH-160
	)	CCPO Hearing File No. 12-CCPO-012
_____	)	

**DECISION**

**I. Introduction**

This case involves a request by U P to relax the regulatory deadline for submittal of certain Child Care Assistance Program (CCAP) billing report forms. The Department of Health and Social Services, Division of Public Assistance (DPA or Division) denied payment for two months of Ms. P's child care expenses because she did not submit the in-home care provider's billings to the Division within the time provided by regulation.<sup>1</sup> This decision concludes that the Division was correct to deny payment for the two months of child care expenses because the billing reports were not timely filed and the Division does not have the discretion to ignore the deadlines provided in its regulations.

**II. Facts**

Ms. P has four minor children who require child care.<sup>2</sup> The Division has a program pursuant to which it will pay a child care provider to provide child care in a benefit recipient's own home.<sup>3</sup> On February 3, 2011 Ms. P and her adult son S P signed the Division's Parent / In-Home Provider Agreement.<sup>4</sup> Through this agreement, S agreed to provide child care for the minor children in return for payment. The agreement was received by the Division on April 22, 2011 and was ultimately approved by the Division on August 1, 2011 for the period August 2011 through January 2011.<sup>5</sup>

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<sup>1</sup> Exs. 10, 11.

<sup>2</sup> Exs. 8a, 9a. Ms. P needs assistance with child care because she works several (2-3) jobs (P hearing testimony).

<sup>3</sup> 7 AAC 41.370.

<sup>4</sup> Ex. 3.

<sup>5</sup> Exs 3a, 6a.

The Division requires that the child care provider and recipient submit monthly In-Home Billing Report Forms to the Division, for payment, on a periodic basis.<sup>6</sup> On March 9, 2012 the Division received Ms. P's In-Home Billing Report Forms for the months of October 2011 and November 2011.<sup>7</sup> On March 16, 2012 Alaska Family Services, Inc. (a private contractor which provides services to the Division) notified Ms. P that it could not pay her In-Home Billing Report Forms for October 2011 and November 2011 because they were received after the 90-day filing deadline.<sup>8</sup>

On March 29, 2012 Ms. P submitted to the Division a request for administrative review of Family Services' decision denying payment for the two months of child care charges.<sup>9</sup> Ms. P's request for review stated:

I know that you have a deadline, but I just did not remember due to my very busy schedule, such as I do work all seven days doing 2-3 jobs in addition to my family . . . . I ask for an exemption. I'll try to do different next time.

On April 2, 2012 the Division issued its administrative review decision.<sup>10</sup> The decision concluded that, because Ms. P's October 2011 and November 2011 billings<sup>11</sup> were received after the last day of the third month following the month covered by the billing, regulation 7 AAC 41.370(i)(1) prohibited payment of the billings.

Ms. P requested a Fair Hearing on April 23, 2012.<sup>12</sup> In her hearing request Ms. P essentially reiterated what she had written in her request for administrative review (see above), and requested a one-time exemption from the time limit for submitting billing reports.

Ms. P's hearing was held as scheduled on May 23, 2012. The hearing was recorded. Ms. P participated in the hearing by telephone, represented herself, and testified on her own behalf. Cheryl Windham, a Program Coordinator I employed by the Division, attended the hearing in person and represented and testified on behalf of the Division. All testimony and exhibits offered by the parties were admitted into evidence. At the end of the hearing the record was closed and the case became ripe for decision.

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<sup>6</sup> 7 AAC 41.370(i)(1).

<sup>7</sup> Exs. 8a, 9a.

<sup>8</sup> Exs. 10a, 11a.

<sup>9</sup> Ex. 12a.

<sup>10</sup> Exs. 13a, 13b.

<sup>11</sup> The decisional document specifically references only the October 2011 billings (see Ex. 13a). However, at hearing both parties treated the decision as pertaining to both the October 2011 and November 2011 billings.

<sup>12</sup> Ex. 14a.

### III. Discussion

The Child Care Assistance Program (CCAP) is established pursuant to Alaska Statutes (“AS”) 47.25.001 - 47.25.095. The regulations governing CCAP are set forth in the Alaska Administrative Code (AAC) at 7 AAC 41.010 - 7 AAC 41.990.

The facts of this case are not in dispute. Ms. P seeks the Division's payment of child care expenses incurred by her during the months of October 2011 and November 2011. She acknowledges that the billing forms for these child care expenses were not submitted to the Division until March 9, 2012. However, she asks for what amounts to a hardship exemption from the time limits pertaining to the submission and payment of billings for child care services.

The regulation directly applicable to this case is 7 AAC 41.370, titled "Child Care in the Child's Own Home." The regulation states in relevant part:

- (i) A family shall submit billing statements, and any corrections to billing statements, to the department or designee, as determined by the department as follows:
  - (1) for the first 10 months of a state fiscal year, no later than the last day of the third month following the month in which the charges were incurred;
  - (2) for the last two months of a state fiscal year, no later than 31 days after the end of the fiscal year.
- (j) The department *will not pay* program benefits billed on a billing statement or a correction to a billing statement submitted later than the applicable deadline set in (i) of this section. [Emphasis added].

The State of Alaska's fiscal year begins on July 1<sup>st</sup> of each year.<sup>13</sup> The billings at issue here (for October 2011 and November 2011) fell within the first ten months of Alaska's 2012 fiscal year. Accordingly, pursuant to 7 AAC 41.370(i)(1), the October 2011 billing form was due by January 31, 2012, and the November 2011 billing form was due by February 29, 2012.

Regulation 7 AAC 41.370(j) prohibits the Division from paying CCAP benefits for billing statements received after the deadline specified by 7 AAC 41.370(i). Administrative agencies are bound by their regulations just as the public is bound by them.<sup>14</sup> Accordingly, the Department does not have the ability to grant Ms. P an exemption, and the Division was correct to deny payment of the billing statements at issue.

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<sup>13</sup> AS § 37.05.920.

<sup>14</sup> *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010).

#### **IV. Conclusion**

Because of the mandatory language used in 7 AAC 41.370(j), the Department does not have the discretion to relax the filing deadlines for a CCAP recipient's submittal of billing statements for in-home child care services. Ms. P admits that her October 2011 and November 2011 billing statements were submitted after the applicable deadlines. Accordingly, the Division was correct when on April 2, 2012 it denied Ms. P's request for payment for these two months of child care expenses. The Division's decision is therefore AFFIRMED.

DATED this 23<sup>rd</sup> day of July, 2012.

*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 16<sup>th</sup> day of August, 2012.

By: *Ree Sailors* \_\_\_\_\_

Title/Agency: Deputy Commissioner, DHSS

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