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

In the Matter of	)	
	)	
U T	)	OAH No. 12-1039-CCA
	)	Agency No.

DECISION

I. Introduction

The Division of Public Assistance ended U T's and B G's supported child care benefits because they were no longer eligible to participate in the Child Care Assistance Program. It also capped their child care benefits at 80 hours from August 1, 2013 through November 30, 2013. Mr. T appealed.

When the evidence is weighed, the division has met its burden of proving, by a preponderance of the evidence, that Mr. T did not provide information in a timely manner about his employment as required by regulation. As a result, the family was only eligible for a program benefit of 80 hours, for seeking work, which was exhausted in August 2012. Subsequently, Mr. T was not engaged in an eligible activity and the family could no longer participate in the program.

II. Facts

On July 31, 2012, Mr. T and Ms. G applied for supported child care through the Division of Public Assistance Child Care Assistance Program (CCAP).[1] The application was incomplete and the family was notified they had until August 27, 2012 to complete their application by participating in an interview and providing missing paperwork.[2]

The required interview was conducted on August 20, 2012 by CCAP eligibility evaluator Carol Hansen. Both parents participated. During the interview, Ms. G confirmed that she worked 30 hours per week and Mr. T indicated that he was not employed, but that he was "going to be starting work soon with No Name."[3]

Mr. T did not provide a specific start date or other details of employment, so his statement was insufficient to establish he was engaged in the eligible activity of "working."[4]

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[1] Exh. 3.
[2] Exh. 5.
[3] Exh. 6.
[4] Hansen Testimony.

However, it was sufficient to establish that Mr. T was "seeking work," which is an eligible program activity.

Ms. Hansen verbally informed the couple that they were authorized for child care assistance not to exceed 80 hours per calendar year while Mr. T continued to seek work. Even though he indicated he was starting work soon, Mr. T questioned whether 80 hours would be a sufficient amount of time to look for a job.[5] The family's certification period was from July 31, 2012 through December 31, 2012.

On August 30, 2012, the division received the remaining paper work and the application was complete. Ms. Hansen reviewed the application and, on September 14, 2012, entered the information in the division's Integrated Child Care Information System (ICCIS). ICCIS generates an authorization letter informing applicants of their eligibility rights and responsibilities, as well as the amount of benefits that will be received. A letter is also generated for the care provider. However, in the G/T file, there was a computer glitch or "bug" in the Authorization Documents screen and no letter was generated.

Ms. Hansen and Cheryl Windham, Program Coordinator, testified regarding their personal knowledge of the ICCIS and the business practices of the division. The ICCIS is designed so that each family's file is distinct. Data is entered on family-specific portals or screens.[6] A separate program runs each screen.[7] Ms. Hansen was able to access and create case notes for the T/G family but could not enter the data to generate the approval letter, because there was a "bug" that prevented her from generating the authorization letters.[8] Ms. Hansen confirmed that the "bug" was limited to this family's file and the Authorizing Documents screen because she was able to access other screens, such as the "Case Notes" screen and other applicants' files. The "bug" was reported to the technology department.[9]

It is also the division's regular business practice to record contacts with an applicant under the case notes in that particular applicant's file. In addition, the division regularly logs in the case notes screen that it has received documents from an applicant.[10]

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[5] Exh. 6; Hansen Testimony.
[6] Hansen Testimony; Windham Testimony.
[7] *See* Exh. 9. *See also* documents filed by email February 21, 2013 at 2:22 p.m.
[8] Hansen Testimony. *See also* documents filed by email February 21, 2013 at 2:22 p.m. The program generates an image of a flying insect on the screen to inform the individual accessing the screen that there is a program error.
[9] *See generally* Exh. A, B; Hansen Testimony.
[10] Exh. 7b.

From the division's perspective, nothing more occurred in the T/G case until October 8, 2012, when Mr. T called the division, questioning why his provider had not been paid for August or September 2012.[11] This call prompted Ms. Hansen to follow up with the division's technology department and the authorization letter in general.[12] The division searched its records and had no record of any contact from Mr. T until October 8, 2012.

Mr. T disagrees with the division's contention that there was no contact from him during this period. He was employed by No Name from September 11, 2012 through October 12, 2012.[13] Mr. T claimed that he called the division on several different occasions to find out whether it had received his paperwork notifying the division that he was working at No. Each time he called, Mr. T said he was told by the person answering the phone that his file was not accessible. In short, Mr. T argues that there was a computer problem with his file and, therefore, it is possible that the "bug" prevented a record of contact from being created.[14]

Ms. Hansen spoke with Mr. T on October 10, 2012, informing him his application was approved and that an authorization would be forthcoming. Mr. T told Ms. Hansen that he began working for No Name in September 2012 and he thought all the paperwork had been turned in to the division.[15] Mr. T's statements to Ms. Hansen caused her to generate a notice informing the family that, to maintain eligibility, Mr. T would be required to provide verification of income for his employment with No Name by October 22, 2012 or the division would terminate the family's participation in the program.[16]

Ms. Hansen was informed on October 11, 2012 that the "bug" had been resolved. On October 12, 2012, ICCIS generated a notice of approval informing the family that they were eligible to receive assistance from August 1, 2012 through December 31, 2012 for the activity of seeking work, not to exceed 80 hours.[17]

Without having received an authorization from the division, the family's child care provider submitted her August billing seeking payment for 15 full time days.[18] A full time day is ten hours of child care.[19] Because the family was only eligible for 80 hours of seek-work

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11 Exh. 10; T Testimony.
12 *See* documents filed by email February 21, 2013 at 2:22 p.m.
13 S Z Testimony.
14 T Testimony.
15 Exh. 11.
16 Exh. 12.
17 Exh. 13.
18 Exh. 14a.
19 Hansen Testimony.

activities, the provider's program payment was capped.[20] Without the documentation to establish Mr. T was engaged in an eligible activity for the remaining time period, the division could not approve child care assistance for the remaining hours.

Having received no paper work, on October 29, 2012, the division issued another notice to Ms. G and Mr. T, informing them that the required paper work was not submitted so their file would close effective November 30, 2012.[21] Mr. T contacted the division on November 5, 2012 to update his file to reflect that he was no longer at No Name and was now working for No Name, a new employer. During the course of this conversation Mr. T was reminded to submit his income verification for September and October so his child care provider could be paid for eligible care.[22] Mr. T did not provide the verification, so the division closed the G/T file effective November 30, 2012. On December 4, 2012, the division received an employment statement regarding Mr. T from his new employer.[23] The division would not re-open his previously closed file and Mr. T appealed. The family also reapplied to participate in the CCAP program.

At Mr. T's request, the hearing was scheduled to take place during his lunch hour over two consecutive days. At the end of the second day it became apparent that a third day of hearing was needed, so it was scheduled with Mr. T's input. When the hearing commenced on that third day, Mr. T was called at the number provided but he did not answer the telephone. The record closed without further participation from Mr. T.

III. Discussion

CCAP provides assistance with child care expenses for income-eligible families who are working or participating in an education or training program.[24] To qualify for this program, both parents must be participating in an "eligible activity"[25] such as work, seeking work, education or training.[26] Additionally, a family participating in CCAP is required to notify the division within seven days after an income change, change in work activity, or any other change that would affect the family's benefits or eligibility under this program.[27] This is because the division

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20 Exh. 14; Hansen Testimony.
21 Exh. 16, 17; Hansen Testimony.
22 Exh. 20.
23 Exh. 21.
24 AS 47.25.001.
25 7 AAC 41.300(a).
26 7 AAC 41.310.
27 7 AAC 41.320(a)-(c).

approves supported child care for specific eligible activities. If a parent is participating in an eligible activity different than the one for which services are approved, services must be approved for the new activity. Also, benefits may not be paid where one parent is not engaged in an eligible activity and is capable of caring for the child.[28]

The division ended the T/G family's participation in the program because each parent was not participating in an eligible activity under 7 AAC 41.310 and meeting income criteria.[29] Without the proof of employment, the division could not determine whether Mr. T was engaging in an eligible activity. Consequently, the family was no longer eligible to participate in the program.

The division alleges two separate failures by Mr. T to provide required information.[30] The first is Mr. T's failure to provide an employer's statement from No Name, and the second is his failure to provide an employer's statement from No Name. The failure to timely report Mr. T's change to working for No Name resulted in closure of the family's case.

1. *No Name*

The division maintains the absence of any record is evidence that Mr. T had no contact with the division until October 2012. The division is correct. It has established that the program's regular business practice is to record any contact with or from a program participant in the case notes section of that person's file. Ms. Hansen conducted a thorough search of the division's records and could find no record of contact in September from Mr. T. The absence of a business record supports the division's position.[31]

In response, Mr. T argues that because there was an admitted problem with his account, the absence of any record of contact should be given little, if any, evidentiary weight. He was unwavering in his position that he had asked No Name to complete the form. Mr. T presented several accounts of how he attempted to file his change in status and income verification as well as several accounts of his attempts to confirm receipt of the information by the division.

In his opening statement, Mr. T claimed it was possible that No Name failed to submit the form. As the division's case developed, Mr. T's theory evolved to include the assertion that

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[28] AS 47.25.021.

[29] 7 AAC 41.300(a).

[30] When the hearing commenced, the division accepted that it was its burden to establish by a preponderance of the evidence that closure was appropriate under the circumstances, and that it was appropriate to cap supported child care at 80 hours.

[31] Alaska Rules of Evidence 803(7). The rules of evidence are used as a guide in these proceedings. 2 AAC 64.290(b).

the division lost the form, or the computer bug would not let program staff access his file when he would call to confirm receipt of the form. Because Mr. T contends that he timely informed the division of his change in status when he started working for No Name, it is reasonable to conclude that Mr. T was aware of his obligation to provide notice of a change in income or work activity.

Mr. T's argument is clever in that it builds on the division's computer glitch in his data file, but it is not compelling. When the computer paper trail is viewed sequentially, it is sufficient to support a finding that it is more likely than not that the division had no contact from Mr. T or No Name, and therefore the division's actions should be affirmed. The record contains case notes entered on September 14, 2012, October 9, 2012, and October 10, 2012.[32] The problems with the ICCIS were reported to the help desk on September 27, 2012 and October 8, 2012. The "bug" was reported fixed on October 12, 2012. Thus, it is more likely than not that the case notes portion of the family's file was accessible and working. From this it follows that, had Mr. T contacted the division regarding his change in work status, the contact would have been recorded. Accordingly, the absence of any record is sufficient to prove nonoccurrence.

The division's theory of nonoccurrence is also supported by the testimony of S Z, an officer with No Name. Ms. Z recalled filling out the form, but she does not recall if Mr. T provided the form or if it was transmitted by the division for completion. Regardless, Ms. Z testified that had she faxed the form she would have a record because it is No Name's normal business practice to keep a copy of the form, and the fax transmittal. Ms. Z could not confirm that she sent the form to the division because she was unable to locate a copy in her records. Ms. Z testified that because she does not have a record of the form, it is likely that Mr. T may have picked it up himself. Had he picked up the form, Ms. Z would not have kept a copy because No Name was not responsible for transmitting the form.

In response to Ms. Z's testimony, Mr. T asserted that the form was received by the division and that Ms. Z could not recall him getting the form because he asked Mr. Z for the form, not Ms. Z. Mr. T's initial testimony was that he asked Mr. Z to grab the document from Ms. Z, but that Mr. Z never gave it to Mr. T and Mr. T never saw the document. Ms. Z responded that if Mr. Z was involved, it would have been the first time that happened and she would have remembered it.

[32] Exhs. 8 – 13.

The evidence in favor of the division outweighs Mr. T's evolving testimony. His assertion that it is possible that his form was received, then lost, does not tip the scales in his favor. A claim of what *could* be possible does not rise to the level of establishing that an event more probably than not occurred.

2. *No Name*

It is undisputed that the No Name income verification form was filed after the deadline. Mr. T's unchallenged testimony is that the delay was the fault of his employer and should be excused. In a recent OAH decision, an applicant's failure to timely file information requested by the division during the application process was excused and the division's decision denying an application for program services was reversed.[33]

In *In re N.S.D.,* the division requested certain information pertaining to one parent's disability. The delay in supplying the required information was due to an inability to secure an appointment with the appropriate doctor before the deadline. The decision noted that there was no penalty for failure to provide information in support of an application, and there was no time requirement for supplying the requested information. Additionally, the applicant was proactive in keeping the division informed of her ongoing attempts to provide documentation.

This case is distinguishable from *In re N.S.D.* Unlike the applicant in *In re N.S.D.,* Mr. T did not keep the division informed of his attempts to acquire and provide documentation. The most significant difference is that the T/G application had been approved. Once a family is participating in the program, it has seven days to notify the division after a change in work activity, income change greater than $200, or other factor that may affect the family's benefits or eligibility.[34] This seven day requirement is mandatory.[35] Without proof of an eligible activity, the T/G family could not participate in the program.

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33 *In re N.S.D.*, OAH No. 12-0215-CCA (November 20, 2012).

34 7 AAC 41.320(c)(2). Exhibit 13b, the authorization letter informs an applicant that they have 10 days to provide the requested information. Mr. T agrees that his information was untimely.

35 7 AAC 41.320(c).

IV. Conclusion

The division met its burden of proving by a preponderance of the evidence that Mr. T failed to fulfill his responsibilities, and that the family was only authorized to receive 80 hours of supported child care. The division's actions are affirmed.

DATED this 27th day of March, 2013.

Signed
Rebecca L. Pauli
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 10th day of April, 2013.

By: *Signed*
Name: Rebecca L. Pauli
Title: Administrative Law Judge

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