

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

In the Matter of)
)
D M)
_____)

OAH No. 13-0626-CCA
Agency No.

DECISION

I. Introduction

D M was providing child care services as an approved relative provider to her cousin’s children. The controlling regulation, 7 AAC 41.990(a)(48), requires that the children be within the first degree of consanguinity of a relative provider. Because Ms. M is not a “relative” as defined by regulation, she is not an approved relative provider under the Child Care Assistance Program. Therefore she is not eligible to be paid for the children in her care. Payments previously received as an approved relative provider were properly designated as overpayments by the division.

II. Facts

The facts are undisputed. This is a single issue matter: is Ms. M a “relative” for purposes of the Division of Public Assistance’s (division) Child Care Assistance Program’s Approved Relative Provider program? On May 4, 2012, Ms. M submitted an approved relative provider application to the division.

Ms. M, her cousin, and the children are Hmong. In the Hmong culture Ms. M is considered the children’s “auntie” and she considers the children to be her nieces and nephew, which is why Ms. M designated them as her nieces and nephew on the approved relative provider.¹ Using the information provided by Ms. M, the application was approved May 17, 2012.

The division relied upon the information provided to it by Ms. M. It was not until early 2013 that the division discovered that Ms. M was ineligible to receive payments as a relative provider. All told, Ms. M was over paid in excess of \$10,000.

¹ M Testimony.

III. Discussion

The division provides a variety of child care assistance services.² There are several categories of participating providers. The type of provider determines the licensing requirements, oversight, and the number of children that may be cared for.

Ms. M applied to be an Approved Relative Provider under 7 AAC 41.200. As a relative provider she would be exempt from licensure under 7 AAC 57.015(8) provided she did not care for more than five children (including her own) and “all of [the children] are a relative of the provider.”³

A “relative” is defined as “a child who, by marriage, blood, or court decree, is the grandchild or great-grandchild of the provider; niece, nephew, great-niece, or great-nephew of the provider . . .”⁴ There is no category for a relative by culture. Applying the undisputed facts to the regulatory definition of relative, Ms. M was not providing care for her relatives.

IV. Conclusion

The children provided for by Ms. M are not her relatives as defined by 7 AAC 41.990(a)(41), although she reported them as such on her approved relative provider application. The division, relying on the information reported, approved her application and commenced providing payments to Ms. M as a relative provider. Ms. M received overpayments totaling \$10,948. She was not eligible for these payments. The decision of the division is AFFIRMED.

DATED this 23rd day of August, 2013.

By: Signed
Rebecca L. Pauli
Administrative Law Judge

² 7 AAC 41.010.

³ 7 AAC 57.015(8).

⁴ 7 AAC 41.990(a)(48).

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 6th day of September, 2013.

By: Signed
Name: Lawrence A. Pederson
Title: Administrative Law Judge

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