

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

In the Matter of )  
 )  
G C )  
\_\_\_\_\_ )

OAH No. 13-0783-CCA  
Agency No.

**DECISION**

**I. Introduction**

The Division of Public Assistance’s Child Care Assistance Program (division) terminated G C’s status as an approved relative provider because she failed to timely submit verification of age appropriate CPR and first aid certifications. Ms. C timely completed her training, but no proof of training was timely received. Without timely verification of age appropriate CPR certification, Ms. C is not eligible to receive subsidy payments as an approved relative provider. The decision of the division is affirmed.

**II. Facts**

This is single issue matter: Whether the division has established by a preponderance of the evidence that Ms. C failed to timely submit the required verification.

On July 30, 2012, Ms. C applied to be an Approved Relative Provider.<sup>1</sup> The last two pages of her application list the health and safety requirements that must be complied with to participate in the Child Care Assistance Program (CCAP).<sup>2</sup> Requirement number 11 is to “[o]btain first aid and cardiopulmonary resuscitation (CPR) certification within 6 months of approval.”<sup>3</sup>

On August 17, 2012, Ms. C was informed that she was approved to participate in the CCAP effective September 1, 2012 through August 31, 2013.<sup>4</sup> Because she did not have the CPR certification, the notice of approval reminded Ms. C she had six months to obtain and submit verification or be terminated from the program.<sup>5</sup> In early January, the division provided a

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<sup>1</sup> Exhibit 3.  
<sup>2</sup> Exhibit 3c-d.  
<sup>3</sup> Exhibit 3c.  
<sup>4</sup> Exhibit 10a.  
<sup>5</sup> Exhibit 10a.

third reminder of the need for certification and the consequences of not submitting the verification.<sup>6</sup>

On February 21, 2013, Ms. C completed CPR training through ResCare Alaska. Ms. C, knowing the division required verification of certification, asked a ResCare employee to fax the certificate of completion to the division.<sup>7</sup> Ms. C did not receive any report indicating that a fax was sent to the division or received by the division. She called the division to confirm receipt of the fax but does not know who she spoke with.<sup>8</sup>

The division has no record of receiving the verification on February 21 or before February 28, 2013.<sup>9</sup> Because there was no record of compliance with the requirement to obtain and submit age appropriate CPR and first aid certification, Ms. C was terminated from the program and was no longer eligible to receive Child Care Assistance subsidy payments.<sup>10</sup>

The division presented testimony of several witnesses who explained that the division's Integrated Child Care Information System (ICCIS) is where the division logs all provider contacts.<sup>11</sup> The division also maintains a paper file.<sup>12</sup> If a fax had been received by the division, it would have been logged in ICCIS and placed in the paper file. The division conducted a search of the paper file but there was no record of a fax as described by Ms. C. Similarly, had ResCare faxed the certificate, its business practice was to print the report showing successful receipt by the division. ResCare also conducted a search, and like the division, it could find no cover sheet or other indication that a fax was sent to the division.<sup>13</sup>

Ms. C believes the termination was in error because she timely completed the course and relied on ResCare to fax the certificate. She even followed up with the division.<sup>14</sup> She believes the division must have misplaced her certificate, and regardless, she should not be penalized because she completed the class as required.

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<sup>6</sup> Exhibit 11a.

<sup>7</sup> C Testimony.

<sup>8</sup> Exhibit 15.

<sup>9</sup> Testimony of Billy Macon.

<sup>10</sup> Exhibit 12a.

<sup>11</sup> Testimony of Billy Macon; Kathy Culling; Janice Braden; Zerylyna Lancanlale; Matt Bockhorst.

<sup>12</sup> Testimony of Billy Macon.

<sup>13</sup> Testimony of Veronica Miller.

<sup>14</sup> C Testimony.

### III. Discussion

The division provides a variety of child care assistance services.<sup>15</sup> There are several categories of participating providers. The type of provider determines the licensing requirements, oversight, and the number of children they may have in their care. The division oversees many providers and families. It is the provider's responsibility to ensure all program safety and health requirements are met. For this the division relies upon the provider to submit proof of compliance. The division terminated Ms. C from a program she was participating in. Therefore, the division has the burden of proving by a preponderance of the evidence that its action was appropriate.<sup>16</sup>

Ms. C was an approved relative provider under 7 AAC 41.200(e). One of the requirements for a provider such as Ms. C is that she "shall, within six months after being approved, obtain a valid certification for first aid and age-appropriate CPR . . . ."<sup>17</sup> The requirements for this type of provider are not extensive.<sup>18</sup> If a provider fails to maintain eligibility status, the division will issue a notice of termination.<sup>19</sup>

To maintain her eligibility, Ms. C was required to obtain a valid certification for first aid and age appropriate CPR.<sup>20</sup> Failure to do so is a failure to maintain health and safety requirements.

As evidence of failure to comply, the division notes the absence of any record of receipt that Ms. C failed to provide the required information. The division is correct.<sup>21</sup> It has established that the program's regular business practice is to record any contact with or from a program participant in ICCIS. It also established that if a fax had been received, it should have been logged in ICCIS and then placed in Ms. C's paper file. The division conducted a thorough search of the division's records and could find no record of having received the certification. ResCare has no record of faxing the certification to the division.

Ms. C argues that she completed the course within the six months and she should not be penalized because either the ResCare employee did not follow through and fax the form or

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<sup>15</sup> 7 AAC 41.010.

<sup>16</sup> 7 AAC 49.135.

<sup>17</sup> 7 AAC 41.235(b).

<sup>18</sup> *See generally* 7 AAC 41.200(e), (g).

<sup>19</sup> 7 AAC 41.200(j).

<sup>20</sup> 7 AAC 41.215 (b), (e)(18); 7 AAC 41.235(b) (incorporated by reference at 7 AAC 41.215(e)(18).

<sup>21</sup> Alaska Rules of Evidence 803(7). The rules of evidence are used as a guide in these proceedings. 2 AAC 64.290(b).

because it was faxed and the division lost it. She was unwavering in her position that she had asked ResCare to fax the certification and confirmed its receipt. If the division does not have it, then Ms. C reasons the division must have lost it.

If the ResCare employee failed to fax the certificate as requested, it is still Ms. C's responsibility to ensure that 1) it was faxed and 2) it was received by the division. Ms. C believes she did when she called to follow-up on the fax. Ms. C is correct that it is possible that certification was received by the division and then lost. However, what *could* be possible does not establish that scenario is probable. Here, such is the case. The possibility that the division lost the certification, when weighed against the absence of a business record, does not establish that it is more likely that the application was lost than it was not received.

#### **IV. Conclusion**

The absence of a business record is evidence that it was not received by the division.<sup>22</sup> The division met its burden of proving by a preponderance of the evidence that, effective March 1, 2013, Ms. C was no longer eligible to receive Child Care Assistance subsidy payments. The division's decision is affirmed.

DATED this 24<sup>th</sup> day of December, 2013.

*Signed*

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Rebecca L. Pauli  
Administrative Law Judge

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<sup>22</sup> Alaska Rule of Evidence 803(7). The rules of evidence are used as a guide in these proceedings. 2 AAC 64.290(b).

**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 7<sup>th</sup> day of January, 2014.

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

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