

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

In the Matter of)	
)	OAH No. 13-0912-CCA
K (N) M)	Agency No.
_____)	

DECISION

I. Introduction

K N¹ had been approved for Child Care Assistance benefits while attending college. When she submitted her recertification application, the Child Care Program Office (CCPO) reduced the amount of benefits she would receive. CCPO concluded that, although Ms. N was a full time student, most of the time she needed child care did not constitute “attending school” because she was enrolled in an online program with no set classroom hours. Accordingly, her eligibility was reduced from five full days per week of child care to one half-day per week.

Ms. N appealed that decision. A formal hearing was held on September 4, 2013. The primary issue in dispute was whether CCPO was correctly interpreting its statutes and regulations to disallow time spent participating in online coursework when there is no scheduled class meeting time.

As discussed below, CCPO’s interpretation of “attending school” is too restrictive. This case is remanded to CCPO to evaluate and act on her application under a less restrictive interpretation.

II. Facts

Ms. N is a full time student at the University of Phoenix, an internet based accredited university.² She is working towards receiving a Bachelor of Science in Health Administration/Health Management, and ultimately wants to obtain a Master’s Degree.

The University of Phoenix requires its students to complete each three credit course in five weeks. Students are held accountable to course participation requirements. Exhibit 12p – 12gg is a typical course syllabus from one of Ms. N’s courses, Legal Issues in Health

¹ When originally enrolled in the Child Care Assistance program, Ms. N’s last name was M. Her last name has since changed.

² The factual findings are based on Ms. N’s testimony and the agency record.

Care. Students have assigned reading each week. They are required to respond to two weekly discussion questions in an online forum. They then participate in the class discussion by providing substantive responses to their classmates' initial answers. The instructor maintains rigor by enforcing minimum length requirements for responses, and by only giving credit for responses that show thoughtful analysis of the issue presented.

Students also participate in team activities with other classmates. The team is given various projects to complete during the five week course, and they meet by phone and Skype to complete those projects. Finally, students have individual projects to complete which involve research and a written paper.

Although students must complete their work within certain time frames, there are no set hours within each day or week. Team members decide among themselves when to meet as a team, and individual students decide when to go online to complete the class discussion assignments. Ms. N testified that she spends about eight hours per day, including weekends, to keep up with the coursework.

Although Ms. N only takes one three credit course at a time, the class schedule covers the same amount of material in five weeks that is covered in 18 weeks in a traditional semester, and because it covers the same amount of material, she receives three college credits for that class.

III. Discussion

A. *Child Care Assistance Program*

Child care assistance is authorized for low and moderate income families by AS 47.25.001. Benefits are not available for all child care costs, however.

Benefits may be paid for the care of children of a low or moderate income family only if a parent or guardian, because of the day care, is freed to work or to seek work or to attend school. Benefits may not be paid for the care of children of a family where one parent or guardian is not working, actively seeking work, or attending school and is physically and mentally capable of caring for the children.^[3]

This benefit allows a parent who would otherwise be caring for his or her child an opportunity to be employed, seek employment, or attend school. In this case, the question is whether child care assistance frees Ms. N to “attend school.”

³ AS 47.25.021.

Although there is no statutory definition of attending school, and no definition in the definition section of the regulations, the Department has defined attending school elsewhere. The Department has prioritized which families should receive child care assistance when legislative appropriations are insufficient to provide benefits to all eligible families. Under that regulation, a higher priority is given to students who have received benefits for less than five years.⁴ A definition of attending school has been adopted for determining how to apply this priority.

A parent is attending school if the parent is participating in an educational or training program. An educational program is a structured learning environment in which an instructor or teacher leads students through a course of study that includes specific learning objectives, goals, and standards, and leads to a certificate of mastery or completion, a state license, a diploma, or a degree. A training program is a structured learning environment for participants that has specific learning objectives, identified skills to be mastered, a beginning date, and an ending date.^[5]

B. Is Ms. N Attending School?

At the hearing, CCPO took the position that it interpreted the “attending school” requirement in light of a traditional, semester based in person college campus. A three credit course is based on a requirement of actual classroom attendance three hours per week at scheduled times over the course of a semester. In addition, CCPO allows an additional one hour per credit per week for library and laboratory activities, attending workshops or tutoring, or similar activities necessary to complete the course work.⁶ This formula would apply regardless of whether the student is attending class in person or online, but does require a scheduled time for classroom attendance. Under this formula, a student enrolled in a three credit class would be eligible for 108 hours of child care assistance in a semester.⁷

CCPO determined that Ms. N was eligible for the three hours per week of other activities, but not the three hours per week for classroom attendance because there was no scheduled time for that attendance.⁸

Ms. N’s position is that it shouldn’t matter whether she is required to participate in class at certain times each week; the focus should be on the amount of time needed to

⁴ 7 AAC 41.050(d).

⁵ 7 AAC 41.050(e).

⁶ 7 AAC 41.310(3).

⁷ Six hours per week x 18 weeks = 108 hours.

⁸ CCPO also allowed one hour per week of travel time for transporting her children to and from child care, for a total of four hours per week, which is one half-day of child care each week.

complete the required course work. The difficulty with this method of calculating benefits is that it might be hard to apply fairly. Individual students require different amounts of time to complete the work for a specific course, and any particular student may need differing amounts of time for different courses.

Ms. N fits the definition of “attending school” set out in 7 AAC 41.050(e). She is participating in a structured learning environment, a teacher leads students through the course of study, and there are specific learning goals and standards, leading to a formal college degree. Nothing in statute or regulation suggests that “class time” should be limited to classes that are scheduled in advance on a particular schedule. CCPO’s policy manual says that child care may be authorized for “class time” without restricting this to scheduled classes.⁹ Attending school is an eligible activity even if the student has the flexibility to set his or her own attendance hours. Accordingly, Ms. N is entitled to child care assistance for time spent in class.

C. How Many Hours of Assistance Should be Allowed?

In the absence of any other regulatory guidance, there are at least two approaches CCPO could use to determine the number of hours of assistance Ms. N should receive. At the hearing, CCPO acknowledged that working is an eligible activity even if the person is self-employed and could set his or her own hours. With a self-employed recipient, CCPO would work with that individual to determine the average amount of time spent working each week, and authorize child care assistance for up to that number of hours.¹⁰ There is no reason to apply a different method for recipients attending school. CCPO could work with Ms. N and determine how many hours of assistance she needs each week to enable her to attend school, including the required class attendance.

A second method would be to use the general rule CCPO is already using for students attending more traditional schools.¹¹ Currently, CCPO allows a student in a three credit course child care assistance for three hours per week of class attendance over an 18

⁹ Exhibit 3f.

¹⁰ Child care assistance is authorized in advance, but only paid if the child does in fact use child care during that time period.

¹¹ This second method would also be appropriate for calculating benefits when a student attends summer school, which often offers courses on an accelerated basis, or attends a school that uses a trimester or quarter calendar instead of the semester calendar.

week semester, for a total of 54 hours.¹² When the class is conducted on an accelerated basis, CCPO could reasonably assume that a similar amount of class attendance is required, but in fewer weeks. Because Ms. N completes her course in five weeks, she would be entitled to 10.8 hours per week of child care assistance for class attendance.¹³ She would also be entitled to an additional hour per credit, or three hours per week, for additional non-class time work necessary to complete her course work.¹⁴ Thus, under this method Ms. N would be eligible for 13.8 hours per week of child care assistance benefits.

Under both methods, Ms. N would be eligible for travel time between the eligible activity and her child care provider.¹⁵ Either method would advance the statutory goal set out in AS 47.25.021 of providing assistance so that, because of the assistance, the recipient is freed to attend school. This decision does not direct which method CCPO should use.

IV. Conclusion

The Child Care Program Office used an overly restrictive definition of “attending school” that is not supported by existing statutes or regulations. Accordingly, this matter is remanded to CCPO to recalculate the number of hours Ms. N is eligible to receive in a manner consistent with the discussion in this decision. If Ms. N disagrees with its recalculation, she may request a new hearing.

Dated this 11th day of September, 2013.

Signed

Jeffrey A. Friedman
Administrative Law Judge

¹² Three hours per week x 18 weeks = 54 hours.

¹³ 54 hours divided by five weeks = 10.8 hours per week.

¹⁴ 7 AAC 41.310(3). While it would be reasonable to assume that compressing an 18 week semester into five weeks would also require awarding more time per week for this additional non-classroom work, the regulation allowing this as an eligible activity specifically caps the number of hours that may be allowed.

¹⁵ 7 AAC 41.310(6).

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 9th day of October, 2013.

By: Signed _____
Name: Ree Sailors
Title: Deputy Commissioner, DHSS

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