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

In the Matter of	)	
	)	
U Z-J	)	OAH No. 14-1606-CCA
	)	Agency No.

DECISION

I. Introduction

U Z-J is an approved relative provider (ARP). The Division of Public Assistance Child Care Assistance Program (division) seeks to recoup an $800 payment to Ms. Z-J for child care services she provided to her niece. The division believes this is an overpayment because the niece was not listed on Ms. Z-J's Approved Relative Provider Application. However, based on the evidence received at hearing the division did not meet its burden of proving that once she received an approval letter for her niece she failed to be in compliance with either 7 AAC 41.210(c)(1), (2), or(5). The division's decision that Ms. Z-J must repay $800 is reversed.

II. Facts

The material facts are not in dispute. Ms. Z-J has been an approved relative care provider since August 2013. She provides child care for her nephew, P O.[1] On May 8, 2014, P's mother informed Alaska Family Services Municipality of Anchorage, who is a grantee of the State of Alaska Child Care Program, that she would be placing her new daughter, B, with Ms. Z-J effective June 1, 2014.[2] The Child Care Assistance Program Official Family Case Note dated May 29, 2014 reports that units of care were created for B O, a document number 0000000000 was reissued to Ms. Z-J, a Notice of Change with Authorization was mailed to the parent, and a "corrected" authorization was mailed to the provider (Ms. Z-J).[3] A copy of the authorization was not provided for this proceeding.

On August 19, 2014, a Child Care Assistance Program Official Facility Case Note in the division records identified a possible overpayment to Ms. Z-J as a "result of provider caring for

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1 Exh. 1.
2 Exh. 2.
3 Exh. 2

children that were not reported. Provider received authorizations as well as billed for these months and received payment."[4]

Later that day, the division made its determination and wrote another Official Facility Case Note. This time the division wrote that there was an overpayment because B was not listed on "Approved Relative Provider Application as children in care. The additional Child in care was not reported until 08/06."[5]

Ms. Z-J was unaware that she needed to notify the division because she had received the authorization letter and she billed under that authorization.[6] Ms. Z-J subsequently submitted a report of change identifying B as a child in the home.[7]

The division conducted an administrative review and affirmed its earlier position that the payments were in error even though Ms. Z-J received a letter authorizing payment. The division believes Ms. Z-J should have known better because shortly after Ms. Z-J had been approved as a relative provider in September 2013, it mailed her a notice explaining that she could not care for more than five children, and confirming that she had listed she would be caring for her nephew.[8] Also, in support of its position, the division went on to explain that in May 2014 when Alaska Family Services authorized her to care for B, Ms. Z-J should have submitted a report of change to the division.[9]

III. Discussion

Because the division is seeking to recover monies paid to an approved provider, it has the burden of proof.

The division provides a variety of child care assistance services.[10] 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. Z-J is 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."[11] The division

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4 Exh. 3.
5 Exh. 4.
6 Exh. 6.
7 Exh. 7.
8 Exh. 9.
9 Exh. 9.
10 7 AAC 41.010.
11 7 AAC 57.015(8).

believes Ms. Z-J was wrong to rely upon an authorization from the division's designee, Alaska Family Services, that units of care were in the system for B and that she was the authorized provider. Finally, the division believes Ms. Z-J should have submitted a change of information to the division.

The division has identified three "responsibilities" it believes Ms. Z-J failed to fulfill under 7 AAC 41.210, Provider Responsibilities:

> (c) . . . a participating provider
>
> (1) shall provide complete, accurate, and <u>current information regarding any factor that would affect eligibility to participate in the child care assistance program under this chapter;</u>
>
> (2) shall remain in compliance with the applicable requirements of this chapter; in addition, a provider subject to the licensing requirements of 7 AAC 57 shall remain in compliance with the applicable requirements of that chapter; a provider described in 7 AAC 41.200(a);
>
> . . .
>
> (5) must have a valid authorization before billing the department for services under this chapter . . . [12]

Regarding 7 AAC 41.210(c)(1), the provision to provide current information *regarding any factor that would affect eligibility* to participate in the child care assistance program under this chapter is vague.[13] The division attempts to apply this regulation to mean if they are not kept abreast of how many children a provider has they cannot enforce the five child limit. It further reasons that because the number of children would affect eligibility to participate in the program, then failure to inform the division that the provider is taking care of another relative is a failure to provide current information.

These arguments are not persuasive, especially when it is considered that an authorized designee of the program provided Ms. Z-J with authorization to provide child care services to B. The division has not identified any requirement regarding the need to provide the program with a separate notice once the provider has received authorization from the division or a grantee holding itself out as authorized to approve the provider.

A reasonable reading of this regulation is that a provider would only have to inform the division if it was something that would preclude the provider from participating in the program (factors that would affect eligibility to participate).

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[12] Emphasis provided in division's briefing.

[13] Emphasis added.

The division emphasized that Ms. Z-J was approved for a total of five children.[14] Therefore, it was reasonable of Ms. Z-J to read this as she did not need to inform the program because adding B would only affect her eligibility to participate if B would be the sixth child she was caring for.

Regarding 7 AAC 41.210(c)(2), the division did not identify the requirement with that Ms. Z-J was noncompliant.

Regarding 7 AAC 41.210(c)(5), the division has alleged there was no valid authorization,[15] but at the same time it acknowledges its designee determined Ms. Z-J was an eligible provider. Under 7 AAC 41.340(b), when there is a change in a participating family's circumstances, such as a new baby, "the department will or a designee shall issue to the family and the provider a new child care authorization . . . ." The applicable regulation mandates that the designee issue a new authorization. The regulations do not mention or hint that the authorization is not valid unless the provider goes to the division and file a program report of change.

Finally, when the change to add B was first reported and logged, it was memorialized that there had been a reported change: units of care were created and the authorization was reissued to include B.[16] The Official Facility Case Note indicating these changes has the Department's logo, and at the bottom states that it is a copyrighted Official State of Alaska Casenote. A reasonable person viewing the record would conclude under these circumstances that the program was informed of the change.

IV. Conclusion

Ms. Z-J is an approved relative provider. She received authorization to care for B from the division's designee. On this record, the division has not bet its burden of proving that Ms. Z-J received an overpayment. Accordingly, the division's finding that Ms. Z-J owes $800 in overpaid child care assistance is reversed.

DATED this 23rd day of April, 2015.

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

[14] Exh. 9.

[15] As stated above, the authorization was not offered into evidence. Because the division has the burden of proof, if the authorization was beneficial to the division, it is reasonable to expect the division would have offered it into evidence. Because it was not offered, it is presumed that the authorization complies with 7 AAC 41.340(a).

[16] Exh. 2.

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 11th day of May, 2015.

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

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