

transmission.⁹ Ms. K's fax machine does not report faxes successfully sent.¹⁰ No Name did not receive that fax.¹¹ No Name's fax machine does not produce a received fax log.¹²

In late August 2014, Ms. K phone No Name inquiring when her June payment would be received. No Name informed Ms. K it did not receive her June 2014 billing report. No Name had no known problems with the fax and the staff was unable to locate Ms. K's June 2014 billing report.¹³ Ms. K re-sent the June 2014 billing report on August 29, 2014.¹⁴ On September 4, 2014, No Name returned the June 2014 billing report unpaid because it was received after the July 31, 2014, deadline.¹⁵

On September 17, 2014, the Child Care Program Office (CCPO) received Ms. K's request for an Administrative Review.¹⁶ CCPO's Administrative Review upheld the payment denial because the billing report was not submitted before the July 31st deadline.¹⁷ The denial also stated that the error report sent by Ms. K had a fax date of June 5, 2014, and it did not receive a fax report showing a successful transmission for the billing in question.¹⁸ The denial review notes that it is the provider's responsibility to ensure documents are received.¹⁹ On September 24, 2014, CCPO sent Ms. K a notice of the Administrative Review denial.²⁰ Ms. K requested a hearing to challenge the denial on September 30, 2014.²¹

III. Discussion

The Child Care Assistance Program (CCAP) is established pursuant to Alaska Statutes ("AS") 47.25.001 - 47.25.095. The regulations governing CCAP are set forth in the Alaska Administrative Code (AAC) at 7 AAC 41.010 - 7 AAC 41.990. The regulation directly applicable to this case is 7 AAC 41.250, titled "Billing statements; payment." The regulation states in relevant part:

⁹ See Ex. 17.1 for an example of a billing error report.

¹⁰ K testimony.

¹¹ Martin testimony.

¹² Martin testimony.

¹³ Martin testimony.

¹⁴ See Ex. 4.1 - 4.2, date stamped received August 29, 2014.

¹⁵ Ex. 6 - 6.1.

¹⁶ Ex. 7; Ex. 17.

¹⁷ Ex. 12 - 12.3.

¹⁸ Ex. 12 - 12.3.

¹⁹ Ex. 12 - 12.3.

²⁰ Ex. 12 - 12.3. The original denial was sent on September 19, 2014. CCPO staff sent an amended notice on September 24, 2014 to correct errors. The original notice incorrectly identified CCPO, not No Name as the agency working directly with Ms. K.

²¹ Ex. 13.2.

(a) Except for a provider subject to 7 AAC 41.370, a participating provider shall submit billing statements and any corrections to those statements to the department or to the designee, as determined by the department, as follows:

(2) for the last two months of a state fiscal year, no later than 31 days after the end of the fiscal year.

(b) Payment will not be made for a billing statement or a correction to a billing statement that is submitted later than the applicable deadline set in (a)(1) or (2) of this section.

The State of Alaska's fiscal year begins on July 1st of each year.²² The May and June billing reports were due July 31, 2014.

Regulation 7 AAC 41.250 prohibits the Division from paying CCAP benefits for billing statements submitted after the July 31st deadline. "Submit" means to give to someone that so that it can be considered or approved.²³ Here, the regulation prohibits payment for billings not submitted by the deadline. The regulation does not prohibit payment for a billing submitted, but not received.

It is a well-established evidentiary rule that absence of documentation in regularly kept records is admissible to prove the nonoccurrence or nonexistence of the matter.²⁴ And in the vast number of circumstances, an agency should deny payment for a billing report received past the deadline. This is an exception to the rule. The exception is appropriate because the preponderance of the evidence supports a finding that Ms. K submitted her June 2014 billing report before the regulatory deadline.

Ms. K testified under oath that she faxed the June billing on July 2, 2014 and watched the fax until it went through. The billing report was signed on July 2, 2014. Ms. K testified credibly that no error report was generated when she faxed the June billing. Because Ms. K watched the billing report being faxed and because the fax did not produce an error report, Ms. K reasonably concluded that the June billing report was successfully submitted. She had successfully submitted billing reports many times in the same manner.²⁵ Therefore, it is more likely than not, that Ms. K submitted the billing report on July 2, 2014, before the regulatory deadline. As such, the Division may process Ms. K's June 2014 billing report.

²² AS § 37.05.920.

²³ <http://www.merriam-webster.com/dictionary/submit>

²⁴ See *United States v. De Georgia*, 420 F.2d 889, 892-93 (9th Cir.1969); Fed.R.Evid. 803(7)

²⁵ As an example, Ms. K's May billing report was signed on June 3, 2014, and received the same day. See Ex. 5 – 5.1.

No Name's denial and CCPO's Administrative Review denial were reasonable based on the information at the time. No Name's denial was appropriate because its records indicate it did not receive Ms. K's June 2014 billing report until August 29, 2014 - after the regulatory deadline. It appears CCPO believed the exhibit submitted by Ms. K was meant to show her June billing report or meant to show that she attempted to fax it and got an error. The June 5, 2014, error report shows a fax sent to No Name, with a "no answer" error message. At hearing, Ms. K clarified that she submitted the fax error report as an example of what is generated when an error occurs, not to establish a successful fax of her June billing report.

Reliance on technology does on occasion give rise to errors. That appears to be what occurred here.

IV. Conclusion

While the onus is on the child care provider to ensure that a billing is received, the evidence here shows that Ms. K submitted June's billing report before the deadline. Under these specific facts, Ms. K should receive payment for her June 2014 billing. The Division's denial is reversed.

Although this decision approves payment of the June 2014 billing report, Ms. K should confirm receipt of billing reports in the future.

DATED: December 8, 2014.

By: Signed _____
Bride Seifert
Administrative Law Judge

Adoption

The undersigned, by delegation from 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 29th day of December, 2014.

By: Signed
Name: Bride Seifert
Title/Division: ALJ/OAH

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