

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

In the Matter of )

E S )

) OAH No. 15-0644-CCA  
) Agency No.

**DECISION**

**I. Introduction**

E S submitted an application for Child Care Assistance on March 6, 2015. On April 11, 2015, the Division of Public Assistance (division) denied the application based on its determination that Ms. S had failed to provide information necessary to complete her application. Ms. S timely requested and received an administrative review of the denial. The denial was upheld. She then timely requested a hearing.

Ms. S's hearing was held on June 25, 2015. Ms. S appeared by telephone. Jeff Miller represented the division by telephone. The hearing was recorded. The record was held open until July 6, 2015 for the division to supplement the record. The division timely filed the requested documents.

Based on the record as a whole and after due deliberation, the decision denying Ms. S's March 6, 2015 application for Child Care Assistance is reversed.

**II. Facts**

On March 6, 2015, Ms. S submitted an application for child care assistance.<sup>1</sup> The division sent Ms. S a letter requesting that she provide information regarding her application for child support services and told her to schedule an interview on March 9, 2015. This letter was returned to the division on March 23, 2015. This letter indicated that her application might be denied if the interview and providing the requested documentation were not completed by March 20, 2015.<sup>2</sup>

The division called Ms. S to confirm that the letter was sent to the correct address that day. Ms. S asked what was in the letter, but rather than tell her, the division's representative

---

<sup>1</sup> Exhibit 1.

<sup>2</sup> The letter is found at Exhibit 4.1.

simply informed Ms. S that the letter would be resent. The letter was resent on March 24, 2015.

3

When she did not receive the resent letter within the next week, Ms. S went to the division's office and was told that it was too late to respond to the request, and that her application was denied. Although the division had not yet mailed the denial letter, the division's representative informed Ms. S that the division was required to send out the denial of her March 6, 2015 application. At that time, the division showed Ms. S a copy of the letter she had not received. The division advised Ms. S to re-apply and to appeal the denial. Ms. S followed these instructions and her new application was approved, but this approval did not cover all of the period that would have been covered by her initial application.

On April 11, 2015, the division sent Ms. S the letter denying her March 6, 2015 application because of her failure to timely respond to the March 9, 2015 letter that she had not received.<sup>4</sup>

At the hearing, Ms. S explained that she had gone to the Post Office to find out what had happened to the second letter but did not find out. Ms. S explained that she was getting mail at the address that the division sent her the letters, with only one other mail problem that she knows about. Ms. S explained that she lives in a large apartment complex with centralized mail boxes, and that she had only recently moved to this address prior to her application.

On April 20, 2015, Ms. S submitted a request for an administrative review of the denial of her March 6, 2015 application for child care assistance. Her request was denied.<sup>5</sup> Ms. S timely appealed this decision as well.<sup>6</sup>

### **III. Discussion**

The issue in this case is whether the division correctly denied Ms. S's application for child care assistance because she did not timely follow the instructions in the letter she did not receive. Ms. S has the burden of proving by a preponderance of the evidence that her application should have been approved.<sup>7</sup>

---

<sup>3</sup> Exhibit 5.

<sup>4</sup> Exhibit 6.

<sup>5</sup> Exhibit 7.

<sup>6</sup> Exhibit 10.

<sup>7</sup> 2 AAC 64.290(e).

The Child Care Assistance Program provides assistance with child care expenses for income-eligible families who are working or participating in an education or training program.<sup>8</sup> To be eligible for benefits, parents must be participating in an “eligible activity”<sup>9</sup> such as work, seeking work, education or training.<sup>10</sup>

The Child Care Assistance Program regulations require families that are applying for benefits to cooperate with the program to determine the family’s eligibility. That cooperation includes providing all of the information requested by the department or its designee:

(a) A family applying for child care assistance under this chapter shall provide complete, accurate, and current information regarding children, family income, hours of employment or training, work activities, and other factors that would affect eligibility for program benefits. At the time of application, a parent of the family shall read and sign a family responsibilities form prescribed by the department that includes the requirements of this section and contains a statement that the person signing the form has read those requirements, understands them, and agrees to abide by them.

(b) If requested by the department or a designee, a family shall provide documentation to support information provided on the application or family responsibilities form.<sup>[11]</sup>

The division cited the regulation above as authority in denying Ms. S’s application for failing to timely provide the information requested and following the instructions to schedule an interview, which were in the letter that she did not receive in time to respond. The division also cited the following regulation:

7 AAC 41.315. Family application

(a) A family seeking to participate, or to continue participation, in the PASS II or PASS III program must apply to any designee serving the community where the family resides or participates in an eligible activity. If no designee serves that community, the family may apply to the department. (b) Application, including a renewal application, must be made on a form prescribed by the department and must be submitted to the department or a designee, as appropriate, for review and approval.

---

<sup>8</sup> AS 47.25.001.

<sup>9</sup> 7 AAC 41.300(a).

<sup>10</sup> 7 AAC 41.310.

<sup>11</sup> 7 AAC 41.320(a)-(b).

As can be seen in the language above, there is no penalty or sanction listed in these regulations, 7 AAC 41.315 and 7 AAC 41.320, which were cited in the denial letter. These regulations do not explicitly impose a penalty for a family's failure to provide information to division in support of an application for child care assistance.<sup>12</sup> The regulation also does not contain any time requirements for supplying requested information.<sup>13</sup> The regulation is designed to secure a family's cooperation in the process of determining its eligibility for program services. Failure to cooperate with the division and failure to provide accurate and complete information in a reasonable timeframe are, however, implicit grounds for disqualification under these regulations. The division needs to make a timely determination on eligibility, and cannot delay a determination indefinitely while it waits for an untimely response to a request for the information needed to establish eligibility.

Ms. S, however, was fully cooperating in the application process. She accurately submitted requested information to the division to establish her eligibility for child care assistance on her initial application. She did not refuse to respond to the information request, and kept division informed of address. Had she received the division's letter in the mail, the evidence indicates that Ms. S would have timely responded and her first application for services would have been approved. Because Ms. S was otherwise eligible; did not refuse to provide the division with the requested information; was actively seeking to respond to any requested information before the denial was issued; provided that information as soon as she knew what was needed; and informed division about why she did not timely provide the requested information, her application should not have been denied.

In making an eligibility determination in public assistance appeals, the hearing authority considers all evidence available at the time of the hearing that bears on the circumstances that existed at the time of the decision under review. The administrative law judge and the final decisionmaker must consider new evidence that tends to establish

---

<sup>12</sup> The denial letter is found at Exhibit 6.

<sup>13</sup> The Division's *Child Care Assistance Policy & Procedure Manual* § 305 allows a minimum 10 day time period to respond to a request for information. ([http://dhss.alaska.gov/dpa/Documents/dpa/programs/ccare/files/ccpp\\_manual.pdf](http://dhss.alaska.gov/dpa/Documents/dpa/programs/ccare/files/ccpp_manual.pdf) dated accessed November 8, 2012).

eligibility at the time of the original denial, regardless of whether the original caseworker had access to the evidence.<sup>14</sup>

While it is not clear that Ms. S's application should have been denied initially, the new evidence in the record on appeal that further shows that the denial should be overturned is the documentation in the record supporting the income amounts provided in her application; her diligent attempts to establish her eligibility despite her problems with the mail service; the accuracy of the information in her application, as well as her undisputed eligibility when she filed her second application.

Ms. S did not provide information requested or schedule an interview by the deadline in the letter that she did not receive. By the time the division resent the letter that had been returned, that deadline had already past. Ms. S did not receive the resent letter. Ms. S's testimony was credible and her assertion that she did not receive this second copy of the letter is supported by the undisputed fact that the first letter was returned despite being correctly addressed.

Ms. S accurately provided all of the information she had available to her at the time her of her application and cooperated diligently as her application and appeals were being processed. The delay was not due to Ms. S's actions. The delay in following the instructions in the division's letter was due problems with the mail and the division's decision not to tell her what was needed when she was contacted to confirm her address.

#### **IV. Conclusion**

Ms. S met her burden of proving by a preponderance of the evidence that her application should not have been denied based on not timely following the division's instructions because she cooperated with the division and because her delay in following the division's instructions were due to problems in conveying these instructions to her rather than any fault or lack of diligence on her part. Thus, the decision by division to deny Ms. S's March 6, 2015 application for child care assistance is REVERSED.

DATED this 4<sup>th</sup> day of August, 2015.

---

<sup>14</sup> See *Parker v. New Hampshire Department of Health and Human Services*, 969 A.2d 322, 329-30 (N.H. 2009); *Carter v. New Mexico Human Services Department*, 211 P.3d 219, 222-23 (N.M. App. 2009) (citing several prior cases); *Maryland Department of Health and Mental Hygiene v. Brown*, 935 A.2d 1128, 1144-46 (Md. App. 2007); *Albert S. v. Department of Health and Mental Hygiene*, 891 A.2d 402 (Md. App. 2006); cf. *Murphy v. Curtis*, 930 N.E.2d 1228, 1235-36 (Ind. App. 2010) (noting limits on scope of *de novo* inquiry).

*Signed*

Mark T. Handley

Administrative Law Judge

**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 27<sup>th</sup> day of August, 2015.

By: Signed \_\_\_\_\_  
Name: Mark T. Handley  
Title: Administrative Law Judge

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