

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

In the Matter of: )  
 )  
 B L ) OAH No. 16-0675-CCA  
 ) DPA Case No.

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**DECISION**

**I. Introduction**

The issue in this case is whether B L timely provided certain information, relevant to her household's eligibility for the Child Care Assistance Program (CCAP or program), requested by the Division of Public Assistance (DPA or Division). The Division asserts that Ms. L failed to submit documentation which the Division had requested, concerning her income from employment, within the time specified in the Division's notice. Ms. L admits that she did not submit the employment income documentation requested in the Division's notice, but asserts that a Division employee verbally advised her that she did not need to do so.

This decision concludes that the alleged statements by the Division employee to Ms. L did not excuse Ms. L's failure to provide the income information requested by the Division because the conversation occurred *after* the deadline for providing the information (specified in the Division's notice) had already passed. In other words, the deadline for producing the pay stubs requested by the Division had already passed *before* the conversation, in which misleading statements *may* have been made, ever occurred. Ms. L therefore failed to satisfy her obligation, under the applicable Child Care Assistance Program regulations, to timely provide all relevant information requested by the Division. Accordingly, the Division was correct to deny Ms. L' household's application for Child Care Assistance Program benefits dated April 5, 2016. The Division's decision is therefore affirmed.<sup>1</sup>

**II. Facts**

Ms. L has two children, ages five and seven.<sup>2</sup> On April 5, 2016 Ms. L submitted a CCAP application to the No Name Child Care Program Office (CCPO).<sup>3</sup> Later that day Alaska Family

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<sup>1</sup> Ms. L may reapply for Child Care Assistance Program benefits at any time.

<sup>2</sup> Exhibit 1.

<sup>3</sup> Exhibits 3.3 - 3.7.

Services (AFS), a contractor for CCPO, sent a letter to Ms. L about her application; the letter stated in relevant part as follows:<sup>4</sup>

The application for child care assistance we received on 04/05/2016 is incomplete. Submit the item listed below by 04/18/2016 or your application may be denied.

1. You must participate in an interview which can be conducted in-person or by phone. Please contact our office to speak with an Eligibility Technician about this process and/or schedule your interview.
2. Verification of income received by you in [February] and/or March, 2016. This can be provided with copies of pay stubs, an Employment Statement, or other contact with your employer . . . .
3. Verification of your UIB [Unemployment Insurance Benefits].

On April 6, 2016 Ms. L participated in a telephonic eligibility interview with a DPA eligibility technician (ET).<sup>5</sup> With regard to Ms. L's work schedule, the ET's notes indicate that Ms. L told her that she was an "on-call" employee; that she could be called on any weekday for shifts beginning at 9:00 a.m., noon, or 3:00 p.m.; that her work days and hours varied; that she was working about 20 - 25 hours per week; that she was paid \$15.00 per hour; and that she was paid twice per month; the ET's notes also contain the phrase "pending for pay stub."<sup>6</sup>

The Division has no record of any contact with Ms. L from April 7, 2016 through May 3, 2016.<sup>7</sup> A DPA case note dated May 4, 2016 states that, on that date, a "third party" (not Ms. L) dropped-off a three page document detailing UIB payments received by Ms. L from January 2016 through March 2016.<sup>8</sup> The case note does not indicate that any documentation concerning Ms. L's income from employment was received.<sup>9</sup>

On May 6, 2016 the Division's contractor AFS mailed a letter to Ms. L stating that her CCAP application had been denied based on her failure "to provide all the information required to complete [her] application by 04/18/16;" the notice also stated that the prior "notice dated 04/05/2016 was sent detailing the information required for an eligibility determination to be made."<sup>10</sup> On May 31, 2016 Ms. L requested administrative review of the Division's decision and (if

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<sup>4</sup> Exhibit 2.1.

<sup>5</sup> Exhibits 3.0 - 3.2.

<sup>6</sup> Exhibit 3.0.

<sup>7</sup> Sally Dial's hearing testimony.

<sup>8</sup> Exhibit 4.

<sup>9</sup> Exhibit 4. In any event, any income documentation provided by Ms. L on May 4, 2016 was provided 16 days *after* the deadline specified in the Division's letter of April 5, 2016.

<sup>10</sup> Exhibit 5.1.

necessary) a hearing<sup>11</sup> On her appeal form, Ms. L wrote that she never received a letter stating that she needed to submit her pay stubs, and that, when she turned in her information concerning her UIB payments, the Division's No Name "office told [her] that was good."<sup>12</sup>

On June 7, 2016, the Division issued an Administrative Review Decision, upholding its original determination denying Ms. L's application.<sup>13</sup> Accordingly, the case proceeded to hearing. Ms. L's hearing was held on June 29, 2016. Ms. L participated in the hearing by phone, represented herself, and testified on her own behalf. Sally Dial participated in the hearing by phone and represented the Division. All testimony and exhibits offered by the parties were admitted. At the end of the hearing the record closed and the case became ripe for decision.

### **III. Discussion**

#### **A. *The Child Care Assistance Program - Relevant Statutes and Regulations***

The Child Care Assistance Program (CCAP) is established pursuant to Alaska Statutes (“AS”) 47.25.001 - 47.25.095.<sup>14</sup> The regulations governing CCAP are set forth in the Alaska Administrative Code (AAC) at 7 AAC 41.010 - 7 AAC 41.990.

Under the CCAP, parents or guardians select a day care facility for the care of their children, and then benefits are paid by the Division.<sup>15</sup> A family's eligibility for CCAP day care benefits is determined based on (1) the income of the family; (2) the number of children in the family; and (3) whether there is one parent or guardian solely responsible for the care of the family.<sup>16</sup> The program's maximum monthly income limits vary based on the size of the family, and are set forth in a Family Income and Contribution Schedule which has been adopted into regulation by reference.<sup>17</sup>

Under the CCAP, a family's monthly income is determined by totaling the monthly gross earned and unearned income of each parent.<sup>18</sup> Earned income includes earnings from employment and self-employment.<sup>19</sup> Unearned income includes things like unemployment benefits, alimony, and

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<sup>11</sup> Exhibit 6; a copy of Ms. L's hearing request is also attached to the case referral form which the Division filed with the Office of Administrative Hearings (OAH).

<sup>12</sup> Exhibit 6.

<sup>13</sup> Exhibits 7.0, 7.1.

<sup>14</sup> A.S. § 47.25.001(a)(1) requires that the Department of Health and Social Services "implement and administer a program to assist in providing day care for the children of low and moderate income families . . . ."

<sup>15</sup> A.S. § 47.25.051.

<sup>16</sup> See A.S. § 47.25.031 1 ("Eligibility of Families for Benefits").

<sup>17</sup> 7 AAC 41.335.

<sup>18</sup> See 7 AAC 41.325 ("Family Income Determination").

<sup>19</sup> See 7 AAC 41.325 ("Family Income Determination").

child support payments.<sup>20</sup> However, Alaska Permanent Fund Dividends, Medicare, Medicaid, food stamps, and benefits from some other programs do not count as income for purposes of the CCAP.<sup>21</sup>

A family applying for child care assistance must provide complete, accurate, and current information concerning the children at issue, family income, hours of employment or training, work activities, and other factors that would affect the family's eligibility for CCAP benefits.<sup>22</sup> The applicant family must also provide documentation to support the information provided on the application, or on the "Family Responsibilities" form, if requested by the Division.<sup>23</sup>

**B. Was the Division Correct to Deny Ms. L's CCAP Application?**

The Division asserts that Ms. L did not submit the documentation at issue within the time period specified in the Division's notice. This is a purely factual issue, as to which the burden of proof can become decisive. Under Alaska "Fair Hearing" regulation 7 AAC 49.135, the applicant bears the *burden of proof* in cases involving applications for new or additional benefits. Accordingly, Ms. L bears the burden of proving that the Division erred in denying her application for CCAP benefits. The applicable *standard of proof* is the "preponderance of the evidence" standard.<sup>24</sup> Under this standard, Ms. L must prove that it is more probable than not that she provided the information requested within the time period specified by the Division.

Originally, in her appeal form, Ms. L asserted that she had never received the Division's notice dated April 5, 2016 requesting additional income documentation. At hearing, however, Ms. L testified:

I did get a letter the first time stating that I needed proof of income and pay stubs. So I went in the first time and I went to talk to somebody because I wanted to tell them that I technically was not working yet; they had me just on-call. I wasn't really getting any hours at all. I was getting maybe two hours per week, three hours per week, very minimal . . . . When I went in<sup>[25]</sup> the lady [asked], "are you on unemployment?" and I said "yes" and she said "I need verification that you're getting unemployment." So then I gave that [unemployment] statement to the [front desk] lady and she said [it] was good [that] I was not getting hours, so I had nothing to prove . . . . So I never turned in the pay stubs because she told me that I didn't need them; I just needed the unemployment [document]. I came back, [submitted] the unemployment [document], and then I never got a second letter stating that I needed those pay stubs still. So then I got a phone call after they had already closed my

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<sup>20</sup> See 7 AAC 41.325 ("Family Income Determination").

<sup>21</sup> See 7 AAC 41.325 ("Family Income Determination").

<sup>22</sup> 7 AAC 41.320(a) ("Family Responsibilities").

<sup>23</sup> 7 AAC 41.320(b) ("Family Responsibilities").

<sup>24</sup> 7 AAC 49.135.

<sup>25</sup> Ms. L testified that she believed this conversation, with an employee at the front desk of the No Name CCPO, occurred sometime around May 4, 2016.

case, and that's when they told me that they needed the pay stubs instead of just [information about] unemployment [benefits].

Thus, Ms. L now acknowledges that she received the Division's letter requesting information about her earnings, but asserts that the employee at the front desk of the Division's No Name office told her that such information was unnecessary.

Had Ms. L asserted that her conversation with the DPA counter-person occurred on or before April 18, 2016, it would be necessary to decide whether this conversation occurred, and if so, whether the Division's employee waived the pay stub filing requirement.<sup>26</sup> However, Ms. L testified that she thought the conversation with the Division employee occurred around May 4, 2016. That was about 16 days *after* the April 18 deadline specified in the Division's letter of April 5, 2016. The Division denied Ms. L's application based on her failure to provide the requested documentation by *April 18th*.<sup>27</sup> Accordingly, whatever may have been said during a conversation on May 4, 2016 is irrelevant, because the deadline for document production had already passed.

In summary, the preponderance of the evidence indicates that Ms. L failed to provide the Division with the earned income information the Division had requested by the date specified in the Division's notice of April 5, 2016. Accordingly, the Division was correct, under its regulations, to deny Ms. L's Child Care Assistance Program application.

#### **IV. Conclusion**

The alleged statements by the Division employee to Ms. L did not excuse Ms. L's failure to provide the income information requested by the Division because the conversation occurred *after* the deadline for providing the information (specified in the Division's notice) had already passed. Ms. L therefore failed to satisfy her obligation, under the applicable Child Care Assistance Program regulations, to timely provide all relevant information requested by the Division. Accordingly, the Division was correct to deny Ms. L's household's application for Child Care Assistance Program benefits dated April 5, 2016. The Division's decision is therefore affirmed.<sup>28</sup>

DATED this 31st day of August, 2016.

*Signed* \_\_\_\_\_  
Jay Durych  
Administrative Law Judge

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<sup>26</sup> Ms. Dial testified that the Division has no case note in concerning the conversation described by Ms. L.

<sup>27</sup> Exhibit 5.1.

<sup>28</sup> Ms. L may reapply for Child Care Assistance Program benefits at any time.

## 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 9<sup>th</sup> day of September, 2016.

By: Signed \_\_\_\_\_  
Name: Jay D. Durych  
Title: Administrative Law Judge, DOA/OAH

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