

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

In the Matter of	)	
	)	
M'S CHILDCARE	)	OAH No. 16-1205-CCA
	)	Agency No.

**DECISION**

**I. Introduction**

The Division of Public Assistance (“Division”) denied payment for M’s Childcare’s June 2016 services because the owner of M’s Childcare submitted its June 2016 billing report after the mandatory deadline had past. Because the deadline is established in regulation, and does not allow for any exceptions, the Division’s decision is affirmed.

**II. Facts**

M J is an Anchorage resident. Her business, M’s Childcare, is a licensed childcare provider. Ms. J is approved to provide care for children who are eligible for childcare assistance. When she provides childcare for children who are eligible for benefits under the childcare assistance program, Ms. J bills the childcare assistance program directly.<sup>1</sup>

During the month of June 2016, Ms. J provided full-time child care for her three grandchildren.<sup>2</sup> On August 5, 2016, she hand-delivered her monthly billing report to the child care assistance program within the Division of Public Assistance.<sup>3</sup>

The months of May and June that summer were very stressful for Ms. J. The child care assistance program was seeking to recoup almost \$10,000 in child care support payments from Ms. J, based on an omission that Ms. J had made in her application. She went through a stressful fair hearing, which concluded in early June. She received a recommended decision in early July, which found that her omission was a violation of program rules, but that recoupment of past payments was not warranted. That decision became final in late July. The process was so stressful for Ms. J, however, that she neglected some of her utility bills, and the utility companies were threatening to disconnect her.<sup>4</sup>

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<sup>1</sup> Division Exhibit 24.1.  
<sup>2</sup> Division Exhibit 6.  
<sup>3</sup> J testimony.  
<sup>4</sup> J testimony.

On August 18, 2016, the Division returned Ms. J's June billing report to her unpaid. The form letter sent to Ms. J explained that the billing statement was late.<sup>5</sup> Ms. J requested an administrative review, which resulted in a letter affirming the denial of payment for the June billing. The administrative review explained that the June billing report was due on July 31, 2016. Because the June statement was not submitted until August 5, 2016, it could not be paid.<sup>6</sup> Ms. J requested a fair hearing to contest the administrative review decision.<sup>7</sup> A hearing was held on November 3, 2016. The evidence and arguments presented at the hearing are discussed below.

### III. Discussion

The child care assistance program is a program of the Alaska Department of Health and Social Services. The Department is required by statute to "implement and administer a program to assist in providing day care for the children of low and moderate income families."<sup>8</sup> The Department has adopted regulations under which the program is administered.<sup>9</sup> The Division must follow the Department's regulations.

The Division requests that its decision denying payment for Ms. J's June 2016 billing report be affirmed because the law requires that the report be submitted no later than July 31.<sup>10</sup> The Division emphasized that the deadline was clearly printed on the billing report form. It was also printed on the statement of provider responsibilities that Ms. J signed. The Division also points to the trainings that Ms. J had attended. The Division agreed that Ms. J's knowledge of the regulation was not a legal requirement for enforcement, but wanted to make the point that the Division had made the effort to ensure that Ms. J was aware of the requirement.

Ms. J does not dispute that the law required her to submit her billing report for June no later than July 31. She also does not dispute that her report was five days late. She requests,

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<sup>5</sup> Division Exhibit 1.2

<sup>6</sup> Division Exhibit 2.2.

<sup>7</sup> Division Exhibit 13-13.1.

<sup>8</sup> AS 47.25.001(a)(1).

<sup>9</sup> 7 AAC 41.010 - 7 AAC 41.990.

<sup>10</sup> 7 AAC 41.250(a) establishes the firm deadline in legal terminology:

(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:

(1) for the first 10 months of a state fiscal year, no later than the last day of the third month following the month in which the charges were incurred;

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

The billing reports and statements of provider's responsibilities translate this into plain English: "For months May and June, the monthly billing report must be submitted no later than July 31." *See, e.g.*, Division Exhibit 24.1.

however, that the Department make a reasonable accommodation for her. She has never been late before in the several years that she has been a licensed provider. There were extenuating circumstances that led to her overlooking the date. Ms. J feels that the punishment of missing an entire month's worth of compensation seems out of proportion for being a mere five days late.

I agree with Ms. J that strict enforcement of the regulation here works a hardship on her that is likely out of proportion to the prejudice that her late filing caused the Division. Sometimes, however, deadlines are strict. Here, the end-of-the-fiscal-year deadline is important for state agencies because those agencies must close out accounts and do their year-end accounting. In this situation, the Department has adopted a mandatory deadline that does not provide for any exceptions.

The regulations of the Department of Health and Social Services are binding on the Division and on this hearing.<sup>11</sup> The regulation is clear and unambiguous in establishing an absolute deadline for submitting the June billing report no later than July 31.<sup>12</sup> I am not permitted to ignore the regulations or to add or subtract terms in order to achieve a different result.<sup>13</sup> Although I acknowledge that the effect on Ms. J is severe, I have no choice but to follow the law. Therefore, the Division's denial of payment for Ms. J's June services is affirmed.

#### **IV. Conclusion**

The Division's denial of payment for M's Childcare June 2016 childcare services is affirmed.

DATED this 1<sup>st</sup> of December, 2016.

By: Signed  
Andrew M. Lebo  
Administrative Law Judge

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<sup>11</sup> See, e.g., *United States v. RCA Alaska Commc'ns, Inc.*, 597 P.2d 489, 498 (Alaska 1978) ("In general, an administrative agency must comply with its own regulations.").

<sup>12</sup> 7 AAC 41.250(a).

<sup>13</sup> Cf., e.g., *Hickel v. Cowper*, 874 P.2d 922, 927–28 (Alaska 1994) (holding that in construing constitutional provision, "we are not vested with the authority to add missing terms or hypothesize differently worded provisions in order to reach a particular result.").

## Adoption

Under a delegation from the Commissioner of Health and Social Services and under the authority of AS 44.64.060(e)(1), I adopt this decision 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 15<sup>th</sup> day of December, 2016.

By: *Signed* \_\_\_\_\_  
Name: Andrew M. Lebo  
Title: Administrative Law Judge/OAH

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