

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

In the Matter of)	
)	
K X)	OAH No. 17-0023-CCA
_____)	Agency No.

DECISION

I. Introduction

K X and D X are the parents of F X. Mr. X applied for child care assistance under the Child Care Assistance Program administered by the Department of Health and Social Services, Division of Public Assistance (Division). The Division denied Mr. X’s application because he failed to complete his application by completing an interview with the Division. The Division mailed a written denial notice to Mr. X at his address of record on July 1, 2006.

On October 19, 2016, Ms. X requested an administrative review of the July 1 denial, which was denied as untimely. On November 2, Ms. X requested a fair hearing on the July 1 denial. The Division mailed Ms. X a non-referral notice on December 15, informing her that her request for a hearing was also untimely. On December 28 Ms. X requested a fair hearing on the Division’s non-referral decision.

Ms. X maintains that she and Mr. X never received the Division’s July 1 denial notice. Because the law presumes that mail is received unless returned by the U.S. Postal Service, and because Ms. X has not met her burden to prove that her appeal could not have been filed within the time required, the Division’s non-referral decision is affirmed.

II. Facts

On May 23, 2016, Mr. X submitted an application for child care assistance and listed the family’s address as No Name Avenue, Apt. 1, Anchorage.¹ Division records show that an agency representative mailed a notice to Mr. X on May 27, 2016, informing him that his application was incomplete and scheduling an interview; the notice was addressed to the No Name Avenue address.² Division records show that an agency representative mailed a second notice to Mr. X on June 13, 2016, to reschedule his interview with the Division; this notice was also addressed to the No Name Avenue address.³ The Division’s notice instructed Mr. X to call the Division to

¹ Ex. 2.
² Ex. 2.5, 2.6.
³ Ex. 2.7, 2.8.

reschedule if he was unable to attend the interview as scheduled. It further informed him that his application would be denied “if you do not contact our office by 06/15/16 to either complete or reschedule your participation in an interview.”⁴

Division records show that an agency representative mailed a denial notice to Mr. X on July 1, 2016; the denial notice was addressed to the No Name Avenue address.⁵ The Division denied Mr. X’s application based on his failure to participate in an interview.⁶ The denial notice stated that the applicant could request an administrative review within 15 days of receiving the denial or request a hearing within 30 days of receiving the denial by completing and submitting the enclosed appeal form.⁷ As discussed further below, the record shows that Ms. X called the Division in mid-July regarding the family’s child care assistance application and was informed at that time that their case was closed and that she would have to re-apply; Ms. X did not act on this information for several months.⁸

F attended child care at the No Name Facility from February to October 2016.⁹ On October 13, 2016, the No Name Facility’s manager contacted the Division to inquire regarding Mr. X’s application for child care assistance for the months of June to October 2016. No Name Facility’s manager spoke with the program manager, Colleen Vague, who informed her that the family did not have authorization for June through September, but that their application was pending for October.¹⁰ Minutes later, Ms. X called Ms. Vague in response to the information the No Name Facility’s manager had related to her regarding the family’s authorization for the months of June through September 2016.¹¹ Ms. Vague informed Ms. X that Mr. X was “P1” (parent number one) on the application and, therefore, all correspondence would be mailed to him at the address provided. Ms. Vague further informed Ms. X that Division records showed no mail had been returned to the office as undeliverable. Ms. X reapplied for child care benefits and requested an appeal form, which was sent to her by fax.¹²

On October 19, 2016, Ms. X filed a request for administrative review of the denial notice dated and mailed July 1, 2016.¹³ Ms. X’s request for administrative review included a letter to the

⁴ Ex. 2.8.

⁵ Ex. 3, 3.1.

⁶ Ex. 3.1.

⁷ Ex. 3.1.

⁸ Ex. 10.1.

⁹ Ex. 2.

¹⁰ Ex. 18; Vague testimony.

¹¹ Ex. 19.

¹² Ex. 19.

¹³ Ex. 4.1.

Child Care Program Office regarding the family’s application.¹⁴ Ms. X explained that Mr. X missed the interview because the program office representative called him while he was at a speech therapy class with his daughter F, that he asked the representative to call him back later that day, but that the representative did not call him back.¹⁵ Ms. X then explained:

I ended up calling the office in mid-July and inquired about the paperwork. The receptionist stated that the case was closed and that we would have to re-file for assistance. I asked her why and she wouldn’t explain as to why my daughter was denied coverage.[¹⁶]

Ms. X stated that neither she nor Mr. X had received a phone call or mail from the program office informing them their application had been denied. Ms. X further stated that, before they moved out of the No Name Avenue address, “we frequently had our mail stolen, sometimes never receiving important documents” for their daughter’s care.¹⁷

On November 1, 2016, the Division mailed Ms. X and Mr. X notice that their request for administrative review was denied because it was filed after the fifteen-day deadline for filing under 7 AAC 41.435.¹⁸ On November 2, 2016, Ms. X requested a fair hearing, asserting that she had not received the denial notice mailed to her on July 1, 2016.¹⁹ On November 15, 2016, the Division mailed a notice of non-referral to Ms. X, stating that she was outside the 30-day time frame to request a hearing on a denial notice mailed to her on July 1, 2016.²⁰ This non-referral notice was returned to the Division because the address was incorrect.²¹ On December 15, 2016, the Division mailed a new non-referral notice to Ms. X with a corrected address.²²

On December 28, 2016, Ms. X emailed the Division, requesting that her request for a hearing be reconsidered; she included the letter she originally submitted in October because it includes “all the pertinent information” regarding her appeal.²³ On January 10, 2017, the Division referred Ms. X’s request to the Office of Administrative Hearings (OAH) for a hearing exclusively on the timeliness of her request for a hearing from the July 1 notice of denial.²⁴

¹⁴ Ex. 4.2-4.3.
¹⁵ Ex. 4.2.
¹⁶ Ex. 4.2.
¹⁷ Ex. 4.2.
¹⁸ Ex. 5.
¹⁹ Ex. 6.
²⁰ Ex. 7.
²¹ Ex. 8.
²² Ex. 9.
²³ Ex. 10.
²⁴ Ex. 11.

A hearing was held on Ms. X's appeal on March 6, 2017. Ms. X appeared and represented herself. Jeff Miller represented the Division. The Division called as witnesses Colleen Vague, Sharon Espinosa and Misty Anderson. Additional facts are referenced and discussed in the discussion below.

III. Discussion

Under regulations of the Department of Health and Social Services, an opportunity for a hearing must be granted to a recipient whose request for financial assistance has been denied.²⁵ A request for a hearing, however, must be filed in writing not later than 30 days after the date of notice of the adverse decision.²⁶ When an appeal is untimely, Department regulations leave no discretion; an administrative law judge is required to dismiss the appeal.²⁷ The only exception to that rule is that an appeal can be accepted more than 30 days after the deadline “only if the administrative law judge finds, based on the evidence submitted, that the request for a hearing could not be filed within the time limit.”²⁸

In her written submissions and in her testimony at hearing, Ms. X makes two key points on the timeliness question. First, she maintains that she never received the July 1 denial notice the Division mailed to her No Name Avenue address.²⁹ Ms. X testified that she discussed the topic with Mr. X, and he denied receiving the July 1 denial notice as well.³⁰ Ms. X questions how could she timely appeal a decision she says she never received.³¹ Second, Ms. X asserts that she experienced problems with mail being stolen while she lived at the No Name Avenue address.³² Ms. X testified that the No Name Avenue location was frequented by homeless people, and she speculated that someone may have broken into her mailbox. She testified that the mailbox was not secure; the back of the box was loose and the mail accessible; and the box had been damaged and torn from the wall at times.³³

²⁵ 7 AAC 49.020(1).

²⁶ 7 AAC 49.030(a).

²⁷ 7 AAC 49.100(5) (“The administrative law judge *shall deny or dismiss* a hearing request or terminate a hearing if . . . the appeal was untimely under 7 AAC 49.030.”) (emphasis added).

²⁸ 7 AAC 49.030(a).

²⁹ X testimony; Ex. 4.2. Ms. X testified that her relationship with Mr. X ended toward the end of July 2016, but she did not move from the No Name Avenue address until the end of August 2016. X testimony.

³⁰ X testimony.

³¹ Ex. 11.1.

³² X testimony; Ex. 4.2.

³³ X testimony.

The evidence presented by the Division shows that the July 1 denial notice was properly mailed to Mr. X and Ms. X's address of record.³⁴ The proper mailing of a document creates a legal presumption that the document was delivered, unless it is returned by the U.S. Postal Service. The presumption is rebuttable with credible evidence that the document was, in fact, *not* received.³⁵ Where the date of delivery is unknown or disputed, courts have held that the mail was delivered/received three to seven days after the date of mailing.³⁶ In prior decisions, OAH has recognized and applied this presumption.³⁷

Based on the totality of the evidence, Ms. X has not overcome the presumption that the July 1 denial notice was delivered on or about July 8, 2016, at the latest. There is one example of returned mail, which was addressed incorrectly (the notice of non-referral), but no prior notices mailed to Mr. X or Ms. X were returned undelivered.³⁸ Therefore, it is unlikely the July 1 denial notice was misdirected or otherwise mailed incorrectly. Ms. X's testimony about the mail possibly being stolen, while possible, is speculative. The scarce evidence available is insufficient to rebut the presumption that the notice was delivered in early July 2016.

Accordingly, dismissal of this appeal can be avoided only if the evidence shows "that the request for a hearing could not be filed within the time limit."³⁹ While Ms. X maintains she never received the notice (as does Mr. X, based on Ms. X's testimony), the law presumes otherwise. Given that presumed fact, there is no evidence establishing that Mr. X and Ms. X could not file their appeal within the time limit. Pertinent to this point, at the hearing the administrative law judge noted that Ms. X had verbal notice in mid-July that her case had been closed and that she needed to reapply for benefits.⁴⁰ Ms. X received this notice well within the appeal period, but she

³⁴ Miller testimony; Ex. 3-3.2. Because Mr. X was the P1 on the application, the denial letter was addressed to him, not Ms. X. Ex. 11.9. Ms. X testified at hearing that if she had collected the mail, she would have given it to him, and she did not believe he would throw it away as junk mail. X testimony. She also testified that even if Mr. X did not recognize the sender – Alaska Family Services – as affiliated with the child care program, he likely would have opened it because their daughter was involved with several government agencies from which they receive mail. X testimony.

³⁵ *Hagner v. United States*, 285 U.S. 427, 430 (1932) ("The rule is well settled that proof that a letter properly directed was placed in a post office, creates a presumption that it reached its destination in usual time and was actually received by the person to whom it was addressed."); *Jefferson v. Spenard Builders' Supply, Inc.*, 366 P.2d 714, 717 (Alaska 1961) ("Evidence as to the proper mailing of a letter has been held to create a presumption the letter was received by the addressee.").

³⁶ *Morgan v. Potter*, 489 F.3d 195, 196 (5th Cir. 2003) (within three to seven days after mailing); *Coen v. Riverside Hosp.*, 2 Fed. Appx. 449, 450-51 (6th Cir. 2001) (within five days of mailing); *Loyd v. Sullivan*, 882 F.2d 218, 218 (7th Cir. 1989) (within five days of mailing).

³⁷ *D.K.B.*, OAH No. 14-0035-MDE; (May 5, 2014); *K.E.*, OAH No. 14-0079-MDE (Feb. 24, 2014); *M.S.*, OAH No. 12-0828-ATP (Dec. 26, 2012).

³⁸ Miller testimony; Espinoza testimony; Anderson testimony.

³⁹ 7 AAC 49.030(a).

⁴⁰ X testimony; Ex. 4.2.

did not reapply or seek to appeal at that time, and instead waited until October 19, 2016, to file her request for administrative review.⁴¹ Ms. X was asked why she waited until October to take any action on her application, but none of her explanations – moving, working, processing other benefits, losing track of time, pursuing activities for her daughter – establish she could not have filed an appeal within the time limit.

IV. Conclusion

The Division's non-referral decision is affirmed.

DATED: April 27, 2017.

By: Signed _____
Andrew M. Lebo
Administrative Law Judge

Appeal Rights: This is a final decision for purposes of appeal rights. 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.

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

⁴¹ Ex. 4.1. This request was filed nearly a week after Ms. X spoke with Ms. Vague on October 13, 2016, who confirmed the information Ms. X had previously received in mid-July. Ex. 19.