

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

In the Matter of	)	
	)	
N P	)	OAH No. 17-0392-CCA
_____	)	Agency No.

**DECISION**

**I. Introduction**

N P is the mother of B T. B is approximately three years and six months old. Ms. P applied for child care assistance from the Department of Health and Social Services, Division of Public Assistance (Division). Ms. P was approved for benefits from September 1, 2016, through February 28, 2017. On January 18, 2017, the Division mailed a renewal application to Ms. P. Ms. P failed to file a renewal application, and the Division closed her case on March 10, 2017. Ms. P filed a request for a fair hearing.

Because the Division duly mailed the renewal notice to Ms. P’s mailing address of record, and because Ms. P has failed to rebut the presumption that the document was delivered, the Division’s decision to close Ms. P’s case is affirmed.

**II. Facts**

A telephonic hearing was held in this matter on May 10, 2017. Ms. P appeared and represented herself. Sally Dial, the Division’s hearing representative, presented the Division’s case. Cindy Adams, a Public Assistance Analyst with the Division, testified on behalf of the Division.

Ms. P filed an application for child care assistance on August 24, 2016. On September 29, 2016, the Division notified Ms. P that her application had been approved, and it authorized benefits from September 1, 2016, through February 28, 2017.<sup>1</sup>

Pursuant to 7 AAC 41.405(a), the Division sent Ms. P a child care assistance renewal notice and application on January 18, 2017. The Division mailed the renewal notice to Ms. P’s address of record: No Name Alaska. The notice informed Ms. P that she must complete and a file a renewal application, submit supporting verifications as applicable, and participate in an interview by February 28, 2017. The notice stated that, “[f]ailure to submit the required

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<sup>1</sup> Ex. 2. This and other notices sent to Ms. P came from the Division’s designee, U, which helps administer the Child Care Assistance Program in No Name City. For simplicity’s sake, this Decision refers to the Division.

information or participate in an interview will result in your case closing effective March 1, 2017.<sup>2</sup>

Ms. P did not file a renewal application, any necessary verifications, or participate in an interview by February 28, 2017. On March 10, 2017, the Division mailed a notice of child care assistance closure to Ms. P's No Name Alaska address. The March 10 notice notified her that her case was closed because she did not submit a renewal application to continue to participate in the child care assistance program prior to February 28, 2017.<sup>3</sup>

On April 4, 2017, Ms. P requested a fair hearing. Her request for a hearing listed the same No Name Alaska address. Ms. P stated, in part, that she was appealing because:

I was not notified that my case was coming up for renewal, nor was my child care provider. She received the authorization for February and it stated it was good through March, not before March. This is an error on my case worker's end, not mine . . . [4]

Ms. P also asserted that "there has been a history of me not being notified when my case is coming up for renewal and my case being closed without my knowledge."<sup>5</sup>

Additional facts are discussed where relevant in the discussion below.

### **III. Discussion**

The child care assistance program is authorized under AS 47.25 for the purpose of "providing day care for the children of low and moderate income families."<sup>6</sup> In general, the program is designed to help parents who need child care while they are working, seeking work, or attending school.<sup>7</sup>

The question presented by this appeal is whether the Division erred in terminating Ms. P's benefits. The Division asserts it was correct to terminate Ms. P's benefits because she failed to timely file a renewal application as required by 7 AAC 41.315, 7 AAC 41.320(c)(5), and the Division's renewal notice.<sup>8</sup> Ms. P asserts that she did not receive the Division's renewal notice.<sup>9</sup>

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<sup>2</sup> Ex. 3-3.1.

<sup>3</sup> Ex. 4.1. *See also* Ex. 4 (case note recording mailing of closure notice).

<sup>4</sup> Ex. 5.

<sup>5</sup> Ex. 5.1.

<sup>6</sup> AS 47.25.001(a)(1).

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

<sup>8</sup> Ex. 3.1.

<sup>9</sup> Ex. 5-5.1; P Testimony.

Because the Division is seeking to terminate existing benefits, the Division bears the burden of proof by a preponderance of the evidence.<sup>10</sup>

The Division met its burden of proving that it properly mailed the renewal notice to Ms. P, as required by 7 AAC 41.405(a), to her address of record at No Name Alaska address.<sup>11</sup> At this point, the burden shifts to Ms. P to establish that the notice was not received.

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 creditable evidence that the document was, in fact, *not* received.<sup>12</sup> 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.<sup>13</sup> OAH has recognized and applied this presumption.<sup>14</sup>

At the hearing, Ms. P testified that the No Name Alaska address is her parents' home, not hers. She lives approximately 12 miles away. She has been using her parents' address for her mailing address for approximately ten years to avoid the cost of a mail box at her physical residence. Ms. P testified that she is a busy working single mother and that she gets to her parents' home to collect her mail every week or two. She testified that her parents are normally "pretty good" about getting her mail to her. Ms. P testified that sometimes she does not receive her mail, but she offered no specific explanation or reason why she may not have received an item of mail or, in this case, the Division's January 18 renewal notice. There is no evidence that the January 18 notice was returned to the Division undelivered by the Postal Service.

Ms. P testified that she has a history of not receiving notices from the Division and having her case closed without notice.<sup>15</sup> The Division produced evidence showing that Ms. P's case has been closed six times since 2014, including the instant case.<sup>16</sup> This evidence, however, fails to

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<sup>10</sup> 7 AAC 49.135 ("For actions involving termination or reduction of benefits, the burden of proving evidence supporting the termination or reduction is on the department and is by a preponderance of evidence, unless otherwise provided by law.")

<sup>11</sup> Ex. 3.1; Dial Statement.

<sup>12</sup> *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.")

<sup>13</sup> *Morgan v. Potter*, 489 F.3d 195, 196 (5th Cir. 2003) (within 3-7 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).

<sup>14</sup> *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).

<sup>15</sup> Ex. 5-5.1; P Testimony.

<sup>16</sup> Ex. 6; Adams Testimony.

shed meaningful light on the mailing and delivery of the Division's January 18 renewal notice at issue in this case.

Considering all the evidence in the record, Ms. P has not met her burden to rebut the presumption that the January 18 renewal notice was properly delivered to her address of record. Nor has Ms. P offered any other explanation or justification for not timely filing for renewal of her child care assistance benefits.

#### **IV. Conclusion**

The Division's March 10 decision to close Ms. P's child care assistance case is AFFIRMED.

DATED: May 24, 2017.

By: Signed  
David J. Mayberry  
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 8<sup>th</sup> day of June, 2017.

By: Signed  
Name: David Mayberry  
Title: Administrative Law Judge/OAH

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