

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

In the Matter of	)	
	)	
C M	)	OAH No. 17-0961-CCA
_____	)	Agency No.

**DECISION**

**I. Introduction**

The Division of Public Assistance denied payment of child care charges billed by C M for two children she cared for in the month of June 2017. Although the families of both children were authorized to participate in the child care assistance program, the division determined that it could not pay the charges billed because they were submitted after the deadline.

Because Ms. M submitted the charges before the applicable deadline, the division’s decision to deny payment is reversed.

**II. Facts**

C M owns the No Name Learning Center, which provides child care services in No Name City. The families of some of the children Ms. M cares for participate in the child care assistance (CCA) program.

On June 28, 2017, Ms. M submitted a billing report form to the CCA program administrator in No Name City for child care provided to the E, S, and T families.<sup>1</sup> On July 6, 2017, the administrator returned the form to Ms. M, with a form letter noting “billing form incomplete, provider totals missing.”<sup>2</sup> Ms. M filled in the provider total boxes and again faxed the billing report form to the administrator in mid-July.<sup>3</sup> The administrator returned the form on July 21, 2017, stating that “[n]o provider charges are legible on copy received.”<sup>4</sup>

Ms. M submitted the form a third time on August 15, 2017, this time with the provider charges traced over and appearing boldly on the copy received by the division.<sup>5</sup> On August 17, 2017, the administrator noted on the form that payment was approved for the E children only. The division did not approve payment for the S and T children. On August 18, 2017, the

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<sup>1</sup> Exhibit 3.1. The same day, Ms. M submitted a billing report for two other that was rejected by the administrator because the children had not been authorized to participate in the CCA program. Exhibit 2.1, Exhibit 4. However, because Ms. M was eventually paid cash by a parent for providing this care, the parties agreed that only payment for the T and S children was still at issue.

<sup>2</sup> Exhibit 5.

<sup>3</sup> Exhibit 6.1.

<sup>4</sup> Exhibit 7.

<sup>5</sup> Exhibit 8.3.

administrator notified Ms. M that the billing could not be paid because the billing form was received after the fiscal year deadline of July 31, 2017.<sup>6</sup> Ms. M requested a hearing.<sup>7</sup>

A hearing in this matter was held on September 27, 2017. Ms. M represented herself. Sally Dial, a Public Assistance Analyst with the Division of Public Assistance represented the division.

### III. Discussion

To understand the division's actions and arguments in this case, one must refer to the child care assistance program regulations. The regulations governing the child care assistance program were amended extensively effective January 5, 2017, and the deadlines for submitting billing statements changed.<sup>8</sup>

Before these revisions, the section on billing statements read in part:

- (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.
- (b) Payment will not be made for a billing statement or a correction to a billing statement that is submitted later than the applicable deadline set in (a)(1) or (2) of this section.
- (c) PASS II payments may be made outside the timeframes in (a) of this section for a parent transitioning from PASS I to PASS II, if necessary to avoid a break in service.<sup>9</sup>

After the revisions, the relevant subsection reads:

- (a) A participating provider shall submit a request for payment and any corrections to that request to the department or to the designee, on a form prescribed by the department. A request for payment must be submitted on or before the last day of the month immediately following the month in which child care services were provided. If the department determines that a request for payment includes information that is incorrect or incomplete, the department may obtain

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<sup>6</sup> Exhibit 10.

<sup>7</sup> Exhibit 11 - 11.1.

<sup>8</sup> Under AS 44.62.180, a regulation becomes effective 30 days after it is filed with the lieutenant governor unless otherwise provided in statute or a written instrument submitted with the regulation, unless it is an emergency regulation. The effective date is specified in the history note following the text of each new or revised regulation. For an explanation of the history note, see Drafting Manual for Administrative Regulations (August 2015) at 68 - 72. The January 5, 2017 effective date of the amended 7 AAC 41.250 is found in the July 2017 supplement to Title 7, Alaska Administrative Code.

<sup>9</sup> 7 AAC 41.250, eff. 6/23/2006, Register 178.

the correct or missing information or will return the request to the provider. The department will not make payment for a request for payment that has been returned as incorrect or incomplete unless the department receives the correct or missing information on or before the last day of the month following the month in which the department returned the request. Exceptions to this subsection are as follows:

- (1) PASS II payments may be made outside the time frames in this subsection for a parent transitioning from PASS I to PASS II, if necessary to avoid a break in service;
- (2) a provider may submit a request for payment if a family's program approval and authorization for care are issued after the child begins to receive care from the provider; if an authorization is issued beyond the time described in this subsection, the provider shall submit a request for payment within 30 days after issuance of the family authorization for care to be considered timely for payment processing.<sup>10</sup>

At the hearing, the division argued that under the new version of the regulation, it could pay Ms. M for the care provided to the E children, but not the S and T children. According to the division, payment for the care of the E children in the month of June 2017 could be made under 7 AAC 41.250(a)(2) because the billing was submitted within 30 days after authorization for the children to participate in the program in July 2017. The S and T children, on the other hand, had been authorized and participating in the program for some time. Because they had previously been approved, according to the division, the 30 days after issuance of the family authorization had passed and the division could not go back and pay for services rendered in June 2017 based on the corrected billing statement received in August 2017.

This argument reflects a misreading of the new regulation. The exception in the amended 7 AAC 41.250(a)(2) might give a provider additional time to submit a billing statement for care provided to a family newly approved to participate in the program. However, it does not shorten the time otherwise allowed under (a) to submit a billing request for care provided to a family that has already been approved to participate in the program and authorized for care.

The general rule under the amended 7 AAC 41.250(a) is that a provider must submit the request for payment by the end of the month following the month in which the care was provided. Ms. M met this requirement -- the billing statement at issue was for care provided in June 2017, and the division first received the billing report form on June 30, 2017.<sup>11</sup> If the division returns the request for payment to the provider for additional information or correction, the provider has

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<sup>10</sup> 7 AAC 41.250, as amended 1/5/2017, Register 221.

<sup>11</sup> Exhibit 3.1.

until “the last day of the month following the month in which the department returned the request” to respond. The division returned the billing report form to Ms. M on July 6, 2017 for completion of the provider totals. Ms. M faxed in the form with the totals in mid-July. The division again returned the form to Ms. M on July 21, 2017 because it could not read the provider totals, and Ms. M returned the form to the division, with the provider totals traced over, on August 15, 2017. The monthly billing report was returned to Ms. M in July, and the division received a legible facsimile of the report back from Ms. M before the end of August. Therefore, Ms. M met the deadlines in 7 AAC 41.250(a) with her billing report for the S and T children. Accordingly, payment for care of the S and T children for the month of June 2017 should be authorized under the amended 7 AAC 41.250(a).

Following the hearing, the division submitted additional documents, arguing that the old version of 7 AAC 41.250 with its deadline of one month following the end of the fiscal year, not the amended version, controls in this case. To support this argument, the division cited 7 AAC 41.250 as it read before the 2017 amendments, section 235 of the Child Care Manual relating to the payment of program benefits, and a letter from the division to participating child care providers explaining changes to the program that would be implemented October 1, 2017. The division argued that the amended 7 AAC 41.250 was posted to give providers and families enough notice of the changes, and the 2017 amendments would not be implemented until October 1, 2017. This interpretation ignores the effective date of the amendments to the regulation, and the fact that public notice of the proposed changes was given on April 21, 2016.<sup>12</sup> Even if the division has not yet fully implemented the changes to the program regulations by revising the Child Care Manual and making the changes referred to the letter to providers, Ms. M should be given the benefit of the period allowed under the amended 7 AAC 41.250(a) to respond following return of the billing report form by the division, because the amendments to the regulation have already taken effect and the amended version was the law in effect at the time Ms. M first submitted the monthly billing report for June.

#### **IV. Conclusion**

Although Ms. M failed to include provider charges on the initial version of the billing statement form she submitted, she supplied the missing information on the corrected form received by the division on July 19, 2017. She responded to the division’s concern about

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<sup>12</sup> Notice accessed 10/24/17 at <https://aws.state.ak.us/OnlinePublicNotices/Notices/View.aspx?id=181249>.

readability by tracing over the relevant numbers and submitting the billing statement third time, and this version was received by the division on August 15, 2017. These submissions were timely under the amended version of 7 AAC 41.370(a) that took effect January 5, 2017. Payment of the charges for care provided to the S and T children in June 2017, which were timely submitted by Ms. M, should be approved.

The division’s decision that the charges for the S and T children cannot be paid because “[t]he billing form was received after the fiscal year deadline of July 31” is reversed.

DATED: October 26, 2017.

*Signed* \_\_\_\_\_  
Kathryn L. Kurtz  
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 14<sup>th</sup> day of November, 2017.

By: *Signed* \_\_\_\_\_  
Name: Kathryn L. Kurtz  
Title: Administrative Law Judge

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