

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

In the Matter of)
)
C K) OAH No. 17-1169-CCA
) Agency No.
_____)

DECISION AND ORDER

I. Introduction

C K is the great aunt of her one and one-half year-old grandniece, N. Ms. K applied to be an approved relative child care provider for N. The controlling regulation, 7 AAC 41.990(a)(53), does not include a great-aunt within the qualified relationship for the approved relative Child Care Assistance Program (program). For this reason, the Division denied Ms. K’s application. Ms. K requested a Fair Hearing explaining that her sister, N’s grandmother, passed away and that she had stepped into the role of maternal grandmother since N’s birth. Because Ms. K does not fall within the definition of relative contained within 7 AAC 41.990(a)(53), the Division of Public Assistance (Division) properly denied Ms. K’s application and the denial of benefits is affirmed.

II. Facts

The facts in this matter are not in dispute. The sole issue is whether Ms. K can qualify as a “relative” for purposes of the program.

On October 26, 2017, Ms. K submitted an approved relative child care provider application to the Division seeking assistance for child care for N.¹ The Division denied the application because Ms. K does not meet the definition of relative under the controlling regulation.² Ms. K requested a fair hearing requesting acceptance of her application due to her family’s unique situation.³

Ms. K is N’s great aunt and has taken the role of grandmother and child care provider since the child’s birth as her sister, the child’s grandmother, is deceased. Both Ms. K and her niece, the child’s mother, provided information that Ms. K is the only relative

¹ Exh. 2.
² Exh. 3.
³ Exh. 4.

able to provide childcare and both requested that the Division's decision be overturned in the best interest of the child.⁴

III. Discussion

The Division provides a variety of Child Care Assistance services. There are several categories of eligible providers.⁵ Ms. K applied to be an approved relative provider under 7 AAC 41.200(a)(5). Such providers are exempt from licensure.⁶

Under the applicable regulation a "relative" is defined as

a child, who by marriage, blood, or court decree, is the

(A) grandchild or great-grandchild of the provider;

(B) niece or nephew of the provider; or

(C) sibling of the provider if the provider lives in a separate residence.⁷

There is no category for grandniece. While Ms. K's request for an exception to the regulation is understandable and made to support the best interests of the child, the Division is bound by the statutes and regulations that govern the Child Care Assistance Program and is not empowered to make exceptions even for sympathetic reasons.⁸ Thus, under the undisputed facts of this matter, Ms. K is not eligible for Child Care Assistance as a relative provider.

IV. Conclusion

Although Ms. K is a close relative of N, and possibly the only relative who is capable of providing child care to her, she is not a relative as that term is defined in 7 AAC 41.990(53). Therefore, the decision of the Division is AFFIRMED.

Dated: December 21, 2017

Signed

Karen L. Loeffler

Administrative Law Judge

⁴ Exh. 4.

⁵ 7 AAC 41.200.

⁶ 7 AAC 41.201(d).

⁷ 7 AAC 41.990(53).

⁸ See *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868-869 (Alaska 2010) ("Administrative agencies are bound by their regulations just as the public is bound by them.")

Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Health and Social Services and in accordance with AS 44.64.060, adopts 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 10 day of January, 2017.

By: Signed
Name: Erin E. Shine
Title: Special Assistant to the Commissioner
Agency: Office of the Commissioner, DHSS

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