

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

In the Matter of	)	
	)	
F T	)	OAH No. 17-1252-CCA
_____	)	Agency No.

**DECISION**

**I. Introduction**

F T applied for child care assistance benefits under the Child Care Assistance Program (Program) administered by the Department of Health and Social Services, Division of Public Assistance (Division). The Division denied Ms. T’s application because her family’s monthly income exceeded the Program’s maximum allowable income. Ms. T requested a fair hearing on the denial, but she submitted her request about 40 days past the deadline for doing so. The Division requested dismissal of Ms. T’s appeal because it was untimely.

A hearing was held on December 27, 2017. Ms. T represented herself and testified on her own behalf. The Division was represented by Sally Dial. Because Ms. T did not establish that her appeal could not have been filed within the time required, the Division’s request for dismissal is granted. In addition, the denial of Ms. T’s application is affirmed on the merits.

**II. Facts**

On or about August 31, 2017, Ms. T submitted an application to the Program for child care assistance benefits. On September 6, 2017, Program staff sent her a letter stating that her application was denied because her “family’s countable monthly income of 4979.00 for [her] family size of 4 is above the maximum limit allowable of 4614.00 to participate” in the Program.<sup>1</sup> Ms. T filed her appeal of the denial on November 15, 2017.<sup>2</sup>

Ms. T testified at the hearing that she received the denial notice in the mail, but she didn’t open the envelope right away because she assumed that it was “just a routine mailing,” such as an authorization notice. She testified that she spoke with Program staff on the telephone in September 2017, and she learned that her application for September benefits was going to be denied. She testified that staff also told her at that time that the Program criteria were changing and she would likely be eligible for October benefits, but she wasn’t told that she would have to submit a new application. She spoke with staff again in mid-October and learned then that she

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<sup>1</sup> Exh. 1.  
<sup>2</sup> Exh. 2.

had to re-apply in order to be eligible for any future benefits. She filled out an appeal form at that time, but she waited to file it until mid-November when she was also filing her new application for benefits.<sup>3</sup> She testified that she waited that additional month because she mistakenly believed she needed to file the appeal form along with her new application for benefits, and she experienced some delays in putting together the package of documents for the new application.

Ms. T clarified in her testimony that by pursuing this appeal, she did not intend to dispute the denial of her September benefits. Rather, her intent was to argue that her benefits should have been granted beginning on October 1, 2017, because she felt that the Division should have either taken the information she submitted for September and applied it to October, or it should have told her that she needed to file a new application in order to obtain October benefits.

The Division argued at the hearing that Ms. T did not meet the very narrow statutory criteria under which late public assistance appeals can be accepted. In addition, the Division argued that if Ms. T had opened the mail containing the Program's September 6, 2017 denial notice, she would have seen that it contained language advising her that "[y]ou may reapply at any time by submitting a new application."<sup>4</sup>

### 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.<sup>5</sup> 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.<sup>6</sup> When an appeal is untimely, Department regulations leave no discretion; an administrative law judge is required to dismiss the appeal.<sup>7</sup> The single, narrow 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."<sup>8</sup>

In her written submissions and her testimony at the hearing, Ms. T explained that she had not opened the mail containing the Division's September 6, 2017 denial notice because she

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<sup>3</sup> Ms. T's signature on the appeal form is dated October 16, 2017, but the Program receipt stamp on the form is dated November 15, 2017.

<sup>4</sup> Exh. 1.

<sup>5</sup> 7 AAC 49.020(1).

<sup>6</sup> 7 AAC 49.030(a).

<sup>7</sup> 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).

<sup>8</sup> 7 AAC 49.030(a) (emphasis added).

assumed it was an authorization notice or other routine mailing. It cannot be disputed that if Ms. T had opened the mailing, she would have seen the clear language explaining that she had only 30 days to file her appeal. In addition, Ms. T acknowledged in her testimony that she learned that her application had been denied during a telephone call with Program staff in September; yet she still waited until mid-November before filing the appeal, based in part on her mistaken assumption that it needed to be filed at the same time as her new application for benefits.

Ms. T did not make a persuasive argument on the timeliness question. Under the regulations quoted above, a late-filed appeal can be accepted only under circumstances that are so extreme that a finding can be made that “the request for a hearing could not be filed” by the deadline.<sup>9</sup> Ms. T’s argument in favor of allowing her late appeal to go forward, although unclear, appeared to be that if the Division had told her that she needed to file a new application, she would have realized that she needed to open the September 6, 2017 mailing from the Division and would then have understood that her filing deadline was only 30 days out.<sup>10</sup> Ms. T may also have been trying to argue that she did not see any need to file an appeal until she learned that she wouldn’t receive October benefits, based on her failure to file a new application. These arguments, however, fall short of the type of circumstances that would allow one to conclude that her appeal “could not be filed” by the deadline. Ms. T did not present any evidence or argument that she could not have filed her appeal within the time limit. Accordingly, the Division’s request for dismissal of Ms. T’s appeal is granted.

Even if Ms. T’s late request for a hearing were to be accepted, however, her appeal would be denied on the merits; she failed to meet her burden of establishing that the Division erred by not granting her benefits for October 2017. The Division aptly pointed out during the hearing that if she had opened the Division’s September 6, 2017 mailing, she would have seen that the denial notice states that she “may reapply at any time by submitting a new application.”<sup>11</sup> This language is more than adequate notice that she needed to file a new application in order to qualify for October benefits. The Division did not err by not granting her benefits for October 2017.

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<sup>9</sup> *Id.* Typically, for an appellant’s late appeal to be accepted, they would have to prove that they were physically incapacitated or mentally disabled to such an extent that it was essentially impossible for them to file by the deadline.

<sup>10</sup> It is important to note that Ms. T did not allege that the Division affirmatively told her she did not have to file a new application in order to qualify for October benefits; thus she could not argue that she was misled into missing her appeal deadline.

<sup>11</sup> Exh. 1.

#### **IV. Conclusion**

Ms. T's appeal of the Division's denial of her application for child care assistance benefits was not timely filed, and therefore it is dismissed. In addition, the Division's denial of Ms. T's appeal is affirmed on the merits, because she did not establish any error in the Division's failure to grant her October 2017 benefits.

DATED: January 25, 2018.

By: Signed \_\_\_\_\_  
Andrew M. Lebo  
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 9<sup>th</sup> day of February, 2018.

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

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