

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

In the Matter of)	
)	
U G)	OAH No. 17-1271-CCA
_____)	Agency No.

DECISION

I. Introduction

U G applied to renew her certification to participate in the child care assistance program. The Division of Public Assistance denied the application, on the grounds that Ms. G had failed to provide requested information about her self-employment income. Ms. G requested a fair hearing.

Due to a change in the child care assistance program regulations that took effect January 5, 2017, the division’s review of Ms. G’s eligibility to participate in the program was premature. Therefore, the division’s decision to close Ms. G’s case is reversed.

II. Facts

Ms. G and her four-year-old live in No Name City. They applied to participate in the child care assistance program through Catholic Community Services.¹ Catholic Community Services approved their application for assistance for the period February 1, 2017 through July 31, 2017.²

Catholic Community Services did not send a renewal notice to Ms. G before the certification period expired. Rather than sending the notice before the certification period expired, it sent the notice on August 29, 2017. The notice informed Ms. G that she must submit “a completed application with supporting verification” by October 13, 2017 and participate in an interview. The notice stated that failure to submit the required information would result in case closure effective July 31, 2017.³

Ms. G submitted the required application on September 13, 2017.⁴ Catholic Community Services noted that Ms. G had been given 45 days to submit the renewal application (until October 13, 2017), so since she submitted the renewal application on September 13, 2017, “there will be no lapse in coverage.”⁵ Ms. G’s caseworker interviewed her on October 19, 2017, and

¹ Ex. 1.
² Ex. 2.
³ Ex. 3.
⁴ Ex. 4, 4.13.
⁵ Ex. 4.

Ms. G provided verification of employment and wages for her two jobs, as well as her University class schedule.

However, Ms. G did not provide verification of her income as a self-employed photographer. At the interview on October 19, 2017, Catholic Community Services requested verification of Ms. G's self-employment income for May through July 2017.⁶ Catholic Community Services also sent Ms. G a "pending notice" on October 18, 2017, indicating that she would need to provide the verification of her self-employment income, enclosing self-employment income/deduction worksheets for her use.

On November 8, 2017, Catholic Community Services denied Ms. G's renewal application for failure to provide verification of her self-employment income for May through July 2017.⁷ On November 21, 2018, Ms. G requested a hearing, and provided completed self-employment income/deduction worksheets for May, June, and July 2017. She reported business expenditures exceeding business income for each of those months.⁸

A hearing in this matter was held on January 8, 2018. Ms. G represented herself. Sally Dial, a Public Assistance Analyst with the Division of Public Assistance, represented the division.

III. Discussion

The regulations governing the child care assistance program were amended extensively effective January 5, 2017.⁹ Among other changes, the certification period for families participating in the program was extended. The old version of 7 AAC 41.305(a) required re-determination of a family's eligibility every six months.¹⁰ The amended regulation provides in part "[a]fter a determination of eligibility, the department will not and a designee may not re-determine family eligibility for 12 months, if the family's average monthly income as described in 7 AAC 41.325(b) does not exceed 85 percent of the state median income as described in 7 AAC 41.335(b) for a family of the same size." Because the amendments to the regulations took effect on January 5, 2017, the new regulations govern in this case. Under the new regulations, Catholic

⁶ Ex. 4.4.

⁷ Ex. 7.

⁸ Ex. 8.1 - 8.3.

⁹ 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.

¹⁰ Ex. 12.

Community Services erred in sending out the renewal notice and attempting to re-determine Ms. G's eligibility at six months from February 1, 2017, rather than one year from that date.

The confusion is understandable, given the recency of the changes to the regulations. At the hearing, the division concluded that the new regulations applied, and after the hearing, filed a copy of the current version of 7 AAC 41.305.¹¹ The division noted some of the challenges in implementing the new regulations in a letter to providers, which indicated among other things that “[c]urrently participating families will be converted to a 12 month certification based on the date of their most recent application submission.”¹²

Under the new regulations, Ms. G should not have been required to complete a six-month recertification. Therefore, her failure to timely supply the requested self-employment verification as part of the six-month recertification did not affect Ms. G's continuing eligibility for the child care assistance program.

By operation of the revised regulation, Ms. G remains eligible for the child care assistance program through January 2018.

IV. Conclusion

The division's decision denying Ms. G's application for renewal is reversed.

DATED: January 23, 2018.

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 8th day of February, 2018.

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

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

¹¹ Ex. 12.

¹² Ex. 13.