

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

In the Matter of)	
)	
MAD DOGS & ENGLISHMEN)	OAH No. 17-0286-MPC
_____)	Agency No. 1002489

DECISION

I. Introduction

Mad Dogs & Englishmen, a care coordination service, applied to renew its certification as a Medicaid provider. The Division of Senior and Disabilities Services denied the application. The Division determined that the documentation necessary to certify Mad Dogs was insufficient or missing.

A hearing was held on June 7, 2017. Mad Dogs was represented by its owner and administrator Daniel Kilanowski, and Mr. Kilanowski testified on behalf of Mad Dogs. The Division was represented by Elizabeth Smith, AAG. Medical Assistance Administrator Laura Baldwin and Health Program Manager Karen Engstrom testified for the Division.

Based upon the evidence presented and the record on file, the denial of Mad Dogs' recertification is affirmed.

II. Facts

On August 1, 2016, the Division mailed a renewal notice to Mad Dogs advising that its certification would expire on November 30, 2016, and that its complete recertification application was due by September 1, 2016.¹ The notice stated that there are changes to the Home and Community Based Waiver regulations effective July 1, 2015, and cautioned Mad Dogs to ensure that all its policies and procedures complied with current regulations. On October 31, 2016, the Division mailed a notice to Mad Dogs stating that it had not received a provider recertification application.² The notice advised that, if an application was not received by November 5, 2016, the process to close Mad Dogs would begin.

On November 28, 2016, the Division received a recertification application from Mad Dogs.³ The Division reviewed the November 28 application and sent Mad Dogs a notice on November 29 advising it of deficiencies in its application that needed to be addressed before the

¹ Administrative Record (Rec.) 56-57.
² Rec. 55.
³ Rec. 52.

Division could make a final certification status determination.⁴ On December 20, 2016, Mad Dogs submitted additional documents to the Division, and the Division sent another notice to Mad Dogs on December 21, 2016, itemizing deficiencies in its application and giving Mad Dogs until January 6, 2017, to complete the application.⁵ This back-and-forth process repeated itself two more times. Ultimately, Mad Dogs submitted supplemental documents to the Division on December 20 and December 27, 2016, and January 13 and February 14, 2017. The Division sent deficiency notices to Mad Dogs on November 29, December 21, and December 28, 2016, and January 16, 2017.⁶

On February 28, 2017, the Division mailed a notice to Mad Dogs denying its application for recertification.⁷ The Division determined that Mad Dogs' application failed to include a quality improvement report and included deficient policies on critical incident reporting, quality improvement and training. The Division determined that Mad Dogs' application was "incomplete and certification cannot be approved at this time."⁸ On March 22, 2017, Mad Dogs requested a fair hearing.

At the hearing, Mr. Kilanowski testified that he took full responsibility for the deficiencies in Mad Dogs' recertification application.⁹ Mr. Kilanowski, however, did not dispute any of the items identified by the Division in its decision letter denying Mad Dogs' recertification; nor did he dispute the Division's determination that Mad Dogs' application was insufficient. Mr. Kilanowski testified that his principal concern was caring for his clients and that he saw his work as being about people, not paperwork.

III. Discussion

Providers of services under the Home and Community Based Waiver program must enroll with the Medicaid program and must be certified by the Division.¹⁰ Providers are initially certified for one year and then are recertified for two years at a time.¹¹ At least ninety days before the certification expires, the Division must send a notice to the provider that its certification is expiring.¹² "The provider must submit a new application for certification and all required

⁴ Rec. 52-54.

⁵ Rec. 48-51.

⁶ Rec. 35-36; 39-54.

⁷ Rec. 35-38.

⁸ Rec. 37. The Division also determined that Mad Dogs' ownership status was ambiguous based upon its current business license.

⁹ Kilanowski Testimony.

¹⁰ 7 AAC 130.220(a).

¹¹ 7 AAC 130.220(c).

¹² 7 AAC 130.220(d).

documentation not later than 60 days before the expiration date of the current certification.”¹³

The Division will deny a certification application if:

the provider fails to submit a complete application under (a) of this section so that it is received by the department not later than 30 days after the date of notice from the department that the application is incomplete.^[14]

A party who wishes to dispute a denial of recertification may appeal that decision under AS 44.64.¹⁵ At the hearing, the Division disputed whether it bore the burden of proof in this case. This issue need not be decided, however, because there are no material facts in dispute, and this decision would reach the same result no matter how the burden of proof was allocated.

As the commissioner noted in a prior case, written policies play a central role in the administration of the Waiver services program.¹⁶ The conditions of participation in the program require providers to submit detailed policies and procedures covering fourteen areas of operations.¹⁷ The conditions of participation also require that each provider

must demonstrate readiness to provide services and comprehension of Medicaid regulations, home and community-based waiver services regulations, and pertinent service Conditions of Participations [sic] through documents describing provider operations.^[18]

Thus, the written policies and procedures serve not only as a reference for the provider, but also provide assurance to the Division that the provider understands the requirements of the relevant regulations and conditions of participation and is able to implement them.¹⁹

A provider must submit a quality improvement report as part of its recertification application.²⁰ A provider must develop and implement policies on critical incident reporting.²¹ A provider must also develop and implement policies for quality improvement in the delivery of services and employee training, including training on critical incident reporting, as part of its conditions of participation.²²

¹³ 7 AAC 130.220(d).

¹⁴ 7 AAC 130.220(f)(1).

¹⁵ 7 AAC 130.220(g).

¹⁶ *In re Jenny's Home*, OAH 16-0667-MPC at 7 (Aug. 24, 2016).

¹⁷ 7 AAC 130.220(b); Provider Conditions of Participation (COP), available at <http://dhss.alaska.gov/dsds/Documents/docs/ProviderCOPs.pdf>, or Ex. 4.

¹⁸ Provider COP at 1 (section I.A.1).

¹⁹ Baldwin Testimony.

²⁰ Provider COP at 1 (section I.A.2.e).

²¹ 7 AAC 130.224(b).

²² Provider COP at 2-3 (section I.D), 4-5 (section II.B).

In its decision denying recertification, the Division found that Mad Dogs failed to submit a quality improvement report for the prior certification period. The Division also identified insufficiencies in Mad Dogs' critical incident reporting, quality improvement and employee training policies.²³ The Division noted that Mad Dogs' application was missing a quality improvement report beginning with its first notice to Mad Dogs on November 29, 2016,²⁴ and in each subsequent notice. The Division noted the additional flaws in Mad Dogs' critical incident reporting, quality improvement and employee training policies in its subsequent notices to Mad Dogs on December 28, 2016, and January 16, 2017.²⁵ In its final notice to Mad Dogs, the Division gave Mad Dogs until January 30, 2017, to submit the required information specified in the notice.²⁶ Mad Dogs failed to comply by January 30, 2017, and the Division ultimately issued its decision denying Mad Dogs' application on February 28, 2017.²⁷

A provider must "comply" with the requirements of 7 AAC 130 to be certified.²⁸ This includes the requirement to develop and implement various policies and procedures. Not all regulations and conditions of participation expressly use the phrase "develop and implement," but the concept of *compliance* with the mandatory requirements for certification in 7 AAC 130 necessarily implies *implementation* of such policies and procedures. As the commissioner held in a prior case, "[a] provider is not in compliance until it has implemented its policies, and [the Division] may not renew a certification before that occurs."²⁹ The commissioner further held in that case that:

Medicaid is a highly regulated program. Providers are expected to plan ahead for the renewal process so they can submit a complete application 60 days before the expiration of their current certification. Providers are expected to understand and comply with numerous, complex regulations. Providers are expected to be in compliance with all those regulations, and not just working towards compliance.^[30]

In this case, Mad Dogs had three months to rectify the deficiencies in its application that were repeatedly pointed out by the Division. Yet, Mad Dogs was unable to complete its

²³ Rec. 36-37.

²⁴ Rec. 52.

²⁵ Rec. 43-46 (Dec. 28, 2016), 39-41 (Jan. 16, 2017).

²⁶ Rec. 39. (The letter states 2016, but that is an obvious typographical error in a letter dated January 16, 2017.)

²⁷ Rec. 35-38.

²⁸ 7 AAC 130.220(b)(2).

²⁹ *In re V. Baker Personal Homecare*, OAH No. 15-0656-MPC, at 9. (Commissioner of Health and Social Services 2015), available at <http://aws.state.ak.us/officeofadminhearings/Documents/MPC/MPC150656.pdf>.

³⁰ *Id.* at 10-11 (emphasis original).

application package. Mad Dogs presented no evidence to indicate otherwise. Considering that Mad Dogs was obligated to submit a complete application package sixty days prior to its certification expiring and that the Division notified Mad Dogs of that obligation on August 1, 2016, Mad Dogs had plenty of time to implement the policies and procedures it was required to develop pursuant to the regulations. Mad Dogs failed to do so. The Division, therefore, did not err in denying Mad Dogs' application.

IV. Conclusion

The Division's decision to deny Mad Dogs & Englishmen recertification as a Medicaid provider is AFFIRMED.

DATED: July 6, 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 2nd day of August, 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.]