

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

In the Matter of)	
)	OAH No. 12-0411-CMB
U T)	Agency No.
_____)	

DECISION

I. Introduction

U T applied for Adult Public Assistance (APA) benefits and Medicaid. The Division of Public Assistance (division) denied her claim. Ms. T requested a hearing to contest that decision.

A hearing was held on October 4, 2012. Both parties participated by telephone. Ms. T represented herself. The division was represented by Public Assistance Analyst Terri Gagne. Prior to the hearing, the division submitted a motion to dismiss because it believed the hearing request was untimely. That issue was addressed first and, based on the evidence in the record, Ms. T's appeal was in fact untimely. Accordingly, the division's motion is granted, and this case is dismissed.

Ms. T has at least one subsequent application for APA, as well as a Food Stamps case. This decision only addresses the July 2011 APA application. If Ms. T receives an adverse decision on a different application, or on her Food Stamps benefit, she has the right to request a hearing on that decision. She has 30 days to request a hearing for most benefits, and 90 days for Food Stamps.

II. Facts

Ms. T applied for APA and Medicaid in July of 2011. A denial was issued by the division on July 3, 2012.¹ The reasons for the denial were

We did not receive a signed and dated AD-2 form completed by a medical doctor. We also did not receive proof that your social security case has been appealed. If you have questions please call us at 269-XXXX.^[2]

Ms. T was mailed her Food Stamp Recertification paperwork on August 16, 2012.³ She returned the Rights and Responsibilities form that came with that paperwork, and stated

¹ Exhibit 2.2; Testimony of Terri Gagne.

² Exhibit 2.2 (original font was in all capitals).

³ Exhibit 2.4.

that she would like to request a hearing.⁴ This request was dated September 10, 2012. The reason stated was “I would like public assistance + Medicaid please. I have no income.”

III. Discussion

An applicant for public assistance benefits, including APA and Medicaid, has the right to request a hearing if his or her application is denied.⁵ This hearing is only available, however, if it is requested within “30 days after receipt of notice of the division action by which they are aggrieved.”⁶

The evidence in this case shows that the notice was mailed on July 3, 2012.⁷ Many courts apply a rebuttable presumption that a notice that was mailed and not returned as undeliverable was received within no more than seven days of the date of mailing.⁸ That same presumption should be applied in Alaska hearings under 7 AAC 49, and it is presumed that Ms. T received the notice seven days after it was mailed.⁹ In addition, while she wasn’t certain as to when she received the notice, Ms. T acknowledged that she likely did receive it in July. The presumption that the notice was received seven days after mailing – July 10, 2012 – has not been rebutted.

Because the notice is presumed to have been received by July 10, 2012, Ms. T had until August 9, 2012, to request a hearing on the denial of her application. Her request was not made until September 10, 2012. Accordingly, her request was untimely.

IV. Conclusion

Ms. T did not request a hearing within the thirty days allowed by the applicable regulation. Accordingly, her request was untimely, and this case is dismissed.

Dated this 5th day of October, 2012.

Signed

Jeffrey A. Friedman
Administrative Law Judge

⁴ Exhibit 2.5.

⁵ 7 AAC 49.010(a); 7 AAC 49.020(1).

⁶ 7 AAC 49.040.

⁷ Ms. Gagne testified that the “date printed” shown on the notice is the date that it is mailed under the division’s normal practice.

⁸ *Francis v. Wing*, 694 N.Y.S.2d 29, 30 (1999); *Carter v. Review Bd of Indiana*, (526 N.E.2d 717, 718 – 719 (Indiana Ct. of Appeals, 1st Dist 1988)); *Ocasio v. Fashion Inst. of Tech.*, 9 Fed. Appx. 66, 68 (2nd Cir. 2001); *Seitzinger v. Reading Hosp. & Med. Ctr.*, 165 F.3d 236, 239 (3rd Cir. 1999); *Morgan v. Potter*, 489 F.3d 195, 196 (5th Cir. 2007); *Martin v. Alamo Cmty. Coll. Dist.*, 353 F.3d 409, 411 (5th Cir. 2003); *Coen v. Riverside Hosp.*, 2 Fed. Appx. 449, 450-51 (6th Cir. 2001); *Loyd v. Sullivan*, 882 F.2d 218, 218 (7th Cir. 1989); *Lozano v. Ashcroft*, 258 F.3d 1160, 1167 (10th Cir. 2001); *Legille v. Tegtmeyer*, 382 F.Supp. 166, 169 (D.D.C. 1974).

⁹ Ms. T was not living in a remote location where mail delivery might routinely take longer than seven days.

Adoption

The undersigned, by delegation from of 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 14th day of November, 2012.

By: Signed
Name: Ree Sailors
Title: Deputy Commissioner, DHSS

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