

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

In the Matter of:)
)
 Q F) OAH No. 13-0475-CMB
) DPA Case No.

DECISION

I. Introduction

Q F applied for Adult Public Assistance and Medicaid benefits in February 2013. The Division of Public Assistance (Division) denied her application because she was not currently receiving Supplemental Security Income (SSI) benefits from the Social Security Administration (SSA). Ms. F requested a hearing.

Ms. F’s hearing was held on April 26, 2013. Ms. F represented herself and testified on her own behalf. Terri Gagne represented the Division.

Because Ms. F was eligible for SSI benefits, and those benefits had been suspended, not terminated, she was eligible for Adult Public Assistance benefits. The Division’s decision to deny her application for Adult Public Assistance benefits is therefore reversed. Medicaid eligibility is, however, dependent upon both eligibility for and receipt of either SSI or Adult Public Assistance benefits. Because Ms. F is not currently receiving SSI benefits, since they are suspended, and because the Division has the discretion to withhold payment of her Adult Public Assistance benefits, the Division's decision to deny Ms. F’s application for Medicaid benefits is affirmed.

II. Facts

Ms. F was receiving Adult Public Assistance and its related Medicaid benefits in the fall of 2012.¹ She was also then receiving SSI benefits. On October 12, 2013, the SSA notified her that it was looking for a different representative payee for her and that it was “delaying your Supplemental Security Income (SSI) payments. Your November 1, 2012 SSI payment is being delayed, but we should begin your payments again within 30 days.”² In that same correspondence, the SSA stated “[w]hen we begin your SSI payments again, we will pay all

¹ Ex. 1.
² Ex. A, p. 1.

money that is due you.”³ Ms. F has not received an SSI payment since October 2012. Computer printouts obtained by the Division from its interface with SSA, from October 26, 2012, through April 9, 2013, all show an SSA payment status code of “S08,” indicating that payments are suspended because “Representative payee development pending.”⁴ The Division terminated Ms. F’s Adult Public Assistance and Medicaid benefits effective the end of November 2012 because she was “currently not in pay status with SSI.”⁵ Ms. F did not appeal that termination.

Ms. F filed an application for General Relief Assistance on February 8, 2013. The Division treated it as a new application for Adult Public Assistance and Medicaid benefits.⁶ The Division then sent Ms. F notice she needed to provide it with a copy of “the award letter from Social Security that states you are back in pay status with them as well as who your payee is.”⁷ The Division determined, as of March 20, 2013, that Ms. F’s SSI was “still not in pay status.”⁸ On March 21, 2013, the Division sent Ms. F notice her Adult Public Assistance case was closed “because we did not receive the items or proof we asked for.” The notice stated the SSA “has not updated your payee situation and as such you are not in payment status with them at this time,” that she was consequently not eligible for Adult Public Assistance benefits, but her Medicaid benefits would continue.⁹

Ms. F requested a hearing on April 9, 2013. On April 16, the Division sent her a corrective notice, replacing the March 21 notice, and notifying her that her application for Adult Public Assistance and Medicaid was denied because she did not comply with the Division’s request that she provide it with a copy of an “award letter from Social Security that states you are back in pay status with them as well as who your payee is.”¹⁰

Ms. F is trying to reinstate her SSI benefits. She applied to be her own SSI payee on April 5, 2013.¹¹

³ Ex. A, p. 1.

⁴ Exs. 2.14 – 2.24. See Ex. 2.13 for a list of the SSA payment status codes.

⁵ Ex. 2.0.

⁶ Exs. 2.1 – 2.10, 2.25.

⁷ Ex. 2.11.

⁸ Ex. 2.12.

⁹ Ex. 2.25.

¹⁰ Ex. 2.26.

¹¹ F testimony; Ex. A, pp. 5 – 10.

III. Discussion

This case presents a confusing procedural posture. Ms. F's Adult Public Assistance and Medicaid benefits were terminated after October 2012, because she was not receiving her SSI payments. She did not appeal that termination. Ms. F then applied for General Relief Assistance in February 2013. The Division treated the application as one for Adult Public Assistance and Medicaid. The Division asked her for proof that her SSI was in pay status. Then, after checking its interface with SSI on March 20¹² and finding out she was not in pay status, it sent her a March 21 notice that her Adult Public Assistance benefits were terminated and that she would continue to receive Medicaid. Ms. F had been notified back in October 2012, however, that her Adult Public Assistance benefits and Medicaid benefits would be terminated.

The termination notice (March 21) and corrective denial notice (April 16) both refer to Ms. F not providing the Division with proof that she was in pay status with the SSA with a representative payee. However, the record is clear that the Division was at all times aware, through its checking the SSA interface, that Ms. F was not in a pay status with the SSA due to representative payee issues (code "S08"). Accordingly, the issue in this case is not whether Ms. F's application should have been rejected because she did not comply with the Division's request for information.¹³ Instead, the issue is whether Ms. F's application should have been rejected because she was not in a pay status with the SSA.

A. *Adult Public Assistance*

An Adult Public Assistance applicant "must meet the eligibility requirements of the SSI program."¹⁴ "An applicant for aid to the permanently and totally disabled . . . must be found by the Social Security Administration to meet the definition of disability contained in Title XVI of the Social Security Act."¹⁵ The applicable regulations do not make eligibility for Adult Public Assistance benefits dependent upon the receipt of SSI benefits; rather, Adult Public Assistance eligibility is dependent upon SSI eligibility.

¹² See "Eligibility Information System State Online Query Response" dated March 20, 2013, showing SSI payment status of "S08." Ex. 2.23. Also see Division case note dated March 20, 2013, stating "AP denied MED continues, SSI still not in pay status." Ex. 2.12.

¹³ See *Alaska Adult Public Assistance Manual* § 400-4D ("For example, if a case worker can get information from SSA through the State Data Exchange (SDX), Beneficiary and Earnings Data Exchange (BENDEX), or State Verification Exchange System (SVES), there is no need for the client to provide proof of the same information.").

¹⁴ 7 AAC 40.030(a).

¹⁵ 7 AAC 40.170(a).

Ms. F is SSI eligible. The SSA correspondence with her, and the Division's printouts from its interface with the SSA, clearly indicate that her SSI benefits have not been terminated. Instead, she is in a suspended category (code "S08"). Her benefits are "delayed," and when she resolves her representative payee issue with the SSA, she will receive her back SSI payments: "[w]hen we begin your SSI payments again, we will pay all money that is due you."¹⁶ Because Ms. F is eligible for SSI, even though her benefits have been temporarily suspended, she is eligible for Adult Public Assistance benefits.

The fact that Ms. F does not currently have an SSI representative payee does not provide the Division with independent justification for denying her application for Adult Public Assistance. If the SSA requires that a person have a representative payee, the Division's regulation, 7 AAC 40.400, provides that the Division "may" also require that they have a representative payee, *i.e.*, it is discretionary, not mandatory. The Division, however, is not required to select the same payee as the SSA; it may select an alternate payee. While the Division is selecting an alternate payee, "assistance . . . will be withheld until an alternative payee is selected by the Division."¹⁷ The regulation's use of the term "withheld" does not imply that an application should be denied pending approval of a payee, but rather that payments will be suspended during the pendency of the approval payee process.

Because Ms. F was eligible for SSI, even though her payments had been suspended, she was eligible for Adult Public Assistance benefits. The fact that she did not have an approved payee did not disqualify her for Adult Public Assistance benefits, although the Division can suspend those payments until such time as she has an approved payee. As a result, the Division should have approved her Adult Public Assistance application.

B. Medicaid

Both Adult Public Assistance and SSI recipients are potentially eligible for Alaska Medicaid benefits. However, the applicable Alaska Medicaid regulation, 7 AAC 100.410, requires not only that an applicant be eligible for either Adult Public Assistance or SSI benefits, but that they actually receive them:

¹⁶ Ex. A, p. 1.

¹⁷ 7 AAC 40.400(b).

(a) An individual who is eligible and receiving SSI is eligible for Medicaid . . .

* * *

(b) An individual who is eligible for and receiving APA is eligible for Medicaid . . .

As discussed above, Ms. F is not currently receiving SSI benefits. They are suspended. Accordingly, her SSI eligibility does not make her eligible for Medicaid benefits. The issue of whether her Adult Public Assistance eligibility makes her eligible for Medicaid benefits is a closer question. As discussed above, Ms. F is eligible for Adult Public Assistance benefits. However, the SSA is requiring that she have a representative payee. Under those circumstances, as discussed above, the Division has the discretion to require that she have a representative payee, and may withhold her Adult Public Assistance payments until such time as one is obtained or appointed for her.¹⁸ Accordingly, the fact that Ms. F is eligible for Adult Public Assistance benefits does not make her eligible for Medicaid benefits. She must also receive those benefits.

IV. Conclusion

Ms. F was eligible for Adult Public Assistance benefits because she was eligible to receive SSI benefits. The Division's decision that she was not eligible for Adult Public Assistance benefits is therefore reversed. However, the Division is within its discretion to withhold those payments until such time as she has an approved representative payee.

Ms. F, however, is not eligible for Medicaid benefits until such time as she actually receives SSI or Adult Public Assistance benefits. The Division's decision that she is not eligible for Medicaid benefits is conditionally affirmed. Ms. F will become eligible for Medicaid when the Division begins to pay Ms. F Adult Public Assistance benefits. If the Division does not require a payee for Ms. F, and its payment of Adult Public Assistance benefits relates back to the date of her application, then Ms. F will be eligible for Medicaid as of that date, and the Division should treat her Medicaid application as approved, not

¹⁸ 7 AAC 40.400(b).

denied. If the Division suspends Ms. F's Adult Public Assistance benefits pending appointment of an alternate payee, the Division's denial of Medicaid benefits is affirmed.

Dated this 29th day of May, 2013.

Signed _____
Lawrence A. Pederson
Administrative Law Judge

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 26th day of June, 2013.

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

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