

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

In the Matter of)
)
 Q S) OAH No. 13-1460-CMB
) Agency No.
 _____)

DECISION

I. Introduction

Q S was receiving Temporary Assistance (TA) benefits and Family Medicaid. Her children left the home to stay with family members while Ms. S addressed medical issues she was experiencing. Because the children were no longer part of the household, the Division of Public Assistance (division) terminated her TA and Medicaid benefits. Ms. S contested that decision, and requested a hearing.

A hearing was held on November 13, 2013. Ms. S testified on her own behalf and called her care coordinator, C J as an additional witness. Because Ms. S's children are no longer living in her home, she does not currently qualify for TA benefits or Family Medicaid. However, because the notice was defective, the division will need to re-notify her of its intended action.

II. Facts

Ms. S had been receiving TA and Medicaid benefits. She was having medical issues, and her medication made it difficult for her to provide proper care for her two children.¹ She sent her children out of state to live with her mother until she was able to get her medical issues taken care off. She does not know when she will be able to have her children come back to live with her.²

Ms. S has also applied for and qualified under the Medicaid Choice Waiver program.³ She has an approved plan of care which was to be implemented to help her get her life in order and her children back in the home.⁴

¹ Testimony of Ms. S.

² *Id.*

³ Testimony of Ms. J. The Waiver Program is for adults with disabilities or adults over 65. It is designed to allow individuals the option of receiving Medicaid services at home rather than in a nursing facility. 7 AAC 130.200.

⁴ *Id.*

On October 15, 2013, Ms. S notified the division that her children would be leaving the home as of October 21.⁵ On October 16, 2013, the division sent Ms. S a notice stating that her benefits would be terminated as of October 31 because “You asked to have your case closed.”⁶ On November 8, 2013, two corrected notices were sent stating that her benefits would be terminated because “There is no longer an eligible child living in your home.”⁷

III. Discussion

The Temporary Assistance program provides cash assistance to certain eligible families.⁸ An eligible family must consist of at least one parent or caretaker **and** at least one dependent child.⁹ Similarly, Family Medicaid is only available to families with a child in the household, or to a woman in the last trimester of pregnancy.¹⁰ Once her children left the home, Ms. S was no longer part of an eligible family under either program.

Because Ms. S was no longer eligible for TA or Family Medicaid, the division was correct to begin the process of terminating those benefits.¹¹ To do so, it must first give written notice at least ten days before the date it intends to take action.¹² The notice must provide the reasons for its proposed action, and include the statute, regulation, or policy that forms the basis for its action.¹³

The first termination notice says that the reason Ms. S’s benefits would end is because she asked to have her case closed. Ms. S testified credibly that she did not ask to have her case closed; she simply called to say the children would no longer be part of the household. Her testimony is supported by the case note entered that day which says “Q called verified SSN & DOB, children will be moving out of home 10/21/13 would like to remove them from her case.”¹⁴ Ms. S has shown by a preponderance of the evidence that

⁵ Exhibit 2.

⁶ Exhibit 3.

⁷ Exhibits 3.1 (TA termination notice) and 3.2 (Medicaid termination notice).

⁸ AS 47.27.025.

⁹ AS 47.27.010. An eligible family may also consist of a woman in the last trimester of pregnancy. AS 47.27.010(3).

¹⁰ 7 AAC 100.114.

¹¹ As noted above, Ms. S has a plan of care as part of the Medicaid Waiver Program. Accordingly, she may be eligible under a different eligibility category listed in 7 AAC 100.002.

¹² 7 AAC 49.060.

¹³ 7 AAC 49.070.

¹⁴ Exhibit 2 (original typed in all capital letters).

the reason initially given for terminating her benefits was not correct. Accordingly, the division may not take action on that notice.

The second two notices gave the correct reason for termination. However, both notices were made retroactive. They were sent in November, but say that benefits would end on October 31, 2013. Notice must be sent ten days before the division intends to take action.¹⁵ Because these notices were sent on November 8, 2013, after the asserted effective date, the notices are invalid as a matter of law.¹⁶ The division must send a new notice that informs Ms. S of its intended action and it must send this notice at least ten days before the date of the intended action.

IV. Conclusion

Ms. S no longer qualifies for Family Medicaid or Temporary Assistance benefits. However, the division must send her a legally sufficient notice before terminating those benefits. Legally sufficient notice has not yet been sent, so the division's termination of her benefits is reversed.

Dated this 15th day of November, 2013.

Signed
Jeffrey A. Friedman
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 2nd day of December, 2013.

By: Signed
Name: Jeffrey A. Friedman
Title: Administrative Law Judge

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

¹⁵ 7 AAC 49.060.

¹⁶ *In re R B*, OAH No. 12-0371-CMB (Commissioner of Health and Social Services 2012) page 4, available on line at <http://aws.state.ak.us/officeofadminhearings/Documents/CMB/CMB120371.pdf>.