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

In the Matter of	)	
	)	
L T	)	OAH No. 14-2334-CMB
	)	Agency Nos.

DECISION

L T requested a hearing regarding the action of the Division of Public Assistance ("Division") in prorating her food stamp and temporary assistance benefits in November 2014. The Division prorated the benefits because it did not receive her recertification application until November 13, 2014, and her eligibility expired at the end of October 2014. Ms. T claimed that the reason she was late in submitting the recertification application was that the Division sent the application forms to the wrong address, due to mistakes by Division staff in recording change of address information she had provided to the Division.

The hearing was held on February 13, February 25, and March 16, 2015. Ms. T represented herself at the hearing and testified on her own behalf. Public Assistance Analyst Jeff Miller represented the Division. Mr. Miller testified for the Division, along with Eligibility Technicians Michael Woodard and Thomas Bybee.

After careful review of the testimony, documentary evidence, and applicable law, this decision concludes that Ms. T did not meet her burden of proof to establish that it was the Division's error that caused her application to be late-filed. Therefore, the Division's determination to prorate her November 2014 benefits is affirmed.

I. Facts

In May 2014, Ms. T was approved for continuing food stamp ("FS") and temporary assistance ("TA") benefits.[1] At that time her mailing address had recently changed from Address 1 to Address 2.[2] The Division had updated her address in her FS claim file, but it had apparently failed to update her address in her TA claim file.[3] The Division sent her May 2014 FS approval notice to the Address 2 address,[4] but the TA approval notice was sent to her at the old address, Address 1.[5]

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1 *See* Exhs. 6, 17.1.

2 L. T testimony.

3 The Division handles FS and TA claims separately, with different sections of the agency devoted to each type of claim.

4 Exh. 6.

5 Exh. 17.1.

In early August, 2014, Ms. T experienced a violent domestic dispute at the Address 2 address, where she had been residing with one of her daughters, and she left the residence and went to the Facility X in Anchorage.[6] On August 5, she contacted the Division and informed Division staff that she was living at Facility X.[7] According to a contemporaneous record prepared by Division staff (a "case note"), Ms. T stated that she was residing at the Facility X facility, but that she also stated that she still wanted to receive her mail at the Address 2 address.[8] The Division staff person also entered the Facility X address in the case note. Ms. T emphatically testified, however, that she told Division staff that she no longer wanted her mail to go to the Address 2 address.[9] She explained that it would have made no sense for her to tell Division staff to send her mail to that address, because she claimed she had been assaulted there and would never go back.[10] She also initially testified, however, that she wasn't certain if she gave the Facility X address as her mailing address at that time.[11] She later testified that she believed she had provided her other daughter's address at Address 3 as her mailing address.[12] Her daughter lives in an apartment across the hall from where Ms. T had resided earlier in 2014.

Division records indicate that Ms. T's FS file was updated to reflect the August 5 telephone call from Ms. T, but her TA case file was not updated. As a result, the FS file showed the Address 2 address as her current address (which in any event Ms. T stated was incorrect), while the TA file still reflected her old address of Address 1.

Ms. T stayed at the Facility X until August 29 or August 30, 2014. At that time she left to visit a friend in California for about a month; and she returned to Anchorage on or about September 28, 2014.[13] She did not inform the Division that she was leaving Alaska, because she knew she would be gone less than a month and believed she was not required to give the agency notice of her absence.[14] In the meantime, on September 16, 2014 the Division mailed Ms. T her

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6 L. T testimony.
7 Exh. 7.
8 *Id.*
9 L. T testimony.
10 *Id.*
11 *Id.*
12 L. T testimony.
13 *Id.*
14 Ms. T testified at one point that during her absence she expected to receive mail at her daughter's address, Address 3, but it is unclear when she believes she gave this address to the Division staff. At another point in the hearing, Ms. T testified she believed that during her absence, the Division should have sent her mail to the Facility X. She did not provide testimony, however, regarding whether she ever went to the Facility X in October, after returning from California, to pick up mail there.

recertification application package for FS benefits, sending it to the Address 2 address.[15] The notice in the package stated that her FS benefits would expire at the end of October unless she timely submitted a recertification application.[16] On the same date, September 16, the Division separately mailed Ms. T her recertification application package for TA benefits, sending it to her old address of Address 1.[17] The notice in the TA package stated that she needed to submit her recertification papers before the end of October.[18]

On September 24, 2014, the Division's TA staff received a form notice from the U.S. Postal Service, indicating that Ms. T's correct address was the Address 2 address. This was the residence she had left after the domestic dispute in early August. The Division's records, however, indicate that this notice was not entered into the Division's system as a case note, in Ms. T's TA case, until October 17, 2014.[19]

After returning to Anchorage, Ms. T stayed at a hotel for about nine days; then she moved to the Facility Y (a shelter for single mothers).[20] She called the Division on approximately October 8 to report the Facility Y address as her new mailing address, and she testified that she left that address on the Division's voicemail system.[21] Division records, however, indicate only that Ms. T called and left a message to be called back, and that Division staff returned her call but were unable to reach her.[22] Division staff testified that according to the Division's standard practices, if Ms. T had left a new mailing address in her voicemail message, the Division's records would reflect that fact.[23] In this instance, the records do not reflect that Ms. T left such information in her voicemail message.[24] In any event, at a later point in the hearing Ms. T testified that she "told an eligibility worker" that Facility Y was her new mailing address. It is unclear when she would have done so, however, since she had already testified that she never received a return call from the Division in response to her voicemail message.

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16 Exh. 8.

17 Exh. 19.

18 *Id.*

19 Exh. 22.

20 L. T testimony.

21 *Id.* Ms. T, however, also later testified that informed a Division eligibility worker of the Facility Y address.

22 Exh. 9; testimony of M. Woodard. Ms. T testified that she never received a call back from Division staff, but she also testified that she was having problems with the ringer on her phone and consequently may have missed the return call.

23 M. Woodard testimony.

24 *Id.;* exh. 9.

On October 16, 2014, the Division sent Ms. T another recertification package for her TA benefits, mailing it to her old address at Address 1.[25]

Ms. T stayed at the Facility Y until approximately November 13, 2014, after which she was essentially homeless and was "going from church to church" for a period of time.[26] Then she returned to the Facility X for a short period.[27] At some point after that she found a roommate and moved into an apartment.[28]

During this period of multiple moves and changes of address, Ms. T finally received the Division's recertification application package for TA benefits on October 31, 2014. Ms. T initially testified that her daughter's boyfriend drove her to a Division office at some point in mid-November, went into the building, obtained the package for her, and then brought it back out to her in the car, where she filled it out.[29] She later testified, however, that she received the recertification package at her daughter's apartment at Address 3 on October 31. The Division had mailed it to her old address at Address 2[30] (across the hall from her daughter's apartment), and fortunately her daughter had been able to receive it on her behalf.[31]

The Division received Ms. T's filled-out TA recertification package on November 13, 2014.[32] Both her FS and TA cases had automatically closed when the Division did not receive her recertification papers by the end of her eligibility on October 31.[33] Her signature on the document is dated November 3, 2014.[34] The Division used the completed application for both her TA and FS cases and it approved her benefits, but the benefits were prorated for November based on a start date of November 13.[35] This appeal followed.

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25 Exh. 21.
26 L. T testimony.
27 Exhs. 13, 26.
28 L. T testimony.
29 *Id*.
30 The Division admitted that it erred in March 2014 by failing to update her address in her TA case file, from her old apartment address to the Address 2 address; but this "error" fortuitously resulted in Ms. T finally receiving the TA recertification papers on October 31.
31 *Id.*
32 Exhs. 11.1-11.5.
33 J. Miller testimony.
34 Exh. 11.5.
35 Exhs. 27-28.

II. Analysis

Because Ms. T is challenging the Division's determination to prorate her November 2014 FS and TA benefits, she has the burden of proving, by a preponderance of the evidence, that the Division's determination was incorrect.[36]

The Division's handling of Ms. T's FS benefits in this case is governed by 7 CFR § 273.14.[37] Its handling of Ms. T's TA benefits is governed by 7 AAC 45.540 and 7 AAC 45.165.[38] These regulations dictate that benefits be prorated when an application is received after the end of the prior period of eligibility, unless the late filing of the application is deemed to be the fault of the Division. Thus, in order to prevail in this appeal, Ms. T would need to establish that her late-filing of her application on November 13, 2014 was the fault of the Division.

In essence, in order to prevail in this appeal, Ms. T needs to prove that if the Division had properly processed the information she had provided, she would have received her recertification papers in a timely fashion and would have been able to submit them by the deadline. Her primary argument at the hearing was that the Division's notation on August 5, 2014 that she still wanted to receive her mail at the Address 2 address was erroneous and made no sense, because she had been the victim of an assault there and had no intention of ever going back; so why would she want to receive her mail there?

While Ms. T's argument makes sense, it doesn't go far enough. She also needs to establish that she provided sufficient clear information to the Division to enable it to send her mail to an address where she would have received it. The problem she faces is that during the relevant timeframe, she moved several times, as well as traveling outside Alaska without informing the Division. And her own testimony regarding this factual context changed at various times throughout the hearing and was unclear on a number of issues, including the key question of the address she expected the Division to use when it sent out her FS and TA recertification packages in mid-September. Early in the hearing, she testified emphatically that the Division should have sent those mailings to her at the Facility X. But in mid-September Ms.

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[36] *See ABC Board v.Decker*¸700 P.2d 483 (Alaska 1985) (the party seeking a change in the status quo has the burden of proof). "Preponderance of the evidence" means that a fact "more likely than not is true." 2 AAC 64.290(e).

[37] *See* exh. 34.

[38] *See* exh. 41-42.

T was in California, unbeknownst to the Division, and she presented no evidence that the Facility X held any mail for her in September, or that she inquired at Facility X to see if it had received Division mail addressed to her in September. To add to the confusion, at a later point in the hearing, Ms. T testified that the Division should have sent its September mailings to her at her daughter's address at Address 3. And to compound this problem, at several points in her testimony Ms. T referred to this address by the shorthand "Address," without distinguishing between Address 3 (her daughter's address) and Address 1 (her own previous address). If she had used such shorthand in her telephone conversations with Division staff, they could have easily assumed she was referring to her old address, rather than her daughter's nearly identical address.

Along with these inconsistencies, Ms. T changed her testimony about how and when she received the TA recertification package, ultimately concluding that she received it on October 31 from her daughter, who had managed to intercept it for her when it was sent to Ms. T's old residence at Address 1. Although Ms. T testified honestly and to the best of her ability, her inconsistent memory on key issues undermines the reliability of her testimony and makes it more difficult for her to meet her burden of proof.

Aside from the inconsistencies and lack of clarity in Ms. T's testimony, the Division pointed out that the FS and TA recertification application forms are interchangeable, so that an applicant can use one application for both programs. The Division contended that Ms. T knew that she could apply for both sets of benefits with one application, because she had done just that with a prior application in May 2014.[39] The Division further pointed out that Ms. T received her TA application package on October 31, 2014, and if she had filled it out and submitted it on October 31 or November 1, she would have received her full November FS and TA benefits.

Based on the foregoing discussion, this decision concludes that Ms. T did not meet her burden of proving that the Division was at fault for her late filing of her recertification application, because she did not establish by a preponderance of the evidence that she provided the Division with sufficient clear information to enable it to send her mail to an address where she would have received it. In addition, the Division cannot be said to be at fault for the late filing when Ms. T had a recertification package in her possession in time to allow her to submit it and still receive full FS and TA benefits.

[39] Exh. 5.

III. Conclusion

Ms. T did not meet her burden of establishing that the Division was at fault for her application being late-filed. The Division's determination to prorate her November 2014 benefits is affirmed.

Dated this 16th day of April, 2015.

Signed
Andrew M. Lebo
Administrative Law Judge

Adoption

The undersigned, under the authority of AS 44.64.060(e)(1), adopts the foregoing 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 6th day of May, 2015.

By: *Signed*
Signature
Andrew M. Lebo
Name
Administrative Law Judge
Title

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