

Accordingly, the Division's denial of Ms. K' hearing request, based on timeliness, is reversed. However, the Division's denial of retroactive Medicaid coverage under the "Healthy Alaska Plan" category, and the Division's denial of eligibility for APA, APA-related Medicaid, and Interim Assistance, are affirmed.

II. Facts

A. Ms. K' Benefit Applications

On August 21, 2015, Ms. K applied for APA and APA-related Medicaid.¹ On September 29, 2015, Ms. K participated in an eligibility interview with a DPA eligibility technician (ET).² On October 2, 2015, the Division mailed a notice to Ms. K stating that her application for APA and APA-related Medicaid had been put on hold pending receipt from Ms. K of (1) proof of the amount of wages received by her in August and September 2015; (2) proof of her filing of a current application for SSI with SSA; and (3) a completed / signed disability examination form (Form AD-2).³ However, on October 7, 2015, the Division notified Ms. K that she had been found eligible to receive Medicaid, under the new Medicaid expansion category, effective September 1, 2015.⁴

On October 29, 2015, Ms. K telephoned the Division and stated that she had applied for SSI 17 years prior and that SSA would not let her file another application.⁵ On October 30, 2015, the Division mailed a second "pend" notice to Ms. K, stating that her application for APA and APA-related Medicaid was still on hold pending receipt from Ms. K of (1) proof of her filing of a current application for SSI with SSA; and (2) a completed / signed disability examination form (Form AD-2).⁶ This notice also stated that, if the requested information was not received by November 30, 2015, Ms. K' application might be denied.⁷

By December 1, 2015, the Division had received some, but not all, of the documentation it had requested from Ms. K. Accordingly, on December 4, 2015, the Division issued a notice denying Ms. K' August 21, 2015 application for APA and APA-related

¹ Exhibit 9.

² Exhibit 9.

³ Exhibit 11.

⁴ Exhibit 25. The Division's approval of Ms. K' Medicaid application, under the new expansion category, technically renders her application for APA-related Medicaid moot.

⁵ Exhibit 13.

⁶ Exhibit A13, Exhibit 14.

⁷ Exhibit A13, Exhibit 14.

Medicaid.⁸ The denial notice stated that Ms. K had still not provided evidence that she had a current application for SSI pending with SSA.⁹

B. Ms. K' Hearing Requests

On October 9, 2015, Ms. K telephoned the Division and requested a hearing concerning retroactive Medicaid coverage for August 2015.¹⁰ On November 30, 2015, Ms. K telephoned the Division and requested a hearing concerning the Food Stamp and Medicaid programs, again requesting retroactive Medicaid coverage to August 1, 2015.¹¹ On December 18, 2015, Ms. K telephoned the Division and requested a hearing concerning the Division's denial of her application for APA, APA-related Medicaid, and Interim Assistance.¹² On January 20, 2016, Ms. K submitted a written hearing request concerning the APA and Interim Assistance programs.¹³ On January 26, 2016, Ms. K telephoned the Division a second time and requested a hearing concerning APA, APA-related Medicaid, and Interim Assistance benefits.¹⁴ On February 5, 2016, Ms. K telephoned the Division a third time to request a hearing concerning APA, APA-related Medicaid, and Interim Assistance benefits.¹⁵ On February 12, 2016, the Division received a written hearing request from Ms. K concerning the three programs; two days later, Ms. K again requested a hearing by phone.¹⁶

C. Ms. K' Hearing

Ms. K' hearing was held on March 9 and March 23, 2016. Ms. K participated in the hearing by phone, represented herself, and testified on her own behalf. Sally Dial participated in the hearing by phone, represented the Division, and testified on its behalf.

At hearing, Ms. K testified that she did not submit a written hearing request because the Division's forms lead her to believe that a telephonic hearing request was sufficient. Ms. K submitted, as an exhibit, a copy of a DPA "Fair Hearing Request" form (form GEN-85, revision of July 2010), which states "[t]his form is not required to ask for a fair hearing," and "[a] fair hearing may also be requested by phone, or in person."¹⁷ Ms. K also submitted a copy of a DPA form titled "Your Rights and Responsibilities" (form GEN-51, revision of September

⁸ Exhibit 16.

⁹ Exhibit 16.

¹⁰ Exhibit 12.

¹¹ Exhibit 15.

¹² Exhibit 17.

¹³ Exhibit 1.

¹⁴ Exhibits 18, 19.

¹⁵ Exhibit 21.

¹⁶ Exhibits 3, 23.

¹⁷ Exhibit A19.

2013), which states that a hearing request may be made "by phone, in person, or in writing."¹⁸ The Division responded that these were outdated forms which Ms. K could not have been given during this case, and that the Division's current forms have been amended to clarify that hearings concerning *Food Stamp benefits* could be requested verbally, but that hearings concerning *all other benefit programs* had to be submitted in writing.¹⁹ The Division submitted a DPA form titled "Your Rights and Responsibilities" (form GEN-50-C, revision of June 2015), which states that hearings concerning all public assistance benefits other than Food Stamp benefits must be requested in writing.²⁰ The Division also submitted a *different* DPA form, also titled "Your Rights and Responsibilities," but without any form number or revision date, which states that "[f]or the Medicaid Program, you may request a fair hearing by phone, in person, or in writing"²¹

After the hearing, the record was left open for post-hearing filings through March 30, 2016. After that date the record closed and the case became ripe for decision.

III. Discussion

A. *The Timeliness of Ms. K' Hearing Requests*

In Alaska, under 7 AAC 49.030(a), "a request for a hearing . . . must be made to the department in writing by a recipient . . . not later than 30 days after the date of the notice required under 7 AAC 49.060." On October 7, 2015, the Division notified Ms. K that she had been found eligible to receive Medicaid, under the new Medicaid expansion category, effective September 1, 2015.²² Two days later, on October 9, 2015, Ms. K telephoned the Division and requested a hearing concerning retroactive Medicaid coverage for August 2015. Accordingly, this hearing request was within the 30 day limit, but was not in writing.²³

¹⁸ Exhibit A20.

¹⁹ Sally Dial's hearing testimony. Pursuant to 7 CFR § 273.15(h), hearings concerning Food Stamp benefits may be requested either verbally or in writing. Pursuant to 42 CFR 431.221(a), states may require that hearings concerning Medicaid benefits be requested in writing. Pursuant to 7 AAC 49.030(a), in Alaska, unless otherwise provided by federal law, hearing requests concerning all public assistance benefits "must be made to the department in writing." The net effect of these three regulations is that, in Alaska, hearings concerning all public assistance benefits *other than Food Stamp benefits* must be requested in writing.

²⁰ Exhibit 22.

²¹ Exhibit 31.

²² Exhibit 25. The Division's approval of Ms. K' Medicaid application, under the new expansion category, technically renders her application for APA-related Medicaid moot.

²³ Subsequent hearing requests were submitted concerning this program, but none of the subsequent hearing requests were within the 30 day time frame.

The Division issued a notice denying Ms. K' application for APA and APA-related Medicaid on December 4, 2015.²⁴ The Division issued no separate denial notice concerning Ms. K' application for Interim Assistance (IA). However, because the application for IA required much of the same information as the application for APA, Ms. K' application for IA should also be considered to have been denied on December 4, 2015. On December 18, 2015, Ms. K telephoned the Division and requested a hearing concerning the Division's denial of her application for APA, APA-related Medicaid, and Interim Assistance.²⁵ The December 18, 2016 hearing request was within the 30 day limit, but was not in writing.²⁶

Under 7 AAC 49.030(a), Ms. K' hearing requests should have been in writing. However, there are certain situations in which the government can be estopped from enforcing statutes and/or regulations. Specifically, "[e]quitable estoppel applies against the government in favor of a private party if four elements are present in a case: (1) the governmental body asserts a position by conduct or words; (2) the private party acts in reasonable reliance thereon; (3) the private party suffers resulting prejudice; and (4) the estoppel serves the interest of justice so as to limit public injury."²⁷

In this case, Ms. K testified that she did not initially submit her hearing requests in writing because the Division's forms, discussed at pages 3 - 4, above, stated that she could request a hearing verbally / by phone. The Division countered that its forms have been amended to clarify that hearings concerning all other benefit programs other than Food Stamps must be submitted in writing; that the forms relied on by Ms. K were outdated forms which Ms. K could not possibly have been given during this case, and that she thus could not have reasonably relied on them.

Ms. K' testimony that she relied on the statements in the forms was credible, especially since it is common practice for government agencies to exhaust supplies of old forms prior to using updated forms. The Division was given the opportunity to submit complete copies of the actual forms given to (and later received back from) Ms. K, but the Division did not do so. Accordingly, the preponderance of the evidence indicates that Ms. K was given old forms

²⁴ Exhibit 16.

²⁵ Exhibit 17.

²⁶ Subsequent hearing requests were submitted concerning these three programs, but none of the subsequent hearing requests were within the 30 day time frame.

²⁷ *Allen v. State, Department of Health & Social Services, Division of Public Assistance*, 203 P.3d 1155, 1164 (Alaska 2009); *see also Hidden Heights Assisted Living, Inc. v. State of Alaska Department of Health and Social Services, Division of Health Care Services*, 222 P.3d 258, 268 (Alaska 2009).

indicating that hearing requests could be submitted verbally; that Ms. K reasonably relied on the statements in the forms;²⁸ that Ms. K will be prejudiced if the writing requirement is enforced; and that the interests of justice will be served by accepting Ms. K' verbal hearing requests in this case.

In summary, Ms. K timely requested a hearing, by phone, as to all benefit programs at issue. Although the Division's regulations require that hearing requests for the programs at issue be submitted in writing, the Division is estopped from enforcing that aspect of the regulation due to its statements to the contrary in several of its official forms. Accordingly, Ms. K is entitled to be heard on the merits of her case.

B. Is Ms. K' Entitled to Retroactive Coverage Under the September 2015 Medicaid Expansion Category?

In order to determine whether Ms. K is entitled to retroactive coverage for August 2015 through the new Medicaid category which became effective on September 1, 2016, some background information is appropriate. On July 16, 2015, Governor Walker sent a letter to the Legislative Budget and Audit Committee giving members the required 45 day notice of his intent to accept additional federal and Mental Health Trust Fund Authority funds to expand Medicaid in Alaska.²⁹ On September 1, 2015, Governor Walker and Lieutenant Governor Mallott announced implementation of the new Medicaid coverage category, known as the "Healthy Alaska Plan," effective *on that date*.³⁰ The new category provides Medicaid coverage for Alaskans, ages 19 to 64, who are not eligible for another type of Medicaid or Medicare, and whose income is less than \$20,328 a year (\$1,694 per month) (single adults).³¹

As indicated above, the "Healthy Alaska Plan" category *did not become effective until September 1, 2015*. As explained on the Department of Health and Social Services' website, "[a]pplications will be accepted starting in September 2015;" "[i]f you apply before Sept. 1,

²⁸ The parties stipulated at hearing that Terry Webb of DPA would have testified that he told Ms. K that she needed to submit her hearing requests in writing. However, it is not unreasonable for an applicant or recipient to place more credence on a state agency's official forms than on the oral statements of one of its representatives. Accordingly, even assuming the Division informed Ms. K of the writing requirement, it was still reasonable for Ms. K to rely on the statements in the Division's forms.

²⁹ See online press release at http://dhss.alaska.gov/News/Documents/press/2015/Medicaid_Expansion_20150716.pdf, accessed on April 27, 2016.

³⁰ See online press release at <http://gov.alaska.gov/newsroom/2015/09/administration-implements-healthy-alaska-plan/>, accessed on April 27, 2016.

³¹ See <http://dhss.alaska.gov/HealthyAlaska/Documents/ExpansionFAQ.pdf>, accessed on April 27, 2016.

your application will be denied;" and "[if you] apply any day in September . . . and . . . are eligible, your coverage will begin Sept. 1."³²

In summary, Ms. K is not entitled to retroactive coverage under the new "Healthy Alaska Plan" Medicaid expansion category, for the month of August 2015, because the category did not exist during the month for which Ms. K seeks retroactive coverage.

C. Was the Division Correct to Deny Ms. K' Applications for Adult Public Assistance, APA-Related Medicaid, and Interim Assistance?

Initially, the regulations applicable to Adult Public Assistance (APA), APA-Related Medicaid, and Interim Assistance (IA) are different. Accordingly, Ms. K' eligibility for each of the three programs must be analyzed separately.

1. Adult Public Assistance

Adult Public Assistance is based on AS 47.25.430(a), which states in relevant part that "financial assistance shall be given . . . to every aged, blind, or disabled needy resident . . ." There are three basic ways by which one may become eligible for APA.³³ First, a person is eligible for APA if he or she is *blind*, over 18 years old, and meets applicable income and resource limits. Second, a person is eligible for APA if he or she is *disabled*, over 18 years old, and meets applicable income and resource limits. Third, a person is eligible for APA, even if he or she is not blind or disabled, if the individual is at least 65 years old and meets applicable income and resource limits.

In this case, Ms. K seeks to qualify for APA based on disability. It is not disputed that Ms. K' income falls within SSI income standards, and whether Ms. K is disabled for purposes of SSI is an issue to be resolved by SSA.³⁴ The narrow issue in this case is whether Ms. K currently has an application for SSI pending with the SSA. APA regulation 7 AAC 40.060(a) requires in relevant part that "an applicant whose income falls within SSI income standards must apply for SSI within 30 days after the date of application under 7 AAC 40.040" (*i.e.* the date of the APA application). The Division asserts that Ms. K has not provided evidence that she had a *current* application for SSI pending with SSA.³⁵

³² See <http://dhss.alaska.gov/HealthyAlaska/Documents/ExpansionFAQ.pdf>, accessed on April 27, 2016.

³³ See A.S. 47.25.430, 7 AAC 40.090, 7 AAC 40.120, 7 AAC 40.140 - 7 AAC 40.360, and the *Division's Adult Public Assistance Manual* at Sections 400, 420, 424, 425, and 430 - 443.

³⁴ APA regulation 7 AAC 40.170 (a) provides that "[a]n applicant for aid to the permanently and totally disabled whose income is within SSI income standards must be found by the Social Security Administration to meet the definition of disability contained in Title XVI of the Social Security Act, as amended (42 U.S.C. 1382c(a)(3))."

³⁵ Exhibit 16.

It is important to note that the SSA has its own appeal process for reviewing SSI decisions, and that the SSA's process is separate from the process under state law for reviewing Interim Assistance decisions made by the Division. Federal regulations provide a three step process for appealing disability determinations. If the applicant disagrees with SSA's initial determination, he or she has a right to request reconsideration.³⁶ If dissatisfied with the reconsideration decision, the applicant can request a hearing before an SSA administrative law judge (ALJ).³⁷ Finally, if the hearing before the ALJ is not favorable, the applicant can ask the Appeals Council to review the ALJ's decision.³⁸ This is the final step in the SSA's administrative review, and the Appeals Council's decision is the final agency decision.³⁹ After that, the only remaining appeal is to the U.S. District Court.⁴⁰ The Office of Administrative Hearings cannot reverse or modify a decision made by the SSA Appeals Council; only the U.S. District Court may do that.⁴¹

Ms. K testified that she currently has an application for SSI pending with SSA. She filed what appears to be an SSA case status printout, date-stamped by SSA on June 21, 2013, which indicates that a case involving an SSI application filed on November 21, 2011 was closed on June 7, 2012, but that Ms. K filed a new SSI application on June 29, 2012, and that this second case was still pending with SSA as of June 21, 2013.⁴² In response, the Division provided case notes from an eligibility technician (ET) stating that the ET had checked an SSA computer interface on October 29, 2015, and again on December 3, 2015, and that SSA's records showed that, as of those dates, Ms. K had no application for SSI pending with SSA.⁴³

It would have been helpful had one of the parties submitted one or more *SSA printouts* showing whether Ms. K had an active SSI case with SSA as of the date the Division denied Ms. K' application for APA. However, I find that the preponderance of the evidence indicates

³⁶ 20 CFR § 416.1400(a)(2).

³⁷ 20 CFR § 416.1400(a)(3).

³⁸ 20 CFR § 416.1400(a)(4).

³⁹ 20 CFR § 416.1481.

⁴⁰ 20 CFR § 416.1400(a)(5).

⁴¹ First, the State of Alaska's "Fair Hearings" regulations do not give this Office the authority to second-guess the findings and conclusions of a federal agency. *See* 7 AAC 49.020, 7 AAC 49.100, and 7 AAC 49.170. Second, the Supremacy Clause of the United States Constitution (Article VI, Section 2) generally operates to prevent a state agency from attacking the findings of a federal agency. *See, for example, Mancusi-Ungaro v. Caldwell*, 205 S.E.2d 58 (Ga. App. 1974) (the findings of a federal agency are final and conclusive on a state agency).

⁴² Exhibit B2.

⁴³ Exhibits 13, 15. It is possible that Ms. K has an appeal of an SSA denial of an application for SSI pending in federal district court or the 9th Circuit Court of Appeals. However, once the denial of an application for SSI is appealed out of SSA's administrative system and into the federal court system, the application no longer counts for purposes of eligibility for Alaska's Adult Public Assistance and Interim Assistance programs.

that Ms. K did not have an application for SSI pending *with SSA* at the time the Division denied her application for APA. Accordingly, the Division's determination on this issue is affirmed.

2. Adult Public Assistance-Related Medicaid

The regulations for the APA-related category of Medicaid incorporate many of the APA regulations by reference.⁴⁴ One of the APA eligibility requirements incorporated into APA-related Medicaid's regulations is the requirement that the applicant "be found by the Social Security Administration to meet the definition of disability contained in Title XVI of the Social Security Act, as amended (42 U.S.C. 1382c(a)(3))."⁴⁵ An applicant cannot be found disabled by SSA if he or she does not have an application for SSI pending with SSA. Accordingly, the Division was correct to deny Ms. K' application for APA-related Medicaid for the same reason (discussed above) that it denied her application for Adult Public Assistance.⁴⁶

3. Interim Assistance

Interim Assistance is a monthly payment in the amount of \$280 provided by the State of Alaska to Adult Public Assistance applicants while those applicants' eligibility for Supplemental Security Income (SSI) is being determined by the Social Security Administration.⁴⁷ Initially, the Division's supplemental position statement of March 10, 2016 states that no denial notice was ever sent to Ms. K concerning her eligibility for Interim Assistance because Ms. K never provided her medical documents to the Division's medical reviewer, and never provided proof of a currently pending application for SSI.⁴⁸ However, since the Division never *approved* Ms. K for Interim Assistance, it effectively denied eligibility. Accordingly, a hearable issue exists regarding Ms. K' eligibility for Interim Assistance.

⁴⁴ 7 AAC 100.400 ("Applicability of APA Regulations").

⁴⁵ 7 AAC 40.170 ("Disability").

⁴⁶ Even were this not the case, I find that the Division's approval of Ms. K' application for the "Healthy Alaska Plan" Medicaid expansion category rendered moot any issues concerning the Division's denial of Ms. K' application for APA-related Medicaid.

⁴⁷ AS 47.25.455; 7 AAC 40.170(a) and (b); 7 AAC 40.375(a).

⁴⁸ Exhibit 8. The Division's assertion that it was not required to send Ms. K a denial notice concerning her Interim Assistance application is incorrect. Pursuant to Section 410-5C of the Division's own Adult Public Assistance Manual, (which also covers Interim Assistance), if additional information is needed to process an application, the applicant must be sent a "pend notice" giving the applicant 10 - 30 days from the date of this notice to provide the missing information. Then, if the applicant either fails to submit the required information or documentation within the specified time frame, or fails to request an extension of time to obtain it, a denial notice is issued at the end of the "pend period."

As with Adult Public Assistance, filing an application for SSI with SSA is a legal prerequisite to receipt of Interim Assistance benefits from the State of Alaska.⁴⁹ Ms. K previously received Interim Assistance, from 2004 until 2012, because she had an active application for SSI pending with SSA during that period.⁵⁰ However, as discussed above in the context of Ms. K' application for APA, the preponderance of the evidence indicates that Ms. K does not *currently* have an application for SSI pending with SSA. Accordingly, the Division was correct to deny Ms. K' application for Interim Assistance on that basis.

IV. Conclusion

Ms. K' hearing request was timely. However, Ms. K is not entitled to retroactive coverage under the new "Healthy Alaska Plan" Medicaid expansion category because the category did not yet exist during the month for which Ms. K seeks retroactive coverage. Ms. K is also not currently eligible for Adult Public Assistance, APA-related Medicaid, and/or Interim Assistance, because those programs require that an applicant have an application for SSI pending with SSA at some administrative level, and the preponderance of the evidence indicates that Ms. K does not currently have an SSI case open with SSA.

Accordingly, the Division's denial of Ms. K' hearing request, based on timeliness, is reversed. However, the Division's denial of retroactive Medicaid coverage under the "Healthy Alaska Plan" category, and the Division's denial of eligibility for APA, APA-related Medicaid, and Interim Assistance, are affirmed.

Dated this 19th day of May, 2016.

Signed _____
Jay Durych
Administrative Law Judge

⁴⁹ See A.S. § 47.25.455, 7 AAC § 40.375(a), and *Adult Public Assistance Manual* Section 426-2 B.

⁵⁰ See discussions in OHA Case No. 11-FH-470 and OHA Case No. 12-0203-APA.

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 1st day of June, 2016.

By: Signed _____
Name: Deborah L. Erickson
Title: Project Coordinator
Agency: Office of the Commissioner, DHSS

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