

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

In the Matter of)
)
 E E)
_____)

OAH No. 16-1387-CMB
Agency No.

DECISION

I. Introduction

The Division of Public Assistance (DPA) seeks to terminate the Adult Public Assistance (APA) and Medicaid benefits of E E on the basis that his income is above the threshold to qualify. No facts are in dispute. This decision concludes:

- APA benefits terminate effective November 1, 2016.
- Medicaid coverage cannot be terminated at this time because both notices the agency has sent are defective.
- There is no dispute that Mr. E’s income is now too high for Medicaid eligibility, and thus it is likely that his Medicaid will terminate once a proper (third) notice can be sent. This may be avoided if he sets up a Medicaid Qualifying Trust, which may or may not make sense for him. He was encouraged to seek legal advice on this option.

II. Background Facts

Mr. E is a 75-year-old gentleman living independently with his daughter and grandchildren in exchange for a monthly rental payment. On October 12, 2016, he filed an eligibility review form seeking to continue his APA, Food Stamps, and Medicaid benefits.¹ DPA sent him a notice on October 21, 2016 that his APA and Medicaid benefits would end after at the end of that month.² On November 10, 2016, Mr. E requested a Fair Hearing, consenting to immediate termination subject to reimbursement should the agency’s denial prove to be incorrect.³ A month later, on approximately December 12, DPA sent Mr. E a second notice of termination, adding two additional lines of text.⁴

¹ Ex. 2.

² Ex. 4.

³ Ex. 5. It is not clear whether the benefits were actually terminated.

⁴ Ex. 4.1. The notice carries a date of December 12, 2016, but was submitted as an exhibit in this case on December 9, 2016. It is unusual for documents to be dated later than the date they become exhibits. The discrepancy was not explored at hearing.

At the time of the first termination notice, Mr. E was receiving \$715 per month of Social Security retirement benefits (SSA) and \$690.59 of Veteran’s Administration (VA) benefits.⁵ In December his VA benefits increased to \$1165 on account of a 60 percent disability rating.⁶ On December 20, his SSA increased to \$717.⁷

III. Adult Public Assistance

Mr. E was receiving one dollar per month of APA. The parties do not dispute that he has had as least \$1405 per month of unearned income during the relevant period, subject to a deduction of \$20,⁸ yielding a net of at least \$1385. The need standard for him, as an adult living independently, is \$1362.⁹ He exceeds this threshold and is not eligible for APA. The notice of termination was sent ten days in advance of the date it took effect, and explained the reasons and the regulatory basis for the agency’s action, both as required by regulation.¹⁰ Therefore, the termination of his APA benefits, effective November 1, 2016, must be affirmed.

IV. Medicaid

Apart from special circumstances that do not apply here, the DPA must give written notice to a recipient at least ten days before taking action to terminate assistance.¹¹ The notice must state “the reasons for the proposed action, including the statute, regulation, or policy on which that action is based.”¹²

DPA conceded at hearing that its October 21, 2016 notice of termination to Mr. E failed to meet this standard and was ineffective with respect to Medicaid. It failed to meet the standard because it did not cite any statute, regulation, or policy relating to Medicaid.¹³ DPA stated that it is relying on the December 12 notice, and that termination can only be effective January 1, 2017.¹⁴

The December 12 notice is also ineffective, however. First, that notice purports to close Medicaid coverage retroactively, effective November 1.¹⁵ Thus, it does not comply with the

⁵ Ex. 3, 3.1. The figures are accepted by both sides.

⁶ Testimony of Mr. E.

⁷ Ex. 3.1.

⁸ 7 AAC 40.320(a)(23).

⁹ APA Manual § 450-2 & Addendum 1.

¹⁰ See 7 AAC 49.060-070.

¹¹ 7 AAC 49.060.

¹² 7 AAC 49.070.

¹³ Ex. 4. All of the cited authorities pertained to APA.

¹⁴ Remarks of J. Miller.

¹⁵ The notice closes APA “after OCTOBER 2016,” and then says that “Medicaid benefits will also stop *after the above date*” (italics added). Ex. 4.1.

requirement to give ten days' prior notice. Second, it has long been settled in Alaska Fair Hearing decisions (following principles laid down by the Alaska Supreme Court) that defective notices cannot be cured by corrective information issued during the hearing process.¹⁶ The agency must start over, with a prospective notice.

Medicaid coverage will therefore continue pending the issuance of a new termination notice meeting the requirements for number of days in advance and information supplied. In this case, it is fairly clear that, unless something changes, Mr. E will then lose Medicaid coverage, because in his case the threshold income for eligibility is the same as for APA eligibility,¹⁷ and he is now well above that level. For this reason, Mr. E was urged to seek legal advice about whether a Medicaid Qualifying Trust makes sense in his situation. DPA is also sending him information about the trust option.

V. Conclusion

The decision of the Division of Public Assistance to terminate Adult Public Assistance for E E, effective November 1, 2016, is affirmed. The decision of the Division of Public Assistance to terminate Medicaid coverage for E E, is reversed.

DATED this 6th day of January, 2017.

Signed

Christopher Kennedy
Administrative Law Judge

¹⁶ *In re R.B.*, OAH No. 12-0371-CMB (Comm'r of Health & Soc. Serv. 2012) (http://aws.state.ak.us/officeofadminhearings/Documents/CMB/CMB120371.pdf?_ga=1.91360282.1007090623.1398363649); *In re W.R.*, OHA Case No. 11-FH-125 (Office of Hrgs. & Appeals 2011).

¹⁷ *See* 7 AAC 100.400(a)(17).

Adoption

The undersigned, by delegation from 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 20th day of January, 2017.

By: Signed
Name: Christopher Kennedy
Title: Deputy Chief ALJ

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