

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

In the Matter of )  
 )  
 N S ) OAH No. 18-0104-MDS  
 )  
 \_\_\_\_\_ )

**DECISION**

**I. Introduction**

N S was authorized by the Department of Health and Social Services, Division of Senior and Disabilities Services to receive personal care services (PCS) under the Medicaid program starting in October 2017. However, in December 2017, the division first notified Ms. S that the authorization would end, then closed Ms. S’s PCS case because it found that Ms. S was not currently enrolled in the Alaska Medicaid program.

The division has not provided a copy of the notice that the closure was based on, nor has it shown that Ms. S’s enrollment in the Medicaid program was terminated or that she was properly notified of the termination. The division has not shown the underlying factual basis for its decision. The Division of Senior and Disabilities’ decision to close Ms. S’s personal care services case is reversed.

**II. Facts**

Ms. S is 62 years old and has diabetes.<sup>1</sup> Her diabetes has caused charcot foot in her left foot, and progressive diabetic retinopathy and macular edema.<sup>2</sup> In the last year she has had foot surgery and eye surgery. She is visually impaired, and is not able to read.<sup>3</sup> Her home is at the top of four flights of stairs, and she has difficulty navigating those stairs.<sup>4</sup>

Ms. S applied for PCS in August 2017. On August 27, 2017, September 26, 2017, and October 2, 2017, the division notified Ms. S that her application was incomplete and could not be processed, each time citing different deficiencies.<sup>5</sup> According to the division, Ms. S submitted a complete application on October 3, 2017, along with a request for an

---

<sup>1</sup> Exhibit F at 4.  
<sup>2</sup> Feb. 28, 2018 fax from Community Connections at 4, 13.  
<sup>3</sup> Testimony of S.  
<sup>4</sup> Exhibit J at 11 and 15, Testimony of Z.  
<sup>5</sup> Exhibit G to March 21, 2018 letter from Gagne at 1 - 5.

expedited assessment.<sup>6</sup> A division assessor assessed Ms. S on October 11, 2017 to determine her eligibility for PCS.<sup>7</sup> The division subsequently issued a notice that Ms. S was approved for 5.5 hours of PCS a week starting on October 24, 2017.<sup>8</sup>

On December 19, 2017, the division issued a “correction notice” specifying that Ms. S’s PCS authorization would end on January 31, 2018.<sup>9</sup> The “correction notice” repeated much of the text of the original notice, but added a note specifying that the authorization was predicated on Medicaid eligibility, and a paragraph describing the authorization as a “short term plan based on your temporary need for services,” specifically the fact that Ms. S could not bear weight on her left leg, had bilateral neuropathy, was using a wheelchair and could not use crutches or a walker, and lived at the top of four flights of stairs.<sup>10</sup>

On December 26, 2017, the division notified Ms. S that it was closing her PCS case effective January 26, 2018, because it had received notice from the Division of Public Assistance that Ms. S was not currently enrolled in the Medicaid program.<sup>11</sup> Ms. S requested a fair hearing on January 25, 2018.

A telephonic hearing convened on March 2, 2018, and continued on March 21, 2018. Ms. S represented herself with assistance and testimony from her daughter K U, and her care coordinator T Z. Terri Gagne represented the division. Following the hearing, the record was held open to permit both parties to submit additional information.

### **III. Discussion**

The issue on appeal in this case is whether the division’s December 26, 2017 decision to close Ms. S’s PCS case was correct. For appeals involving the termination of benefits, the burden of proving evidence supporting the termination is on the division.<sup>12</sup> Because the December 26, 2017 decision involves a termination of benefits, the burden of proof in this case is on the division.<sup>13</sup>

---

<sup>6</sup> “Items Requested” summary sheet, filed with March 21, 2018 letter from Gagne.

<sup>7</sup> Exhibit J at 9 - 39.

<sup>8</sup> Exhibit J at 1. The notice was dated August 8, 2017, however, at the hearing Ms. Gagne testified that this date must have been a typographical error and not the date the service level authorization notice was first mailed because an assessment must be completed before the required level of services can be determined.

<sup>9</sup> Exhibit E at 1.

<sup>10</sup> Exhibit J at 1 - 2.

<sup>11</sup> Exhibit D at 1.

<sup>12</sup> 7 AAC 49.135.

<sup>13</sup> The division’s letter of December 26, 2018 stated that “SDS is notifying you that your personal care services (PCS) or your application for PCS services will be closed effective 01/26/18.” Exhibit D at 1. The

Participation in the PCS program is predicated on eligibility for the Medicaid program. Under 7 AAC 125.010(b) the authorization and provision of PCS is limited to individuals who are “recipients.” A separate regulation defines “recipient” as “an individual who has been determined eligible for Medicaid in this state . . .”<sup>14</sup>

The division notified Ms. S that it was closing her PCS case on the grounds that the Division of Public Assistance had informed it that Ms. S was not currently enrolled in Medicaid.<sup>15</sup> However, the division presented conflicting evidence relating to Ms. S’s eligibility for Medicaid. On the one hand, the division argued that Ms. S was not eligible for Medicaid in August 2017 when she first applied for PCS, or in October 2017, when the division approved her application for PCS.<sup>16</sup> As evidence, the division presented screen prints of a client profile/maintenance screen relating to Ms. S’s participation in various programs, and a case profile screen.<sup>17</sup> On the other hand, the division filed its own internal case note stating that Ms. S had MAGI (Medicaid expansion group) coverage through November of 2017, when “her coverage ended due to income.”<sup>18</sup>

The testimony from Ms. U and Ms. Z tends to show that Ms. S had been participating in the Medicaid program. Both referred to Ms. S’s receipt of a lump sum payment of retroactive SSDI benefits from the Social Security Administration. Ms. U referred to efforts to set up a Miller Trust to permit continuing eligibility, and filed a copy of the trust registered February 28, 2018.<sup>19</sup> Ms. Z argued that Ms. S had been income eligible for years and that her eligibility should not have been cut off. Furthermore, Ms. Z submitted medical records including a summary of care for a December 7, 2017 visit to Harborview Medical Center by Ms. S indicating that the coverage for the visit was through Alaska Medicaid.<sup>20</sup>

---

language in the letter referring to closure of PCS services *or* the application for PCS services is confusing. However, at the hearing, the hearing representative stated that this case involved a closure (as opposed to denial of an application). This interpretation is consistent with the December 19, 2017 correction notice as well.

<sup>14</sup> 7 AAC 160.990(b)(69).

<sup>15</sup> Exhibit D at 1.

<sup>16</sup> Testimony of Gagne; March 21, 2018 letter from Gagne; April 20, 2018 letter from Gagne (“Ms. S was approved for PCA services in October of 2017 but Medicaid was not approved, nor was it approved at the time of hearing on 3/21/18 or anytime during her eligibility period for PCS services.”)

<sup>17</sup> Exhibit L at 1; Exhibit I at 2.

<sup>18</sup> Exhibit I at 1.

<sup>19</sup> Testimony of Z; March 30, 2018 letter from U and attachments.

<sup>20</sup> February 28, 2018 fax filing from Z at 4 of 35.

In the closure notice and at the hearing, the division attempted to place the burden on Ms. S to demonstrate that she was eligible for Medicaid.<sup>21</sup> But this is not a case involving an initial denial of services -- this is an appeal of a termination notice, and the division has the burden of proving ineligibility. Based on the evidence presented, it is more likely than not that Ms. S was at some point found eligible to participate in the Alaska Medicaid program. The division has not shown that this eligibility terminated, or that Ms. S received proper notice of the closure of her Medicaid case and an opportunity to appeal that decision.

Before the Department of Health and Social Services can terminate assistance under the Medicaid program, it must give notice to the recipient of the proposed agency action. The notice must state the reason for the termination, and inform the recipient of the recipient's right to a hearing.<sup>22</sup> In this case, the division did not file a copy of a notice terminating Ms. S's participation in the Medicaid program. The division's letter to Ms. S stating that the division had received notice from the Division of Public Assistance (DPA) that Ms. S was not currently enrolled is not adequate to prove that Ms. S's participation in the Medicaid program had been terminated and that Ms. S was properly notified of that termination.<sup>23</sup> Nor is a printout of a screen from the division's computer system adequate for this purpose.<sup>24</sup>

To be clear, this decision does not resolve the issue of whether Ms. S was eligible for Medicaid benefits when the division issued the notice closing her PCS case. The holding here is limited to whether closure of the PCS case was proper. Because the division did not meet its burden of proving that Ms. S had been found ineligible to continue participating in the Medicaid program, and that Ms. S's participation in the Medicaid program had been properly terminated when the division in turn closed her PCS benefits, the PCS closure cannot be affirmed.

#### **IV. Conclusion**

The division's December 26, 2017 decision closing Ms. S's PCS case is reversed.

Dated: May 14, 2018.

*Signed* \_\_\_\_\_  
Kathryn L. Kurtz  
Administrative Law Judge

---

<sup>21</sup> Exhibit D at 1; Gagne Testimony.

<sup>22</sup> 7 AAC 49.060, 7 AAC 49.070. *See also Allen v. State, Dep't of Health & Social Services, Div. of Public Assistance*, 203 P.3d 1155, 1166 - 1168 (Alaska 2009) (relating to due process and adequacy of notice).

<sup>23</sup> *See* Exhibit D at 1.

<sup>24</sup> *See* Exhibit L at 1.

## 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 31<sup>st</sup> day of May, 2018.

By: Signed  
Name: Kathryn L. Kurtz  
Title: Administrative Law Judge

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]