

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

In the Matter of)	
)	
EMPLOYER A)	OAH No. 18-1217-CCA
)	Agency No. 10000302

DECISION

I. Introduction

C J is the owner of Employer A, which provides day care services to Child Care Assistance (CCA) recipients. The Division of Public Assistance’s (Division) Child Care Program Office (CCPO) received bills to those services from Mrs. J for April, May, and June 2018 on two separate occasions: August 15, and November 2, 2018. The Division denied payment for these bills on both occasions because the bills were submitted after the regulatory deadline for requesting payment.

Mrs. J requested a hearing to contest the payment denial. Her hearing was held on December 13, 2018. Mrs. J appeared telephonically. She represented herself with the aid of her husband M K N. Both Mrs. J and Mr. J N testified. Sally Dial, a Fair Hearing representative with the Division, represented the Division. She appeared telephonically and testified on the Division’s behalf.

The evidence in this case shows that it is more likely true than not true that Ms. J did not submit her billings in the time allowed by regulation. As a result, the Division’s decision to deny payment is affirmed.

II. Facts¹

Mrs. J owns a day care business called Employer A. She has been a licensed child care provider with the CCPO for 22 years. On January 24, 2018, the CCPO sent notice to providers that, effective April 1, 2018, Catholic Community Services (CCS) would no longer be providing services to include eligibility and payment processing. Providers were instructed that payment requests needed to be sent to the CCPO in Anchorage.² The notice listed three options for submitted the records with corresponding contact information: by fax, by email or by mail.³

¹ Unless otherwise noted, the facts are based on testimony from Mrs. J, Mr. K N and Ms. Dial.
² Ex 2.
³ Id.

Mrs. J provides day care services for one CCA recipient. The Division received bills for that recipient for the months of April, May, and June 2018 on August 15, 2018.⁴ It denied payment of those bills because they were presented after the deadline.⁵ Mrs. J did not request a hearing to challenge those denials. Instead, she resubmitted the bills for all three months, which were received by the CCPO on November 2, 2018.⁶

Payment for these bills was again denied as untimely.⁷ Mrs. J testified that she submitted her initial billings in a timely manner, but that they were returned to her. She further testified that she resubmitted them, but her testimony is unclear as to when and to whom she resubmitted her billings.

III. Discussion

A. Procedural Issue

A review of the record indicates that there is a potential procedural bar to this case, which the Division did not assert. While it does not preclude consideration of this case on the merits, because the Division waived it, it is necessary to address the issue briefly to clarify the procedural basis for this case.

Mrs. J was originally notified on August 15, 2018 that her payment requests were denied. Her remedy at this point was to appeal. Appeals must be made within 30 days of the date of denial.⁸ Instead of appealing, Mrs. J resubmitted her payment requests, which were received by the CCPO on November 2, 2018. This cannot be construed as a timely appeal, inasmuch as the payment requests were originally denied on August 15, 2018. The Division should have notified Mrs. J that her payment requests were not accepted and that she was not entitled to a hearing, because she did not timely appeal from the August 15, 2018 denial.⁹ Instead, the CCPO erroneously sent Mrs. J a new denial notice that provided her with appeal rights. Based upon that erroneous notice, the Division declined to assert the procedural bar to this case.

B. Timeliness of the Payment Requests

⁴ Exs. 3 – 3.2

⁵ Exs. 4 – 4.5

⁶ Exs. 5 – 5.2.

⁷ Exs. 6 -- 6.2.

⁸ 7 AAC 49.030(a).

⁹ *See* 7 AAC 49.080(1).

The Department is required by statute to “implement and administer a program to assist in providing day care for the children of low and moderate income families.”¹⁰ The CCA program regulations require, in addition to other requirements, that a “request for payment must be submitted on or before the last day of the month immediately following the month in which child care services were provided.”¹¹ This means that the bill for April must have been submitted by the end of May; the bill for May must have been submitted by the end of June, and the bill for June must have been submitted by the end of July.

Because Mrs. J is requesting the payment under the child care assistance program, she bears the burden by preponderance of the evidence that she timely submitted the child care payments.¹² As a result, Mrs. J has the obligation to show that she submitted the bills in a timely manner.

Mrs. J argued that because she is a Spanish-speaker, she was confused about the January 2018 notice requiring her to mail her request for payment to a different address, so she mailed the documents to the same place she had mailed previous requests. However, Mrs. J has been participating in the CCA program as a provider and receiving documents from the Division in English for over two decades. Further, Mrs. J’s husband, who reads and speaks English, testified not only does he help his wife but their children, who also read and speak English, assist when she has questions.

While a language barrier can present some obstacles, Mrs. J had the same assistance she has had over the past two decades to help her receive all prior payments. Her argument is therefore not persuasive. Further, the applicable regulation does not provide a legal exception to meeting the submission deadlines. These regulations are binding on the Division, and on this hearing.¹³

Mrs. J also argues that she timely submitted her paperwork. While the regulation does state the “provider shall *submit* a request for payment... on or before the last day of the month immediately following the month in which the child care services are provided,” it does not

¹⁰ AS 47.25.001(a)(1).

¹¹ 7 AAC 41.250(a). There are some exceptions to this general rule, such as transitioning between different types of child care assistance, or if approval for child care assistance has been issued after child care services have already been provided. 7 AAC 41.250 (a)(1) and (2). There was no evidence or argument presented that either of these exceptions apply.

¹² 7 AAC 49.135.

¹³ See, e.g., *United States v. RCA Alaska Commc'ns, Inc.*, 597 P.2d 489, 498 (Alaska 1978) (“In general, an administrative agency must comply with its own regulations.”).

require the documents be *received* on any specific date.¹⁴ So, if Mrs. J were able to prove the documents were submitted on the required dates, even though their receipt was untimely, she could prevail regardless of the receipt date.

However, Mrs. J does not have such proof. Mrs. J said she submitted the requests for payment documents timely for each month, but she does not have any corroborating evidence of this. She did not even state which date the documents were mailed- she just said they were filed on time.

The Division presented as exhibits the requests for payments from Mrs. J for April 2018, May 2018, and June 2018.¹⁵ In each corner the receipt date stamp reads August 15, 2018. Mrs. J presented no evidence of when the date these documents were actually submitted. Each of the requests is dated. However, the dates each request for payment was signed is not evidence of the date each request was sent to the CCPO.¹⁶

Further, since CCPO regularly deals with the submission of payment requests, their records, or absence of records, are persuasive. Ms. Dial testified there were no notes in Mrs. J's case that reflect receiving requests for the April, May and June 2018 childcare payments prior to August 15, 2018. It is their practice to record these transactions. If documents had been received and returned, there would have been internal notes and correspondence reflecting that. While everyone, including state agencies, make mistakes, the probability that the Division could misplace submissions by Mrs. J three months in a row and then mark them as received all on the same day is improbable.

IV. Conclusion

Because Mrs. J did not present evidence sufficient to show she submitted her requests in accordance with the strictly construed timelines of the law, the Division's denial of payment for Mrs. J's childcare services for April, May and June 2018 is affirmed.

DATED: January 9, 2019

By: Signed
Signature
Hanna Sebold

¹⁴ 7AAC 41.259 (a). Italics added.

¹⁵ Exhibits 5,5.1, and 5.2.

¹⁶ Interestingly enough, the payment request for services provided during the month of June bears the handwritten date of June 2, 2018. Exhibit 3.2.

Name
Administrative Law Judge
Title

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

Administrative Law Judge

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 25th day of February, 2019.

By: Signed
Signature
Laura Russell
Name
Policy Advisor, DHSS
Title

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