

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

In the Matter of)
)
EMPLOYER A) OAH No. 18-0985-CCA
) Agency No. 10003390
_____)

DECISION

I. Introduction

The Division of Public Assistance Child Care Program Office (Division) denied payment to Employer A for services it provided under the Child Care Assistance Program in May and June 2018. The Division denied payment after concluding that Employer A’s billing statements were not timely submitted.

Based on the evidence in the record and after careful consideration, this decision concludes that Employer A did not complete the process for submitting its May and June Requests for Payment until August 21, 2018. By that date, both submissions were untimely. Despite Employer A’s long history of providing services to eligible children and its record of timely submissions in many other months, the Division correctly denied payment for the two months at issue. Its decision is affirmed.

II. Facts

Employer A is a nonprofit entity that provides child care and education to young children. It is approved under the Child Care Assistance Program to care for eligible children, and it has provided services to such children and families since at least 2014.¹

As of May and June 2018, the months at issue in this case, Employer A’s standard practice for billing the Child Care Assistance Program required participation from three different individuals. The office manager, M E E, prepared the monthly billing statements known as “Requests for Payment.” When a bill was complete, she would put it on the fax machine, dial the program’s fax number, and hit the “send” button.² She then moved on to other tasks and did not wait to verify that the submission was successful.

Other staff members later removed the billing statement from the fax machine and matched it up with an accompanying transmission report printout that showed the date, time, and status of the submission.³ Successful submissions were recorded on the transmission reports as

¹ Exhibit 1; Gan Yeladim submission, pp. 2-34.

² Dutchess testimony; Gan Yeladim Response received 10/30/18.

³ See Gan Yeladim submission pp. 2-34; Dutchess testimony; Exhibit 9.

“Status: completed.”⁴ Staff then filed each billing statement and transmission report in Employer A’s filing system. Employer A’s accountant handled payments from the Child Care Program Office.⁵ As a general practice, the accountant and Ms. E did not communicate about or jointly track the bills submitted and the payments received.

Using this system, Employer A timely submitted Requests for Payment for care it provided to two eligible children in February, March, and April 2018. It also timely submitted billing statements for services to the children in July and later months. It has fax transmission reports confirming the “completed” status of each of these submissions.⁶

During the spring and summer of 2018, the office lost two staff members and fell behind on office work. Ms. E remembers preparing timely billing statements for child care services Employer A provided in May and June 2018. She recalls putting each statement on the fax machine and sending it to the Child Care Program Office before the submission deadline, in keeping with her usual practice. However, due to the staffing shortage and the press of other work, no one confirmed that a transmission report showed completed submissions for those months. It wasn’t until mid-August 2018, when Ms. E was catching up on a large stack of paperwork and filing, that she realized the two transmission reports were missing.⁷

On August 20, 2018, Ms. E called the Child Care Program Office and asked whether it had received the May and June billing requests. An employee informed her that the program had no record of either bill. However, if Employer A could produce a transmission report showing timely submission, the employee advised that the program could still process and approve the requests.⁸

Ms. E thoroughly searched Employer A’s office but found no documentation confirming the fax transmissions. By mid-August, the fax machine memory had overwritten transmissions from prior months, so its job history data was unhelpful in showing whether timely submissions had been attempted or completed.

On August 21, 2018, Ms. E initiated a second effort to submit the May and June 2018 Requests for Payment, and the Division received them.⁹ The May statement had been signed and

⁴ See Gan Yeladim submission, pp. 2-34.

⁵ Rabbi Greenberg testimony; Dutchess testimony.

⁶ Gan Yeladim submission pp. 29-34.

⁷ Gan Yeladim submission, p. 1; Dutchess testimony.

⁸ Dutchess testimony; Gan Yeladim Response & Closing Statement, received 10/30/18.

⁹ Exhibits 3.1, 5.1.

dated by Ms. E on June 20, 2018.¹⁰ The June form was signed and dated July 26, 2018.¹¹ If they had been submitted on or about those dates, the bills would be considered timely.

Through the Child Care Program Office, the Division denied payment for both months, asserting that the bills were not timely submitted.¹² Employer A requested a hearing, which took place by telephone on October 25, 2018. It was audio-recorded. Employer A was represented by Rabbi Z H, with assistance from Ms. E and F H. Rabbi H and Ms. E both testified. Sally Dial, a Public Assistance Analyst with the Division of Public Assistance, represented the Division. All submitted documents were admitted to the record, which closed on October 31, 2018.

III. Discussion

The Child Care Assistance Program is established pursuant to Alaska Statutes 47.25.001 - 47.25.095. The regulations governing the program can be found in the Alaska Administrative Code (AAC), 7 AAC 41.010 - 7 AAC 41.990. The regulation directly applicable to this case is 7 AAC 41.250, entitled "Request for payment." It states in relevant part:

(a) A participating provider shall submit a request for payment and any corrections to that request to the department or to the designee, on a form prescribed by the department. *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.* If the department determines that a request for payment includes information that is incorrect or incomplete, the department may obtain the correct or missing information or will return the request to the provider. The department will not make payment for a request for payment that has been returned as incorrect or incomplete unless the department receives the correct or missing information on or before the last day of the month following the month in which the department returned the request. Exceptions to this subsection are as follows:

(1) PASS II payments may be made outside the time frames in this subsection for a parent transitioning from PASS I to PASS II, if necessary to avoid a break in service;

(2) a provider may submit a request for payment if a family's program approval and authorization for care are issued after the child begins to receive care from the provider; if an authorization is issued beyond the time described in this subsection, the provider shall submit a request for payment within 30 days after issuance of the family authorization for care to be considered timely for payment processing.¹³

¹⁰ Exhibit 3.1.

¹¹ Exhibit 5.1.

¹² Exhibits 3-6.

¹³ 7 AAC 41.250 (emphasis added).

Based on this regulation, Employer A’s billing deadline was June 30, 2018 for services it provided in May 2018. The billing deadline for services provided in June 2018 was July 31, 2018.

There is no dispute that Employer A provided services to eligible children in May and June, and it was entitled to payment under the program’s rules. The issue is whether it submitted its payment requests on or before the applicable billing deadlines. If not, the next question is whether the Division may pay a late-submitted bill.

A. Employer A did not submit the May and June 2018 Requests for Payment before the applicable deadlines.

The dates of Ms. E’s signatures on the May and June Requests for Payment show that she prepared each statement in a timely way. More likely than not, she placed the bill for May on the fax machine on or about June 20, 2018, dialed the Child Care Program Office fax number, and hit “send,” as was her usual practice. She did the same thing on or about July 26, 2018, when she prepared and signed the June 2018 billing statement. Due to its staffing shortage, however, no one at Employer A confirmed the status of either transmission. This information was available only to Employer A, particularly if a transmission error occurred.

The Miriam-Webster dictionary defines “submit” to mean “to present or propose to another for review, consideration, or decision,” or “to deliver formally.”¹⁴ This requires some actual connection between the sender and the recipient. When documents are submitted by U.S. mail, a legal presumption arises that properly addressed and mailed documents were delivered to the addressee.¹⁵ The date of mailing is generally considered to be the date of submission.

However, there is no similar presumption when documents are submitted by fax. Fax technology is not consistently reliable; it gives rise to transmission errors with some regularity. It also allows the sender to retain control of the document, and it provides the means to contemporaneously verify a successful transmission. Consequently, it is the responsibility of the sender to assure a successful transmission.

¹⁴ <https://www.merriam-webster.com/dictionary/submit>.

¹⁵ See, e.g., *Hagner v. United States*, 285 U.S. 427, 430 (1932) (“The rule is well settled that proof that a letter properly directed was placed in a post office creates a presumption that it reached its destination in usual time and was actually received by the person to whom it was addressed.”); *Martens v. Metzgar.*, 524 P.2d 666, 676 (Alaska 1974) (“Evidence as to the proper mailing of a letter has been held to create a presumption the letter was received by the addressee.”).

In this case, it is not likely that the Child Care Program Office actually received the May and June bills on the dates Ms. E first tried to submit them, but it then misplaced them. There is no reason to believe the program mishandled two consecutive months' payment requests, which would have been submitted weeks apart. It is much more likely that Employer A's first attempt at submitting each bill failed but, because of the staffing shortage and resulting office disruption, no one noticed. As a result, the first successful submission of each bill took place on August 21, 2018, after the deadline for each submission had passed.

The totality of the evidence in the record is that Employer A timely *initiated* the process to submit its May and June 2018 Requests for Payment. However, those steps were not successful, and the faxes most likely did not go through. Those efforts therefore do not qualify as a "submission" within the meaning of 7 AAC 41.250. Employer A did not complete the submission process until August 21st, after the deadlines for the May and June bills had already passed.

B. The Division cannot pay the late-submitted requests.

By its plain language, 7 AAC 41.250 contemplates that some requests for payment may not be fully submitted until after the applicable deadline. It authorizes payment of those bills, but only in limited situations. Primarily, this applies when the Division has returned a request for payment to a provider as incorrect or incomplete. In those cases, the provider may submit a corrected or completed bill for a limited time after the normal submission deadline. In addition, the regulation permits the Division to pay certain bills outside the usual time frame when a parent is transitioning between program levels, or when a family's approval and authorization are issued after the child began to receive care from the provider.¹⁶

Unfortunately, none of these exceptions apply here. The Division did not receive Employer A's first attempts at submission and had no notice of them. It did not request any additional or corrected information. Further, the regulation's specific delineation of circumstances justifying a late submission suggests that other reasons for untimely submission are not permissible. This places the burden of timely submissions on the provider, with no leeway for inadvertent errors on the provider's part. During the hearing, Employer A explained changes it has made to its billing procedures, which should ensure that future requests for payment are timely submitted and tracked.

¹⁶ See 7 AAC 41.250(a)(1), (a)(2).

IV. Conclusion

When a request for payment is submitted by fax to the Division’s Child Care Program Office, the onus is on the child care provider to show a successful transmission by the applicable deadline. Here, the evidence is that Employer A attempted to submit its May and June 2018 billing requests in a timely way. However, the efforts were not successful, and a printed transmission report likely would have shown errors. Employer A’s second efforts on August 21, 2018, were successfully completed but occurred after the applicable submission deadlines.

Because Employer A cannot show more definitive evidence of a successful and timely transmission, and the program regulations do not provide flexibility for payment of late submissions, the Division’s decision denying payment for each month at issue is affirmed.

DATED: November 30, 2018.

By: Signed
Name: Kathryn A. Swiderski
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.]

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 17th day of December, 2018.

By: Signed
Name: Kathryn A. Swiderski
Title: Administrative Law Judge

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