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

In the Matter of	)	
	)	OAH No. 18-0794-CCA
S D	)	Division No. 40029116
	)	

DECISION

I. Introduction

S D and T D are a divorced couple with two minor children who receive Child Care Assistance (CCA). This case relates to March 2018, a month in which both parents were approved for CCA assistance at the same day care.

No Name Child Care (No Name's) was owed a total of $1,250 for the child care services it provided for the D children in March 2018. That payment was partially provided by the CCA program, with the remainder provided by Ms. D. The CCA program, however, insisted that Mr. D must pay No Name's an additional $335.52 for March 2018 child care, which would have resulted in an overpayment to the provider. When Mr. D declined to overpay the provider, the program debarred him from participation in CCA.

Because No Name's was paid in full for the services it provided in March 2018, and the regulations cannot be construed to require payment of moneys that are not owed, the debarment of Mr. D must be reversed. It must also be reversed because the notice of debarment cited only one regulation as its basis, a regulation that does not apply to this situation.

II. Facts

The following facts were established by a preponderance of the evidence.

Mr. D and his now ex-wife have two children, A who is enrolled in school and F who is a preschooler. In March 2018, Ms. D was receiving CCA for A and F. She had the children placed with No Name Child Care (No Name's), the authorized provider for them, five days per week. F received full days of day care and A received day care when not in school.

Mr. D, who was anticipating expanded visitation with the children, filed an application for CCA so that he could also receive CCA for the children on Mondays and Fridays. His application was filed on March 5, 2018. In his application, he specified that No Name's would

be the child care provider.[1] Mr. D was approved for CCA on March 28, 2018 retroactive to March 5, 2018 for CCA for A and F based upon him having CCA two days per week. His co-pay was calculated at $266.52 for March.[2]

No Name's provided A with 15 part-time days of care and 6 full-time days of care in March. It provided F with 21 days of full-time care in March. As will be seen in Part III, each of these amounts represents full-time day care for each child. No Name's full-time care charge for preschool children is $650 per month, and its charge for full-time care for school age children is $600 per month.[3] This means the correct total March charge for both children's care was $1,250. As part of Ms. D's CCA benefit, the CCA program paid No Name's $993 for that care.[4] Ms. D paid No Name's an additional $257 for her portion of the child care in March 2018.[5] No Name's therefore received a total of $1,250 for the March 2018 childcare, which paid it in full for March.

For the month of March, Mr. D did not pay the co-pay that had been calculated at the time of his approval. On April 30, 2018, No Name's notified the CCA program that Mr. D had not paid $335.52, which it calculated was his portion of the child care bill for March. It is not clear how No Name's came up with this amount; the provider's report of non-payment does not explain the claimed amount.[6]

The Division notified Mr. D that he needed to pay No Name's or enter into a payment plan with No Name's. If he did not, he would be debarred from the CCA program.[7] On July 13, 2018, the Division notified Mr. D that he was ineligible ("debarred") from the CCA program because he did not pay No Name's.[8] Mr. D requested a hearing to challenge that debarment.

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1 Division's Exs. 2.6 – 2.11.
2 Division Exs. 3 – 3.3.
3 Child Care Program Office employee Mr. C's testimony. *Also see* Division Exs. 7 – 7.1.
4 Mr. D's Ex. 6.
5 Mr. D's Ex. 7.
6 Division Ex. 6.
7 Division Exs. 8 – 9.
8 Division Ex. 11.

III. Discussion

A. CCA Regulations Do Not Require Payment of Money that Is Not Owed.

The CCA program provides financial assistance with child care costs for financially eligible families. The CCA program will only pay a certain portion of those costs. The family of the children is responsible for the remainder. The family's financial contribution, the portion of the childcare costs that the family is required to pay, is based upon the family's gross monthly income and whether the children attend childcare part-time or full-time.[9] The family is required to make this co-pay directly to the child care provider. In addition, if the child care provider's charges exceed the CCA program's portion plus the family's designated co-pay, the family is responsible for paying that excess.[10] If a family does not pay its portion to the child care provider, then the Division "will take debarment action under 7 AAC 41.450."[11] Debarment makes a family ineligible to receive CCA.[12]

It is undisputed that Mr. D applied for CCA and that he identified No Name's as the child care provider for the children. It is also undisputed that he was notified that he was approved, effective March 5, 2018, and he was advised of his purported co-pay obligation, and that he did not make that payment. Although Mr. D argued that he should not be subject to debarment because he was only applying to see if he was eligible for the program and that he did not intend to use No Name's, nor did he enter into an agreement with them for them to provide childcare, these arguments are not persuasive because he actually applied for the program and stated No Name's would be the child care provider.

Mr. D, however, raises a valid point. No Name's was paid in full by the CCA program and Ms. D for the children's care for March. Any additional payment would result in No Name's being overpaid for that care. The Division's use of the debarment sanction would result in a windfall for the provider, at Mr. D's expense. The Division argues that the CCA regulations require it to take this action against Mr. D.

The Division's regulations define full-time enrollment as being anywhere from "17 to 23 days of care that includes at least one full day of care in a month."[13] Part-time enrollment is

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9 7 AAC 41.025(a) and (b)(2); 7 AAC 41.330 – 335.

10 7 AAC 41.320(c)(3); 7 AAC 41.330.

11 7 AAC 41.330(b). Note that this is not the basis for debarment cited in the program's notice in this case. That problem will be addressed in III-B below.

12 7 AAC 41.450(b).

13 7 AAC 41.025(b)(2)(B).

defined as being "fewer than 17 days of care in any combination of part or full days in a month or from 17 to 23 part days of care in a month."[14] The regulations further provide that "[c]are may not be authorized for a child in excess of a full month enrollment plus a part month enrollment except in the case of a shared custody arrangement when care for a child is provider by two providers in different service delivery areas."[15] The Division argues that this means that No Name's can be compensated for both full-time care for Ms. D's CCA benefits, and part-time care for Mr. D's CCA benefits. This interpretation might very well make sense when a child care provider is providing more than full-time care, *i.e.*, more than 23 days of care in a month. However, the facts show that F and A each received 21 days of care from No Name's in March, meaning that they each received only full-time care, as defined in the regulation. In other words, No Name's provided full-time care for each child. Between the CCA program's payment to No Name's and Ms. D's direct payment to No Name's, No Name's was paid in full.

The purpose of the CCA program is to help parents pay for day care, so that the parents can work, go to school, look for work, or attend training programs.[16] The CCA program regulations require that the day care provider be paid in full.[17] In this case, No Name's was fully paid for the children's March day care. The regulations do not contemplate that CCA recipients overcompensate the day care provider. The Division's requirement that Mr. D provide an additional $335.52 to No Name's would result in No Name's being overpaid for the care it provided. Mr. D cannot be debarred for not paying No Name's a sum that it is not owed.

B. 7 AAC 41.420 Only Permits Debarment in Connection with an "Overpayment"

The sole basis cited for the debarment imposed in this case was 7 AAC 41.420.[18] That regulation applies only when there has been an "overpayment." It defines "overpayment" as an occasion where "a family or provider receives benefits it is not entitled to."[19] If, and only if, "an overpayment of program benefits . . . has occurred", it authorizes the department to develop a "repayment plan."[20] Then if, and only if, a family fails to comply with such a repayment plan, it authorizes the department to place the family on a "the list . . . of ineligible families."[21]

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14 7 AAC 41.025(b)(2)(A).
15 7 AAC 41.035(c).
16 *See* 7 AAC 41.310.
17 *See* 7 AAC 41.320(c)(3). 7 AAC 41.330.
18 Division Exs. 9 and 11.
19 7 AAC 41.420(a).
20 7 AAC 41.420(b), (c).
21 7 AAC 41.420(d).

In relying on 7 AAC 41.420, the CCA program went astray at the very outset of this case. There has been no overpayment of benefits to anyone. Since there has been no overpayment, there is no basis to place Mr. D on the list under the single regulation the program has cited.[22] This is an independently sufficient reason to reverse the program's action.

IV. Conclusion

The Division's debarment of Mr. D from participation in the CCA program is reversed.

DATED this 29th day of October, 2018

By: *Signed*
Signature
Lawrence A. Pederson
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.]

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 16th day of November, 2018.

By: *Signed*
Signature
Deborah Erickson
Name
Project Coordinator, Office of the Commissioner
Title

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

[22] "[T]he department will state in the written notice the reasons for the proposed action, including the statute, regulation, or policy upon which that action is based." 7 AAC 49.070.