

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

In the Matter of)
)
F T) OAH No. 19-0150-MDE
) Agency No. 05651669
_____)

DECISION AND ORDER OF DISMISSAL

J T is the daughter of F T. She held a power-of-attorney for Ms. T and was also her court-appointed guardian. Ms. T is deceased as of early December 2018.

Through her guardian, Ms. T had applied for Medicaid benefits on November 28, 2018, just before she died. On January 30, 2019, Ms. T was notified that Ms. T was approved for Medicaid benefits for a limited period: November 3 to November 30, 2018.

Because there were nursing home bills for Ms. T that the limited approval did not cover, Ms. T requested a hearing to challenge that limited approval on February 8, 2019. A hearing addressing the denial was held on March 7, 2019.

No probate estate has been opened for Ms. T. As a purely legal matter, Ms. T's guardianship and power-of-attorney for Ms. T both expired when Ms. T passed. In order for Ms. T to have legal authority to request a hearing for Ms. T, she would have needed to be court appointed as Personal Representative for Ms. T's estate. Because no probate estate has yet been opened, Ms. T has not received that court appointment.

In order to obtain a hearing, the hearing must be requested by the recipient or her legal representative: "a request for a hearing ... must be made to the department in writing by a recipient, or by a legal representative acting on the recipient's behalf."¹ Because Ms. T is not, and was not at the time of the hearing request, Ms. T's legal representative, it follows that her request for a hearing was not valid. As a result, the Office of Administrative Hearings does not have jurisdiction to hear this case. This case is therefore dismissed due to a lack of jurisdiction.

If a probate estate for Ms. T is opened in the near future and Ms. T is appointed as the Personal Representative, she may be able to request a hearing at that time. However, that hearing request could be subject to dismissal as untimely:

[A] request for a hearing ... must be made to the department in writing by a recipient, or by a legal representative acting on the recipient's behalf, not later than 30 days after the date of the notice required under 7 AAC 49.060. A hearing request may be accepted after the time limit under this section only if the

¹ 7 AAC 49.030(a).

administrative law judge finds, based on the evidence submitted, that the request for a hearing could not be filed within the time limit.²

The Personal Representative would need to show that she “could not” file the appeal within the time limit. This may be possible if the time taken to set up an estate is reasonable but may become more difficult if there is delay in seeking and receiving an appointment as Personal Representative.

As discussed at the hearing, the family may not be responsible for the unpaid bills in any event. Ms. T may wish to seek legal advice on that issue.

DATED: March 13, 2019.

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 1st day of April, 2019.

By: Signed
Signature
Lawrence A. Pederson
Name
Administrative Law Judge
Title

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² 7 AAC 49.030(a).