

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

In the Matter of)	
)	
K G)	OAH No. 19-0299-CMB
<hr style="width: 40%; margin-left: 0;"/>)	Agency No.

DECISION

I. Introduction

K G submitted an application for Adult Public Assistance (APA) on July 2, 2018 and also sought Interim Assistance (IA) benefits.¹ The Division of Public Assistance (Division) notified Ms. G in October that she was not eligible for IA benefits because she had not provided a “Preliminary Examination for Interim Assistance” form signed by a physician to the Division.² However, her APA application was “pending” or held open until there was a decision on Ms. G’s application for federal Supplemental Security Income (SSI) benefits.³

The Division denied Ms. G’s application for APA on March 29, 2019, shortly after the Social Security Administration (SSA) denied her SSI application, although Ms. G subsequently filed a timely appeal relating to the denial of her SSI application. Ms. G appealed the Division’s denial of her application for APA and its denial of IA benefits.

Because Ms. G filed a timely appeal of the denial of her SSI application, the Division prematurely denied her application for APA. Accordingly, the Division’s decision to deny Ms. G’s APA application is reversed, instead the application should be placed in a hold status pending the results of Ms. G’s SSI appeal. Since a completed Preliminary Examination Form signed by a physician is necessary to for the Division to determine Ms. G’s eligibility for IA, the Division’s decision denying Ms. G IA is affirmed.

II. Facts

A. Ms. G Seeks APA and IA Benefits

Ms. G applied for APA and its associated Medicaid benefits on July 2, 2018.⁴ When the Division interviewed her in connection with her application, IA was discussed and the Division

¹ The IA program is a special subcategory of APA. *See* Exh. 18.

² This form is also known as an “AD 2” form. *See* Exh. 8; *see also* Presentation of Ms. Dial.

³ The APA program is inextricably intertwined with the federal SSI program. In order to qualify for APA benefits, a person must meet the eligibility requirements for the SSI program. *See* 7 AAC 40.030; *see also* Exh. 19.

⁴ Exhs. 1, 2.1.

sent her an IA packet which she needed to complete in order for the Division to determine if she was eligible for IA benefits.⁵ On July 24, 2018, the Division notified Ms. G that she needed to supply some additional documents by August 23, 2018 in order for her APA application to be processed.⁶ These additional documents included a Preliminary Examination for IA Form (AD 2) to be completed by her “doctor.”⁷ Ms. G supplied the requested records, but did not provide an AD-2 form signed by a physician.⁸ Division records note that, as of August 3, 2018, the Division still needed an AD-2 from Ms. G’s doctor.⁹ The Division records further state that “no new IA had been received as of October 3, 2018.”¹⁰

B. The Division Denies Ms. G IA and Denies her APA Benefits

On October, 4, 2018, the Division notified Ms. G that she was not eligible for IA benefits because the Division had not received an AD-2 form “completed by a physician.”¹¹ After receiving this denial notice, Ms. G provided the Division with an AD-2 form completed by K X, a physician’s assistant, on January 2, 2019.¹² The Division’s records relate that Ms. G visited the Division’s office on February 20, 2019 and was upset that the Division had not accepted the AD-2 form which she had “submitted multiple times.”¹³ According to the Division’s records, Ms. G was given another AD-2 form during that visit and the Division’s representative emphasized that “a doctor, not a PA [physician’s assistant],” needed to sign it.¹⁴

⁵ Exh. 2.

⁶ Exh. 3; *see also* Exh. 4. Ms. G was also advised she need to supply a completed Application for Services (GEN50 C), an Authorization for Reimbursement of IA (Gen 142), a Disability and Vocational Report Form (APA 4), an Authorization for Release of Protected Health Information (GEN 150 IA) for each doctor who may be able to provide information and proof of her medical condition, Proof that she is was actively pursuing SSI benefits, and verification of how her rent was paid. *See* Exh. 3.

⁷ Exh. 3.

⁸ The Division records note that, as of August 3, 2018, the Division still needed an AD-2 form from Ms. G’s doctor. *See* Exh. 4.

⁹ Exh. 4.

¹⁰ Exh. 6.

¹¹ Exh. 7.

¹² Exh. 8.1-8.2. A form AD-2 was completed by K X, a physician’s assistant, and is dated June 23, 2018 – several days *before* Ms. G signed her APA application -- and December 7, 2018. *Compare* Exh. 8.2 *with* Exh. 2.8. It is unclear when the Division first received this form, since the only date-stamped copy in the record is dated January 2, 2019.

¹³ Exh. 9. Both the Division and Ms. G are in agreement that she submitted the AD-2 signed by Mr. X more than once. *See* Testimony of Ms. G; Exh. 8

¹⁴ Exh. 9; Testimony of Ms. G.

On March 19, 2019, the SSA denied Ms. G's SSI application.¹⁵ Because of this denial, the Division notified Ms. G that her APA application had been denied.¹⁶ The Division's notice also stated that the AD-2 form, applicable to Ms. G's IA benefits (which had already been denied), had been signed by a physician's assistant rather than by a physician.¹⁷

C. Ms. G's Appeal

On April 1, 2019, Ms. G filed a fair hearing request encompassing her APA and IA benefits.¹⁸ She stated that her reason for requesting a fair hearing was because her benefits had been denied while she "was waiting for an SSI determination."¹⁹

The hearing in this case was initially convened on May 14, 2019. Sally Dial, a Fair Hearing representative for the Division, presented the Division's case and testified on behalf of the Division. Ms. G represented herself and testified on her own behalf. At the hearing, Ms. Dial argued that the Division had properly denied Ms. G's IA benefits because she had never supplied an AD-2 form signed by a physician. Ms. G testified that she had been told by the physician's assistant that the laws had changed and now disability forms could be signed by a physician's assistant. She also expressed frustration that the Division had not told her that the form had to be signed by a physician before denying her application in October of 2018.²⁰

The Division also argued that its denial of Ms. G's APA application was appropriate. According to the Division, if a denial letter for APA benefits is issued after an adverse SSI determination has been made but *before* a timely appeal has been filed, the Division's determination should be upheld.²¹ In support of this argument, Ms. Dial testified that SSI denied Ms. G's SSI application on March 19, 2019 and that the Division had notified Ms. G that it was denying her APA application on March 29, 2019.²² The Division's Social Security interface

¹⁵ Exhs. 10, 10.1, 11.

¹⁶ Exh. 11.

¹⁷ Exh. 11.

¹⁸ In the fair hearing form, Ms. G also requested a fair hearing on two other programs: Chronic and Acute Medical Assistance and heating assistance. See Exh. 12. However, the Division issued a notice of non-referral regarding those two programs because Ms. G had never applied for Chronic and Acute Medical Assistance and the Division had taken no negative action on her application for heating assistance. See Ex. 13. Accordingly, Ms. G's fair hearing request only applies to the APA and IA programs.

¹⁹ Exh. 12.

²⁰ Testimony of Ms. G.

²¹ Presentation of Ms. Dial.

²² Testimony of Ms. Dial; Exhs. 10.1-10.2.

shows that Ms. G's SSI appeal was filed on April 1, 2019, shortly after the Division sent her its denial notice.²³

At Ms. G's request, the hearing was continued to May 21, 2019 to allow Ms. G to appear in person and present documents she thought might be relevant to her case.²⁴ At the conclusion of the hearing, Ms. G requested that the record be held open until June 11, 2019 so she could provide documents supporting her argument that the AD-2 form could be signed by a physician's assistant. Ms. G had not produced any documents in support of this argument prior to the record closure.

III. Discussion

A. Ms. G's APA Benefits

The APA program provides financial assistance to "aged, blind, or disabled needy [Alaska] resident[s]"²⁵ Applicants, like Ms. G, who are under the age of 65 years are required to apply and qualify for SSI benefits.²⁶ Once an individual is approved for SSI benefits, he or she is then eligible to receive APA benefits.²⁷ However, because the SSI program operates without mandatory processing time frames, applicants must wait weeks for a decision on eligibility.²⁸

Ms. G's SSI application was denied on March 19, 2019. Ten days later, on March 29, 2019, the Division notified Ms. G that it was denying her APA application because her SSI benefits had been denied. However, Ms. G had *60 days* from the denial of her SSI application to file a written request for reconsideration of this initial termination, the first step in the SSA's appeal process.²⁹ As the Division's Manual notes, "many SSI applicants are initially denied SSI benefits and then must pursue a lengthy administrative appeal process before being found eligible."³⁰ As a prior OAH decision has observed, "Adult Public Assistance eligibility is not dependent upon the *receipt* of SSI benefits; rather Adult Public Assistance eligibility is

²³ Ex. 10.1.

²⁴ One handwritten document was produced, but it was not germane to the issues in this case, so it was not admitted as evidence.

²⁵ AS 47.25.430.

²⁶ 7 AAC 40.170(a). Adult Public Assistance applicants whose income exceeds the SSI standards are not required to apply for SSI benefits. 7 AAC 40.170(a).

²⁷ 7 AAC 40.030(a); 7 AAC 40.170(a).

²⁸ Exh. 18.

²⁹ See 20 C.F.R. 416.1409(a)(allowing SSI applicants who have received an adverse initial determination to file a written request for reconsideration within 60 days of receiving notice of the initial determination); see also OAH No. 15-0274-APA.

³⁰ Exh. 18.

dependent on SSI *eligibility*.”³¹ Accordingly, the Division’s denial of an APA application is premature if it was issued before the 60 day period if the applicant timely requested the SSA to reconsider the denial of the applicant’s SSI application.³² And as the record shows, Ms. G filed an appeal with the Social Security Administration on April 1, 2019.

Because Ms. G timely requested reconsideration of her SSI denial within the 60-day appeal period, the Division should not have denied her application. Instead, it should have instead placed her “on hold” pending the results of her appeal because 60 days had not passed since the March 19, 2019 denial of her SSI application.³³ Accordingly, the Division’s denial of Ms. G’s APA application was premature and the Division’s denial must be reversed. This does not mean that her APA application is approved. Instead, it means that the application is in a hold status pending the results of her SSI appeal.

B. *IA Benefits*

IA is a monthly payment in the amount of \$280 provided by the State to qualifying Adult Public Assistance applicants while they are waiting for the SSA to rule on their application for SSI.³⁴ There is no formal IA application. Instead, it is a case worker at the Division who decides whether or not to place an APA applicant in the IA program.³⁵ As part of the IA approval process, the Division requests certain information, including a Preliminary Examination for Interim Assistance (AD-2) form. The AD-2 form states that it “*must* be signed by a physician, licensed clinical psychologist with a PhD, or psychiatrist.”³⁶

The Division advised Ms. G that it had to receive additional information by August 23, 2018 in connection with her APA application and IA.³⁷ One of the forms that needed to be provided by that date was the AD-2 form.³⁸ It is undisputed that the only AD-2 form Ms. G submitted to the Division was one signed by K X, a physician’s assistant.³⁹ Although Ms. G

³¹ OAH No. 15-0274-APA (emphasis added).

³² See OAH No. 15-0274-APA (concluding that the Division’s APA denial would be deemed premature if it was issued before the 60 day period in situations where the applicant timely requested reconsideration of the denial of an SSI application).

³³ See OAH no. 15-0274-APA (stating that where an APA applicant timely requests reconsideration of an SSI denial, the Division should place her application on hold pending the results of her appeal, rather than denying the application).

³⁴ 7 AAC 40.170(b), 7 AAC 40.375.

³⁵ See Exh. 18.

³⁶ Exh. 8.1 (emphasis added).

³⁷ Exh. 3.

³⁸ Exh. 3.

³⁹ See Exh. 8.1-8.2.

considered him to be her “primary doctor” and referred to him as “Dr. K X,” it is undisputed that he is not a physician.⁴⁰ Consequently, the Division was correct in denying Ms. G IA because she had failed to submit an AD-2 form signed by a physician.

IV. Conclusion

The Division’s decision to deny Ms. G’s APA application is REVERSED, because the application was prematurely denied. The Division’s decision to deny Ms. G IA is AFFIRMED.

Dated: June 12, 2019

Signed

Kathleen A. Frederick

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 22nd day of August, 2019

By: *Signed*

Signature

Kathleen A. Frederick

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.]

⁴⁰ It should be noted that the Division on July 24, 2018 and on August 3, 2018 advised Ms. G that it needed an AD-2 form from her “doctor,” which may have been confusing for Ms. G since she considered Mr. Winzcura to be her “primary doctor.” *Compare* Exhs. 3-4 with Exh. 4.30. However, the form itself clearly states in three different locations that it must be signed by a physician, licensed clinical psychologist with a PhD, or psychiatrist. *See* Exh. 8.1-8.2.