

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

In the Matter of)
)
N N) OAH No. 20-0128-ADP
_____)

DECISION

I. Introduction

NN was receiving Adult Public Assistance and Medicaid benefits. She was also receiving federal Social Security Supplemental Security Insurance (SSI) benefits from the federal Social Security Administration (SSA). The SSA terminated Ms. N's SSI benefits because it determined there was an issue with Ms. N's Pooled Special Needs Trust that caused her to exceed the SSI program's asset limit. The Division of Public Assistance then terminated Ms. N's Adult Public Assistance benefits as a consequence of her losing her SSI benefits.¹

This case presents a purely legal question. Did the termination of Ms. N's SSI benefits in turn require the termination of her Adult Public Assistance benefits? The answer to this question is yes. Under the Adult Public Assistance regulations, if an Adult Public Assistance recipient is also receiving SSI benefits and the SSI benefits are terminated, the Division is required to terminate the recipient's Adult Public Assistance benefits even if the SSA's decision to terminate the SSI benefits is under appeal or is erroneous. Accordingly, the Division's termination of Ms. N's Adult Public Assistance benefits is AFFIRMED.

II. Facts and Procedural History

Ms. N was receiving Adult Public Assistance benefits in January 2020. She was also an SSI recipient. However, her SSI benefits were terminated by the SSA in July 2019. She appealed that termination; that appeal is still pending.² Ms. N applied to renew her Adult Public Assistance and Medicaid benefits in January 2020.³ Her application disclosed that her SSI benefits were terminated in June of 2019.⁴

¹ The Division also initially terminated Ms. N's Medicaid benefits due to the trust issue. However, the Division was able to reinstate Ms. N's Medicaid benefits without a lapse in benefits, after the trust was amended. As a result, only Ms. N's Adult Public Assistance eligibility is an issue in this case.

² Ex. 16.

³ Ex. 2.1 – 2.8.

⁴ Ex. 2.3.

After its receipt of Ms. N's renewal application, the Division reviewed Ms. N's SSI status and determined that her SSI had been terminated because the SSA had determined that Ms. N's Pooled Special Needs Trust (Trust) was a countable resource that placed her over the SSI program's resource limits.⁵ The Division then closed Ms. N's Adult Public Assistance and Medicaid cases, which terminated those benefits effective the end of February 2020.⁶ The Division's termination notice stated the underlying reason for the termination was because Ms. N's Trust caused her to exceed the Adult Public Assistance program's resource limits.⁷

Since Ms. N's Adult Public Assistance benefits and Medicaid benefits were terminated, Ms. N has amended her Trust and the Alaska Medicaid program has determined that the amendment makes her Medicaid eligible. Her Medicaid benefits were reinstated without a lapse.⁸ This left only the issue of whether her Adult Public Assistance benefits should have been terminated. At hearing, the parties stipulated and agreed that the underlying issue was not whether Ms. N's Trust caused her to be over the Adult Public Assistance program's resource limits, but whether Ms. N's loss of her SSI benefits also required that she lose her Adult Public Assistance benefits.

III. Discussion

A person who is eligible to receive SSI benefits is also eligible to receive Adult Public Assistance benefits from the State of Alaska, if he or she also satisfies other State of Alaska eligibility criteria.⁹ If a recipient of both Adult Public Assistance benefits and SSI benefits has his or her SSI benefits terminated by the Social Security Administration, the State of Alaska is required to terminate Adult Public Assistance benefits. Alaska's regulation, 7 AAC 40.060(c), states as follows:

(c) If an applicant is receiving SSI benefits and is determined by the Social Security Administration to be ineligible, except as provided in (d) and (e) of this section, the division will terminate assistance in accordance with 7 AAC 49.060, regardless of whether the applicant files an appeal with the Social Security Administration.

The exceptions to the termination rule contained in 7 AAC 40.060(c) refer to SSI termination due to either excess income or a disposal of resources for less than fair market

⁵ Ex. 2.

⁶ Ex. 3.

⁷ Ex. 3.

⁸ Division's "Fair Hearing Additional Information" dated March 31, 2020; April 1, 2020 Hearing Recording.

⁹ 7 AAC 40.030.

value.¹⁰ Because Ms. N had her SSI benefits terminated due to her Trust being counted as a resource, those exceptions are not applicable here.

Ms. N makes two arguments to try and defeat the termination requirement contained in 7 AAC 40.060(c). First, she argues that SSI eligibility is not a requirement for Adult Public Assistance eligibility. Second, she argues that because the SSA made a mistake, that the Division cannot terminate her Adult Public Assistance.

Ms. N's first argument has two components, both of which would have the Division ignore the conditional requirement that an Adult Public Assistance applicant/recipient be SSI eligible. She maintains that because she meets the eligibility requirements contained in regulation 7 AAC 40.090, that she is not required to satisfy the additional eligibility requirements that "an applicant whose income falls within SSI income standards must apply for SSI"¹¹ and be found by the SSA to meet the SSA definition of disability.¹² She additionally argues that because individuals who are ineligible for SSI can receive Adult Public Assistance, that she similarly can receive Adult Public Assistance despite having had her SSI benefits terminated.

Ms. N's argument ignores the fact that while the regulations provide a mechanism for someone who is not eligible for SSI to qualify for Adult Public Assistance, that route applies only to individuals whose income exceeds the SSI income standards.¹³ It is undisputed that Ms. N's monthly income is within the SSI income limits. Ms. N also cites to Medicaid eligibility rules pertaining to trusts. However, even though some Adult Public Assistance financial eligibility regulations are incorporated into Medicaid,¹⁴ the converse is not true. Finally, Ms. N's argument would require the Division to ignore this Adult Public Assistance regulation: "[i]f an applicant satisfies **all** factors of eligibility of this chapter, the applicant is entitled to assistance under this chapter."¹⁵

The Alaska regulation pertaining to the "domino effect" of a Supplemental Security Income benefit termination, 7 AAC 40.060(c), is clear. The termination of Ms. N's SSI benefits requires that her Adult Public Assistance benefits be terminated.

¹⁰ See 7 AAC 40.060(d) and (e).

¹¹ 7 AAC 40.060(a).

¹² 7 AAC 40.170(a).

¹³ 7 AAC 40.060(a).

¹⁴ See 7 AAC 100.400.

¹⁵ 7 AAC 40.370(a) (emphasis supplied).

Ms. N’s last argument is essentially that the regulation’s termination requirement does not apply because the SSA made a mistake when it terminated Ms. N’s SSI. This would carve out a new exception to the termination requirement that is not contained in the regulation.¹⁶ However, the regulation does not provide an exception that allows the Division to effectively second guess the SSA. Regardless of whether the SSA’s decision to terminate SSI benefits is wrong or under appeal with the SSA, the Division does not have the discretion to ignore the termination requirement: “Administrative agencies are bound by their regulations just as the public is bound by them.”¹⁷ As a result, once the SSA terminated Ms. N’s SSI benefits, she was no longer eligible for Adult Public Assistance benefits.¹⁸

IV. Conclusion

The Division’s action terminating Ms. N’s Adult Public Assistance benefits is
AFFIRMED.

Dated: April 28, 2020

Signed _____
Lawrence A. Pederson
Administrative Law Judge

¹⁶ As explained above, there are only two exceptions to the SSI termination requirement, excess income and resource transfers. This case involves neither.

¹⁷ *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010).

¹⁸ *In re Q. H.*, OAH Case No. 13-0415-APA (Dept. of Health and Social Services 2013) – available online at <https://aws.state.ak.us/OAH/Decision/Display?rec=252>; *In re Matter of B. C.*, OAH Case No. 14-0653-APA (Dept. of Health and Social Services 2014) – available online at <https://aws.state.ak.us/OAH/Decision/Display?rec=290>; *In re E J*, OAH Case No. 14-0700-APA (Dept. of Health and Social Services 2014) – available online at <https://aws.state.ak.us/OAH/Decision/Display?rec=291>.

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 12th day of May, 2020.

By: *Signed* _____

Name: Lawrence A. Pederson

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.]