

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

In the Matter of)
)
BUSINESS A LEARNING CENTER) OAH No. 20-0890-CCA
) Agency No.
_____)

DECISION

I. Introduction

The Division of Public Assistance Child Care Program Office (Division) denied payment to the Business A Learning Center (BALC) for services provided in August 2020 under the Child Care Assistance Program.

In mid-March 2020 the COVID-19 pandemic started gathering momentum in more populated cities in Alaska. By summer, case numbers were beginning to rise in rural areas as well. At the end of September the BALC, located in the remote town of City A, Alaska, was forced to close due to the pandemic, and did not reopen until the end of October 2020. This led to the BALC submitting a request for payment for services provided in August 2020 more than two weeks late. The Division denied the request as being untimely.

The BALC appealed, requesting equitable tolling of the regulatory deadline due to the extraordinary circumstances created by the COVID-19 pandemic. Based on the evidence in the record and after careful consideration, this decision concludes that the Division should process the BALC’s claim for August services as timely in the interest of justice.

II. Facts

The BALC is a nonprofit entity located in City A, Alaska, that provides child care and education to young children.¹ It is approved under the Child Care Assistance Program (CCAP) to care for eligible children, and it has provided services to such children and families since at least 2018.² In August 2020, two CCAP-enrolled children attended the BALC.

The late summer and early fall of 2020 was a time of considerable disruption for the BALC. In August 2020 the BALC Director of Administration left that position due to a family emergency.³ J G accepted the position, and among other duties, assumed the responsibility of signing and submitting payment requests on behalf of the BALC. Ms. G completed her childcare

¹ Ex. 1.
² Ex. 2.
³ Ex. 10.

provider billing training in late August, and on September 14 she was granted signatory authority for the BALC.⁴

Two weeks later the spread of the Covid-19 pandemic led to a temporary closure of the BALC facility. On October 1, 2020, Ms. G submitted to the Division a “Notification of Facility Emergency” form indicating that as of September 28, “[t]he BALC has closed until further notice due to community spread of COVID-19 in the area.”⁵

The BALC remained closed until October 26, 2020, during which time the employees were asked by the BALC Board to avoid reentering the building unless necessary.⁶ Ms. G transitioned to working from home, relying on her work-issued laptop. While she was still able to access her work email on her laptop, she no longer could access the desktop of her computer at the BALC.⁷

Several weeks into the closure, Ms. G realized that the BALC had never received payment from the Division for childcare services for the month of August 2020. This led to a discovery that the payment request she believed she had timely emailed the Division prior to the September 30 deadline had not been sent, but rather remained in her “Drafts” folder.

Upon discovering the mistake, Ms. G immediately emailed the Division the request for payment on October 19, 2020, explaining the oversight as follows: “The August CCG and CCA forms were stuck in my bookkeeping outbox due to a technical error in emailing and our center being closed suddenly due to Community Spread of Covid in our area. I was not aware the forms had not sent and did not have access to the forms to resent.”⁸

On October 21, 2020, the Division responded, denying her request for payment as untimely.⁹

The BALC requested a fair hearing, which took place by telephone on November 25, 2020. Ms. G represented the BALC and testified on its behalf. Jessica Hartley, a Fair Hearing Representative for the Division of Public Assistance Child Care Program Office represented the Division. All submitted documents were admitted into the record, which closed following the hearing.

⁴ Ex. 3 – 3.2, 4 – 4.5.

⁵ Ex. 5.

⁶ Ex. 5 – 9, 13.

⁷ G testimony.

⁸ Ex. 10.

⁹ Ex. 11.

III. Discussion

The Child Care Assistance Program is established by statute.¹⁰ 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, 7 AAC 41.250 (“Request for payment.”), states in relevant part: “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.”¹¹ Accordingly, for childcare services provided in August 2020, the BALC’s billing deadline was September 30, 2020. There is no dispute that BALC provided services to children in August, and there is no dispute that it did not submit its bill to the Division by the September 30 deadline. The sole issue is whether its late submission satisfies any of the exceptions that would allow payment of a request submitted after that deadline.

The BALC asserts that an exception should be granted as the emergency closure of BALC prompted by the Covid-19 pandemic created unique and especially challenging workplace circumstances.¹² Ms. G testified credibly that trying to learn the responsibilities of her new position and manage work-related matters from home, on her agency-issued laptop, was difficult.¹³ She believes that had she been on site at the facility and able use her work computer it would have been far more likely that she would have noticed the unsent email in her “Drafts” folder.¹⁴ Additionally, she would have been able to access the necessary claims forms which were saved on the desktop of her work computer.¹⁵

The Division’s regulations include only a few limited exceptions allowing it to pay a provider despite receiving the payment request after the normal submission deadline.¹⁶ However, none of the regulatory exceptions apply here. This case does not involve an otherwise timely but incomplete billing request.¹⁷ There are no allegations that the children implicated in the payment request were transitioning between benefit levels or programs in August, nor that

¹⁰ AS 47.25.001 - 47.25.095.

¹¹ 7 AAC 41.250(a).

¹² G testimony.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *See* 7 AAC 41.250(a).

¹⁷ *See* 7 AAC 41.250(a)(1), (a)(2).

the approval or authorization for any families was issued after their children began to receive care from the provider.¹⁸

However, as the Division has previously acknowledged, beyond the exceptions established by regulation the law allows for deadlines to be extended in situations where the interests of justice so require. Facility closures forced by the COVID-19 pandemic can create a situation where a late filed submission may be excused on equitable grounds.¹⁹ For example, when an Anchorage youth camp was shut down due to an emergency mandate issued by Anchorage Mayor Ethan Berkowitz in March 2020 in response to the pandemic, the Division conceded that payment requests due during the time the camp facility was closed would be accepted despite being untimely.²⁰

When a magnitude 7.0 earthquake on the last business day of November 2018 prevented a day care from submitting its October 2018 payment claims that day, the administrative law judge concluded that the earthquake-mandated closure of state offices constituted a “state holiday” for purposes of extending state deadlines that would otherwise run that day.²¹

More generally, courts have recognized that deadlines may be equitably tolled where a petitioner’s diligent pursuit of rights is interrupted by “some extraordinary circumstance [that] stood in his way.”²² In *McKibben v. Eastern Hospitality Management, Inc.*, for example, the statute of limitations was equitably tolled where the courthouse was unofficially closed on the final day for filing due to a catastrophic storm.²³ While “equitable tolling is a rare remedy to be applied in unusual circumstances,”²⁴ courts in other jurisdictions have concluded that the COVID-19 pandemic has created the type of extraordinary circumstances in which such tolling of deadlines is warranted.²⁵

¹⁸ *Id.*

¹⁹ *In re: Business A Camp*, OAH No. 20-0539-CCA.

²⁰ *Id.* The prehearing brief submitted by the Division included a prior OAH decision addressing untimely payment request submissions. It is disappointing that the Division opted not to include *Business A Camp*, a more recent decision which specifically addresses equitable tolling in light of the COVID-19 pandemic.

²¹ *In re: Business A Center*, OAH No. 18-1295 CCA (administrative Law Judge’s Proposed Decision, January 2019), pp. 2-3.

²² *Holland v. Florida*, 560 U.S. 631, 649 (2010).

²³ *McKibben v. Eastern Hospitality Management, Inc.*, 288 F.Supp.2d 723, 725-26 (N.D. W. Va. 2003).

²⁴ *Neves v. Holder*, 613 F.3d 30, 36 (1st Cir. 2010) (“[E]quitable tolling is a rare remedy to be applied in unusual circumstances, not a cure-all for an entirely common state of affairs.” (quotation marks omitted)).

²⁵ See, e.g., *Dunn v. Baca*, 2020 WL 2525772, at *1 (D. Nev. May 18, 2020) (“The Court finds that under the extraordinary circumstances of the COVID-19 pandemic, equitable tolling for a fixed time until August 10, 2020, is warranted.”); *Cowans v. Davis*, 2020 WL 1503423 (E.D. Cal. Mar. 30, 2020) (also granting preemptive equitable tolling due to COVID); *In re: Dudley*, 2020 WL 2569921 (U.S. Bankruptcy Ct., E.D. Cal. May 18, 2020) (“The

The BALC was forced to shut down due to the COVID-19 pandemic on September 28, 2020, two days before the deadline for submitting the payment request. It did not reopen until October 26, 2020. During this time Ms. G’s ability to complete her job responsibilities was clearly hampered by the closure of her office. In the interest of justice and in maintaining consistency with prior decisions addressing the impact of “extraordinary circumstances” created by global emergencies, the regulatory deadline for the BALC’s submission of the request for payment for the month of August is tolled from September 28 through October 26, 2020 due to the COVID-19 pandemic.

IV. Conclusion

The decision to reject the Business A Learning Center August 2020 payment claim is reversed. The Division shall process the claim as timely.

Dated: December 14, 2020

Signed _____
Danika B. Swanson
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, but notes that the holding herein is limited to the specific and unique facts and circumstances of this case.

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 26th day of January 2021.

By: *Signed* _____
Name: Jillian Gellings
Title: Project Analyst
Agency: Office of the Commissioner, DHSS

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

debtor states that he intends to reinvest the Homestead Proceeds in another homestead but he is unable to do so because of circumstances created by the COVID-19 pandemic and the current state of emergency. In this court's view, that is an equitable basis to toll the debtor's six-month reinvestment period consistent with California law and its COVID-19 pandemic policy.”).