

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

In the Matter of	)	
	)	
B N	)	OAH No. 20-0976-CCA
_____	)	Agency No.

**DECISION**

**I. Introduction**

There have now been two hearings before the Office of Administrative Hearings in this matter. The first involved the limited issue of whether the applicant, B N, timely filed a hearing request entitling her to an administrative hearing on the merits. That issue was resolved in Ms. N’s favor because it was determined that she had, before the deadline to request a hearing, timely submitted documentation that functionally served as a hearing request.

The second hearing was to determine whether the submitted documentation fulfilled the requirements necessary for renewal of Ms. N’s child care assistance benefits. Because the Division acknowledged at the hearing that she would have been granted benefits had it received the documentation as alleged, and because that determination was already made at the first hearing and further reconfirmed here, Ms. N has satisfied the requirements for renewal of her benefits. Accordingly, the Division’s decision is reversed.

**II. Facts**

The Division sent Ms. N a renewal notice regarding her child care assistance benefits on August 3, 2020.<sup>1</sup> It received her application on August 13, 2020.<sup>2</sup> On August 17, 2020, it sent her a notice stating that she was required to participate in a telephonic interview and that she must also submit income verification by August 28, 2020.<sup>3</sup>

A Division representative conducted a telephonic interview with Ms. N on August 25, 2020.<sup>4</sup> Case notes indicate that Ms. N was advised during the interview that she must provide

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<sup>1</sup> Div. Exs. Vol. I, 8.1, 8.2. It is noted that the Division produced two separate positions statements and three different groups of exhibits in this case. See Position Statement (December 23, 2020) (containing Exs. 1-7), Division Supplemental Information (January 14, 2021) (containing Exs. 2-8) and Position Statement (February 19, 2021) (containing Exs. 1-12). Unfortunately, while the exhibits contained in the first position statement and the supplemental information appear to have been numbered sequentially, the exhibits included as part of the second position statement were not. Consequently, there are two different sets of exhibits numbered 1-8. For purposes of clarity, the exhibits produced as part of the Division’s first position statement and its supplemental information, will be referenced as Volume I. The exhibits produced as part of the Division’s second position statement will be referenced as Volume II.

<sup>2</sup> Div. Exs. Vol. I, 8.1, 8.3.

<sup>3</sup> Div. Ex. Vol. I, 8.6.

<sup>4</sup> Div. Exs. Vol. I, 8.1, 8.7 - 8.11.

income verification. Further, the notes reference that this was to be done by August 28, 2020 and that her “[a]pplication will be denied 30 days from receipt of application: 09/13/20.”<sup>5</sup> Despite the September 13, 2020 deadline referenced in the Division’s case notes, a denial notice was sent to Ms. N much earlier, on August 31, 2020. It stated that she was being denied child care assistance benefits because she failed to provide the Division requested documentation. It further instructed her that she had 30 days from the date of the notice to submit a request for hearing.<sup>6</sup>

At the first hearing, Ms. N testified that she did not receive the denial notice and had been having difficulty receiving mail at her apartment.<sup>7</sup> She testified, however, that she faxed the requested income verification documents to the Division on September 10, 2020.<sup>8</sup> She also produced the fax confirmation page and a copy of the faxed income verification documents.<sup>9</sup>

Ms. N further testified that the first indication that something was wrong was on November 12, 2020, when she received a text from her child care provider regarding a denial of payment.<sup>10</sup> As a result of this communication, she contacted the Division on November 16, 2020 and advised the representative that she never received a notice of denial.<sup>11</sup> She then submitted a hearing request and copy of her earlier fax confirmation.<sup>12</sup>

The Division provided testimony that it did not receive any documentation from Ms. N on September 10, 2020. Consequently, it took the position that Ms. N failed to comply with the August 28, 2020 income verification deadline and had also failed to timely request a hearing following the Division’s denial notice.<sup>13</sup>

The Division issued a notice of non-referral indicating that Ms. N was not entitled to a hearing because her hearing request was untimely.<sup>14</sup> She appealed the non-referral, and a

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<sup>5</sup> Div. Exs. Vol. I, 8.9, 8.11 (emphasis added).

<sup>6</sup> Div. Exs. Vol. I, 1, 1.1, 8.1, 8.12.

<sup>7</sup> Testimony of Ms. N, January 7, 2021.

<sup>8</sup> Testimony of Ms. N, January 7, 2021.

<sup>9</sup> Div. Exs. Vol. I, 2 - 2.1; N Exs. 1-6.

<sup>10</sup> Testimony of Ms. N, January 7, 2021; N text screenshot, received by OAH on January 15, 2021.

<sup>11</sup> Testimony of Ms. N, January 7, 2021; Div. Exs. Vol. I, 8.1, 8.13, 8.14.

<sup>12</sup> Div. Exs. Vol. I, 2, 8.15.

<sup>13</sup> Testimony of Sally Dial, January 7, 2021.

<sup>14</sup> Div. Ex. Vol. I, 3.

hearing occurred on the timeliness of her hearing request.<sup>15</sup> Following the hearing, the administrative law judge requested and received additional documentation from both parties.<sup>16</sup>

A decision was then issued on the timeliness of Ms. N's hearing request.<sup>17</sup> That decision held that she had made a timely hearing request. She was therefore entitled to a hearing on the merits regarding whether the documentation she provided on September 10, 2020 resulted in her being eligible for renewal of her child care assistance benefits.<sup>18</sup>

At the hearing on the merits, the Division's hearing representative was asked to clarify the Division's position in this case. Specifically, was it the Division's position that because the documents previously deemed submitted by Ms. N on September 10, 2020, were past the August 28, 2020 deadline, they would not be considered for purposes of determining her eligibility? Or alternatively, was it simply the Division's position that the documents were not received and therefore, would not be considered by the Division for purposes of determining her eligibility? It was conclusively confirmed that the Division's position was the latter, not the former. In other words, despite the earlier ruling, the Division was maintaining the position that it never received the documents and therefore, they would not be considered in making an eligibility determination.<sup>19</sup>

In support of this position, the Division produced a fax log, for September 10, 2020, from the Child Care Assistance Office.<sup>20</sup> It is noteworthy that the fax log is for a fax number within the Child Care Assistance Office that matches the fax number contained in the fax confirmation, from the same date, supplied by Ms. N.<sup>21</sup> The Division also offered testimony regarding its procedures for receiving and notating both physical and electronic documentation received by the office and asserted that there was no evidence either in the fax log or its notation system that the faxed documentation was ever received on September 10, 2020.<sup>22</sup>

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<sup>15</sup> Div. Ex. Vol. I, 4; Notice of Hearing, dated December 16, 2020; Order for Rescheduled Hearing, dated December 30, 2020.

<sup>16</sup> Order Regarding Close of the Record, dated January 7, 2021; Division Supplemental Information, dated January 14, 2021; Email from Ms. N, dated January 15, 2021.

<sup>17</sup> Decision on Timeliness, dated January 27, 2021.

<sup>18</sup> Decision on Timeliness at pp. 3-4.

<sup>19</sup> Testimony of Sally Dial, dated February 25, 2021.

<sup>20</sup> Testimony of Sally Dial, dated February 25, 2021; Testimony of Jennifer Mayfield, dated February 25, 2021.

<sup>21</sup> Compare Div. Ex. Vol. II, Exs. 9 – 9.1 with Div. Ex. Vol. II, Ex. 7.1.

<sup>22</sup> Testimony of Sally Dial, dated February 25, 2021; Testimony of Jennifer Mayfield, dated February 25, 2021; Div. Ex. Vol. II, Exs. 9 - 9.1, 10.

Finally, the program manager from the Anchorage Child Care Assistance Office testified that had the documentation been provided by Ms. N on September 10, 2020, Ms. N would have been approved for benefits. In other words, the documentation were fully responsive regarding what the Division was seeking. In fact, the program manager confirmed that Ms. N has since been awarded benefits based on having provided similar information and documentation.<sup>23</sup>

### **III. Discussion**

The previous hearing was regarding whether Ms. N provided documentation to the Division on September 10, 2020. As a result of that hearing, it was determined that “it is more likely than not that Ms. N provided documentation to the Division which should liberally be construed as a request for a hearing.”<sup>24</sup> The evidence referenced by that holding was the a fax confirmation page from Ms. N for September 10, 2020, and the six pages of income verification sent by her to the Child Care Assistance Office.<sup>25</sup> This means that the only issue remaining in this case is whether the documents faxed by Ms. N on September 10, 2020 constituted a timely and adequate response to the Division’s documentation requirement..

Ms. N satisfied her burden of proof in this case. Per 7 AAC 49.135, in an action involving a request for new or additional benefits, the burden of proof is on the applicant to prove the actions alleged by a preponderance of evidence.

As part of the record from the hearing on timeliness, Ms. N provided a fax confirmation for documents sent to the Child Care Assistance Office, on September 10, 2020. The confirmation indicates she successfully sent a fax to that office and that delivery was completed.<sup>26</sup> She further provided copies of the six pages of income verification documents comprising the fax.<sup>27</sup> She also produced a screenshot of a text conversation she had with her child care provider in November after learning that the Division was denying payment for services.<sup>28</sup> As indicated in the text, contemporaneous with learning of the non-payment, Ms. N told her provider that she never received any notification of denial from the Division and had previously provided the Division her pay stubs. She then quickly followed-up with the Division

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<sup>23</sup> Testimony of Jennifer Mayfield, dated February 25, 2021.

<sup>24</sup> Decision on Timeliness at 1.

<sup>25</sup> *See generally*, Decision on Timeliness; Div. Exs. Vol. I, 2 - 2.1; N Exs. 1-6.

<sup>26</sup> Div. Ex. Vol. II, 7.1.

<sup>27</sup> N Exs. 1-6.

<sup>28</sup> Testimony of Ms. N, January 7, 2021; N text screenshot, received by OAH on January 15, 2021.

after receiving the text.<sup>29</sup> All of this is consistent with Ms. N’s credible testimony during both hearings regarding the circumstances surrounding this case.<sup>30</sup>

The fax log and testimony provided by the Division, however, do little to establish the documentation was not sent, as argued by the Division. The fax log was procured by the Division from Information Technology within the Department of Health and Social Services. It was obtained by the program manager from the Anchorage Child Care Assistance Office.<sup>31</sup> However, nobody from IT testified regarding the fax log, how it was created, or concerning the details it contained. Instead, all testimony concerning the fax log was offered by the program manager for the Anchorage Child Care Assistance Office.<sup>32</sup>

As that testimony reflected, she was not entirely certain or confident about the information reflected in the exhibit. At one point, she indicated that the exhibit represented all incoming and outgoing faxes from the office’s fax number during the timeframe specified. However, she subsequently acknowledged that the exhibit may only represent incoming faxes, but not outgoing faxes.<sup>33</sup>

As the exhibit also indicates, there are no phone numbers identified other than for the office’s receiving fax itself.<sup>34</sup> As such, it is impossible to match whether a fax was received from a particular sender, except by date, time, and potentially, the number of pages. Everywhere where you would expect that an incoming fax would be identified by number, the fax log simply indicates N/A.<sup>35</sup> This calls into question whether the fax log accurately reflects all incoming faxes received by the office during the timeframe at issue. Without confirmation that the fax machine was set to the correct date and time, we are unable to confirm if the dates and times represented are accurate.

Also troubling is the fact that the Division’s fax log, under the “results” column, identifies a concerning recurrence. It repeats “OK, Received, Send Error, OK, Received, Send Error. . .” repeatedly down the entire column. Without more foundation regarding why this repetition is occurring and precisely what each of the items of information means not only within

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<sup>29</sup> Testimony of Ms. N, January 7, 2021; Div. Exs. Vol. I, 8.1, 8.13, 8.14.

<sup>30</sup> Testimony of Ms. N, January 7, 2021; Testimony of Ms. N, February 25, 2021.

<sup>31</sup> Testimony of Jennifer Mayfield, dated February 25, 2021.

<sup>32</sup> Testimony of Jennifer Mayfield, dated February 25, 2021.

<sup>33</sup> Testimony of Jennifer Mayfield, dated February 25, 2021.

<sup>34</sup> Div. Exs. Vol. II, 9 – 9.1.

<sup>35</sup> Div. Ex. Vol. II, 9.1.

this column, but also throughout the fax log, it is far from certain that the fax log establishes that the documents were not received from Ms. N, as alleged.

Finally, the Division's case notes reflects that that Ms. N's application would not be denied until "30 days from receipt of application: 09/13/20."<sup>36</sup> In other words, Ms. N impliedly had until September 13, 2020 to provide the requested documents despite the earlier notice arguably imposing an August 28, 2020 deadline. The program manager was also asked whether she could reconcile the apparent conflict between Ms. N's fax confirmation at Div. Ex. Vol. II, 7.1 with the Division's fax log at Div. Exs. Vol. II, 9 – 9.1. She could not.<sup>37</sup>

Based on the conflicting fax documentation and testimony, I conclude that it is more likely than not that Ms. N provided the necessary income verification documentation to the Division, as alleged, on September 10, 2020.

#### **IV. Conclusion**

Ms. N has satisfied her burden of proof on these facts and shown that she more likely than not provided the Division the documentation as claimed before the implied deadline contained in the case notes of September 13, 2020. Because the Division has acknowledged that she would have been granted benefits had that occurred, the Division's denial of the benefits at issue is reversed.

DATED: March 8, 2021.

By: Signed  
Z. Kent Sullivan  
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 23<sup>rd</sup> day of March, 2021.

By: Signed  
Name: Z. Kent Sullivan  
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.]

<sup>36</sup> Div. Exs. 8.9, 8.11 (emphasis added).

<sup>37</sup> Testimony of Jennifer Mayfield, dated February 25, 2021.