

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

In the Matter of)	
)	
N S)	OAH No. 20-0800-MDS
_____)	Agency No.

DECISION

I. Introduction

N S requested a fair hearing to contest the closure of her Medicaid personal care services (PCS) eligibility based on non-usage of services for 90 consecutive days. While the case was pending, and prior to the hearing being held, the Division of Senior and Disabilities Services (Division) rescinded the closure notice. The Division then moved for summary adjudication, arguing that there was no longer any hearable issue to be resolved. Ms. S opposed the motion.

Because a fair hearing must be limited to the issues listed in 7 AAC 49.020, and the only issue raised by the request for hearing has already been resolved in Ms. S’s favor, there is no longer an issue in dispute that can be resolved through a fair hearing. Accordingly, the Division’s motion for summary adjudication is granted.

II. Facts

Ms. S has been a recipient of services under the Division’s Medicaid PCS program for many years. Her husband Elias S has recently acted as her PCS provider. On July 28, 2020, the Division sent her a notice stating that her “PCS services are being closed effective on 08/27/20,” based on her apparent “fail[ure] to use the personal care services in the service level authorization within [a] 90 consecutive day period.”¹ Ms. S filed an appeal of this notice.²

The appeal was set for a hearing in November 2020 and then was rescheduled several times. On February 12, 2021 the hearing was convened, and Ms. S’s counsel first appeared in the case at that time. The hearing was continued to February 24, 2021 to allow counsel time to get up to speed on the issues in dispute in the case.

Prior to the hearing being reconvened, the Division submitted an email on February 23, 2021 stating the following: “This email is meant to serve as advance notice that the Division intends to reverse the closure at issue in case 20-800-MDS on the record. The closure was for

¹ Division Exh. C, p. 4.

² Early in the case, the Division argued that the appeal was not timely filed; that argument was withdrawn after counsel entered his appearance for the Division. Therefore, the appeal is deemed to be timely filed.

long-time non-utilization of the service, but utilization resumed this month.” On February 24, 2021 the Division sent Ms. S a letter stating that the Division “reverses the closure of Personal Care Services notice dated 07/28/2020 and your PCA Services will continue as previously authorized.”

As a result of the Division’s February 24, 2021 notice, the hearing set for that date was vacated. A brief status conference was held instead. Division staff explained on the record during the conference that the “non-utilization of the service” that was the basis for the Division’s July 28, 2020 closure notice had apparently occurred because Mr. S’s required background check reauthorization had lapsed, and complications had arisen in his efforts to get the background check reauthorized. The Division issued its reversal of the closure notice after Mr. S’s background check reauthorization had been approved by the Division of Health Care Services and Ms. S’s utilization of PCS services had then resumed.

The Division submitted its motion for summary adjudication on February 25, 2021. In the motion, the Division argues that the only issue properly before me in this appeal was the question of the propriety of the Division’s July 28, 2020 closure notice; that the reversal of that notice by the Division had completely resolved the issue on appeal in Ms. S’s favor; and therefore there is no hearable issue and the appeal should be dismissed. The Division noted that it had received no PCS billings for Ms. S during the period at issue, i.e., while Mr. S’s background check reauthorization had been unresolved. The Division’s motion also anticipates Ms. S’s argument regarding potential issues concerning billing for Mr. S’s services; the Division argues that there were no known billing issues in controversy at that stage of the case in late February 2021. The Division also argues that any potential issue regarding Mr. S’s difficulties in obtaining reauthorized background check concern another state agency (the Division of Health Care Services) and therefore are outside the scope of this appeal.

Ms. S’s opposition to the Division’s motion was submitted on March 8, 2021. She contends in her opposition that the case should not be dismissed, arguing that the motion “is deficient in addressing any valid reason for dismissing this matter.” More specific reasons are stated as (1) “the termination of benefits for Ms. S with Mr. S as her PCA in 2019 is within the Department’s jurisdiction, as well as the background check procedure for Mr. S;” and (2) “Ms. S’s benefits were not compensated during the period of termination until reinstatement and [she] requests back pay for this time frame.”

III. Discussion

The proper scope and jurisdiction of Medicaid fair hearings are governed by 7 AAC 49.020 and 7 AAC 49.100. 7 AAC 49.020 provides that “opportunity for a hearing must be granted” to a Medicaid recipient whose “request for . . . medical assistance is denied,” or whose “financial, food, or medical assistance benefits are suspended, terminated, or reduced.” 7 AAC 49.100 provides that the administrative law judge “shall . . . dismiss a hearing request or terminate a hearing if . . . the issues by which the recipient is aggrieved are not those set out in 7 AAC 49.020.”

This appeal was filed by Ms. S to contest the Division’s closure of her PCS eligibility. The question of whether or not the Division properly effected that closure, based on an alleged non-usage of services for 90 consecutive days, is the only issue properly before me in this appeal. Any other issue tangentially related to the closure, such as whether Mr. S’s reauthorization of his background check was properly performed, and whether he has performed services that require compensation, are outside the scope of the appeal. An administrative appeal is not a wide-ranging investigatory process that can encompass any issue that could be potentially raised against any state agency or that might arise involving the appellant’s Medicaid services. The appeal is limited to the specific issue raised at the outset, which contested the specific agency action described in the appeal filing – the closure of services notice.³

The issue raised Ms. S’s appeal has been fully resolved in her favor by the Division’s reversal of the closure notice and resumption of her PCS eligibility. The Division is correct in arguing that this resolution means that there is no longer a dispute between the parties regarding the issue raised by Ms. S’s appeal, so the appeal is moot. To the extent that Mr. S believes he should be compensated for any services he may have rendered during the period when the closure was in effect, he must pursue a separate action to pursue any such claim; similarly, if he believes the Division of Health Care Services did something improper in its handling of his background check reauthorization, he must pursue a claim against that Division.⁴

³ See, e.g. *In the Matter of FH*, OAH No. 15-0586-MDX (July 28, 2015) (available on OAH’s website at <https://aws.state.ak.us/OAH/Decision/Display?rec=3045>).

⁴ This discussion of any potential claims is entirely hypothetical, and this decision should not be read to comment on whether they necessarily are valid claims.

IV. Conclusion

Because the only issue raised by Ms. S’s request for an administrative hearing has already been resolved in her favor, and there is no longer an issue in dispute that can be resolved through a fair hearing, the Division’s motion for summary adjudication is granted.

Accordingly, this case is HEREBY DISMISSED.

Dated: July 19, 2021

Signed _____
Andrew M. Lebo
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 6th day of August, 2021.

By: *Signed* _____
Signature
Andrew M. Lebo _____
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.]