

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

In the Matter of:)	
)	
E.T.)	OAH No. 22-0838-MDE
_____)	Agency No. 05864797

DECISION AND ORDER ON TIMELINESS

I. Introduction

E.T. is a Medicaid recipient. He was assessed a Medicaid Cost of Care obligation for January 2018. He did not formally request an appeal to challenge that assessment and instead provided information to the Division of Public Assistance (Division). After receiving that information, the Division made a slight adjustment on the amount and sent E.T. a notice to that effect on February 13, 2019. On August 8, 2022, E.T. requested a hearing. The Division denied the request for a hearing as untimely. E.T. requested a hearing to challenge that denial on October 6, 2022.

The evidence in this case shows that E.T.’s hearing request was untimely by over two years. As a result, this case is dismissed as untimely.

II. Facts

E.T. was receiving long term care benefits through the Alaska Medicaid program in 2017. At the time he was residing in the Medical Center’s nursing home section. On December 12, 2017, the Division notified him that because he had received funds through the sale of some assets, that his monthly Medicaid Cost of Care obligation for January 2018 was \$23,943.84 and that beginning with February 2018, his monthly Medicaid Cost of Care obligation was \$1,201.14.¹

E.T. did not formally appeal the Division’s actions setting his Medicaid Cost of Care for January and February 2018. Instead, he submitted additional information to the Division.² After multiple exchanges of information, including a meeting between Ms. Jane Doe from Medical Center and the Division on April 5, 2018, the Division issued a new notice on February 13, 2019 which slightly reduced E.T.’s Medicaid Cost of Care obligation for January 2018.³

¹ Exs. 6 – 7.
² Ex. 8.
³ Exs. 9 – 10, 12 – 14; Ms. Jane Doe’s testimony.

E.T. did not appeal the Division’s February 13, 2019 action setting his Medicaid Cost of Care for January 2018. Medical Center contacted the Division about this matter several times thereafter, including in October 2019, July 2022, and August 2022.⁴

F.T. requested a hearing. The hearing request was signed by him on August 5, 2022 and was forwarded to the Division via an August 8, 2022 email from Medical Center.⁵ The Division denied that request as untimely on September 16, 2022.⁶ Medical Center then requested a hearing by email on October 3, 2022. Medical Center was notified, by email that the hearing request had to come from E.T.. F.T. requested a hearing on his father’s behalf on October 6, 2022.⁷

E.T.’s hearing was held on November 7, 2022. E.T. did not attend. Instead, he was represented by his son F.T., who holds E.T.’s power of attorney. E.T.’s daughter-in-law U.T. also participated in the hearing, as did Jane Doe with the Medical Center. The Division was represented by Jessica Hartley, one of its Fair Hearing Representatives.

III. Discussion

The only issue for this case is whether E.T.’s October 6, 2022 hearing request was timeliness. An applicant for Medicaid benefits is required to request a hearing within 30 days of the date notice is sent advising him or her that there has been a change or a termination in those benefits. That hearing request must be made in writing.⁸ “The administrative law judge shall deny or dismiss a hearing request or terminate a hearing if . . . (5) the appeal was untimely . . .”⁹ “A hearing request may be accepted after the time limit . . . only if the administrative law judge finds, based on the evidence submitted, that the request for a hearing could not be filed within the time limit.”¹⁰

Because the salient issue is whether the hearing request was timely, this decision will not discuss and cannot discuss the issue of whether the Division’s Cost of Care allocation was correct or incorrect. Medical Center vigorously asserted that the Cost of Care allocation was

⁴ Exs. 15, 16 – 16.1; 18 – 18.2 Ms. Doe’s testimony. Ms. Doe’s testimony also established that there was an Ombudsman’s complaint filed regarding this matter.

⁵ Ex. 18.

⁶ Ex. 19.

⁷ Exs. 20 – 20.2.

⁸ 7 AAC 49.030(a). Official notice is taken of the fact that all Division notices are sent on two sided paper. One side contains the notice advising applicants/recipients of the Division’s action and the other side advises the applicants/recipients of their hearing rights.

⁹ 7 AAC 49.100.

¹⁰ 7 AAC 49.030(a).

incorrect. This is an important issue for both E.T. and Medical Center because resolution of the January 2018 Cost of Care allocation, if in E.T.'s favor, would result in the Medicaid program paying more to Medical Center for E.T.'s care during that month, which in turn would result in E.T. reducing his financial obligations to Medical Center. However, in order to reach that issue, E.T.'s hearing request would need to be timely.

The facts of this case show that E.T.'s hearing request was not timely. The Division's definitive action in this case was taken on February 13, 2019, when it reset the figure for E.T.'s January 2018 Cost of Care. Under the timelines in effect at the time, E.T. had 30 days thereafter to request a hearing.¹¹ E.T. did not request a hearing within 30 days. Although the record shows that Medical Center was continuing to interact with the Division on this issue after February 13, 2019, that does not substitute for E.T. making a timely hearing request. There is no evidence in the record showing that E.T. could not file his hearing request within the time limit. Because E.T. did not request a hearing on the underlying Cost of Care issue until August of 2022, which was almost 2 and one-half years after the deadline for requesting a hearing, the applicable regulations require, regardless of E.T.'s argument that the Cost of Care determination was wrong, that this case be dismissed. "Administrative agencies are bound by their regulations just as the public is bound by them."¹²

IV. Conclusion and Order

E.T.'s hearing request was untimely. As a result, this case is dismissed.

Dated: November 16, 2022

Signed _____
Lawrence A. Pederson
Administrative Law Judge

¹¹ 7 AAC 49.030(a). Although the time for requesting an appeal is currently 120 days, that change was not instituted until April 2, 2020 in response to the Covid-19 pandemic. Ex. 21.1.

¹² *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010).

Adoption

The undersigned, by delegation from the Commissioner of Health, 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 1st day of December, 2022

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.]