

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

In the Matter of: )  
 )  
 D.M. )  
 \_\_\_\_\_ ) OAH No. 21-1827-CHC

**DECISION ON SUMMARY ADJUDICATION**

**I. Introduction**

In this case, D.M. challenges the denial of her application for a foster care license in 2020. The license had been denied on a variety of grounds, including the presence of what the Office of Children’s Services (OCS) regards as an unexpired 10-year bar to eligibility for a license.

OCS moved for summary adjudication on two grounds: first, that the appeal was grossly untimely; and second, that the 10-year bar is nondiscretionary and makes license denial mandatory as a matter of law.

At a recorded conference in August 2021, the nature of the motion was discussed with D.M. and she was given a time limit to submit any evidence or other materials she wanted to have considered when the motion was evaluated. It was explained to her that if she submitted nothing, the motion would be considered unopposed. She submitted nothing.

Although the motion is unopposed, it cannot be granted automatically and its sufficiency must be evaluated “on the applicable law and the existing record.”<sup>1</sup> A preliminary review of the motion has shown that the second ground might be a difficult basis for summary adjudication, because the applicable law is written less clearly than OCS contends. For that reason, this decision will take up only the first ground, which presents no ambiguities and is fully dispositive of the case.

**II. Uncontroverted Material Facts**

OCS issued the decision under review on September 25, 2020.<sup>2</sup> The decision contained a statement of appeal rights, informing D.M. of the 15-day time limit for appeal under the applicable statute.<sup>3</sup> It was delivered to D.M. via certified mail on October 6, 2020.<sup>4</sup>

---

<sup>1</sup> 2 AAC 64.270(c), used as guidance herein pursuant to the Notice of Assignment of July 21, 2021.  
<sup>2</sup> R. 64.  
<sup>3</sup> *Id.*  
<sup>4</sup> R. 67.

D.M. requested an appeal of the decision on July 8, 2021.<sup>5</sup> There is evidence that she did not appeal before that time.<sup>6</sup> There is no admissible evidence in the record of any appeal prior to July 8, 2021.<sup>7</sup> Accordingly, it is uncontroverted that July 8, 2021 was the date on which D.M. appealed the decision she received on October 6, 2020.

### III. Analysis

Summary adjudication in an administrative proceeding is the equivalent of summary judgment in a court proceeding.<sup>8</sup> It is a means of resolving disputes without a hearing when the material underlying facts are not in contention, but only the legal implications of those facts. If facts that are undisputed establish that one side or the other must prevail, the evidentiary hearing is not required.<sup>9</sup>

An appeal of a foster care license denial must be requested “within 15 days after receipt of the notice.”<sup>10</sup> D.M.’s appeal of this denial was due on October 21, 2020. D.M. did not appeal until July 8, 2021, 260 days late. The appeal is untimely.

It is possible that due process or other law would prevent strict enforcement of the deadline in exceptional circumstances. However, no such circumstances have been presented, nor supported by evidence, in this case.

### IV. Order

Summary adjudication is granted to the Office of Children’s Services. D.M.’s appeal is dismissed for untimeliness.

DATED this 21<sup>st</sup> day of December 2021.

By: Signed  
Name: Christopher Kennedy  
Title: Administrative Law Judge

---

<sup>5</sup> R. 12; Hubbard Affidavit, ¶ 12.

<sup>6</sup> Hubbard Affidavit, ¶¶ 10-11.

<sup>7</sup> D.M. did submit appeals of two other, non-licensing decisions in 2020-21, one of them submitted on August 26, 2020 (long before this license denial occurred) and one of them submitted on January 12, 2021 (over 90 days after receiving this license denial). R. 70.

<sup>8</sup> See, e.g., *Schikora v. State, Dept. of Revenue*, 7 P.3d 938, 940-41, 946 (Alaska 2000).

<sup>9</sup> See *Smith v. State of Alaska*, 790 P.2d 1352, 1353 (Alaska 1990); 2 Davis & Pierce, *Administrative Law Treatise* § 9.5 at 54 (3d ed. 1994).

<sup>10</sup> AS 47.32.070(b).

## Adoption

The undersigned, on behalf of the Commissioner of Health and Social Services, adopts this Decision and Order 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 Rule 602 of the Alaska Rules of Appellate Procedure within 30 days after the date of this decision.

DATED this 27th day of December, 2021.

By: Signed  
Signature  
Jillian Gellings  
Name  
Project Analyst, DHSS  
Title

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