

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

In the Matter of:)	
)	
B.P.)	OAH No. 22-0946-CCA
<hr style="border: 0.5px solid black;"/>)	Agency No. 10003694

DECISION

I. Introduction

B.P. owns a childcare business. She is a licensed childcare provider who participates in the Division of Public Assistance’s (Division) Child Care Assistance Program (CCAP). B.P. submitted a timely billing to the Division’s Child Care Program Office (CCPO) for children whom she cared for in September 2022. However, she inadvertently omitted one child (“Michael”¹) from that timely billing. She then submitted a bill for Michael on November 3, 2022. The CCPO denied payment for Michael as untimely. B.P. requested a hearing to challenge the payment denial.

B.P.’s hearing was held on January 3, 2023. B.P. represented herself and testified on her own behalf. Jeff Miller, a fair hearing representative with the Division, represented the CCPO and testified on its behalf.

The evidence in this case demonstrates that B.P. filed her billing for September 2022 for Michael on November 3, 2022, which was after the regulatory deadline of October 31, 2022. Consequently, the CCPO’s denial of payment for the late September 2022 billing is **AFFIRMED**.

II. Facts

B.P. is a licensed childcare provider that participates in the CCAP program.² B.P. has completed the CCAP’s provider billing training.³ On October 29, 2019, she completed and signed a “Child Care Provider Rates and Responsibilities” form which she acknowledged as having read and understood.⁴ That form contains a section that reads, in pertinent part:

I assume the responsibility for remaining in compliance with the Child Care Assistance Program regulations 7 AAC 41, including but not limited to:

* * *

¹ “Michael” is a pseudonym used to protect his and his parent’s privacy.
² Ex. 1.
³ Ex. 2.
⁴ Exs. 3 – 3.2.

3. Submitting a *Request for Payment* CC78 form by the last day of the month, following the month care services were provided and charges were incurred, signed by an individual with signatory authority for the facility ...⁵

B.P. provided childcare services to several children who had CCAP coverage in September 2022. She submitted her September billing for all but one of those children (Michael) to the CCPO on October 24, 2022.⁶ The CCPO issued her a check paying for those children’s care on November 2, 2022.⁷ After she received that payment, B.P. realized that she had not included Michael in her billing for September 2022. She then submitted a billing for Michael on November 3, 2022.⁸ The CCPO denied payment for Michael on November 10, 2022 because the billing request “was received after the deadline date of October 31, 2022.”⁹

III. Discussion

The Department of Health is required by statute to “implement and administer a program to assist in providing day care for the children of low and moderate income families.”¹⁰ The Division’s childcare program’s regulations require, in addition to other requirements, that 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 This means that the bill for September 2022 must have been submitted by the end of October 2022, which was Monday October 31, 2022.

Because B.P. is requesting the payment under the CCAP, she bears the burden by preponderance of the evidence that she timely submitted the childcare payment request.¹² It is undisputed that B.P.’s September 2022 billing for Michael was not received until November 3, 2022, after the due date of October 31, 2022.

Under the CCAP’s regulations, the CCPO was required to deny her request for payment. However, B.P. argued that if the Division had processed her timely September 2022 billing

⁵ Exs. 3 – 3.3 (emphasis in original).

⁶ See Copy of date stamped billing filed by B.P. on December 30, 2022.

⁷ See Copy of check issued on November 2, 2022, which was filed by B.P. on December 30, 2022.

⁸ B.P.’s testimony; Ex. 4.1.

⁹ Ex. 5.

¹⁰ AS 47.25.001(a)(1).

¹¹ 7 AAC 41.250(a). There are some exceptions to this general rule, such as transitioning between different types of childcare assistance, or if approval for childcare assistance has been issued after childcare services have already been provided. 7 AAC 41.250 (a)(1) and (2). There was no evidence or argument presented that either of these exceptions apply.

¹² 7 AAC 49.135.

request before the end of October, she would have realized that she did not include Michael in that billing request and would have managed to submit a timely billing request for him by October 31, 2022. B.P. is therefore making a legal argument called equitable estoppel, which can be used to create an exception to regulatory requirements. In order to establish equitable estoppel, she must establish each of the following four elements:

1. The assertion of a governmental position by either conduct or words;
2. An act which reasonably relied upon the governmental position;
3. Resulting prejudice; and
4. “estoppel serves the interest of justice so as to limit public injury.”¹³

For B.P. to establish the first element of equitable estoppel, assertion of a governmental position by either conduct or words, she must establish, by a preponderance of the evidence, that CCPO let her know, either by words or conduct, that a billing request for Michael was either not late or would be accepted late. There is absolutely no evidence showing that the CCPO made that assurance to B.P. In addition, there is no evidence showing that the CCPO knew or reasonably should have known that Michael was not included in the September billing that the CCPO received on October 24, 2022, or even have known that B.P. provided childcare for him in September of 2022.

B.P.’s argument focuses on the fact that the CCPO did not finish processing and paying the September billing until November 2, 2022, which was the ninth day after it received the September billing, because she argued that if it had been processed earlier, she would have realized that Michael was not included in the billing and resubmitted it before the deadline. This argument is not persuasive, for several reasons. First, nine days is hardly an unreasonable amount of time. Second, as noted above, there is no indication that the CCPO was aware, before the billing deadline, that Michael had received childcare services during September, or that B.P.’s original September billing request was incomplete. The CCPO relies on the accuracy of the billing requests submitted to it by the childcare providers. Third, as noted above, there is no communication, either explicit or implicit, between the CCPO and B.P., where the CCPO let B.P. know that a late billing submission for the Michael would be accepted. As a result, B.P. has

¹³ *Wassink v. Hawkins*, 763 P.3d 971, 975 (Alaska 1988).

not established the first element of the equitable estoppel test. Because she has not established the required first element, it is not necessary to discuss the remaining three elements.

B.P. also argued that it was unfair for her to have provided services for which she is not paid and that it resulted in a financial hardship. The CCAP regulations, however, do not allow an exception to the deadline for undue hardship or exceptional circumstances. “Administrative agencies are bound by their regulations just as the public is bound by them.”¹⁴ Consequently, the CCPO does not have the discretion to accept B.P.’s late filed billing. Finally, it must be noted that B.P. was fully aware of the billing deadlines and the consequences for not meeting them, because she had a similar case in 2018, where denial of payment for a late filed billing request was upheld.¹⁵

IV. Conclusion

The CCAP regulations govern in this case. They do not allow an exception to the filing deadlines. Because the billing for the one omitted child for September 2022 childcare was submitted after the filing deadline, the CCPO’s denial of payment is AFFIRMED.

Dated: January 11, 2023

Lawrence A. Pederson
Administrative Law Judge

¹⁴ *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010).

¹⁵ OAH Case No. 18-0686-CCA (Exs. 1.1 – 1.4).

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 27th day of January, 2023.

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.]