

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

In the Matter of)
)
U D E CENTER) OAH No. 20-0725-CCA
) Agency No.
_____)

DECISION

I. Introduction

The U D E Center is a child care center operated by the United States military on a Joint Base in City A. The Division of Public Assistance (Division) denied payment for services the center provided under the Division’s Child Care Assistance Program in December 2019, January 2020, and February 2020. The payments were denied because the invoices for the months in question were submitted after the billing deadlines set by regulation.

The U D E Center’s (UDEEC’s) billings were late because they were mistakenly sent to an incorrect email address. UDEC did not discover and remedy the error until long after the submission deadline for the months in question had passed. The Division is bound by its regulatory deadlines, and it correctly denied payment. Therefore, its decision is affirmed.

II. Facts

The facts of this case are not disputed. The UDEC is approved by the Child Care Assistance Program to care for and receive subsidy payments for eligible children.¹ It has provided services to eligible children for many months, including the period from February 2019 through April 2020. Because it is on a military facility where staff assignments often change, the UDEC can experience high staff turnover, which at times this has resulted in inconsistent administrative oversight. In addition, the UDEC does not have on-site accountants. Child Care Assistance Program payments go directly to a different office for processing, so workers at the UDEC typically are not aware of whether and when its invoices to the Child Care Assistance Program are paid.²

B D began working as an administrative clerk at the center in the spring of 2020; at some point shortly after, she reviewed its Child Care Assistance Program accounts. She found that the center had not received payment for services to eligible children during a fifteen-month period, from February 2019 through April 2020.³ Ms. D or other staff contacted the Division and learned that the Division had not received requests for payment for those months.

¹ Exhibit 1.
² D testimony; Exhibit 10.
³ D testimony.

After researching files maintained by her predecessor administrative clerk, Ms. D realized that the prior clerk had been submitting monthly invoices to an incorrect email address. The Division's email address for provider invoices is ccpo@alaska.gov.⁴ However, the prior clerk, R S, sent the center's invoices to ccpo@alaska.com.⁵ Ms. S sent the center's December 2019 and January 2020 billing requests to the wrong email address on February 6, 2020,⁶ and she sent the February 2020 billing request to the same incorrect address on March 6, 2020.⁷ Each incorrectly-addressed email had bounced back to UDEC as undeliverable. However, those emails went to a spam folder where they were not noticed by UDEC staff.⁸

The Division played no role in Ms. S's use of the incorrect email address.⁹ The Division did not receive UDEC's initial requests for payment for December 2019, January 2020 or February 2020. It did not see them for the first time until July 21, 2020, after UDEC recognized the email problem and attempted to remedy it, sending the requests to the correct address.¹⁰ The Division denied the requests for payment on July 22, 2020, on the ground that they were not timely submitted.¹¹

The UDEC requested a hearing, which took place by telephone on September 14, 2020 and was audio-recorded. The UDEC was represented by Ms. D, who testified on its behalf and was assisted by UDEC staffers L P and F Z-V. Jeff Miller, a public assistance analyst with the Division of Public Assistance, represented the Division. All submitted documents were admitted to the record, which closed on September 15, 2020, after each party submitted post-hearing exhibits.

III. Discussion

The months at issue in this case are December 2019, January 2020, and February 2020. Those are months for which the Division received appeal requests and requested hearing services from the Office of Administrative Hearings. They are also the only months for which there is documentary evidence in the record.

⁴ Exhibit 10.

⁵ Exhibits 5.3-5.4 (December and January invoices); U D E Center post-hearing submission (February invoice).

⁶ Exhibit 5.4.

⁷ U D E Center post-hearing submission (February invoice).

⁸ Exhibit 10.

⁹ See Exhibit 1.1-1.4 (Child Care Assistance Program billing training certifications for Ms. S and others from the U D E Center); Exhibit 11.

¹⁰ Exhibits 5-7.

¹¹ *Id.*

At the outset of the hearing, Ms. D explained that the UDEC actually appealed or sought to appeal the Division's denial of payment for each month of the fifteen-month period from February 2019 through April 2020. It is unclear why the parties had different understandings about the scope of this case.¹² As mentioned above, the only documents included in the record of this matter pertain to billings for December 2019, January 2020, and February 2020. As discussed during the hearing, the UDEC is encouraged to follow up with the Division to clarify the status of its appeals for other months. Based on the record presented, however, this decision can address only the denied payments for December 2019, January 2020, and February 2020.

The Child Care Assistance Program assists in providing day care for the children of low and moderate-income families.¹³ The program's regulations require child care providers to submit requests for payment "on or before the last day of the month immediately following the month in which child care services were provided."¹⁴ This means January 31, 2020 was the deadline to bill for services provided in December 2019. The deadline for January 2020 services was February 29, 2020, and the deadline for February 2020 services was March 31, 2020.

The first attempted submission of the U D E Center's invoice for December 2019 (sent to the incorrect email address) took place on February 6, 2020.¹⁵ By that time, the invoice was already late. Regardless, the parties agree the Division did not **actually receive** any of the three billing requests in question until July 2020, long after the relevant deadlines. The UDEC argues that it attempted to timely submit its invoices and believed it had done so, and it asks that the Division recognize its good faith efforts and excuse an honest mistake. Otherwise, it stands to incur roughly \$20,000 in unpaid child care services over the 15 months covered by the invoices sent to the wrong address, and approximately \$4,000 for the three months at issue in this appeal.¹⁶

Unfortunately, the Division has no discretion or authority to depart from the clear terms of its payment regulations, which set bright-line submission deadlines. Despite UDEC's good intentions and efforts to comply, it did not "submit" its invoices within the meaning of the regulation when it sent them to the incorrect email address.¹⁷ Submission took place in July. The regulations allow very limited and specific exceptions for late submissions, but they do not

¹² Ms. D explained that a verbal request to appeal all 15 months was made to "someone at DPA"; however, no explanation was given for the absence of a written appeal for those months.

¹³ AS 47.25.001 - 47.25.095.

¹⁴ 7 AAC 41.250(a).

¹⁵ Exhibit 5.4.

¹⁶ D testimony.

¹⁷ The term "submitted" is not explicitly defined within the Division's regulations, but it is appropriately interpreted to mean "received" by the Division; any other interpretation would render the request for payment deadline essentially unenforceable.

encompass the kind of error at issue in this case.¹⁸ Although this result may be viewed as harsh, the regulations are binding, and the Division cannot make an exception to the unambiguous billing submission deadline to accommodate a provider's good intentions.

IV. Conclusion

Based on the foregoing discussion, the decision denying payment to UDEC for services in December 2019, January 2020, and February 2020 is affirmed.

DATED: October 27, 2020.

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 November, 2020.

By: Signed _____
Signature
Carmen Clark _____
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.]

¹⁸ See 7 AAC 41.250(a); see also decision in Case Nos. 19-0630, 0631-CCA (included in record as Exhibit 9-9.3).