

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE COMMISSIONER OF FAMILY AND COMMUNITY SERVICES**

In the Matter of)
)
K. C.) OAH No. 23-0516-SAN
_____)

COMMISSIONER’S FINAL DECISION

I. Introduction

In March 2023 the Office of Children’s Services (OCS) substantiated a finding of child maltreatment against K. C., resulting in her being placed on the Child Protection Registry. A notice was sent to her home address – Address A in No Name, Alaska – advising her of these events and of the 30-day deadline to appeal the decision. Over 90 days later K. C. filed an appeal requesting a fair hearing before the Office of Administrative Hearings (OAH), which OCS denied as untimely. K. C. now appeals the agency’s decision not to refer her request to OAH, asserting that she never received notice of the March 2023 decision.

Administrative Law Judge Danika Swanson issued a proposed decision in this matter on September 27, 2023. OCS submitted a proposal for action as permitted by AS 44.64.060(e). This final decision reflects minor changes to the decision in light of those comments. The changes are made pursuant to AS 44.64.060(e)(5).

It was established by a preponderance of the evidence that OCS’s March 2023 substantiation decision was delivered to K. C.’s home address. Therefore, the agency was justified in not referring her appeal of the decision to OAH as it was not submitted within the 30-day deadline from the date of the decision. Accordingly, her appeal is dismissed.

II. Facts and Procedural History

For more than 15 years K. C. has been a childcare provider licensed by the state of Alaska. She has long operated Business A out of her home on Street A, which has also been approved as a foster facility.¹ As required for both initial and ongoing licensure, K. C. cleared a criminal background check conducted by the Department of Health, Background Check Program (Department).² After OCS issued the March 2023 Notice of Alleged Child Maltreatment Decision and Case Status and Placement on the Child Protection Registry, however, the

¹ Record, pp. 34-35. K. C.’s Childcare and Community Care licenses are both issued to her home address, Address A, No Name, Alaska.
² AS 47.05.310.

Department was notified. In response, on May 22 the Department sent K. C. a letter to her Address A address advising her that the OCS decision was a barrier under 7 AAC 10.905(f) and revoking her criminal history clearance.³

K. C. acknowledged receiving the Department's May 22 letter regarding her background check. On May 30 she filed a request soliciting all OCS records involving the March 2023 substantiated finding of maltreatment, including the March 2023 notice sent to her address on Street A.⁴ After receiving the records, in June K. C. submitted an appeal of the substantiated finding pursuant to the instructions outlined in the notice. She was not in compliance, however, with the specified 30-day deadline to appeal a decision from the date of the substantiation notice.⁵ K. C.'s appeal was received by OCS on June 26, more than 90 days after the March 22, 2023 notice was issued. Accordingly, OCS deemed her request untimely and declined to refer it to OAH. K. C. appeals this decision.

A telephonic hearing was held on September 18 solely to address whether OCS's determination that no hearing should be granted was appropriate. K. C. maintained that she never received the notice of the March 2023 substantiation decision. However, she conceded that Address A - where the notice was sent - is her home address, and that every few days she walks down her driveway and checks her mailbox. She reported never having issues with her mail being stolen from her box, and acknowledged historically receiving mailings from OCS and the Department at this location without incident.

Alaska Laser Printing is the company under contract with OCS that is responsible for the distribution of the agency's "Notices of Alleged Child Maltreatment Decisions..." Using an automated system, the company uploads the files from OCS, prints the substantiation notices, inserts them in envelopes, addresses the envelopes, and assigns each one an individual barcode. The mailings are then delivered to the United States Parcel Service (USPS) which scans the barcodes, allowing every letter to be tracked to the point of delivery. According to the USPS tracking system, the substantiation notice sent to K. C. was initially scanned at the main post office on Postmark Drive in Anchorage on March 23.⁶ The next day it was processed for

³ R. p. 31.

⁴ R. p. 28.

⁵ R. pp. 19, 17.

⁶ R. p. 10.

delivery.⁷ On March 25 the tracking system shows it was scanned and delivered to K. C.’s home address at Address A, No Name, Alaska.⁸

III. Discussion

A. OCS procedures for handling untimely appeals

K. C.’s appeal dated June 26, 2023 was denied by OCS because it was submitted outside the 30-day deadline set in the March 22, 2023, substantiation decision.⁹ In its March 22, 2023 notice regarding the maltreatment substantiation, OCS specified that that an appeal to challenge the decision had to;

- (1) include the reasons OCS erred;
- (2) include “any relevant documentation to support those reasons;” and
- (3) that a hearing be requested within 30 days of the date the letter was mailed.¹⁰

Administrative agencies have broad discretion to set administrative review procedures in accordance with due process.¹¹ This includes establishing directives regarding how to file an appeal and setting a 30-day deadline, although none of these rules are set forth in any statutes or regulations.¹² Therefore, OCS rejected K. C.’s untimely appeal request for failure to comply with an agency directive. The denial was not based on a reason “provided by law,” which in some circumstances could trigger an appeal right to the Superior Court.¹³ This matter is in the correct forum to address an untimely appeal.

B. K. C.’s appeal

K. C. does not challenge the validity of the 30-day appeal deadline. Nor does she dispute that she filed her June 26, 2023 appeal outside the 30-day appeal deadline OCS set in its March 22, 2023 substantiation decision. Rather, she argues that her appeal should be accepted as she did not receive the agency’s March decision in her mailbox. Therefore, she did not learn of the

⁷ *Id.*

⁸ *Id.*

⁹ R. p. 11.

¹⁰ R. p. 4.

¹¹ *See City of Homer v. State, Dep’t of Nat. Res.*, 566 P.2d 1314, 1319 (Alaska 1977) (adopting *Mathews v. Eldridge* test for evaluating due process).

¹² 7 AAC 54.255. OCS’s current regulation states only that a person “must make a request” for review by OAH, with no mention of time restrictions. But K. C. has not challenged the validity of an OCS directive requiring an appeal within 30 days absent a current regulation providing that deadline. What is at issue in this matter is a deadline stated in an OCS decision.

¹³ AS 44.64.060(b). Substantiation matters are voluntary referrals that, in accordance with 7 AAC 54.255(b)(7), are referred to OAH under AS 44.64.030(b). OCS’s proposal for action stated that “OCS is not subject to AS 44.64.030,” and theorized on that basis that AS 44.64.060(b)—which cross-references § 030—is not applicable. However, AS 44.64.060(b) applies to all referrals under AS 44.64.030, including referrals under AS 44.64.030(b). Hence the citation to AS 44.64.060(b) at the beginning of this footnote is not in error.

OCS substantiation until she received the May 22 letter from the Department revoking her criminal history clearance. In effect, K. C. is arguing that the 30-day timeline should be waived.

The substantiation decision was addressed to K. C. at the same No Name address where she confirmed consistently receiving correspondence from state agencies involving her childcare center and foster home. Regarding OCS specifically, K. C. acknowledged being in receipt of past letters involving children in her care, including at least one prior investigation of a report of maltreatment. She also responded to OCS documents sent to this address, indicating she received them without incident. Finally, the USPS tracking system recorded the March substantiation decision has having been delivered. There is no evidence that the decision was not successfully delivered to K. C.'s Street A address in No Name.

Incidentally, even assuming she did not receive the March 22, 2023 decision, the courts have held there is a general rule of diligence.¹⁴ K. C. testified that she was aware of the OCS investigation into the allegation of maltreatment. Representatives even came to her home to discuss in person their concerns involving children in her care. As the owner and operator of both a childcare center and a foster home K. C. knew that her licensing could be in jeopardy if her background check clearance was revoked. Nonetheless, K. C. did not follow up with OCS at any point to ask about the status of the investigation or the resulting decision. Aside from failing to meet the 30-day deadline to file an appeal, therefore, K. C. did not act with due diligence regarding the original report of harm or agency concerns.

IV. Conclusion

Based on the record, OCS established by a preponderance of the evidence that the March 22, 2023 substantiation decision was delivered to K. C.'s home address at Address A, No Name, Alaska. Therefore, her appeal of the decision was received more than 60 days after the 30-day deadline imposed by OCS. The record fails to support an exercise of discretion to waive the appeal deadline. Accordingly, K. C.'s appeal is dismissed.

DATED: November 13, 2023.

Signed

Chrissy Vogeley
Special Assistant to the Commissioner

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

¹⁴ See, e.g., *JCW Investment, Inc. v. Novelty, Inc.*, 509 F.3d 339, 342 (7th Cir. 2007) (“In the absence of a statutory or rule-based deadline [for motion], we think that a general rule of diligence should govern.”)