

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

In the Matter of )  
 )  
M. W. ) OAH No. 23-0786-SAN  
\_\_\_\_\_ )

**DECISION GRANTING SUMMARY ADJUDICATION**

**I. Introduction**

The Office of Children’s Services (OCS) substantiated findings of child maltreatment against M. W. for purposes of the Child Protection Registry. OCS sent a notice to Ms. W.’s home address advising her of the findings and informing her that she had 30 days to request a hearing.

Over 900 days later, Ms. W. requested a hearing on the decision to substantiate the findings against her. OCS denied the hearing request as untimely. Ms. W. has requested a hearing on that denial.

OCS moved for summary adjudication under 2 AAC 64.250. Ms. W. concedes that her hearing request was untimely but effectively asks the department to waive the deadline because of “significant factors” she believes should be taken into account. The undisputed underlying facts establish that the appropriate exercise of departmental discretion is not to waive the deadline, however. Accordingly, the substantiated findings of neglect are affirmed.

**II. Background Facts and Procedural History**

On April 21, 2021, OCS issued a notice to Ms. W. of five substantiated findings of child maltreatment against her for neglecting her children under AS 47.10.011.<sup>1</sup> The Notice was addressed to Ms. W. at P.O. Box 000000 in City A. and contained a paragraph setting a 30-day deadline to request a hearing.<sup>2</sup> The Notice provided instructions on filing a hearing request and cautioned Ms. W. that if she did not request a hearing within the deadline, “the substantiated finding[s] will become a final department decision, which will be placed on the child protection registry.”<sup>3</sup>

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<sup>1</sup> R. 000001-000002. The findings stemmed from a report of harm received by OCS on March 25, 2021. R. 000001.

<sup>2</sup> R. 000002 and R. 000005.

<sup>3</sup> R. 000002.

Ms. W. did not request a hearing until October 23, 2023.<sup>4</sup> After OCS denied the hearing request as untimely on November 7, 2023, Ms. W. requested a hearing to challenge that denial on December 5, 2023.<sup>5</sup>

The matter was referred to the Office of Administrative Hearings (OAH). On July 24, 2024, OCS filed a motion for summary adjudication, to which Ms. W. responded on August 12, 2024.<sup>6</sup> Included with Ms. W.'s responsive brief was an affidavit from her.<sup>7</sup> OCS then filed a reply brief, and the Office of Administrative hearings *sua sponte* permitted Ms. W.'s counsel to file a surreply. The surreply was accompanied by a verified letter from N. F., who has been Ms. W.'s mental health counselor since December of 2022,<sup>8</sup> as well as a second affidavit from Ms. W. largely reiterating her prior account.<sup>9</sup>

Ms. W. has explained in her affidavits that her children had been removed from her care on April 3, 2021, which was traumatizing and stressful for her, and all of her time and energy was focused on a related Child-in-Need-of-Aid (CINA) matter. She reports being distracted from her normal activities and not picking up her mail regularly. Because of this, she did not see the April 21, 2021 notice for six to eight months. This means she saw it between October and December of 2021. She does not dispute its contents, including the requirement to appeal within 30 days.

Ms. W. claims she believed, "perhaps mistakenly," that resolving the CINA matter would also resolve the child maltreatment case. She contends that no one communicated with her to explain the process, so she did not understand the true impact the substantiated findings would have on her as a medical professional. She says that "[i]t wasn't until I was in a meeting with Mariah Johnson and Travis Erickson, OCS supervisors, in October, 2023, that I learned I could actually appeal these findings."<sup>10</sup>

The Office of Administrative Hearings docket shows that Ms. W. had previously requested a hearing in another child maltreatment case, OAH Case No. 19-0509-SAN, which involved a substantiated finding from 2018. That case also involved a CINA matter that was resolved favorably while the substantiation was still pending, and Ms. W. thus was exposed to

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<sup>4</sup> R. 000007-000009.

<sup>5</sup> R. 000010-0000111 and R. 000016-000017.

<sup>6</sup> Additionally, on August 19, 2024, OCS filed a reply to Ms. W.'s opposition to the summary adjudication motion. Because replies are not authorized as a matter of right under 2 AAC 64.250, OCS's reply was not taken into account in the decision on summary adjudication here.

<sup>7</sup> Affidavit of M. W., August 9<sup>th</sup>, 2024.

<sup>8</sup> Affidavit of N. F.

<sup>9</sup> Affidavit of M. W., August 29<sup>th</sup>, 2024.

<sup>10</sup> Affidavit of M. W., August 9<sup>th</sup>, 2024, ¶ 5.

circumstances demonstrating that substantiations are not automatically resolved by a CINA disposition. The appeal of the substantiation went forward, but the substantiated finding was eventually overturned during the course of the appeal, and the case was dismissed.

A final item of evidence potentially relevant to this motion is the affidavit from N. F., submitted with Ms. W.'s surreply. It contains a second-hand summary of the facts asserted by Ms. W., but also includes an assertion that Ms. W. first became aware of the April 21, 2021 substantiation notice in October of 2023. Yet Ms. W. herself has said she became aware of the notice by December of 2021, two years earlier. The account of Ms. F. (which is not made on personal knowledge, and which contradicts her own client) is not admissible on this point because it is not "evidence of the type on which a reasonable person might rely in the conduct of serious affairs."<sup>11</sup> Note that while Ms. F.'s account is styled as a professional opinion of a medical caregiver, Ms. F. offers no opinions in her affidavit and attached letter that fall within her scope of practice.

### **III. Discussion**

#### ***A. Summary Adjudication Standard***

Summary adjudication is "a means of resolving disputes without a hearing when the central underlying facts are not in contention. . . ." If facts that are not disputed establish that one side or the other must prevail, then an evidentiary hearing is not necessary.<sup>12</sup>

Motions for summary adjudication are authorized under the regulations governing hearings before OAH.<sup>13</sup> Summary adjudication motions in administrative proceedings are analyzed essentially according to the same principles applied to motions for summary judgment in Alaska courts. Under those principles, summary adjudication will be granted if there are no material facts in dispute on one or more of the issues, such that one party is entitled to prevail.<sup>14</sup> In evaluating a motion for summary adjudication, if there is any room for differing interpretations, all facts are to be viewed, and inferences drawn, in the light most favorable to the party against whom a decision may be granted.<sup>15</sup>

The fact that a decision involves the exercise of departmental discretion does not preclude summary adjudication in an administrative context. All that is required for summary adjudication

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<sup>11</sup> 2 AAC 64.290(a)(1).

<sup>12</sup> *In Re K.S.*, OAH No. 07-0600-DHS (Commissioner of Health & Soc. Serv. 2007).

<sup>13</sup> 2 AAC 64.250.

<sup>14</sup> See *Smith v. State of Alaska*, 790 P.2d 1352, 1353 (Alaska 1990); *Estate of Miner v. Commercial Fisheries Entry Commission*, 635 P.2d 827, 834 (Alaska 1981).

<sup>15</sup> *Samaniego v. City of Kodiak*, 2 P.3d 78, 82-83 (Alaska 2000).

is that there be no material facts in dispute.<sup>16</sup> Hence, if there is no dispute as to any fact material to the exercise of the Commission’s discretion, the Commissioner may exercise that discretion without a live evidentiary hearing.

**B. Analysis**

OCS argues that it is entitled to summary adjudication upholding the substantiated findings because Ms. W.’s hearing request was 916 days late, long after the 30-day deadline set forth in the Notice for requesting a hearing, and the factual context does not support a relaxation of the deadline.

Administrative agencies have broad discretion to set administrative review procedures in accordance with due process.<sup>17</sup> This includes “procedural rules adopted for the orderly transaction of business,” such as the directive in this case setting a 30-day deadline to file a hearing request.<sup>18</sup>

As a general rule, an applicant who misses a reasonable administrative deadline is not entitled to relief.<sup>19</sup> Whether to waive an administrative deadline is a matter of agency discretion. Discretion to waive such a deadline is appropriate where the ends of justice require it.<sup>20</sup>

Here, Ms. W. does not challenge the validity of the 30-day appeal deadline, nor that the April 21, 2021 notice was sent to her correct mailing address. Nor does she dispute that she filed her hearing request outside the 30-day deadline contained in the April 21, 2021 notice. Rather, she argues that her October 23, 2023 hearing request – filed more than 900 days after the decision it challenges – should be accepted because she was overwhelmed with the CINA proceeding and did not see the notice until six to eight months after it was sent. She further contends that she did not act on the notice at that time because she did not distinguish the child maltreatment and CINA matters, and she did not think she could request a hearing until speaking with two OCS employees in October 2023. Further, even if she had timely requested a hearing, she would have asked that the case be held in abeyance until the CINA matter was resolved anyway. She contends that OCS

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<sup>16</sup> 2 AAC 64.250.

<sup>17</sup> *In re KC*, OAH No. 23-0516-SAN (Commissioner of Family and Comm. Serv. 2023), at 3 (published at <https://aws.state.ak.us/OAH/Decision/Display?rec=6973>); *In re TL*, OAH No. 21-1122-SAN (Commissioner of Health & Soc. Serv. 2021), at 4 (published at <https://aws.state.ak.us/OAH/Decision/Display?rec=6969>); *Amerada Hess Pipeline Corp. v. Alaska Pub. Utilities Comm’n*, 711 P.2d 1170, 1178 (Alaska 1986).

<sup>18</sup> *In re KC*, *supra*.

<sup>19</sup> *In re TL*, *supra*, at 6; *Forquer v. State, Comm. Fisheries Entry Comm’n*, 677 P.2d 1236, 1243 (Alaska 1984) (agency had discretion not to waive deadline to submit evidence).

<sup>20</sup> *In re TL*, *supra*, at 6 n.43 (quoting *Forquer*, 677 P.2d at 1236 (“[I]t is always within the discretion of a court or an administrative agency to relax or modify its procedural rule adopted for the orderly transaction of business before it when in a given case the ends of justice require it.”)).

improperly removed the children from her care, and her livelihood and her children's well-being will be damaged if she is not afforded the opportunity for a hearing.

In the context of summary adjudication, the department must provisionally accept all of Ms. W.'s factual representations as true. Even accepting those assertions, however, an exercise of discretion to relax this deadline by a period of years is not supported.

It is undisputed that Ms. W. had direct experience of the independent nature of substantiations from CINA findings. An assumption that the one would resolve the other may not be reasonable under any circumstances, but it certainly was not a reasonable assumption in her case. Likewise, her focus on the CINA matter and her children's welfare cannot justify failure to open and read notices about her children's welfare. Finally, and most importantly, even when she did open and read the notice, she did nothing for nearly two more years—conduct that fails to support an extraordinary variance from the deadline to appeal.

Ms. W. suggested in her first affidavit, and explicitly argued in her surreply, that OCS suffered no harm as a result of the delay in filing an appeal, because the case would likely have been held in abeyance anyway. This is not dispositive, however. Appeal deadlines serve an important independent purpose to create finality and regularity in official proceedings. Without compelling circumstances showing Ms. W.'s delay to be excusable, the deadline ought to stand.<sup>21</sup>

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<sup>21</sup> Cf. *Beavers v. Alaska Const., Inc.*, 787 P.2d 643 (Alaska 1990) (enforcing analogous appeal deadline with no consideration of whether the other side was prejudiced by the minimal 36-day delay in filing an appeal); *In re E.E.M.*, OAH Case No. 17-0629-PFD (Dep't of Revenue 2017), at 4-5 (published at <https://aws.state.ak.us/OAH/Decision/Display?rec=5767>); *In re S.A.*, OAH Case No. 14-0376-PFD (Dep't of Revenue 2014), at 2-3 (published at <https://aws.state.ak.us/OAH/Decision/Display?rec=5661>).

**IV. Conclusion|**

OCS's motion for summary adjudication is granted. Based on the undisputed facts, the department's discretion should not be exercised to accept Ms. W.'s October 23, 2023 hearing request.

September 17, 2024.

By: Signed  
Signature  
Christopher Kennedy  
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.]

## Adoption

The undersigned, by delegation from the Commissioner of Family and Community 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 14th day of October, 2024.

By: Signed  
Signature  
Chrissy Vogeley  
Name  
Senior Policy Advisor  
Title

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

