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

In the Matter of	)	
	)	
Q. S.	)	OAH No. 26-0175-MDS
	)	

DECISION AND ORDER

I. Introduction

Q. S. is a recipient of Intellectual and Developmental Disability Waiver benefits (IDD Waiver). On December 22, 2025, the Division of Senior and Disabilities Services (the Division) issued written notice that it was terminating Mr. S.'s IDD Waiver benefits. That notice failed to identify the actual regulatory or factual reasoning for the termination. As the Division failed to meet the minimum requirements for adequate notice, the termination of Mr. S.'s IDD Waiver is **REVERSED**.

Because administrative notices cannot be applied retroactively in Alaska, the Division cannot terminate Mr. S.'s benefits until it issues legally sufficient notice. However, because the Division conceded at the hearing that it has now received and verified all necessary documentation, the original basis for termination has been cured. The Division no longer possesses a valid regulatory basis to issue a prospective termination notice and is therefore **DIRECTED** to immediately process Mr. S.'s ongoing waiver renewal services without any gap in coverage.

II. Facts

Mr. S. has been a recipient of IDD Waiver services since 2010.

A waiver renewal application, including an updated Level of Care (LOC) application and a current Qualifying Diagnosis Certification (QDC), is typically required to be underway 90 days before the expiration of the current plan.[1] In Mr. S.'s case, the LOC application needed to be updated on or around September 19, 2025, and it expired on December 18, 2025.[2]

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[1] 7 AAC 130.213. However, Ms. Chord testified it is not uncommon for the Division to work with recipients to resolve the issue, or grant limited extensions, when there is a delay in timely receiving the QDC or LOC application.

[2] Ex. E.

On November 26, 2025, the care coordinator in this case, B. C., faxed a QDC form to Mr. S.'s provider and asked that it be completed.[3] Unfortunately, it is not uncommon for there to be issues with timely providing an up-to-date QDC. Ms. C. had difficulty getting a signed QDC from Mr. S.'s physician because the provider required an in-person appointment before signing the certification.[4] During this delay, Ms. C. actively communicated with the Division's Quality Assurance compliance (QA) unit.[5]

On December 22, 2025, the Division mailed a notice[6] that Mr. S.'s Waiver Services would be terminated to Address A.[7] Unfortunately, Mr. S.'s mailing address is Address A(1).[8] While the Division had Mr. S.'s correct address, and the Division's internal systems auto-populate mailing labels, the Division concedes that the letter was misaddressed.[9] That notice gave Mr. S. 30 days to complete an assessment or face termination of his benefits.

Due to the Division's mailing error, D.S., Mr. S.'s mother and guardian, did not receive the Division's notice until January 6, 2026, effectively losing 15 days of the response window held out by the Division.[10]

On January 9, 2026, Ms. C. received a compliance check from QA investigator Karen Engstrom. That message informed Ms. C.:

> I am including a list of the recipients I am following at this time. I understand from speaking to N. J. that you and other care coordinators in your region are having difficulty getting need records back from medical providers. Can you please go over the spreadsheets that I have provided and make notes in Harmony regarding the delays you are experiencing.
> We do not want any unnecessary closures of programs.[11]

Mr. S. had an in-person appointment with his provider on January 12, 2026.[12] On January 14, 2026, Ms. C. wrote a note in the Harmony system "ICAP documents have been signed.

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3 Ex. 1.
4 Testimony of Ms. C..
5 Testimony of Ms. C.. *See also* Ex. 3.
6 Ex. D, p. 1. While the notice refers to the closure of an Initial Application for Home and Community Based Waiver Services, Mr. S. was seeking to renew his IDD waiver services.
7 Testimony of Ms. Chord.
8 Testimony of Ms. S..
9 Testimony of Ms. Chord.
10 Testimony of Ms. S..
11 Ex. 3. Harmony is a web-based data management system SDS uses to administer programs, services, and certifications for providers.
12 Ex. 4.

Primary care doctor appointment was needed before the QDC was signed. Appointment was on 1/12. QDC has been requested again."[13] Ms. C. followed up with QA directly and advised that she had reviewed the compliance tracking spreadsheets provided and had entered notes into Harmony.[14]

Ms. C. finalized the remaining renewal application materials.[15] Ms. C. attempted to submit the completed renewal application. Ms. C. testified, credibly, that she believed she had submitted the complete application on January 21, 2026.[16] The Division never received these documents, and the Harmony worker event log report does not show that Ms. C. accessed Harmony that day.[17] The weight of this evidence is somewhat balanced by testimony and evidence that Harmony is not 100% reliable.[18]

On February 10, 2026, the Division terminated Mr. S.'s participation in the IDD Waiver program.[19] On February 11, 2026, the Division of Public Assistance (DPA) sent notice that Mr. S. was being transferred from the IDD Specialized Medicaid program to the standard Medicaid program.[20] Ms. S. first became aware that IDD Waiver services had terminated when she received this notice on February 16, 2026.[21] On February 19, 2026, Ms. S. contacted the Division to find out what had happened and why.[22] Ms. Chord responded on February 20, 2026.[23]

A hearing was held on May 7, 2026. The Division was represented by its fair hearing representative, Victoria Cobo-George. Ms. Cobo-George presented testimony from Heather Chord, a Health Program Manager 3 with the Division. Mr. S. was represented by Lauren Kellogg. Ms. Kellogg presented testimony from Ms. C. and Ms. S..

The record was held open to allow the Division to file a Harmony Event Log and for Ms. Kellogg to respond to that exhibit. The record closed May 26, 2026.

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13 Ex. 5.
14 Testimony of Ms. C..
15 *Id.*
16 *Id.*
17 Ex. G (Harmony Event Log).
18 Testimony of Ms. C.. *See also* Ex. 11.
19 Ex. 9.
20 Ex. 6.
21 Testimony of Ms. S..
22 Ex. 8.
23 Ex. 9.

III. Discussion

A. The Division's Notice Was Inadequate

As an initial matter, the Division failed to send the notice to the correct address. The Division addressed the December 22, 2025, notice to Address A, Town A, AK 99___. However, Mr. S.'s address is Address A(1), Town A, AK 99___. This error occurred despite having the correct address in the body of the letter. The Division conceded this notice was addressed incorrectly. However, it is not necessary to determine if this error rendered the Division's notice inadequate, as the body of the notice failed to meet minimum requirements.

Under 7 AAC 49.070, and its federal counterpart 42 C.F.R. § 431.210, a notice of adverse action must explicitly state the precise reasons for the proposed action, including the exact statute, regulation, or policy relied upon. The notice advised that Mr. S.'s services were being closed because "SDS has been unable to complete your assessment." The notice further advised:

> Regulations require an assessment within 30 days of receipt of a complete application or annually, and require that you cooperate with scheduling and completing your assessment. SDS has not received a renewal waiver application to date.
>
> This decision is based on the documented inability to complete your assessment with you, as listed above. To rectify you must contact SDS at 269-3666 or 1-800-478-9996 and schedule and participate in the scheduled assessment within 30 days of this notice.[24]

In support of the closure, the notice cited 7 AAC 130.207(c); 7 AAC 130.213; and 7 AAC 130.219(e). These regulations generally cover the need to undergo an assessment and disenrollment from home and community-based waiver services.[25]

However, Mr. S.'s services were not terminated because of any failure to contact the Division and schedule or complete an assessment.

Heather Chord, a Health Program Manager 3 with the Division, testified that the benefits had to be terminated because the Division did not have a level of care application (LOC) or an updated Qualifying Diagnosis Certification (QDC). Consequently, the Division's primary reason for terminating Mr. S.'s benefits was a failure to timely submit a current QDC signed by his provider and the accompanying LOC application. This reasoning was absent from the Division's

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[24] Ex. D, p. 1.

[25] This same reasoning was echoed in the Division's position statement. Citing the same regulations, the Division's position statement argued that Mr. S.'s Waiver services had to be terminated because he had failed to complete, or failed to cooperate with the completion of, his assessment.

notice. Further, the regulation setting the requirement for a QDC is 7 AAC 130.206(d). That regulation was not cited in the Division's notice or discussed in the position statement.

In *Baker v. State,*[26] a case involving the Department of Health and Social Services' administration of the Medicaid program, the Alaska Supreme Court held that before the Division terminated or reduced benefits, it must first provide adequate notice to recipients:

> We agree that decisional law strongly supports the position that "due process requires an explanation of the *specific* reasons for reducing . . . benefits." . . . to the extent feasible, the department should be required to show how and why it determined that a reduction in PCA services was in order.[27]

The notice in this case was not adequate.

In the Division's notice and its position statement the true regulatory basis, 7 AAC 130.206(d), was completely absent. The Court in *Baker* held that an agency "must actively provide 'complete' notice and should not improperly place on the recipient the burden of acquiring notice; due process directs the agency to supply it."[28] Even if Mr. S.'s guardian was able to determine the true regulatory basis of the Division's actions, *Baker* explicitly rejected the argument that a defect in the notice can be cured by information that the recipients already had in their possession or that they acquired during the hearing process:

> As a preliminary matter, we reject the suggestion that "notice" here can be broadly construed to include not only the written letter, but also the "information the recipients already had about the assessment process and the information the recipients already had about themselves."[29]

Further, *Baker* held,

> that the department cannot presume that recipients already have a basis for understanding why services are being reduced; whatever information the department is required to provide must be part of the written notice itself.[30]

Here, the omission of the actual regulatory basis represents a fatal violation of procedural due process. Further, by instructing the guardian to contact the Division to schedule an assessment instead of disclosing that the true basis for termination was a missing physician-signed QDC and LOC application, the notice actively misdirected the family on how to cure the issue. Therefore, the Division's notice was deficient on its face.

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26 *Baker v. State, Dep't. of Health and Soc. Services*, 191 P.3d 1005 (Alaska 2008).
27 *Id.* at 1011 (citations omitted, emphasis in original).
28 *Id.*
29 *Id.* at 1009.
30 *Id. at* 1010.

B. Notice Cannot Be Retroactive

Under 7 AAC 49.060, the Division must provide valid written notice *prior* to the date it "intends to take action denying, reducing, suspending, or terminating assistance."[31] The federal Medicaid regulation regarding notice requirements, 42 C.F.R. § 431.211, also requires advance notice.[32]

In *Allen v. State, Department of Health and Social Services*,[33] the Alaska Supreme Court addressed a very similar situation, in which the agency had issued a notice that it intended to recoup Food Stamp overpayments, but had neglected to include information about how the claim was calculated and about rights that the recipient had under law, both of which were required by the regulation governing notices.[34] Although the missing information had arguably been supplied in later notices and the recipient was actually aware of her rights, the court nonetheless held that the notice defects "were not cured" because "giving notice that complies with the regulations is prerequisite" to the regulatory action.[35] The court required the agency to start the recoupment process over.[36] No different outcome is warranted here.

Longstanding precedent establishes that when an adverse action notice is found to be legally deficient, any subsequent corrective notice cannot be made retroactive. [37] It can only take effect prospectively, running forward from the date adequate notice is properly issued and served.[38] Consequently, the Division may not seek to terminate Mr. S.'s benefits until it provides adequate notice.[39] Because the December 22, 2025 notice is legally void due to its facial errors,

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31 7 AAC 49.060.

32 There are limited exceptions to this requirement, but none are relevant here.

33 203 P.3d 1155 (Alaska 2009).

34 *Id.* at 1166-68.

35 *Id.* at 1169.

36 *Id.* ("if the Agency wishes to pursue its recoupment claims … it must issue … notices that comply with the . . . regulation").

37 *In re Q.S.*, OAH No. 13-1460-CMB (Commissioner of Health and Social Services 2013) (available at https://aws.state.ak.us/OAH/Decision/Display?rec=6285); *In re R.B.*, OAH No. 12-0371- CMB (Commissioner of Health and Social Services 2012) (available at https://aws.state.ak.us/OAH/Decision/Display?rec=6249); *In re C.M.,* OAH No. 14-0257-MDS (Commissioner of Health and Social Services 2014) (available at https://aws.state.ak.us/OAH/Decision/Display?rec=3147).

38 *See In re K.S.*, OAH No. 17-0671-MDS (Commissioner of Health and Social Services 2017) (available at https://aws.state.ak.us/OAH/Decision/Display?rec=3316); *In re Q.S.*, OAH No. 13-1460-CMB (Commissioner of Health and Social Services 2013)(available at https://aws.state.ak.us/OAH/Decision/Display?rec=6285); *In re T.J.,* OAH No. 16-1120-MDS (Commissioner of Health and Social Services 2017) (available at https://aws.state.ak.us/OAH/Decision/Display?rec=2993).

39 *In re K.S.*, OAH No. 17-0671-MDS (Commissioner of Health and Social Services 2017) (available at https://aws.state.ak.us/OAH/Decision/Display?rec=3316). *See also Allen v. State, Dep't of Health and Soc. Services*, 203 P.3d 1155, 1169 (Alaska 2009).

the status quo of Mr. S.'s waiver benefits remains undisturbed. To terminate his benefits, the Division would be required to start over and issue a new, accurate prospective notice and give Mr. S.'s team adequate time to respond to that notice.

However, between the date of the defective notice and the date of the hearing, Ms. C. successfully uploaded the fully completed renewal application, LOC, and an updated QDC into the Harmony system.[40] Ms. Chord testified that if the Division had received this paperwork before the 30-day period in the notice had expired, Mr. S.'s continuing benefits would have been approved. Because the Division admits it now possesses the exact documentation required to approve the waiver, the factual basis for termination no longer exists. The Division cannot issue a prospective notice for missing paperwork when no paperwork is missing.

While this case ultimately resolved on an issue related to the notice, that should not be read as an endorsement of paperwork consistently being submitted late. While the tribunal understands that every case is unique and there are many hurdles recipients face when dealing with providers and the Division, these hurdles are also somewhat foreseeable. Mr. S. requires the same paperwork at or around the same time every year. To avoid similar issues next year, it is strongly recommended that Mr. S. schedule an in-person appointment with his provider in advance of the QDC deadline, so that his provider can complete the form well in advance of its due date.

IV. Conclusion

The Division's decision to terminate Mr. S.'s IDD Waiver services is **REVERSED**.

Because Mr. S.'s paperwork has been fully corrected, updated, and accepted by the Division during the pendency of this appeal, the Division is **DIRECTED** to immediately process his ongoing waiver renewal services without any gap in coverage.

Dated: June 9, 2026

SIGNED
Eric M. Salinger
Administrative Law Judge

[40] Initially the QDC contained an error in its effective date. That error was corrected, and a revised copy was uploaded to Harmony on the day of the hearing. During the hearing Ms. Chord reviewed that revised QDC and confirmed it was adequate.

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 25th day of June, 2025.

By: SIGNED
Name: Daniel R. Phelps II
Title: Process Improvement Manager
Office of the Commissioner
Alaska Department of Health

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