

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

In the Matter of	)	
	)	
COMMUNITY A ASSOCIATION	)	OAH No. 22-0065-CCA
_____	)	

DECISION

I. Introduction

Community A Association (Community A) is a licensed childcare provider that participates in the Division of Public Assistance’s (Division) Child Care Assistance Program (CCAP). It submitted its billings for the month of November 2021 to the Division’s Child Care Program Office (CCPO) on January 2, 2022. The CCPO denied payment for its November 2021 billings as being untimely. Community A requested a hearing to challenge the payment denial.

Community A’s hearing was held on February 22, 2022. M.X, Community A’s director, represented Community A and testified on its behalf. Jessica Hartley, a fair hearing representative with the Division, represented the CCPO.

The evidence in this case demonstrates that Community A filed its billing for November 2021 on January 2, 2022, which was after the regulatory deadline of December 31, 2021. Even though this was a short delay in filing, the CCAP’s regulations do not allow for an extension to the deadlines. Consequently, the CCAP’s denial of payment to Community A’s November 2021 billing is AFFIRMED.

II. Facts

Community A is a licensed childcare provider.¹ Community A has been participating in the CCAP program for some time. Ms. X, its director, completed the CCAP billing training in September 2017. During her training, she completed and signed a “Child Care Provider Rates and Responsibilities” form on September 19, 2017, which she acknowledged as having read and understood.² 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, penalties, and repayment of any overpayments. I further understand that:

* * *

¹ Ex. 1.

² Exs. 2 – 2.1.

- 6.. *Request for Payment* CC78 forms must be submitted by the last day of the month, following the month care services were provided and charges were incurred. Payment may be denied if submitted outside these timeframes.³

Community A provided childcare services to three children who had CCAP coverage in November of 2021. On January 2, 2022, Community A submitted its billing for November 2021 to the Division's Child Care Program Office (CCPO) by email.⁴ On January 10, 2022, the CCPO notified Community A that its request for payment for childcare services provided in November 2021 was denied because it was received after the December 31, 2021 deadline.⁵

Ms. X acknowledged that the payment request was filed after December 31, 2021. She explained that the delay was due because both she, her immediate family, and a staff member were ill with Covid-19 over Christmas and the New Year.⁶

III. Discussion

The Department of Health and Social Services 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.”⁷ 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.”⁸ This means that the bill for November 2021 must have been submitted by the end of December 2021, which was Friday December 31, 2021.

Because Community A is requesting the payment under the CCAP, it bears the burden by preponderance of the evidence that it timely submitted the childcare payment request.⁹ It is undisputed that Community A's billing was not received until January 2, 2022, after the due date of December 31, 2021.

Community A made two arguments that its late filing was allowed. The first was that Community A staff, including Ms. X and a staff member, were ill with Covid-19 during Christmas and the New Year, and as a result, were unable to file the billing by December 31,

³ Ex. 2.1 (emphasis in original).

⁴ Exs. 4 - 4.1.

⁵ Ex. 6.

⁶ Ms. X's testimony.

⁷ AS 47.25.001(a)(1).

⁸ 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.

⁹ 7 AAC 49.135.

2021. The CCAP regulations, however, do not allow an exception to the deadline for undue hardship or exceptional circumstances.

Community A's second argument was based upon the fact that Friday December 31, 2021, the last day for filing the November 2021 billing, was a state holiday. Community A therefore argued that the due date should fall on the next day. With regard to this argument, it must be noted that the next day would have been January 1, 2022, and that the billing request was filed one day thereafter on January 2, 2022. However, this is not the end of the analysis for this argument. There is an Alaska statute, 01.10.080 Computation of Time, which provides that "the time in which an act provided by law is required to be done is computed by excluding the first day and including the last, unless the last day is a holiday, and then it is also excluded." Thus, when deadlines set by law (and a regulation is a law) fall on a "holiday," the deadline moves to the next non-holiday. "Holiday," as used by the Legislature in this context, has been interpreted by the Alaska Supreme Court to mean Saturdays, Sundays, and any other "day on which the usual operations of business are suspended.""¹⁰

If AS 01.10.080 applies to this case, the billing submitted on January 2, 2022 would be timely because December 31, 2021, the holiday, fell on a Friday. Consequently, the deadline would be extended through the weekend, and the first business day thereafter would have been Monday, January 3, 2022. However, a review of that statute shows that it only applies to "computation of time," such as when some action has to be performed within a certain number of days, for instance, the requirement that an appeal has to be filed within 30 days of the date of the decision being appealed from. In this case, however, there is a date certain deadline – the end of the month, and there is no computation of time component. As such, AS 01.10.080 does not apply in this case. The CCAP regulations also do not contain a provision allowing an extension of time in the event that the last day of the month falls upon a holiday or weekend. Because no such provision exists, even though December 31, 2021, the due date for the November 2021 billing, was a state holiday, the January 2, 2022 filing of the November 2021 billing, was late.

IV. Conclusion

The CCAP regulations govern in this case. They do not contain an undue hardship exception nor an exceptional circumstances exception to the filing deadlines. Nor do they contain a provision that extends the deadline for filing the billing if the billing due date falls

¹⁰ *David v. Sturm, Ruger & Co.*, 557 P.2d 1133 (Alaska 1976) (quoting prior authority).

upon a holiday. Consequently, Community A's January 2, 2022 billing for its November 2021 services was late. The CCPO's denial of payment for those November 2021 services is therefore AFFIRMED.

Dated: March 15, 2022

Signed

Lawrence A. Pederson
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 31st day of March, 2022.

By: Signed
Name: Jillian Gellings
Title: Project Analyst, DHSS

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