

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

In the Matter of	)	
	)	
N.E	)	OAH No. 21-2521-MDX
_____	)	

ORDER OF DISMISSAL FOR UNTIMELINESS

I. Introduction

N.E is a recipient of Medicaid services. On January 2, 2021, the Division of Health Care Services (Division) notified her that she was being placed in the Medicaid Care Management Program (CMP). Ms. E requested a hearing to challenge her placement. The Division issued a Notice of Non-Referral, rejecting her hearing request as untimely. Ms. E appealed this Non-Referral.

A telephonic hearing was held on December 22, 2021. Ms. E represented herself. Laura Baldwin, a fair hearing representative for the Division, testified on behalf of the Division.

Ms. E made her request for a hearing regarding her placement in the CMP more than 30 days after she was notified that she was being placed in the CMP. This means that her hearing request was made after the deadline to request a hearing. Consequently, this case is dismissed, and Ms. E is not able to challenge the Division's decision to place her in the CMP.

II. Facts

Ms. E has been receiving Medicaid services. The Quality Assurance Unit within the Division performed a utilization review of Ms. E's use of Medicaid services. Following that review, the Division concluded that Ms. E's use of Medicaid services during the period from 1/1/2020 through 6/30/2020 was excessive. Consequently, the Division concluded that Ms. E should be placed in the CMP¹.

On January 2, 2021, Ms. E received a letter from the Division notifying her that she was being placed in the CMP and was being assigned a primary care provider and a primary pharmacy for the next 36 months of Medicaid eligibility.² This notice regarding CMP placement was accompanied by a "Notice of Recipient Fair Hearing Rights" advising Ms. E that she could

¹ Exh. D, pp. 4-5.

² Exh. D, pp. 4-5.

appeal the decision to place her in the CMP by requesting a fair hearing in writing within 30 days of the date of the January 2, 2021 notice.³

On November 19, 2021, the Division received a cryptic message by e-mail from Ms. E, which stated “I am unable to get the care I need at this time. Thank you for your time and help.”⁴ The Division treated this e-mail as an appeal of Ms. E regarding her placement in the CMP. Consequently, a Notice of Non-Referral was issued on November 24, 2021 indicating that this appeal was untimely since it was made 321 days after the 1/2/21 notice placing her in the CMP.⁵

On December 1, 2021, the Division got an e-mail from Ms. E requesting a hearing regarding the Division’s decision not to refer her case to a fair hearing. In her fair hearing request, Ms. E stated:

I would please like to appeal this as I am not able to see my mental health provider and have had difficulty all year with the referral system.⁶

A hearing was held on December 22, 2021.

At the hearing, Ms. E testified that she did not originally appeal her placement in the CMP since she needed a primary physician to oversee her care. However, she began to have issues with getting certain medical bills she had incurred paid and getting a referral to her long-term mental health provider. That is when Ms. E decided to file a late appeal.⁷ She further testified that had she known that the CMP would have made it more difficult for her to get medical care, she would have appealed her placement earlier.⁸

III. Discussion

Under 7 AAC 49.030(a), a request or hearing in a public benefits case of this type must ordinarily be made “not later than 30 days after the date of the [required] notice.” The Division may deny the request for untimeliness.⁹ If the Division denies the hearing request, the recipient can request a hearing to challenge the Division’s denial of the hearing request. That is what

³ Exh. D, p. 6.

⁴ Exhs. C, p. 2 & D, p. 3.

⁵ Exh. D, pp. 1-2.

⁶ Exh. C, p. 1.

⁷ Testimony of Ms. E. For example, Ms. E had gone to OPA for treatment prior to being assigned to her current primary physician and this had resulted in some issues with getting that bill paid by Medicaid.

⁸ Testimony of Ms. E.

⁹ 7 AAC 49.080(1).

happened here. Ms. E requested a hearing to challenge her placement in the CMP. The Division denied her hearing request as being untimely. Ms. E then requested a hearing to challenge the Division telling her that she was not entitled to a hearing on her placement in the CMP.

There is a specific regulation in place that addresses the issue of untimely hearing requests. It reads:

The administrative law judge shall deny or dismiss a hearing request or terminate a hearing if

* * *

(5) the appeal was untimely under 7 AAC 49.030.¹⁰

7 AAC 40.030 explicitly states that “[a] hearing request may be accepted after the time limit ... *only* if the administrative law judge finds . . . that the request for a hearing *could not* be filed within the time limit.”¹¹ Thus, there are two questions in an appeal such as this one: (1) was the hearing request made 30 or fewer days after the date of the notice, and (2) if not, were the circumstances such that the request could not have been made on time. When an appeal is untimely under 7 AAC 49.030 and does not meet the single exception, the hearing regulations provide no discretion. The appeal must be dismissed.¹²

In the present case, the hearing request was clearly late. The notice of the agency’s decision was sent out on January 2, 2021. The hearing request was not made until November 19, 2021, 321 days after the 30-day appeal period expired.¹³

The exception to the time limit does not apply because Ms. E has not shown that she *could not* have appealed within the 30-day appeal period. Instead, her delay in filing resulted from problems she began having the bill payment and referrals months after she began participating in the CMP.¹⁴

Because the appeal was beyond the 30-day window and the narrow exception of the deadline does not apply in these circumstances, dismissal is mandatory.

IV. Conclusion

¹⁰ 7 AAC 49.100.

¹¹ 7 AAC 40.030.

¹² 7 AAC 49.100(5).

¹³ Compare Exh. D, pp. 4-5 with Exh. D, p.3.

¹⁴ See Testimony of Ms. E.

The Division's determination that Ms. E was not entitled to a hearing to challenge her placement in the CMP is upheld. Accordingly, this case is dismissed pursuant to 7 AAC 49.030(a) and 7 AAC 49.100(5).¹⁵

Dated: February 15, 2022

Signed

Kathleen A. Frederick
Administrative Law Judge

¹⁵ Although orders of this type are not generally subject to the proposal for action process, the parties were told at hearing that they would have an opportunity to submit proposals for action prior to a final decision being entered. Accordingly, the parties will have the opportunity to submit proposals for action. *See* AS 44.64.030(d) and (e) and 2 AAC 64.340(a).

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 3rd day of March, 2022.

By: Signed
Name: Kathleen A. Frederick
Title: Administrative Law Judge

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