

Office of Hearings and Appeals
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**STATE OF ALASKA
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF PUBLIC ASSISTANCE**

In the Matter of)
)
 [REDACTED])
)
)
)
) OHA Case No. 08-FH-69
) Division Case No. [REDACTED]

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (hereinafter "Claimant") was receiving Adult Public Assistance and Medicaid benefits from the State of Alaska. (Ex. 1) The Division of Public Assistance (hereinafter "Division") sent him notice on January 24, 2008, that the Division may take action regarding his Adult Public Assistance and Medicaid if he did not provide information. (Ex. 3) The Claimant requested a fair hearing on January 30, 2008. (Ex. 4)

Pursuant to Claimant's request, a hearing was held on March 5, 2008. Mr. [REDACTED] attended the hearing telephonically. [REDACTED], Public Assistance Analyst with the Division, attended in person to represent the Division.

STATEMENT OF ISSUES

The parties agreed at the hearing the issue is as follows: Was the Division correct to terminate Claimant's Adult Public Assistance and Medicaid benefits after receiving verification his Social Security benefits were stopped after he failed to provide needed information?

After review of the entire record and legal authority, the actual issue is:

Does this Office have jurisdiction in this case?

FINDINGS OF FACT

1. The Claimant had been a recipient of Supplemental Security Income. (Ex. 1). He was also receiving Adult Public Assistance and Medicaid benefits from the Division. (Ex. 1).
2. On January 23, 2008, the Division received an alert from the Social Security Administration that his Supplemental Security Income assistance was stopped. (Ex. 2) The reason for the stoppage was his failure to furnish a required report. (Ex. 2.1) Because of this, the Division put the Claimant's case on pending status. (Testimony of [REDACTED]).
4. On January 24, 2008, the Division sent Claimant a notice titled "Request for Information." This notice requested information for his Adult Public Assistance and Medicaid case. The notice stated: "The information we need is listed at the bottom of this letter. Please provide it to our office by 2/22/2008. If we do not receive this information by this date, your assistance may be stopped or your benefits reduced." (Ex. 3) The Division required the Claimant to notify it once his Supplemental Security Income was back in pay status. (Ex. 3)
5. On January 30, 2008, the Division received the Claimant's request for a fair hearing. (Ex. 4.2).
6. The Claimant testified during the hearing on March 5, 2008, that he still has not provided the information requested.
7. The record is devoid of any evidence Claimant ever received notice from the Division informing him of the actual intent to terminate benefits or that his benefits were terminated.

PRINCIPLES OF LAW

A party which wishes to change the status quo bears the burden of proof by a preponderance of evidence.¹ Since the Division wishes to change the status quo it has the burden of proof.

This Office's jurisdiction is limited by Alaska Regulation 7 AAC 49.010. That regulation states:

An opportunity for a hearing must be granted to a client whose

- (1) request for an application is denied;
- (2) claim to financial, food, or medical assistance, contained in his application, is denied or is not acted upon with reasonable promptness;
- (3) receipt of benefits the division intends to modify or terminate; or
- (4) request for a covered Medicaid service is denied.

¹ Amerada Hess Pipeline v. Alaska Public Utilities Comm'n, 711 P.2d 1170, 1179 n. 14 (Alaska 1986). Preponderance of the evidence is evidence which as a whole shows the fact sought to be proved is more probable than not.

ANALYSIS

The issue presented by the parties at the hearing was whether the Division was correct to terminate Claimant's Adult Public Assistance and Medicaid benefits after receiving verification his Social Security benefits were stopped after he failed to provide needed information. However, the evidence does not demonstrate the benefits were actually terminated or that the Division issued a notice intending to actually terminate his benefits. Thus, in light of the lack of evidence, the question as to whether this Office has jurisdiction must be addressed.

With regard to fair hearings, the jurisdiction of this Office is set forth in 7 AAC 49.010. In this case, the Claimant did not submit an application which the Division denied or did not act upon with reasonable promptness. In addition, the Division did not deny a covered Medicaid service. Thus, the only basis left for jurisdiction is the intention of the Division to modify or terminate the Claimant's benefits. This would include the situation where the Division actually terminated the Claimant's benefits. However, there is no evidence in the record demonstrating the Division was actually intending to modify or terminate benefits. The January 24, 2008 notice requests information and then states that the Division may stop or reduce benefits if the Claimant does not provide certain information. This notice does not state there is an intent to modify or terminate receipt of benefits. By using the word "may" after the request for information, the notice is merely stating a possible consequence if the Claimant did not provide the information. Accordingly, there is no evidence in the record demonstrating the Claimant is entitled to a fair hearing pursuant to 7 AAC 49.010.

Therefore, this office does not have jurisdiction to consider the action taken by the Division.

Both parties agreed the issue was whether the Division acted properly in terminating benefits. However, the evidence does not demonstrate the benefits were actually terminated. Therefore, the parties have an opportunity to submit evidence within 21 days from the date of this decision demonstrating the Division actually intended/intends to modify or terminate Claimant's receipt of benefits, or has terminated benefits. This office will have jurisdiction and issue a decision in this case.

CONCLUSIONS OF LAW

Based on the evidence presented, this Office does not have jurisdiction to consider this case, pursuant to 7 AAC 49.010.

DECISION

This case is dismissed. If the parties submit evidence within 21 days from the date of this decision demonstrating the Division actually intended/intends to modify or terminate Claimant's receipt of benefits, or has terminated benefits, this office will obtain jurisdiction and issue a decision in this case.

The Claimant is advised that the time period for the Hearing Authority to issue a decision in this matter will be extended by the amount of time incurred obtaining relevant evidence.

APPEAL RIGHTS

If for any reason you are not satisfied with this decision, you have the right to appeal by requesting a review by the Director. To do this, send a written request directly to:

Director of the Division of Public Assistance
Department of Health and Social Services
PO Box 110640
Juneau, AK 99811-0640

If you appeal, you must send your request within 15 days from the date you receive this letter. Filing an appeal with the Director could result in the reversal of the Hearing Authority's decision.

Patricia Huna-Jines
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 29nd day of April, 2008, true and correct copies of the foregoing were sent to:

Recipient – Certified Mail, Return Receipt Requested.

 , Director
 , Policy & Program Development
 , Staff Development & Training
 , Fair Hearing Representative

Case File
Hearing File

Al Levitre, Law Office Assistant I