

FOR IMMEDIATE RELEASE**Contact:** Kate Burkhart, 907-465-4970, kate.burkhart@akleg.gov**OMBUDSMAN FINDS STATE BACKGROUND CHECK
ERRORS COST CITIZEN**

January 27, 2020 Juneau – Alaska State Ombudsman Kate Burkhart recently concluded an investigation of a complaint about the Background Check Program administered by the Department of Health and Social Services Division of Health Care Services. In May 2018, the Ombudsman received a complaint from a health care worker who had their background check clearance renewal denied based on a misdemeanor conviction more than twenty years before. The complaint alleged that the Background Check Program, which had cleared the complainant in 2012, had erroneously determined that the misdemeanor conviction was a permanent barrier.

The ombudsman investigation revealed that the complainant had pled no contest to a municipal misdemeanor involving child abuse in 1996. The Background Check Program cleared the complainant in 2012, and the complainant began a series of jobs with health care providers and other covered employers. The complainant remained employed continuously and without any subsequent allegation or charge of harm to a child or vulnerable adult.

In 2018, the complainant sought to renew their background clearance. The Background Check Program notified the complainant's employer that the clearance was denied based on a permanent barrier – the 1996 misdemeanor conviction. The complainant was placed on administrative leave (ultimately using 300 hours of leave to cover the time out of work). They requested a redetermination by the Background Check Program. That request was not acted upon, and the complainant was referred to the variance process.

When the ombudsman investigator contacted the Background Check Program about the complaint, the manager of the program conducted the redetermination and reversed the agency's decision, explaining that the agency had erred due to changes in regulations in 2017. The complainant was cleared by the Background Check Program and returned to work.

The Ombudsman provided a preliminary report of the investigation to the agency on March 7, 2019. A new manager of the Background Check Program replied to the Ombudsman that the redetermination of the complainant's background check clearance was the error (not the original finding of a permanent barrier) and the agency intended to again deny the complainant's clearance. The agency offered the complainant 90 days to request a variance.

Over the course of several meetings with agency leadership and communications with the Department of Law, the Ombudsman determined that the agency had returned to its position that the municipal ordinance under which the complainant had been convicted with was equivalent to a state law that created a permanent barrier to clearance by the Background Check Program. That

analysis is not supported by the plain language of the municipal ordinance or state law, nor is it supported by case law from the Alaska Supreme Court. Thus, based on a preponderance of the evidence, the Ombudsman found the allegation that the decision to rescind the complainant's clearance was based on a mistake of fact was justified.

The Ombudsman made six recommendations to resolve the complaint, prevent future situations like the one investigated, and ensure that Alaskans subject to the Background Check Program receive due process. The Background Check Program agreed to implement two recommendations, most importantly the recommendation to maintain the complainant's background check clearance and take steps to ensure that future renewals are not barred on the 1996 conviction. The agency declined to compensate the complainant for attorney's fees to request redetermination or the lost personal leave (valued at more than \$7,000) used while on administrative leave pending redetermination by the Background Check Program.

A public report of this investigation (A20180629), findings, and recommendations is available online at <https://ombud.alaska.gov/case-summaries>.

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