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**STATE OF ALASKA  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
OFFICE OF HEARINGS AND APPEALS**

In the Matter of )  
 )  
 [REDACTED], ) OHA Case No. 08-FH-72  
 )  
 Claimant. ) Division Case No. [REDACTED]  
 \_\_\_\_\_ )

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

[REDACTED] (Claimant) was living in Anchorage and receiving Alaska Temporary Assistance (Temporary Assistance) and Medicaid benefits. (Ex. 1.0) She left the State of Alaska and went to [REDACTED]. (Ex. 2) On January 17, 2008, the Division of Public Assistance (Division) notified the Claimant her Temporary Assistance and Medicaid benefits would end effective the end of January 2008. (Exs. 3.0 – 3.1) The Claimant requested a fair hearing on January 28, 2008. (Ex. 5.0) This Office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to Claimant's request, a hearing was held on March 4 and April 29, 2008. The Claimant appeared telephonically and represented herself. [REDACTED], Public Assistance Analyst with the Division, attended in person to represent the Division.

**ISSUE**

Was the Division correct to terminate the Claimant's Temporary Assistance and Medicaid benefits effective the end of January 2008?

## FINDINGS OF FACT

1. The Claimant was living in [REDACTED]. She moved to Alaska in November 2007 due to domestic problems she was having with the father of her minor child. She intended to reside in Alaska.
2. The Claimant applied for public assistance benefits in the State of Alaska on November 19, 2007. (Ex. 1). She was approved to receive Temporary Assistance and Medicaid benefits effective December 1, 2007. (Ex. 1)
3. The Claimant became involved in a child custody dispute that was litigated in the [REDACTED] state courts. She left the State of Alaska on or about December 28, 2007 to return to [REDACTED] to address the child custody dispute.
4. The Claimant contacted the Division on January 9, 2008 and informed a caseworker she was in [REDACTED] because of a custody hearing and that she would be returning to Alaska on February 6, 2008. (Ex. 5.1)
5. A Division caseworker contacted the Claimant's mother and spoke to her on the telephone on January 16, 2008. The Claimant's mother informed the caseworker that the Claimant had left Alaska after Christmas and would not be returning until May 2008. (Ex. 2)
6. On January 17, 2008, the Division sent the Claimant notice her Temporary Assistance and Medicaid benefits would end effective the end of January 2008. (Exs. 3.0 – 3.1)
7. In late January 2008, the Claimant contacted the Division and informed the caseworker she was going to have a child custody hearing on January 24, 2008 and that she expected to return to the State of Alaska on January 28, 2008. (Ex. 4.0) The exact date of the contact is unclear. The Division's case note referencing the conversation is dated January 25, 2008, yet it refers to the January 24, 2008 hearing in the future tense: "SHE HAS HER LAST COURT HEARING ON 1/24/08. SHE HAD TO GET ANOTHER PLANE TICKET TO RETURN TO ALASKA ON 1/28/08." *Id.*
8. The Claimant was granted temporary child custody at the January 24, 2008 child custody hearing. However, the Claimant was not allowed to remove the child from the State of [REDACTED] while the issue of permanent child custody was pending. She stayed in Maine with the child.
9. The Claimant testified that she did not apply for Temporary Assistance benefits in the State of [REDACTED] because her intent is to return to the State of Alaska. She, however, did apply to the State of [REDACTED] for Food Stamp benefits for herself and her daughter, and for [REDACTED] (Medicaid coverage) for her daughter in February 2008,<sup>1</sup> and began

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<sup>1</sup> The Claimant did not recall an exact date. The record does not contain a copy of the application.

receiving those benefits in March 2008. She said the reason she applied for [REDACTED] was because she was told her Alaska Medicaid would not pay for her daughter's health care.

10. As of April 29, 2008, the date this hearing was concluded, Claimant was living in the State of [REDACTED], pending court resolution of permanent child custody. Her stated intent, as of April 29, 2008, was to return to the State of Alaska once permanent child custody is resolved.

### PRINCIPLES OF LAW

This case involves the termination of benefits. Because this is the Division's action terminating benefits, the Division has the burden of proof<sup>2</sup> by a preponderance of the evidence.<sup>3</sup>

Both the Temporary Assistance program and the Medicaid program require that program recipients be Alaska residents. 7 AAC 45.220(a) (Temporary Assistance); 7 AAC 100.060(a) (Medicaid) Both the Temporary Assistance and Medicaid regulations define a "resident" as an individual who is physically present in the state voluntarily and who intends to remain in the state. 7 AAC 45.220(b) (Temporary Assistance); 7 AAC 100.060(b) (Medicaid).

The Temporary Assistance program regulations explicitly deal with the issue of when a Temporary Assistance recipient can leave the State of Alaska and still remain a "resident" for Temporary Assistance eligibility purposes:

(e) Once an applicant or recipient has satisfied the residency requirement of this section, the applicant or recipient is considered a resident of the state until the applicant or recipient abandons residency. An applicant or recipient who is temporarily absent from the state for no more than two months is not considered to have abandoned residency if the absence

- (1) is for a specific purpose;
- (2) does not involve an intent to change residence; and
- (3) includes a plan to return to the state at a future date.

(f) An applicant or recipient who is absent from the state for a period longer than two months will not be considered to have abandoned residency if the absence does not involve an intent to change residence,

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<sup>2</sup> "Ordinarily the party seeking a change in the status quo has the burden of proof." *State, Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985)

<sup>3</sup> Preponderance of the evidence is defined as follows:

Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

*Black's Law Dictionary* 1064 (5<sup>th</sup> Ed. 1979)

includes a plan to return to the state at a future date, is approved in advance by the department, and is for one of the following purposes:

- (1) obtaining essential medical care not available in the state;
- (2) participation in an activity, treatment, training, or educational activity approved by the department.

7 AAC 45.220. A month, for Temporary Assistance purposes, is a calendar month. 7 AAC 45.990(a)(28).

The Alaska Medicaid regulations do not contain the same detail with regard to residency. They provide as follows:

- (e) Once an applicant establishes state residency, the applicant retains state residency until the applicant establishes residency in another place.

7 AAC 100.060(e).

An applicant for [REDACTED] ([REDACTED] Medicaid) must be a [REDACTED] resident, as defined below:

#### 1220 RESIDENCE

Each individual for whom assistance is being requested must be a resident of [REDACTED].

Each individual must be living in the State voluntarily with the intention of making a home in [REDACTED].

An individual who is visiting or in [REDACTED] temporarily is not a resident. The individual should apply to the actual state of residence for medical assistance.

*MaineCare Eligibility Manual §1220 (CMR 10-144, Chapter 332, § 1220).*

#### ANALYSIS

The issue here is whether or not the Division was correct when it terminated the Claimant's Temporary Assistance and Medicaid benefits effective the end of January 2008 because she was no longer an Alaska resident.

Both the Alaska Temporary Assistance and Medicaid programs require that program recipients be Alaska residents. These programs have slightly different rules regarding residency. They are therefore each addressed separately below.

#### A. Temporary Assistance

The Temporary Assistance program allows a two month leave of absence from the State

if the absence

- (1) is for a specific purpose;
- (2) does not involve an intent to change residence; and
- (3) includes a plan to return to the state at a future date.

7 AAC 45.220(e). An absence for longer than two months requires that it be for either “essential medical care not available in” Alaska or an “activity, treatment, training, or educational activity approved by the department.” 7 AAC 45.220(e).

The Claimant’s leave of absence from Alaska initially met the criteria for an up to two month absence. She left Alaska on December 28, 2007. She phoned her caseworker on January 9, 2008 and informed her that she intended to return on February 6, 2008, which was less than two months after she left Alaska. Her absence was for a specific purpose, to appear at a contested child custody proceeding in [REDACTED]. She did not intend to change her Alaska residence, and she planned to return to Alaska within two months.

On January 16, 2008, the Division caseworker called the Claimant’s mother who informed the caseworker that the Claimant would not be returning to Alaska until May 2008. At that point, the Division sent the Claimant notice that her Temporary Assistance benefits would be terminated effective the end of January 2008. There is no evidence that the Division tried to contact the Claimant and determine her plans and if she intended to return, or the prospective date of return. Instead, the Division opted to terminate the Claimant’s benefits.

The Claimant satisfied the regulatory requirements for an up to two month absence from Alaska. She was in [REDACTED] for a very specific purpose, a child custody hearing. She had no intent to remain in [REDACTED]. She had a plan to return to Alaska, and her absence was originally intended to be for less than two months; her two month allowable absence period would have ended the very end of February 2008.

The Claimant did not satisfy the regulatory requirements for an absence from Alaska for more than a two month period. This is because her absence was not for an allowable purpose, which had to be either “essential medical care not available in” Alaska or an “activity, treatment, training, or educational activity approved by the department.” 7 AAC 45.220(e). Her absence due to a child custody dispute did not fit within either exception category.

The Claimant clearly overstayed her allowable two month leave of absence from Alaska. However, the Division notified her on January 17, 2008, less than one month after she left Alaska (December 28, 2007), that her Temporary Assistance benefits would be terminated effective the end of January 2008. This was premature.

The fact the Claimant ended up staying in [REDACTED] for more than two months does not justify the Division’s premature action. The fact the Claimant ended up applying for

██████ Medicaid coverage also does not justify the January 17, 2008 termination of Alaska Temporary Assistance benefits, because the ██████ Medicaid application did not occur until sometime in February 2008, which occurred after the Alaska Temporary Assistance termination effective date.

The Division was not correct when it terminated the Claimant's Temporary Assistance benefits effective the end of January 2008, because at the date of termination, the Claimant's intent was to return less than two months after she had left Alaska.

B. Medicaid

The Alaska Medicaid regulations do not have a specific time limit on how long a recipient may be outside Alaska and still receive Alaska Medicaid benefits. Instead, the pertinent regulation provides "the applicant retains state residency until the applicant establishes residency in another place." 7 AAC 100.060(e). On January 17, 2008, when the Division sent the Claimant notice her Medicaid benefits would be terminated effective the end of January 2008, the Claimant still intended to return to Alaska. The intent to return is shown by the Claimant's January 9, 2008 phone call to the Division, and by her later phone which was reflected in the Division's January 25, 2008 casenote. In other words, as of the end of January 2008, the Claimant had not established residency outside of Alaska. The Claimant's expressed intent, as of the April 29, 2008 hearing, was still to return to Alaska to live.

However, sometime in February 2008, the Claimant applied for ██████ (██████ Medicaid) benefits. An applicant for ██████ is required to be a ██████ resident. *MaineCare Eligibility Manual* §1220 (CMR 10-144, Chapter 332, § 1220). The Claimant's application for ██████ benefits therefore effectively renounced Alaska residency. However, the Claimant testified she did not apply for ██████ benefits until February 2008. I.E., the Claimant did not renounce her Alaska residency until sometime in February 2008.

The Division's determination to terminate the Claimant's Alaska Medicaid benefits was made on January 17, 2008, which was before the Claimant abandoned her Alaska residency by applying for ██████. It was therefore premature. The fact that Claimant subsequently abandoned her Alaska residency does not justify the premature termination of her Alaska Medicaid benefits. The Division was not correct when it terminated the Claimant's Alaska Medicaid benefits effective the end of January 2008, because the Claimant was still an Alaska resident as of January 17, 2008, the date the Division notified the Claimant her Alaska Medicaid benefits would be terminated.

**CONCLUSIONS OF LAW**

1. The Claimant satisfied the Temporary Assistance program's requirement that allowed a two month absence from Alaska, and had been absent from Alaska for less than a month on January 17, 2008, the date the Division sent her notice that her Temporary Assistance benefits would be terminated effective the end of January 2008.

2. The Division's determination to terminate the Claimant's Temporary Assistance benefits effective the end of January 2008 was therefore premature.
3. That Claimant was an Alaska resident on January 17, 2008, the date the Division notified her that her Alaska Medicaid benefits would be terminated.
4. The Division's determination to terminate the Claimant's Alaska Medicaid benefits effective the end of January 2008 was therefore premature.
5. The Division was not correct when it terminated the Claimant's Temporary Assistance and Medicaid benefits effective the end of January 2008.

### DECISION

The Division was not correct when it terminated the Claimant's Temporary Assistance and Medicaid benefits effective the end of January 2008.

### APPEAL RIGHTS

If for any reason the Claimant is not satisfied with this decision, The Claimant has 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 the Claimant appeals, the request must be sent within 15 days from the date of receipt of this Decision. Filing an appeal with the Director could result in the reversal of this Decision.

DATED this 19th day of June, 2008.

Larry Pederson  
Hearing Authority

#### CERTIFICATE OF SERVICE

I certify that on this 19th day of June, 2008, true and correct copies of the foregoing were sent to:

Claimant – Certified Mail, Return Receipt Requested.

██████████, Fair Hearing Representative

██████████, Director

██████████, Policy & Program Development

██████████, Staff Development & Training

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Al Levitre, Law Office Assistant I