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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-157  
 )  
 Claimant. ) Division Case No. [REDACTED]  
\_\_\_\_\_ )

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

[REDACTED] (Claimant) applied for benefits under the Chronic and Acute Medical Assistance (CAMA) program on or about February 11, 2008 (Ex. 4.2).<sup>1</sup> On February 14, 2008 the Division of Public Assistance (Division) sent the Claimant a notice stating that her CAMA application was denied based on excess household income (Ex. 3.0, Ex. 4.0). On or about February 20, 2008 the Claimant requested a fair hearing (Ex. 4.1). This office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to the Claimant's request, a hearing was held on March 20, 2008 before Hearing Officer Elizabeth Vazquez.<sup>2</sup> The Claimant appeared telephonically and represented herself. [REDACTED], Public Assistance Analyst with the Division, attended in person to represent the Division.

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<sup>1</sup> Although the record contains a copy of the Claimant's prior CAMA application dated August 27, 2007 (Ex. 13.0 – 13.5), the record does not contain a copy of the CAMA application currently at issue.

<sup>2</sup> Following the hearing this case was reassigned to Hearing Officer Jay Durych. Mr. Durych reviewed the file, listened to the tape-recorded hearing record, and prepared this decision.

## ISSUE

Was the Division correct to deny the Claimant's February 11, 2008 CAMA program application based on the assertion that the Claimant's household's monthly net income exceeded the CAMA program's monthly net income limit of \$500.00 for a household of three (3) persons?

## FINDINGS OF FACT

1. The Claimant was born on [REDACTED] and was [REDACTED] years old at the time of the hearing (Ex. 13.1).
2. The Claimant applied for benefits under the Chronic and Acute Medical Assistance (CAMA) program on or about February 11, 2008 (Ex. 4.2).
3. The Claimant has a three (3) person household, consisting of herself and her two adult sons, Thomas and Johnny (Ex. 13.1).
4. The Claimant's son [REDACTED] receives \$363.00 per month in Adult Public Assistance benefits and \$300.00 per month in Social Security Disability (SSI) benefits (Ex. 13.2).
5. At the time of the Claimant's application for CAMA benefits, the Claimant's son [REDACTED] was working part-time at [REDACTED] (Ex. 2, Ex. 4.2). [REDACTED] was working part-time (approximately 15 hours per week) because he was recovering from a broken leg (Ex. 2).
6. The record does not contain copies of any of [REDACTED] paychecks or paystubs. However, the record indicates that [REDACTED] was paid bi-weekly, and that the Division was provided with [REDACTED] paystub for the pay period of January 2, 2008 through January 15, 2008 (Ex. 2). This paystub indicated that [REDACTED] worked a total of 34.72 hours during this pay period (Ex. 2). Although the record is somewhat unclear, it appears that [REDACTED] pay rate was \$9.50 per hour (Ex. 2). This would have resulted in gross pay of \$329.84 for this pay period.
7. The record does not contain copies of any of [REDACTED]'s paychecks or paystubs. Accordingly, the amounts of deductions taken from [REDACTED]'s gross paycheck (including employer-required and voluntary deductions for federal and state income tax, FICA, unemployment insurance, union dues, insurance premiums, and retirement) are unknown.
8. On February 14, 2008 the Division sent the Claimant a notice stating that her CAMA application was denied based on excess household income (Ex. 3.0, Ex. 4.0). The Division's stated basis for denial of the Claimant's application for CAMA program benefits was as follows (Ex. 3.0, Ex. 4.0):

[REDACTED]'s income does not count, because he receives SSI. However, [REDACTED]'s income does count, and the income limit for a three-person household is \$500.00 per month.
9. The Claimant disagreed with the Division's denial of her CAMA application. In her Fair Hearing Request, the Claimant asserted that her son [REDACTED] could "not be held responsible for her

financial needs” because “he works at [REDACTED] and is [REDACTED] years old and [is] not responsible for me.” (Ex. 4.1). This position was maintained by the Claimant at the hearing.

10. The sound quality of the recording of the hearing of March 20, 2008 was poor. However, the facts material to the decision in this case, concerning household composition and household net income, were well-documented in the written exhibits numbered 1 through 13.5.

## PRINCIPLES OF LAW

### I. Applicable Burden of Proof and Standard of Proof.

Ordinarily, the party seeking a change in the status quo has the burden of proof. State of Alaska Alcoholic Beverage Control Board v. Decker, 700 P.2d 483, 485 (Alaska 1985). This case involves the Division’s denial of an initial application for CAMA benefits. The Claimant’s filing of her application constitutes an attempt to change the status quo, or existing state of affairs, by obtaining benefits. Accordingly, the Claimant has the burden of proof in this case.

A party in an administrative proceeding can assume that preponderance of the evidence is the applicable standard of proof unless otherwise stated. Amerada Hess Pipeline Corp. v. Alaska Public Utilities Commission, 711 P.2d 1170 (Alaska 1986). The regulations applicable to this case do not specify any particular standard of proof. Therefore, the “preponderance of the evidence” standard is the standard of proof applicable to this case. This standard is met when the evidence, taken as a whole, shows that the fact sought to be proved is more probable than not or more likely than not. Black’s Law Dictionary 1064 (5<sup>th</sup> Ed. 1979).

### II. Applicable Regulations.

7 AAC 48.500 provides that “the Chronic and Acute Medical Assistance (CAMA) program is designed to pay, in accordance with AS 47.08.150 and this chapter, health care providers who provide covered medical services to eligible chronically ill, needy persons suffering from certain chronic or acute medical conditions who are not eligible for medical assistance under AS 47.07.”

7 AAC 48.525 sets forth the general eligibility factors for the CAMA program, and provides in relevant part as follows:

- (a) The division will determine eligibility for CAMA based upon the following: (1) financial need; (2) lack of income to meet that financial need; (3) lack of prior or personal resources . . . .

7 AAC 48.530 addresses financial need determinations for the CAMA program:

- (a) In addition to including the financial need, income, and resources of the applicant, the spouse, child, parent, grandparent, grandchild, or sibling of an applicant for CAMA is liable for the support of that applicant, and will have their financial needs, income, and resources considered in determining financial eligibility of the applicant, if that relative (1) at the time of application has continuously resided in the same household with the

applicant for a period of 30 days or more; (2) does not maintain a separate residence from the applicant; and (3) is financially able to provide support.

(b) A relative who is receiving cash assistance from Alaska Temporary Assistance Program under AS 47.27, Adult Public Assistance under AS 47.25.430 - 47.25.615, or Supplemental Security Income under 42 U.S.C. 1381 - 1383c is not financially able to provide support and will not have their financial needs, income, or resources considered in determining the applicant's financial eligibility for CAMA.

7 AAC 48.540 is another regulation addressing financial need determinations for the CAMA program. This regulation incorporates and adopts by reference the financial eligibility regulations of the General Relief program and the General Relief Medical program, and states as follows:

An applicant for CAMA shall demonstrate financial need in accordance with 7 AAC 47.150(b) -(c) and 7 AAC 47.155, which are adopted by reference as revised as of July 31, 1998.

7 AAC 47.150(b) is essentially a table. The table provides in relevant part that the “Maximum Monthly Need Standard” for a household of three (3) persons is \$500.00. In other words, pursuant to this regulation, a CAMA program applicant is not eligible for benefits if the monthly net income of the applicant’s household exceeds \$500.00.

7 AAC 47.150(c) provides that monthly net income is determined by:

(1) counting all income earned or unearned, from any source, except payments made under the Alaska Native Claims Settlement Act, received during the calendar month in which application is made, and all income reasonably expected to be received in time to meet the specific needs (income received weekly is multiplied by 4.3, that received every two weeks by 2.15, that received twice monthly by 2, and that received monthly by 1);

(2) subtracting all payroll deductions required by the employer, including federal and state income tax, FICA, unemployment insurance, union dues, insurance premiums, and retirement, from gross earned income, and subtracting from earned or unearned income voluntary health insurance premiums which are paid for persons included in the household as described in (d) of this section; and

(3) not counting income received in the month just before the calendar month in which application is made, but considering this a resource under sec. 160 of this chapter.

7 AAC 47.150(d) provides that the following persons are included within an applicant or recipient’s household:

(d) Persons who are included in the household, and who will therefore have their financial needs, income, and resources considered in determining financial eligibility, include the applicant, all persons related to the applicant by blood, marriage, or adoption who reside with him, and all unrelated persons whose needs are included in the request for assistance

and who would benefit directly from the requested assistance, or who would benefit directly even if their needs are not included.

7 AAC 47.155 provides in relevant part as follows:

(a) Financial eligibility for General Relief Medical assistance exists only if the household's monthly net income, as determined under this section, does not exceed the need standard in 7 AAC 47.150(b) . The applicant must provide verification of the household's income, including, for example, tax and wage statements.

(b) Except as provided in (c) of this section and in 7 AAC 47.170(b), persons who are included in the household and who will therefore have their financial needs, income, and resources considered in determining financial eligibility, include the applicant and all persons related to the applicant by blood, marriage, or adoption who, at the time of application, have continuously resided with the applicant for a period of 30 days or more and who do not maintain a separate residence from the applicant.

(c) Persons who are receiving a cash assistance grant from Aid to Families with Dependent Children, Adult Public Assistance, or Supplemental Security Income will not have their financial needs, income, or resources considered in determining the . . . applicant's financial eligibility.

(d) Monthly net income is determined by

(1) counting all income earned or unearned, from any source, except Alaska Permanent Fund Dividends received during the calendar month in which application is made; (to determine monthly income, income received weekly is multiplied by 4.3, that received every two weeks by 2.15, that received twice monthly by 2, and that received monthly by 1);

(2) subtracting all payroll deductions required by the employer, including federal and state income tax, FICA, unemployment insurance, union dues, insurance premiums, and retirement, from gross earned income, and subtracting from earned or unearned income voluntary health insurance premiums which are paid for persons included in the household as described in (b) of this section . . . .

Pursuant to Section 940-4 of the Division's CAMA Program Manual (Ex. 7), if none of the deductions from gross pay referenced in 7 AAC 47.155(d)(2) have been made, net income is calculated by applying a 20% deduction from gross income.

7 AAC 49.170, titled "limits of the hearing authority, provides that, "except as otherwise specified in applicable federal regulations and 7 AAC 49.160, the role of the hearing authority is limited to the ascertainment of whether the laws, regulations, and policies have been properly applied in the case and whether the computation of the benefit amount, if in dispute, is in accordance with them."

### III. Applicable Case Law.

“[I]t is hornbook administrative law that an agency need not – indeed should not – entertain a challenge to a regulation, adopted pursuant to notice and comment, in an adjudication or licensing proceeding.” Tribune Company v. Federal Communications Commission, 133 F.3d 61, 68 (D.C. Cir. 1998), *citing* P. Strauss, et. al, Gellhorn and Byse’s Administrative Law 657 (9<sup>th</sup> Edition 1995).

## **ANALYSIS**

### I. Introduction.

The ultimate issue in this case is whether the Division was correct to deny the Claimant’s February 11, 2008 CAMA program application based on the assertion that the Claimant’s household’s monthly net income exceeded the CAMA program’s monthly net income limit of \$500.00 for a household of three (3) persons. However, a review of the pertinent regulations and the matters contested by the Claimant indicates that there are three sub-issues which must be answered in order to resolve the ultimate issue. These sub-issues are:

- (1) Whether the Division was correct to determine that the Claimant’s son [REDACTED] was a member of the Claimant’s household pursuant to 7 AAC 47.150(d) and 7 AAC 47.155(b);
- (2) Whether the Division was correct to include the income of the Claimant’s son [REDACTED] within the Claimant’s household income pursuant to 7 AAC 47.150(b); and
- (3) whether the Division correctly determined that [REDACTED]’s monthly net income exceeded the CAMA program’s monthly net income limit of \$500.00 for a household of three (3) persons pursuant to 7 AAC 47.155(d) and Section 940-4 of the CAMA Program Manual.

The above three sub-issues will be addressed separately below.

### II. Was the Division Correct to Determine That the Claimant’s Son Johnny Was a Member of the Claimant’s Household Pursuant to 7 AAC 150(d) and 7 AAC 47.155(b)?

The Claimant did not dispute that her son [REDACTED] was part of the Claimant’s household. Further, the Claimant’s Application for Services dated August 27, 2007 (Ex. 13.0 – 13.4) and Fair Hearing Request dated February 20, 2008 (Ex. 4.1) clearly indicate that [REDACTED] is related to the Claimant by blood or adoption and that he physically resided within the Claimant’s household for a period of at least 30 days. Accordingly, the Division properly considered the Claimant’s son, [REDACTED], to be part of the Claimant’s household pursuant to 7 AAC 150(d) and 7 AAC 47.155(b).

### III. Was the Division Correct to Include the Claimant’s Son’s Monthly Net Income in Determining the Claimant’s Eligibility Pursuant to 7 AAC 47.150(b), 7 AAC 47.155(a-b), 7 AAC 48.525(a), and 7 AAC 48.530(a) ?

The next sub-issue is the real area of dispute in this case: whether [REDACTED]’s total monthly net income should have been considered in determining the Claimant’s eligibility for the CAMA program. In this regard, 7 AAC 47.155, (which is incorporated into the CAMA regulations by 7

AAC 48.540), provides in relevant part that “financial eligibility . . . exists only if the household's monthly net income, as determined under this section, does not exceed the need standard in 7 AAC 47.150(b).”

7 AAC 47.150(b), the regulation the Division relied upon to make its eligibility determination in this case, is essentially a table. The table provides in relevant part that the “Maximum Monthly Need Standard” for a household of three (3) persons is \$500.00. In other words, if the monthly net income of a household consisting of three individuals exceeds \$500, there is no eligibility for CAMA. Thus, the table provides a simple, easily applied, “bright-line” standard for making eligibility determinations based on a household’s monthly net income. The table does not contain any mechanism to consider the individual financial needs of the members of an applicant’s household. Because ██████ was a member of the Claimant’s household, ██████’s monthly net income must be included within the Claimant’s household’s income pursuant to 7 AAC 47.150(d) and 7 AAC 47.155(b).

The Claimant asserted, however, that her son ██████ could “not be held responsible for her financial needs” because “he works at ██████ and is ██████ years old and [is] not responsible for me” (Ex. 4.1). This is essentially an argument that ██████’s individual financial circumstances must be taken into account in determining the extent to which his income should be considered as part of the Claimant’s eligibility determination. The Claimant’s position appears to be supported by two regulations, 7 AAC 48.530(a) and 7 AAC 47.155(b).

The first regulation, 7 AAC 48.530(a) provides in relevant part that, “[i]n addition to including the financial need, income, and resources of the applicant, the spouse, child, parent, grandparent, grandchild, or sibling of an applicant for CAMA is liable for the support of that applicant, *and will have their financial needs, income, and resources considered* in determining financial eligibility of the applicant” (emphasis added).

The second regulation, 7 AAC 47.155(b) similarly requires that, “[e]xcept as provided in (c) of this section and in 7 AAC 47.170(b), [which exceptions are not applicable here], persons who are included in the [claimant’s] household . . . *will therefore have their financial needs, income, and resources considered in determining financial eligibility . . .*” (emphasis added).

Thus, both 7 AAC 47.155(b) and 7 AAC 48.530(a) explicitly require that the financial needs of the Claimant’s son ██████, and thus ██████’s actual financial ability to provide support to the Claimant, be taken into consideration by the Division. Thus, the “bright-line” approach taken by 7 AAC 47.150(b) and 7 AAC 47.155(a) is inconsistent with the “individualized determination” approach taken by 7 AAC 47.155(b) and 7 AAC 48.530(a).

The “bright-line” approach taken by 7 AAC 47.150(b) and 7 AAC 47.155(a) also appears to be inconsistent with the language of the governing statute, A.S. § 47.25.230.<sup>3</sup> However, the Office of

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<sup>3</sup> AS § 47.25.230 provides in relevant part that “[e]very needy person shall be supported while living and upon dying, shall be given a decent burial by the spouse, children, parents, grandparents, grandchildren, or siblings of the needy person, if they, or any of them, *have the ability to do so*, in the order named . . .” (emphasis added).

Hearings and Appeals does not have the authority to invalidate a statute or regulation. See 7 AAC 49.170, titled “limits of the hearing authority,” set forth in full in the Principles of Law, above; see also Tribune Company v. Federal Communications Commission, 133 F.3d 61, 68 (D.C. Cir. 1998), citing P. Strauss, et. al, Gellhorn and Byse’s Administrative Law 657 (9th Edition 1995). Thus, this office can only determine whether the Division properly applied the regulation it utilized to render its eligibility decision.

The evidence shows that there is no dispute that the Claimant’s son was a member of her household. Thus, the Division correctly included ██████’s monthly net income in the Claimant’s household income pursuant to 7 AAC 47.150(b) and 7 AAC 47.155(a). There is also no dispute that the Division applied the “bright-line” financial eligibility table in regulation 7 AAC 47.155(b). Accordingly, the only remaining issue is whether the Division correctly determined that the Claimant’s son’s monthly net income exceeded the CAMA Monthly Net Income Limit of \$500.00 for a household of three (3) persons.

IV. Was The Division Correct to Determine, Pursuant to 7 AAC 47.155(d) and Section 940-4 of the CAMA Program Manual, That Johnny’s Monthly Net Income Exceeded the CAMA Program’s Monthly Net Income Limit?

The Division determined that the Claimant’s household’s monthly net income exceeded the CAMA program’s monthly net income limit of \$500.00 for a household of three (3) persons. The Division relied upon 7 AAC 47.155(d) and Section 940-4 of the CAMA Program Manual to make its determination. Pursuant to this regulatory provision and the Program Manual, it calculated that Johnny’s monthly gross income was \$709.16 and that his monthly net income was \$567.33. The Division correctly applied the regulation (7 AAC 47.155(d)) and CAMA Program Manual, as explained below.

7 AAC 47.155(d) provides the methodology for determining net income for purposes of the CAMA program, and provides in relevant part as follows:

(d) Monthly net income is determined by

(1) counting all income earned .....received during the calendar month in which application is made; (to determine monthly income, income received weekly is multiplied by 4.3, that received every two weeks by 2.15, that received twice monthly by 2, and that received monthly by 1);

(2) subtracting all payroll deductions required by the employer, including federal and state income tax, FICA, unemployment insurance, union dues, insurance premiums, and retirement, from gross earned income, and subtracting from earned or unearned income voluntary health insurance premiums which are paid for persons included in the household as described in (b) of this section . . . .

The record does not contain copies of any of ██████’s paychecks or paystubs. However, the record indicates that ██████ was paid every 2 weeks, and that the Division was provided with ██████’s paystub for the pay period of January 2, 2008 through January 15, 2008 (Ex. 2). This paystub



indicated that [REDACTED] worked a total of 34.72 hours during this pay period (Ex. 2). Although the record is somewhat unclear, it appears that [REDACTED]'s pay rate was \$9.50 per hour (Ex. 2). This would have resulted in gross pay of \$329.84 for this biweekly pay period. Pursuant to 7 AAC 47.155(d)(1), this number would be multiplied by 2.15 to determine [REDACTED]'s monthly gross income. Here, [REDACTED]'s monthly gross income was \$709.16. This calculation was not disputed by the Claimant.

The next step is to calculate monthly net income pursuant to 7 AAC 47.155(d)(2). To apply this regulation correctly, it is necessary to know the employee's payroll deductions. In this case, the record does not contain copies of any of [REDACTED]'s paychecks or paystubs. Accordingly, the amounts of the deductions from [REDACTED]'s gross paycheck, (including employer-required deductions for federal and state income tax, FICA, unemployment insurance, union dues, insurance premiums, and retirement, and voluntary health insurance premiums), are unknown.

Section 940-4 of the Division's CAMA Program Manual (Ex. 7) addresses this situation. If none of the deductions from gross pay referenced in 7 AAC 47.155(d)(2) have been made, net income is calculated by applying a 20% deduction from gross income. Here, 20% of Johnny's monthly gross pay (\$709.16) equals \$141.83. Subtracting \$141.83 from \$709.16 results in net monthly income of \$567.33. This is \$67.33 more than the CAMA program's net monthly income limit of \$500.00 for a household of three (3) persons. Accordingly, the Division correctly determined, pursuant to 7 AAC 47.155(d), that the Claimant's household's monthly net income exceeded the CAMA program's monthly net income limit of \$500.00 for a household of three (3) persons.

### CONCLUSIONS OF LAW

1. The Claimant failed to satisfy her burden of proof as Claimant. She did not prove, by a preponderance of the evidence, that she is entitled to CAMA benefits.
2. The Division correctly determined that:
  - a. The Claimant's son, [REDACTED] was a member of the Claimant's household pursuant to 7 AAC 150(d) and 7 AAC 47.155(b);
  - b. The income of the Claimant's son [REDACTED] must be included within the Claimant's household income pursuant to 7 AAC 47.150(b); and
  - c. [REDACTED]'s monthly net income exceeded the CAMA program's monthly net income limit of \$500.00 for a household of three (3) persons pursuant to 7 AAC 47.155(d) and Section 940-4 of the Division's CAMA Program Manual.
3. The Division therefore correctly denied the Claimant's February 11, 2008 CAMA program application because the Claimant's household's monthly net income exceeded the CAMA program's monthly net income limit of \$500.00 for a household of three (3) persons.

## DECISION

The Division correctly denied the Claimant's February 11, 2008 CAMA program application because the Claimant's household's monthly net income exceeded the CAMA program's monthly net income limit of \$500.00 for a household of three (3) persons.

## 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 \_\_\_\_\_ day of January, 2009.

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Jay Durych  
Hearing Authority

## CERTIFICATE OF SERVICE

I certify that on this \_\_\_\_\_ day of January, 2009, true and correct copies of the foregoing were sent to:

Claimant – Certified Mail, Return Receipt Requested.

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

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Al Levitre  
Law Office Assistant I