



2008, and there was no child living in the home. (Ex. 2.2). Upon receipt of the report, the Division terminated Claimant's Temporary Assistance and Medicaid benefits effective the end of February 2008. The Division also adjusted Claimant's Food Stamp benefits amount to reflect a household of one. The Division sent notices to Claimant regarding these actions on February 12, 2008. (Ex. 2.3-2.4).

3. Claimant requested a fair hearing on February 20, 2008, stating her son, a minor, does live with her.

4. Claimant does not have a minor child living with her. This finding is based on the following:

a. The Early Fraud Findings Report stated there were very few clothes belonging to her son in the home. There were a couple of football jerseys, a pair of sweat pants and a pair of shoes in the front hall closet. The investigator also reported talking to the landlord who recounted that the only child staying with the Claimant is the older child, who is nineteen. The investigator also reported calling the Claimant's father, who stated the minor child lives with him, and has lived with him for more than a year. The Claimant's father also stated the child sees his mother occasionally.

Ex. 2.2.

b. Claimant testified at hearing that her son does stay at her home over 50% of the time. However, she did testify he does go back and forth between her and her mother's home. She also testified her father has alzheimers and did not know what he was talking about when he talked to the investigator. Claimant also testified her son does not have many clothes, and does not have many clothes.

c. More weight is given to the investigator's report. The investigator is a disinterested third party, with little to gain in making her report. In contrast, Claimant could lose her benefits if she reported her son out of her household. Furthermore, Claimant was very adamant in not wanting her father to testify. Her reasons for not wanting his testimony were not credible. Claimant did not offer any other testimony or evidence to substantiate her claim.

### **PRINCIPALS OF LAW**

1. The party wishing to change the status quo has the burden of proof.<sup>1</sup> The party wishing to change the status quo is the Division, therefore it has the burden. The burden of proof is by a preponderance of the evidence.<sup>2</sup>

2. To be eligible for Temporary Assistance, the household must have a dependent child. 7 AAC 45.210. A dependent child is a person who has not attained 18 years of age or is 19 years of age and is

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<sup>1</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>22</sup> *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.

a full-time student in a secondary school or in the equivalent level of vocational or technical training. AS 47.27.900.

3. Temporary Assistance benefits automatically qualify for Medicaid benefits. 7 AAC 43.020(a).

4. Eligibility and the amount of Food Stamps benefits a household receives is based upon the number of household members. 7 CFR 273.1. As the number of household members increases, the amount of Food Stamps benefits is increased.

### **ANALYSIS**

It has already been determined that Claimant's minor child does not live in her household. To be eligible for Temporary Assistance, the household must have a dependent child. Since Claimant is the only person in her household, Claimant does not qualify for Temporary Assistance. Therefore, the Division was correct to terminate her Temporary Assistance.

The amount of Food Stamps benefits a household receives is based upon the number of household members. The Claimant was receiving Food Stamps based on a household which included her child. Since Claimant is the only person in her household, her Food Stamps benefits should be based on a household of one, instead of two. Thus, the Division was correct to reduce her Food Stamp benefits to reflect a household of one individual.

Claimant qualified for Medicaid only because she is qualified for Temporary Assistance benefits, if she is no longer eligible for Temporary Assistance, she is also not eligible for Medicaid. 7 AAC43.020(a). Since she is no longer eligible for Temporary Assistance, she is also not eligible for Medicaid.

### **DECISION**

Based upon a preponderance of the evidence, the Division met its burden of proof, therefore:

The Division was correct to termination Claimant's Temporary Assistance and Medicaid benefits and reduce her Food Stamp benefits because she was the only member in her household.

This decision is supported by the above mentioned citations as well as AS 47.27.015(c); 7 AAC 45.970(e); 7 AAC 49 et seq.

### **APPEAL RIGHTS**

If the Applicant is dissatisfied with this decision for any reason, the Applicant has the right to appeal by requesting a review by the Director. To do this, send a written request directly to:

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

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

Dated: This \_\_\_\_ day of May, 2008.

Patricia Huna-Jines  
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this \_\_\_\_ day of May, 2008, true and correct copies of the foregoing were sent to:

Claimant – Certified Mail, Return Receipt Requested.

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

Case File  
Hearing File

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Al Levitre, Law Office Assistant I