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

In the Matter of)	
)	
██████████,)	OHA Case No. 08-FH-355
)	
Claimant.)	Division Case No. ██████████
_____)	

FAIR HEARING DECISION

STATEMENT OF THE CASE

██████████ (Claimant) applied for General Relief Assistance on May 15, 2008. (Ex. 1) On May 19, 2008, the Division sent the Claimant written notice informing the Claimant his application was denied. (Ex. 2.4) The Claimant requested a fair hearing on May 20, 2008. (Ex. 3) This office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to the Claimant's request, a hearing was held on June 17, 2008. The Claimant attended the hearing telephonically and represented himself. ██████████, a Public Assistance Analyst with the Division, attended in person and represented the Division.

ISSUE

The Division argued it was required to deny the Claimant's May 15, 2008 application for General Relief Assistance because his household's monthly income exceeded the allowable income limit for General Relief Assistance.

The Claimant did not dispute that his household's monthly income was greater than allowed to qualify for General Relief Assistance. Instead he argued that the General Relief Assistance regulations denied relief to persons in dire need which was contradictory to the actual public assistance statutes and their underlying purpose.

The resulting issue is: Was the Division correct when it denied the Claimant's May 15, 2008 application for General Relief Assistance?

FINDINGS OF FACT

1. The Claimant applied for General Relief Assistance on May 15, 2008 for his two person household. (Ex. 1)
2. The reason the Claimant applied for General Relief Assistance was because he had received an eviction notice because his home rent was in arrears. (Exs. 2.0, 3)
3. The Claimant's only income in May 2008 was from unemployment. He received a total of three \$98.00 checks in May 2008 from unemployment. (Ex. 2.1) His total unemployment compensation for May 2008 was therefore \$294.
4. The other member of the Claimant's household's only income is Supplemental Security Income. She receives \$637 monthly in Supplemental Security Income benefits. (Ex. 2.2)
5. The Division added together the household income for the Claimant and the other household member and determined the total household monthly income for May 2008 was \$931. (Ex. 2.0) The Division then denied the Claimant's General Relief Assistance application because the household's net income exceeded the General Relief Assistance limit of \$400 for a two person household. (Ex. 2.4)
6. The Claimant did not dispute any of the amounts used by the Division. He did not dispute that his household income exceeded the General Relief Assistance program's income limit.

PRINCIPLES OF LAW

This case involves the denial of an application for benefits. When an application is denied, the Claimant has the burden of proof¹ by a preponderance of the evidence.²

General Relief Assistance is a program that provides cash assistance to needy persons, who have limited income and resources, based upon their financial need. 7 AAC 47.140; 7 AAC 47.150; 7 AAC 47.160.

The Alaska Statutes that authorize General Relief Assistance provide that it may be given "to a needy person who is eligible under the regulations of the department." AS 47.25.120. The statutes define a "needy person" as a "needy resident of the state who is not eligible for aid from another public agency or department providing similar services in the state." AS 47.25.300(3).

¹ "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)

² 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.

The General Relief Assistance regulations determine “need” based upon household income. 7 AAC 47.150(b). A two person household that makes more than \$400 in net monthly income is not in financial need for the purposes of the General Relief Assistance program. *Id.*

Regulations are binding upon the agencies that issue them. 1 Richard J. Pierce, Jr. *Administrative Law Treatise* § 6.6 (4th ed. 2002) “Administrative agencies do not have jurisdiction to decide issues of constitutional law.” *Alaska Public Interest Research Group v. State*, 167 P.3d 27, 36 (Alaska 2007)

ANALYSIS

The Claimant did not dispute that his household income exceeded the maximum income limit for a General Relief applicant. He did not dispute that the General Relief regulations on their face required his application be denied. Instead he argued that the General Relief income limitations were inconsistent with the actual public assistance statutes and their underlying purpose.

The statutes that authorize General Relief Assistance direct the Division to determine eligibility “under the regulations of the department.” AS 47.25.120. In this case, the Division followed the regulation when it determined the Claimant was not financially eligible for assistance. The Claimant’s argument is therefore an attack upon the regulation that established the General Relief Assistance financial eligibility requirements. However, these regulations are binding upon the Department of Health and Social Services. 1 Richard J. Pierce, Jr. *Administrative Law Treatise* § 6.6 (4th ed. 2002) This Office is charged with determining whether or not the Division properly applied the regulation and therefore lacks jurisdiction to ignore or invalidate the departmental regulations. Although the Claimant did not make a specific constitutional attack upon the General Relief Assistance regulations, this office is also without “jurisdiction to decide issues of constitutional law.” *Alaska Public Interest Research Group v. State*, 167 P.3d 27, 36 (Alaska 2007)

The Claimant’s objection is noted for the record. However, the Claimant’s request that the regulation be ignored or invalidated is denied due to a lack of jurisdiction.

CONCLUSIONS OF LAW

1. The Claimant was not entitled to receive General Relief Assistance because his two person household’s income was greater than the General Relief Assistance program’s \$400 income limit.
2. This Office does not possess jurisdiction to address the Claimant’s argument that the General Relief Assistance regulations should be ignored or invalidated.

DECISION

The Division was correct to deny the Claimant’s May 15, 2008 application for General Relief Assistance.

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, the Claimant must 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

An appeal 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 18th day of August, 2008.

Larry Pederson
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 18th day of August 2008, 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

Al Levitre, Law Office Assistant I