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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-359
)
 Claimant.) Division Case No. [REDACTED]
_____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) was receiving Alaska Temporary Assistance and Food Stamp benefits in May 2008. (Ex. 1) On May 6, 2008, the Division of Public Assistance (Division) sent the Claimant separate written notices it was reducing her Temporary Assistance and Food Stamp monthly benefits beginning in the month of June 2008. (Exs. 2.9 – 2.10) On May 13, 2008, the Division sent the Claimant additional written notices it was reducing her Temporary Assistance and Food Stamp monthly benefits beginning in the month of June 2008. (Exs. 2.11 – 2.12) The Claimant requested a fair hearing on May 14 and 19, 2008. (Exs. 3.0, 3.2) This office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to the Claimant's request, a hearing was held on June 17 and July 22, 2008. The Claimant attended the hearing telephonically and represented herself. [REDACTED], Public Assistance Analyst with the Division, attended in person and represented the Division.

ISSUES

1. Did the Division's Temporary Assistance and Food Stamp benefit reduction notices sent on May 6 and May 13, 2008 comply with minimum due process notice requirements?
2. Was the Division correct to reduce the Claimant's Temporary Assistance and Food Stamp benefits beginning in the month of June 2008 because she had allegedly not complied with the terms of her Family Self-Sufficiency Plan (FSSP)?

FINDINGS OF FACT

1. Claimant began receiving Temporary Assistance and Food Stamp benefits in March 2008. (Ex. 1)

2. Claimant completed and signed a Family Self-Sufficiency Plan (FSSP) with her case manager at Nine Star¹ on April 3, 2008. The FSSP provided that she was to take a certified medical assistant course at the [REDACTED] beginning on April 4, 2008, and that she was to keep an appointment with her case manager to review and update her plan on May 7, 2008. (Exs. 2.1 – 2.2)

3. The Claimant did not complete her certified medical assistant course. On April 24, 2008, the [REDACTED] staff called the Claimant's Nine Star case manager and told him the Claimant stopped attending the course after April 14, 2008. (Ex. 2.3) On April 28, 2008, [REDACTED] staff emailed the Claimant's Nine Star case manager and informed him the Claimant was dropped from the course for non-attendance. (Ex. 2.5)

4. On May 5, 2008, the Claimant's Nine Star case manager requested the Division impose a penalty against the Claimant's Public Assistance benefits because she had been dropped from her certified medical assistant course for non-attendance. (Ex. 2.6)

5. On May 6, 2008, the Division mailed the Claimant a notice stating her Temporary Assistance benefits would be reduced to \$493 per month beginning the month of June 2008. (Ex. 2.9) The notice read:

Your family's Temporary Assistance benefit for June 2008 will go down because you or a member of your family did not complete the following Family Self-Sufficiency Plan or work activity: CONTACT [REDACTED] YOUR NINE STAR CASE MANAGER AT 644-8259.

(Ex. 2.9)

6. On May 6, 2008, the Division mailed the Claimant a notice stating her Food Stamp benefits would decrease 25% to \$267 per month beginning with the month of June 2008. The notice read "[t]his reduction in your monthly food stamp benefit is due to you or someone in your household not following Temporary Assistance Program rules." (Ex. 2.10)

7. The Claimant was scheduled to meet with her Nine Star case manager on May 7, 2008 to review and update her FSSP. She did not meet with him. (Ex. 2.7) On May 7, 2008, the Nine Star case manager requested a penalty against the Claimant's Public Assistance benefits because she did not update her FSSP. (Ex. 2.8)

8. On May 13, 2008, the Division mailed the Claimant a notice stating her Temporary Assistance benefits would be reduced to \$493 per month beginning with the month of June 2008. (Ex. 2.11) The notice read as follows:

¹ Nine Star is a private company that coordinates work training and education programs for Public Assistance recipients.

Your family's Temporary Assistance benefit for June 2008 will go down because you or a member of your family did not complete the following Family Self-Sufficiency Plan or work activity: CONTACT [REDACTED] YOUR NINE STAR CASE MANAGER AT 644-8259.

(Ex. 2.11)

9. On May 13, 2008, the Division mailed the Claimant a notice stating her Food Stamp benefits would decrease to \$267 per month beginning with the month of June 2008. The notice read "Reason for the change: YOU ARE UNDER A NINE STAR PENALTY." (Ex. 2.12)

10. The Claimant did not dispute that she had been dropped from her certified medical assistant class due to non-attendance. She missed at least four days due to her and her minor son both having the flu, when her class only allowed two absences regardless of the cause. She also did not dispute she missed her May 7, 2008 FSSP meeting.

PRINCIPLES OF LAW

This case involves two issues. The first is whether or not the benefit reduction notices mailed to the Claimant satisfied minimum procedural due process standards. The second is whether or not the Division was correct when it imposed a financial penalty reducing the Claimant's monthly Temporary Assistance benefit amount.

The Division has the burden of proof² by a preponderance of the evidence³ when it seeks to terminate or modify benefits.

A Public Assistance recipient is required to "have timely and adequate notice detailing the reasons for" adverse actions taken on her Public Assistance benefits. *Goldberg v. Kelly*, 397 US 254, 267 – 268 (1970). "[W]ritten notice to the client must detail the reasons for the proposed adverse action, including the statute, regulation, or policy upon which that action is based." 7 AAC 49.070. For the Food Stamp program, an "adequate" notice must explain "in easily understandable language: The proposed action; the reason for the proposed action." 7 CFR 273.13(a)(2).

The Alaska Temporary Assistance program requires that its adult participants participate in the development of a FSSP. AS 47.27.030(a). If a Temporary Assistance recipient, without good cause, does not comply with the terms of the FSSP, the Division "will impose a penalty upon the

² "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)

³ 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 (5th Ed. 1979)

family in accordance with 7 AAC 45.980.” 7 AAC 45.257(d). The penalty is a reduction in the amount of the Temporary Assistance the family receives. AS 47.27.085(a); 7 AAC 45.980(a)(1). The Food Stamp program imposes a 25% monthly benefit reduction if a Temporary Assistance benefit reduction penalty is imposed “because of the failure of a food stamp household member to perform an action required under the assistance program.” 7 CFR 273.11(j).

ANALYSIS

The initial question in this case is whether or not the various benefit reduction notices sent to the Claimant satisfy the minimal procedural due process requirements set forth in *Goldberg v. Kelly*, 7 AAC 49.070 and 7 CFR 273.13(a)(2). This is a purely legal issue.

The Claimant received two written notices each for the Temporary Assistance and Food Stamp programs. The reasons she was sent these notices were because she had failed to comply with her FSSP by not completing her certified medical assistant class and by not keeping her May 7, 2008 FSSP appointment with her Nine Star caseworker. A review of the two Temporary Assistance notices, sent respectively on May 6, 2008 and May 13, 2008 reveals neither of these notices inform the Claimant of the specific reasons for the Temporary Assistance benefit reduction. Instead both of the notices contain the identical generic language and direct the Claimant to contact her case manager:

Your family’s Temporary Assistance benefit for June 2008 will go down because you or a member of your family did not complete the following Family Self-Sufficiency Plan or work activity: CONTACT [REDACTED] YOUR NINE STAR CASE MANAGER AT 644-8259.

(Exs. 2.9, 2.11) This is not legally adequate notice. It does not detail the reasons for the Claimant’s benefit reduction as required by *Goldberg v. Kelly* and 7 AAC 49.070. Because both the Temporary Assistance benefit reduction notices are legally deficient, the Division was not correct when it reduced the Claimant’s Temporary Assistance benefits beginning with the month of June 2008.

The Claimant also received two written notices that her Food Stamp benefit amount would be reduced. (Exs. 2.10, 2.12) These notices, like the Temporary Assistance notices, do not detail the exact reasons for the Claimant’s benefit reduction. The May 6, 2008 notice does however inform the Claimant her Food Stamp benefit reduction is because of a failure to follow “Temporary Assistance Program rules.” (Ex. 2.10) The May 13, 2008 notice notifies the Claimant the Food Stamp benefit reduction is due to a “NINE STAR PENALTY.” (Ex. 2.12)

The May 6, 2008 notice is arguably adequate because it does inform the Claimant her Food Stamp penalty is due to a problem with her Temporary Assistance benefits, i.e. it states the “reason for the proposed action.” 7 CFR 273.13(a)(2). However, because the Food Stamp penalty is derivative, the failure to adequately notify the Claimant of the reason for her Temporary Assistance benefit reduction means that the May 6, 2008 Food Stamp benefit reduction notice is also legally inadequate.

The May 13, 2008 Food Stamp benefit reduction notice is also not legally adequate. The notice merely informs the Claimant she has a "NINE STAR PENALTY." It does not inform the Claimant of the reason for the penalty. It also does not inform the Claimant that her Food Stamp benefits are being reduced because she has a Temporary Assistance benefit penalty.

Because the Food Stamp benefit reduction notices are not legally adequate, the Division was not correct to reduce the Claimant's Food Stamp benefits.

This Decision therefore finds for the Claimant on purely procedural due process grounds, the failure of the Division's benefit reduction notices to comply with minimum procedural due process notices requirements. It is therefore not necessary to address the second issue, whether or not the Claimant's acknowledged failure to follow her FSSP requirements authorized the Division's action in reducing her Temporary Assistance and Food Stamp benefit amounts.

CONCLUSIONS OF LAW

1. The Division's May 6 and May 13, 2008 Temporary Assistance and Food Stamp benefit reduction notices did not comply with the minimum procedural due process notice requirements as set out in *Goldberg v. Kelly*, 7 AAC 49.070, and 7 CFR 273.13(a)(2).

2. Because of the defective notices, the Division could not legally impose a financial penalty against the Claimant that reduced her Temporary Assistance and Food Stamp benefits beginning with the month of June 2008.

DECISION

The Division was not correct to impose a financial penalty reducing the Claimant's Temporary Assistance and Food Stamp benefits beginning with the month of June 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, 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.

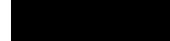
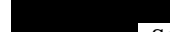
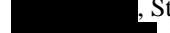
DATED this 16th day of September, 2008.

Larry Pederson
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 16th day of September
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