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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-375
)	
Claimant.)	Division Case No. ██████████
_____)	

FAIR HEARING DECISION

STATEMENT OF THE CASE

██████████ (Claimant) applied for Temporary Assistance and Food Stamp benefits for her two person household on April 7, 2008. (Ex. 1) The Claimant received Temporary Assistance benefits for April, May and June 2008. She also received Food Stamp benefits for May and June 2008.¹

The Claimant requested a fair hearing on May 29, 2008 because she thought the Division did not calculate her income properly for the Temporary Assistance and Food Stamp program benefits. (Ex. 10) This office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to the Claimant's request, a hearing was held on June 24 and July 28, 2008. The Claimant attended the hearing telephonically and represented herself. ██████████, a Public Assistance Analyst with the Division, attended in person and represented the Division. ██████████ a Workforce Development Specialist employed by the Division, who had previously been the Claimant's Eligibility Technician with the Division, attended telephonically on June 24, 2008 and testified on the Division's behalf. ██████████, a case manager at Nine Star Enterprises (Nine Star),² attended telephonically on July 28, 2008 and testified on the Division's behalf.

¹ The Claimant was receiving Food Stamp benefits from the state of ██████████ which terminated the end of April 2008. (Ex. 3.1) Thus, the Claimant did not receive Food Stamp benefits from the state of Alaska in April 2008.

² Nine Star Enterprises is a private company that provides workplace training, education, and development assistance to public assistance recipients.

ISSUE

In her request for a hearing, the Claimant generally asserted that her Temporary Assistance and Food Stamp benefits were not determined correctly because her income was not properly considered. The Claimant also asserted during the hearing that her benefits for the months of April, May and June were not properly calculated because an additional deduction was not provided for higher shelter costs. Therefore, the issue is:

Did the Division calculate correctly the Claimant's benefits for the months of April, May, and June 2008?

FINDINGS OF FACT

1. Claimant has a two person household consisting of herself and one minor child. (Ex. 1)
2. The Claimant applied for Temporary Assistance benefits on April 7, 2008. At the time of her application, she had housing costs of \$700 per month (\$350 for trailer rent and \$350 for trailer space rent) and was allowed the Temporary Assistance standard utility deduction of \$294. (Ex. 30.13)
3. The Claimant developed and signed a Family Self-Sufficiency Plan (FSSP) on April 16, 2008, that called for her to meet with a Nine Star case worker and develop a new FSSP. (Exs. 30.7 – 30.8)
4. The Claimant did not meet with her Nine Star case manager on April 24, 2008, as scheduled. (Ex. 5) As a result, the Division imposed a penalty reducing the Claimant's Temporary Assistance benefits for the months of April, May and June 2008, because she did not meet with her case manager. (Exs. 6 – 8.0) The Claimant did not dispute the penalty. (Claimant testimony)
5. On April 30, 2008, the Division of Public Assistance (Division) sent the Claimant written notification that she would receive Temporary Assistance benefits of \$394 for April 2008, \$252 for May 2008, and \$90 for June 2008. (Ex. 7)
6. The Division lifted the Claimant's penalty effective April 30, 2008, after she met with her Nine Star case manager on April 29, 2008 and developed and signed a new FSSP. (Exs. 8.1, 30.5 – 30.6) After lifting the penalty, the Division revised the Claimant's Temporary Assistance benefits for the months of April and May 2008. On April 30, 2008, the Division increased the Claimant's benefits by \$71 for the month of April and by \$329 for the month of May. (Ex. 8.1) The Division also increased her Food Stamp benefit amount for May 2008 of \$267 by \$89, and changed her Food Stamp benefit amount for June 2008 from \$267 to \$243. (Exs. 7, 8.1)
7. The Claimant's undisputed gross income for April 2008 was \$25.02. (Ex. 7; Claimant testimony) Based upon this income, the Division initially determined the Claimant was entitled to receive \$394 in Temporary Assistance benefits for the month of April 2008. (Ex. 8.0) That was a reduced benefit amount because the Claimant had a penalty of \$360.78 imposed against her for not showing up to meet with her Nine Star case manager on April 24, 2008. (Exs. 8.0,

8.10) After applying this penalty, the Division determined the maximum benefit the Claimant could have received for April 2008 was \$394.

8. After the Division lifted the penalty on April 30, 2008, the Claimant's Temporary Assistance payment for April 2008 increased by \$71. (Ex. 8.1; ██████ testimony) That increased her total Temporary Assistance benefit payment for April 2008 to \$465 (\$394 plus \$71).

9. The Claimant's revised Temporary Assistance benefit amount for April 2008 of \$465 was calculated based upon the following: a partial month of benefits (24 days) because she applied on April 7, 2008, income of \$25.02; rent of \$700; and she was allowed a standard utility deduction of \$294. (Exs. 8.6 – 8.10)

10. The Claimant's April 29, 2008 FSSP states she was scheduled to begin working at MatSu Social Services. (Ex. 30.5) ██████, who was then the Claimant's Eligibility Technician with the Division, wrote a case note on April 29, 2008. (Ex. 7) The case note shows she phoned ██████ Social Services on April 29, 2008, and was told the Claimant would begin working on May 5, 2008 for 20 hours per week at an hourly rate of \$10.50 per hour. (Ex. 7) Based upon her April 29, 2008 conversation with ██████ Social Services, ██████ determined the Claimant would be paid for 60 hours of work in May 2008, and receive gross pay of \$630 in May 2008, and that she would then work a full month for June 2008 on a part-time basis (20 hours per week) for \$930 in gross income for the month of June 2008. (Ex. 7)

11. For the month of May 2008, the Division initially determined the Claimant was entitled to receive \$252 in Temporary Assistance benefits. This was based upon the Claimant's projected income for this month of \$630 (60 hours), a work deduction of \$270 (based on her anticipated gross employment income of \$630); rent of \$700 and was allowed a standard utility deduction of \$294. (Ex. 7). This initial Temporary Assistance payment for May 2008 was increased by \$329, after the Division lifted the benefit penalty on April 30, 2008. (Ex. 8.1) This increased the Claimant's Temporary Assistance benefit payment for May 2008 to \$581 (\$252 plus \$329).

12. For the month of June 2008, the Division initially calculated the Claimant's Temporary Assistance benefit to be \$90. This was determined based upon the following: the Claimant's projected income for June 2008 of \$903; a work deduction of \$____ \$300.60 (based on her anticipated gross employment income of \$903); rent of \$700; and was allowed a standard utility deduction of \$294. (Exs. 7, 8.24-8.28) The Claimant, after having her benefit penalty lifted on April 30, 2008, had her Temporary Assistance payment for May 2008 increased to \$419. (Ex. 8.1)

13. The Claimant testified that the Division's benefit calculations for May and June 2008 were not correct for two reasons. First, she stated that her initial pay at MatSu Social Services would only be \$7.15 (minimum wage) per hour and it would not increase to \$10.50 until she had completed training. Second, she did not actually begin work at ██████ Social Services on May 5, 2008 as originally scheduled. She actually started to work on June 2, 2008. (Ex. 30.27) However, she did not inform her case manager at Nine Star of this change until she had her FSSP appointment on May 20 or 21, 2008. (Claimant testimony) The Claimant completed and signed

an FSSP on May 21, 2008 reflecting that her training at MatSu Social Services was not scheduled to begin until June 2, 2008. (Exs. 30.3 – 30.4)

14. The Claimant did not contact the Division and inform it that her job with [REDACTED] Social Services did not begin in early May 2008 as planned. (Claimant testimony) She testified she dealt only with her case manager at Nine Star, who did not inform her that she needed to contact her Eligibility Technician with the Division. She further testified that she had difficulty understanding her Nine Star case manager.

15. [REDACTED] was the Claimant's case manager at Nine Star. She testified that she told the Claimant that she was only dealing with her employment issues and that the Claimant had to contact the Division for anything dealing with benefits. [REDACTED] never directly answered the question as to whether she told the Claimant she should inform her Division Eligibility Technician about the fact her job at [REDACTED] Social Services was not scheduled to begin until June 2008, saying only she told the Claimant that she only handled case management and not benefits. English is not [REDACTED] native language. While her English speaking skills were less than perfect, she was understandable.

16. The Division received the Claimant's Fair Hearing request on May 29, 2008. (Ex. 10)

17. The Claimant testified that her new Eligibility Technician was reevaluating her Temporary Assistance benefits for June 2008. No evidence was introduced into the record as to whether or not that had been completed, or whether or not her benefits for June 2008 had been adjusted.

PRINCIPLES OF LAW

This case involves the Claimant's challenge to the Division's initial determination of her benefits. When the Claimant challenges her benefit amount, she has the burden of proof³ by a preponderance of the evidence.⁴

The Temporary Assistance program uses what is referred to as prospective income determination. When calculating benefits, the Division is required to make its "best estimate" of what income a recipient will receive during a particular eligibility month. 7 AAC 45.425(a). If the exact amount of expected income is uncertain, the Division is to use "only that amount that can be anticipated with reasonable certainty." 7 AAC 45.425(c).

A Temporary Assistance program participant (applicant or recipient) "shall cooperate with the department, or its designee, to develop and sign a family self-sufficiency plan." AS 47.27.030(a). A Temporary Assistance participant who does not is subject to a penalty that is a "40 percent

³ "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)

⁴ 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)

[reduction] of the maximum cash assistance that would be payable . . . for a family of the same size, assuming the family has no income counted . . . until the date the department determines that the family is in compliance.” AS 47.27.085(a)(1); 7 AAC 45.980(a).

The maximum Temporary Assistance payment a family of two persons, one of whom is a parent, with no income, could receive in calendar year 2008 is \$821. AS 47.27.025(b)(2); 7 AAC 45.523(a)(1); *Alaska Temporary Assistance Manual Addendum 2*.

A Temporary Assistance recipient is allowed a number of deductions. An employed recipient is allowed a work deduction from her gross employment income consisting of \$150 plus 25 percent of the remainder of her gross employment income. 7 AAC 45.480(b)(2). The Temporary Assistance program does not provide a deduction for shelter costs; it assumes that shelter costs (rent and utilities) are a minimum of 30 percent of the appropriate need standard for her family size and type. 7 AAC 45.527(a)(1). The need standard for a family of two persons, one of whom is a parent, is \$1,230. 7 AAC 45.520(a)(1); *Alaska Temporary Assistance Manual Addendum 2*.

If a Temporary Assistance recipient’s shelter costs are less than 30 percent of the appropriate need standard, the recipient is actually penalized for low shelter costs; a Temporary Assistance recipient does not receive a larger Temporary Assistance benefit for high shelter costs. 7 AAC 45.525(b)(2); 7 AAC 45.527(a).

The Food Stamp program is a federal program administered by the State. 7 CFR 271.4(a). The Code of Federal Regulations (CFR) contains the rules for calculating the amount of a recipient’s monthly Food Stamp benefit. The amount of a recipient’s monthly Food Stamp benefit is based upon her income and expenses. 7 CFR 273.10(e). Income from Temporary Assistance benefit payments is considered income for Food Stamp program purposes. 7 CFR 273.9(b)(2)(i).

ANALYSIS

The Claimant has challenged the amount of benefits she received in each of the months of April, May, and June 2008. Specifically, she argued that the Division did not properly consider her income and did not provide her with an additional deduction for higher shelter costs incurred during these three months.

A. April 2008

For the month of April 2008, there is no dispute with regard to the Claimant’s income which was \$25.02. This income was effectively zero because it was less than the work deduction (\$150 plus 25 percent of the remainder of her gross employment income.) to which she was entitled. Moreover, because her household consisted of two persons (a parent and a minor child) with no income whatsoever, the maximum Temporary Assistance amount she could have received in April 2008, is \$821. Therefore, the Claimant’s challenge to her April 2008 benefit amount calculation and the evidence, raises two issues. First, was she entitled to a different benefit amount because of her high shelter costs? Second, did the Division calculate her benefit penalty amount correctly?

1. Shelter

A review of the facts in this case shows that the Claimant's shelter costs (\$700 rent and \$294 standard utility deduction) exceed \$369 (30 percent of her \$1,230 need standard). Because her costs exceeded \$369, she was not subject to being penalized for low shelter costs and was not entitled to receive a higher Temporary Assistance benefit amount due to high shelter costs. 7 AAC 45.525(b)(2); 7 AAC 45.527(a). Thus, the Division properly considered the Claimant's shelter costs in calculating her benefit amount for the month of April 2008.

2. Benefit Penalty

The Division imposed a benefit penalty against the Claimant for her initial failure to meet with her case manager at Nine Star. The Claimant did not dispute this penalty and the penalty is therefore considered valid. By statute, AS 47.27.085(a)(1), the benefit penalty that the Division can impose is forty percent (40%) of the maximum benefit amount the Claimant could have received. Therefore, the maximum benefit the Claimant could have received, is \$328.40 (40% of \$821). However, for some inexplicable reason, the computer printout showing the Division's calculations has a benefit penalty of \$360.78. (Ex. 8.10) This is 43.94% of \$821, the maximum benefit amount the Claimant could have received. In other words, the Division's benefit penalty exceeded the amount it was legally allowed to assess against the Claimant. Thus, the Division is required to revisit this issue and recalculate the Claimant's April 2008 Temporary Assistance benefit payment using the correct benefit penalty amount.

The Claimant was not receiving Food Stamps from the State of Alaska in April 2008.⁵ It is therefore not necessary for the Division to recalculate her Food Stamp benefit amount for April 2008.

B. May 2008

The Claimant's challenge to her May 2008 benefit amount calculation and the evidence raises two issues. First, was the Claimant entitled to a benefit adjustment due to her high shelter costs? Second, did the Division determine correctly her gross employment income for May 2008 at \$630. It should be noted there is no benefit penalty issue for the month of May 2008. When the Division lifted the penalty on April 30, 2008, the benefits for May 2008 were re-determined to eliminate the penalty. As a consequence, more benefits were issued to the Claimant.

1. Shelter

The Claimant's shelter costs (\$700 rent and \$294 standard utility deduction) exceed \$369 (30 percent of her \$1,230 need standard). Because her costs exceeded \$369, she was not subject to being penalized for low shelter costs. However, because of the way in which Temporary Assistance calculates benefits, she was not entitled to receive a higher Temporary Assistance benefit amount due to high shelter costs. 7 AAC 45.525(b)(2); 7 AAC 45.527(a). Thus, the

⁵ The record shows the Claimant had been receiving Food Stamp benefit assistance from the State of ██████████ which was terminating the end of April 2008. (Ex. 3.1) April Food Stamp assistance is therefore not an issue for this case.

Division properly considered the Claimant's shelter costs in calculating her benefit amount for the month of April 2008.

2. Employment Income

The income issue for May 2008 requires a credibility determination. The Claimant did not dispute that she was to originally begin work at [REDACTED] on May 5, 2008 and work 20 hours per week. What she did dispute was her pay rate. The Claimant testified that her pay rate would be only minimum wage (\$7.15 per hour) while she was in training and that she would receive \$10.50 after she completed her training.

The contrasting evidence comes from [REDACTED], the Claimant's eligibility technician, who called [REDACTED] on or about April 29, 2008 and was told the Claimant would begin working at [REDACTED] on May 5, 2008, for 20 hours per week, at an hourly pay rate of \$10.50 per hour. (Ex. 7) [REDACTED] informed [REDACTED] the Claimant would receive two paychecks in May, on May 16, 2008 for 20 hours, and on May 30, 2008 for 40 hours. *Id.* [REDACTED] then calculated the Claimant's May 2008 gross employment income from [REDACTED] as being \$630 (\$10.50 hourly wage times 60 hours). *Id.* The differing evidence necessitates a credibility determination.

[REDACTED] was more credible. She does not have a financial interest in the matter. She drafted a contemporaneous case note that reflected her conversation with [REDACTED] personnel. The Claimant, on the other hand, has a financial motivation. A lower wage for her means higher benefits for her. Additionally, the Claimant had the burden of proof in this case. She could have produced a statement from [REDACTED] showing what the exact pay arrangement was. She did not. It is therefore established, for the purposes of this Decision, that the Claimant's hourly wage at [REDACTED] was supposed to be \$10.50 per hour in May 2008.

The difficulty in this case is that the Claimant did not begin work at [REDACTED] in May 2008 as scheduled. However, she did not inform her eligibility technician at the Division of this change. She did not inform her work case manager at Nine Star until May 20, 2008. The Division calculated the Claimant's May 2008 Temporary Assistance benefit amount on April 29, 2008 and April 30, 2008. (Exs. 7, 8.1) It did so doing the best information available to it: the information then provided it by the Claimant and [REDACTED], her prospective employer. This satisfied the regulatory mandate that the Division base its benefit amount on its "best estimate" of the amount of income that a recipient is reasonably anticipated to receive. 7 AAC 45.425(a) and (c). The Division therefore correctly made its "best estimate" that the Claimant would receive \$630 in gross employment income from [REDACTED] in May 2008.

The fact the Claimant never went to work for [REDACTED] in May 2008 does not change this conclusion due to the fact the Claimant did not report the fact to the Division at all, and only reported it to her Nine Star case manager on May 20, 2008. If the Claimant had reported the change in circumstances as soon as she learned about it, early in May 2008, rather than later, this Decision might well be different. However, given the Claimant's delay in

reporting the change in her anticipated work, she does not present a case where the Division's calculation of her anticipated income for May 2008 should be reversed.

The Division's calculations for Claimant's May 2008 Temporary Assistance benefit amount are summarized in Exhibit 8.19. The calculations show the Claimant received the correct deductions from her employment income, including a work deduction of \$270 (based on her anticipated gross employment income of \$630). As was discussed above, the Claimant is not entitled to a deduction for her high shelter costs. A review of the entire record does not show any other deductions to which the Claimant was entitled. The Division's calculation of the Claimant's Temporary Assistance benefit amount for May 2008, based upon her anticipated income of \$630, was therefore correct.

Given that the Temporary Assistance benefit amount calculations for May 2008 were correct, her Food Stamp benefit amount for May 2008 was also correct.

C. June 2008

The Claimant's challenge to her June 2008 benefit amount calculation and the evidence raise two issues. First, was the Claimant entitled to a benefit adjustment due to her high shelter costs? As shown above, she was not. The remaining issue is whether or not the Division was correct when it determined her gross employment income for June 2008 would be \$903.

1. Shelter Costs

The Claimant alleges that she was entitled to a benefit adjustment because of her high shelter costs. As discussed above, she was not entitled to higher deduction.

2. Employment Income

When [REDACTED] calculated the Claimant's anticipated income for June 2008, she did so based upon her contact with [REDACTED], wherein she was informed the Claimant would be working 20 hours per week at an hourly rate of \$10.50 per hour. (Ex. 7) There was a change in circumstances, being that the Claimant ended up not beginning work with [REDACTED] in May 2008. Instead, she ended up being scheduled for training and work with Mat-Su Social Services beginning June 2, 2008. As is noted above, she did not communicate the change to the Division, instead notifying her Nine Star case manager of the change on May 20, 2008.

The question therefore arises as to whether the Claimant's letting her Nine Star case manager know there was a change in her employment circumstances was sufficient to put the Division on notice that it should reexamine its estimate of the Claimant's income for June 2008. The Division's position was that notice to Nine Star was not notice to the Division because Nine Star only handled work case management services, and not benefits. When asked if she had told the Claimant to tell her Division eligibility technician about the work change, [REDACTED] did not answer directly but rather testified she told the Claimant that Nine Star did not handle benefits.

The Claimant testified that her Nine Star case manager ([REDACTED]) did not tell her to contact her Division eligibility technician. [REDACTED] testimony did not contradict the Claimant. Given [REDACTED] equivocal testimony, the Claimant's testimony is accepted on this point. [REDACTED] the Claimant's Nine Star case manager, when informed on May 20, 2008 that the Claimant's employment situation had changed, did not tell her that she needed to contact her Division eligibility technician.

If the Claimant had contacted the Division on May 20, 2008 advising it of the change in her work circumstances, the Claimant would have given the Division time prior to June 2008 to reevaluate her June 2008 Temporary Assistance benefit amount. While it may be questionable as to whether the Claimant's notification to Nine Star was notice on the Division, the record is clear that the Division received the Claimant's Fair Hearing request on this matter on May 29, 2008, before the June 2008 benefit month started. (Ex. 10)

The Division should therefore have reevaluated the Claimant's Temporary Assistance benefit amount for June 2008, in light of the fact that her employment situation had changed. The Claimant testified her current eligibility technician was looking into the matter. However, nothing in the record indicates whether or not the issue has been resolved. This matter is therefore remanded to the Division to reexamine the issue of the Claimant's Temporary Assistance benefit amount for June 2008. Because Temporary Assistance income is income for Food Stamp benefit determination purposes, Claimant's June 2008 Food Stamp benefit amount is similarly remanded to the Division for re-determination.

In summary, the Division determined correctly the Claimant's Temporary Assistance and Food Stamp benefits for the month of May 2008. The Division correctly anticipated the Claimant's income for May 2008 in light of the information available to it and the appropriate shelter deduction was applied. However, the Division did not determine correctly the Claimant's Temporary Assistance benefits for the month of April 2008. The correct income and shelter deduction was considered but an incorrect penalty benefit amount was used to determine these benefits. Therefore, this matter is remanded to the Division so it can recalculate the Claimant's April 2008 benefits, using the correct penalty benefit amount. In addition, the Division is requested to re-determine the Claimant's June 2008 Temporary Assistance and Food Stamp benefits in light of her change in employment.

CONCLUSIONS OF LAW

1. The Division applied an incorrect penalty benefit amount that caused it to improperly calculate the Claimant's Temporary Assistance benefit amount for the month of April 2008.
2. The Division correctly anticipated the Claimant's income for May 2008 in light of the information available to it. Her May 2008 Temporary Assistance and Food Stamp benefit amounts are therefore correct.
3. The Division was on notice, before June 2008, the Claimant's employment situation had changed. It should have acted upon the information and redetermined the Claimant's

June 2008 Temporary Assistance and Food Stamp benefit amounts, based upon the change in her situation. It did not.

DECISION

1. Upon remand, the Division is to redetermine the Claimant's April 2008 Temporary Assistance benefit amount, after application of the correct benefit penalty amount.
2. The Division correctly determined the Claimant's May 2008 Temporary Assistance and Food Stamp benefit amounts.
3. Upon remand the Division, the Division is to redetermine the Claimant's June 2008 Temporary Assistance and Food Stamp benefit amounts, taking her employment change into account.

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 3rd day of October 2008.

Larry Pederson
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 1st day of October 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