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

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|-----------------------|---|------------------------------|
| In the Matter of |) | |
| |) | |
| ████████████████████, |) | OHA Case No. 08-FH-384 |
| |) | |
| Claimant. |) | Division Case No. ██████████ |
| _____ |) | |

FAIR HEARING DECISION

STATEMENT OF THE CASE

██████████ (Claimant) was a recipient of Adult Public Assistance benefits. (Ex. 1) On May 21, 2008, the Division of Public Assistance (Division) sent the Claimant notice her monthly Adult Public Assistance benefit amount would be reduced beginning with the month of June 2008. (Ex. 2.5) The Claimant requested a fair hearing on May 23, 2008. (Ex. 3) This office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to Claimant's request, a hearing was held on July 1, 2008, The Claimant attended the hearing telephonically and represented herself. ██████████, Public Assistance Analyst with the Division, attended in person to represent the Division.

ISSUES

1. Was the Division correct to reduce the Claimant's monthly Adult Public Assistance benefit amount from \$521 per month to \$421 per month beginning with the month of June 2008?

FINDINGS OF FACT

1. The Claimant is an Adult Public Assistance recipient who resides in her own home with her husband and adult son. (Exs. 1, 2.4) Her husband is not himself eligible for Adult Public Assistance. (Ex. 1) The Claimant applied for a renewal of her Adult Public Assistance benefits on May 1, 2008. (Ex. 2.0)

2. The Claimant receives Supplemental Security Income in the amount of \$637 monthly. (Ex. 2.4)

3. The Claimant's husband began working a part time on call job on March 31, 2008. He is paid every two weeks. His wage is \$7.15 per hour. (Ex. 2.3) He received the following gross paychecks:

| <u>Pay Period Ending</u> | <u>Month Received</u> | <u>Hours Worked</u> | <u>Gross Amount</u> |
|--------------------------|-----------------------|---------------------|---------------------|
| April 13, 2008 | April 2008 | 13 | \$ 92.95 |
| April 27, 2008 | May 2008 | 27 | \$196.63 |
| May 11, 2008 | May 2008 | 19 | \$135.85 |
| May 25, 2008 | May 2008 | 13 | \$ 92.95 |

(Exs. 2.0, 2.2 – 2.3)

4. On May 20, 2008, a Division caseworker added together the Claimant's husband's gross pay for the biweekly pay periods ending April 13, April 27, and May 11, 2008. These three paychecks totaled \$425.43 in gross income. The caseworker then divided \$425.43 by three to arrive at an average biweekly gross pay of \$141.81. She then multiplied his average biweekly gross pay by the biweekly pay conversion factor of 2.15 to arrive at an average gross monthly pay for the husband of \$304.89. (Ex. 2.0)

5. The Division then determined the Claimant's monthly Adult Public Assistance benefit amount as follows:

- a. It first calculated the Claimant's husband's countable monthly earned income was \$119.95. It arrived at this figure by taking his average gross monthly pay of \$304.89, subtracting a \$65 work deduction from it, and dividing the difference by two. (Ex. 2.4)
- b. It then took the Claimant's Supplemental Security Income of \$637 and deducted \$20 (income disregard) from it to arrive at a figure of \$617. It added the \$617 together with the Claimant's husband's countable earned income of \$119.95 to arrive at a rounded up countable monthly household income of \$737. *Id.*
- c. The household's countable monthly income of \$737 was subtracted from the Adult Public Assistance payment standard of \$1158. The difference of \$421 was the Claimant's monthly benefit amount. *Id.*

6. The Division subsequently notified the Claimant, on May 21, 2008, that her monthly Adult Public Assistance benefit amount was changing to \$421 per month, beginning with the month of June 2008. (Ex. 2.5)

7. The Claimant testified that the Division's modification of her benefit amount was a decrease in her income of \$100 per month, that would cause her great financial hardship. She stated her husband's income varied because his job was part time on an on call basis, and that his income had decreased to about \$180 per month. She said that she had not reported the income decrease to the Division because she had not had time to do so. She testified that she had a large amount of personal loans, including a car loan. Her Fair Hearing request also provided the information that her husband paid a number of his own expenses (prescriptions and medical bills) out of his own pocket. (Ex. 3.0)

PRINCIPLES OF LAW

This case involves the Division's modification of benefits. When the Division seeks to modify benefits, the Division has the burden of proof¹ by a preponderance of the evidence.²

Adult Public Assistance is a monthly financial benefit paid to recipients. Eligibility for Adult Public Assistance is dependent upon "financial need with respect to income," in addition to other factors. 7 AAC 40.090(8).

"The income and resources of an applicant's spouse who is living with [her] are considered income and resources of the applicant." 7 AAC 40.240(a). "[I]ncome means any property, money, or services received by an applicant, together with the applicant's spouse under 7 AAC 40.240, which can be used, directly or indirectly to meet the applicant's need for food and shelter." 7 AAC 40.300(a)(1).

Countable monthly income for Adult Public Assistance purposes is calculated by adding together an applicant's and her spouse's gross monthly income, both earned and unearned, and subtracting allowable income deductions. 7 AAC 40.310(a); 7 AAC 40.350. Wages are classified as earned income. 7 AAC 40.300(a)(2). Supplemental Security Income is classified as unearned income. 7 AAC 40.300(a)(3).

The list of allowable deductions from an applicant's income and her spouse's income is provided in 7 AAC 40.320 and 7 AAC 40.330. An applicant is entitled to one deduction of \$20 from her income. 7 AAC 40.320(a)(23). Where an applicant (or spouse) has earned income, she is also entitled to a work/earned income deduction from her income of "\$65 per month of any earned income plus one-half of the remainder." 7 AAC

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.

Black's Law Dictionary 1064 (5th Ed. 1979)

40.320(a)(20). The list of deductions does not include any deductions for personal expenses such as loans.

In order to qualify for Adult Public Assistance based on income, the countable monthly income for a household of two adults, married to each other, who reside together in their own home, when only one is eligible, cannot exceed \$1,422. 7 AAC 40.310(a)(5) and (c); *Alaska Adult Public Assistance Manual Addendum 1*.

If an applicant passes the financial eligibility test, the Division subtracts her countable household income from the Adult Public Assistance payment standard. 7 AAC 40.370(b). The difference is the applicant's monthly Adult Public Assistance benefit amount. The 2008 payment standard for a married couple residing together in their own home, when only one is eligible for Adult Public Assistance, is \$1,158. 7 AAC 40.370(c)(2) and (d); *Alaska Adult Public Assistance Manual Addendum 1*. The Adult Public Assistance regulation does not provide for an increased payment standard when there are more than two persons residing in a household. *Id.*

The term "applicant" as used in the Adult Public Assistance regulations includes both applicants for Adult Public Assistance and those already receiving Adult Public Assistance. 7 AAC 40.900(1).

ANALYSIS

The issue in this case is whether or not the Division was correct when it reduced the Claimant's monthly Adult Public Assistance benefit amount to \$421 per month beginning with the month of June 2008. The Claimant's financial eligibility is not at issue.

The Claimant did not dispute the amount of Supplemental Security Income she received monthly. She also did not dispute the income figures used by the Division in calculating her husband's gross monthly income. Instead, she raised three points in her testimony and in her written hearing request:

1. Her husband's income should not be considered because he paid for his own medical expenses.
2. Her husband's income varied due to the part time on call nature of his employment and his income had decreased to approximately \$180 per month.
3. The decrease in her monthly Adult Public Assistance benefit caused her financial hardship, and she had a large amount of debt.

The Claimant's arguments will each be addressed separately below. The Division's calculation of the Claimant's monthly Adult Public Assistance benefit amount will also be addressed.

1. Should the Husband's Income be considered?

It is undisputed that the Claimant and her husband reside together. The Adult Public Assistance regulations clearly state that when an applicant and spouse reside together, the spouse's income is considered available to the applicant. 7 AAC 40.240(a). The income of both an applicant and her spouse are required to be added together when determining both Adult Public Assistance eligibility and the monthly benefit amount. 7 AAC 40.310(a); 7 AAC 40.350. The fact the Claimant's husband may have his own expenses does not exclude his income from being included in the Claimant's eligibility and benefit amount calculations.

2. Income Variation

The Claimant's husband's income unquestionably varied. He was employed on an on call basis, i.e. the amount of time he worked was not predictable. On May 20, 2008, when the Division calculated his income, it had income information for his last three biweekly pay periods in its possession. (Ex. 2.0) The gross pay information for each of those three pay periods was \$92.95, \$196.63, and \$135.85. The Division averaged those checks to come up with an average gross biweekly pay of \$141.81. It multiplied the average gross biweekly pay by a conversion factor of 2.15³ to arrive at an average gross monthly income figure of \$304.89 for the husband. (Ex. 2.0)

The way the Division calculated the husband's income was appropriate. It averaged the income to account for his varying work schedule. It used the biweekly conversion factor to account for the fact that persons paid biweekly occasionally receive three paychecks in a calendar month rather than two paychecks in a calendar month. It used the most current information available to it when it made its calculations.

The fact that the Claimant's husband's gross monthly income may have decreased to approximately \$180 per month from the \$304.89 does not justify disregarding the Division's original determination. As the Claimant admitted in her testimony, she had not informed the Division that there was a decrease in her husband's gross monthly pay.

The Division's calculation of the husband's gross monthly income was correct. It was made on May 20, 2008, based upon the Claimant's three most recent paychecks.

3. Financial Hardship

The Claimant's financial hardship argument is essentially one that her financial circumstances justify either relaxing the Adult Public Assistance benefit calculation regulations or that she is entitled to deductions in addition to those allowed by the Division. However, the Adult Public Assistance regulations are quite explicit. They set a

³ The conversion factor of 2.15 accounts for the fact that there are 26 biweekly pay periods per year, instead of 24. It therefore avoids underestimating gross monthly pay when an individual receives two biweekly paychecks in a calendar month and avoids overestimating gross monthly pay when an individual receives three biweekly paychecks in a calendar month.

maximum payment standard for the Claimant's household⁴ of \$1,158. 7 AAC 40.370(c)(2) and (d); *Alaska Adult Public Assistance Manual* Addendum 1. They do not provide for a higher payment standard when there are persons in the household besides the applicant and her spouse. *Id.* They do not allow a higher payment for persons with higher costs of living or debt. *Id.* The Adult Public Assistance regulations also do not provide for increased income deductions when a household has higher costs of living or debt payments. *See* 7 AAC 40.320 and 7 AAC 40.330.

The Adult Public Assistance regulations do not grant the Division discretion to relax the Adult Public Assistance program's financial rules. The Claimant's financial hardship and large debt load do not provide the Claimant with additional deductions or a larger benefit amount.

4. Monthly Adult Public Assistance Benefit Calculation

The Division's printout of how it calculated the Claimant's monthly benefit amount is contained in Exhibit 2.4. The specific calculations are set out in Finding of Fact No. 5 above. The final result was that the Claimant was entitled to receive \$421 per month in Adult Public Assistance benefits.

The Division's calculations follow the Adult Public Assistance regulations. As is shown above, the Division correctly calculated the Claimant's husband's gross monthly income based upon the information available to it. The Division gave the husband the correct earned income credit (work deduction) of \$65 plus one half of the remaining earned income. 7 AAC 40.320(a)(20). The Division counted the Claimant's Supplemental Security Income of \$637 as unearned income and gave her an additional deduction of \$20. 7 AAC 40.300(a)(3); 7 AAC 40.320(a)(23). The facts do not justify any additional deductions.

Based upon the Adult Public Assistance payment standard of \$1,158, and the countable income for the Claimant's household, the Division correctly calculated the Claimant's monthly Adult Public Assistance benefit amount was \$421.

CONCLUSIONS OF LAW

1. The Division properly applied the Adult Public Assistance regulations when it calculated the Claimant's monthly Adult Public Assistance benefit amount was \$421 per month beginning June 1, 2008.

DECISION

1. The Division was correct when it reduced the Claimant's monthly Adult Public Assistance benefit amount to \$421 per month beginning June 1, 2008.

⁴ Adult living with her spouse in their own home, when only the applicant is eligible for Adult Public 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, 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.


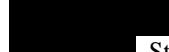
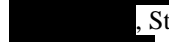
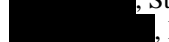
DATED this 25th day of August, 2008.

Larry Pederson
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 25th 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