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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-388
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (hereinafter "Claimant") was receiving Alaska Temporary Assistance benefits in June 2008. (Ex. 1) On June 3, 2008, the Division of Public Assistance (hereinafter "Division") sent the Claimant notice it had imposed a penalty against her Temporary Assistance benefits ("job quit penalty") because she had been terminated from employment without good cause. (Ex. 5.0) Claimant requested a fair hearing on June 3, 2007. (Ex. 5.2) This office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to the claimant's request, a hearing was held on June 26, 2008 before Hearing Officer Mary Jane Sutliff. The Claimant attended the hearing telephonically and represented herself. [REDACTED], Public Assistance Analyst with the Division, attended in person to represent the Division. [REDACTED], a case manager with Maximus,¹ attended telephonically and testified on behalf of the Division.

This case was subsequently reassigned to Hearing Officer Larry Pederson, who reviewed the complete record including the recording of the June 26, 2008 hearing.

ISSUE

Was the Division correct to impose a voluntary separation (job quit) penalty against the Claimant on June 3, 2008, that made her ineligible to receive Alaska Temporary Assistance benefits for a

¹ Maximus is a private agency that provides work development assistance to Public Assistance recipients.

one month period beginning July 1, 2008, because the Division alleged the Claimant had voluntarily separated from his employment with [REDACTED]?

FINDINGS OF FACT

1. Claimant was receiving Temporary Assistance benefits and employed at [REDACTED] in March 2008. On March 19, 2008, while she was receiving benefits, she met with her case manager at Maximus and signed a Family Self-Sufficiency Plan. (Exs. 2.0 – 2.1) The plan states the Claimant is to inform her case manager within 5 days of any changes in her “household, employment, finances, assets, or income.” (Ex. 2.0) It also stated the Claimant is responsible for arranging childcare, which was paid for by the Division (PASS I). (Ex. 2.1)
2. Claimant has a one year old son. Claimant was living with her parents in March 2008. Her mother provided childcare for the child while the Claimant was at work.
3. The Claimant moved out of her parents’ home to live with her son’s father on or about April 20, 2008. (Ex. 3.1) Her parents disapproved of the move, and her mother immediately stopped providing childcare. *Id.*
4. The Claimant missed work a number of times at [REDACTED]. In early May 2008, she was fired from her job because of her absenteeism.² (Ex. 4.1) On May 11, 2008, the Claimant phoned [REDACTED], her case manager at Maximus, and left her a telephone message informing her about the termination. (Ex. 3.0)
5. The Claimant spoke to her case manager on May 12, 2008 and informed her case manager she missed work because she did not have anyone to provide her with childcare, since her mother had stopped providing childcare when the Claimant moved back in with her son’s father. (Ex. 3.1) The case manager informed the Claimant she could have found childcare for her. The Claimant told the case manager she did not know the case manager could have found her childcare. *Id.*
6. The Claimant testified she missed work because she did not have childcare. She said it was difficult for her to obtain childcare because she was working nights, and she did not know her case manager could have obtained childcare for her.
7. Ms. [REDACTED], the Claimant’s case manager testified. She said the Claimant had childcare assistance approved for her, and the Claimant did not contact her when she was unable to obtain childcare. However, she stated the Claimant “may not have directly associated” her with childcare.
8. On June 3, 2008, the Division notified the Claimant she would be ineligible to receive Temporary Assistance benefits for a one month period, from July 1, 2008 through July 31, 2008 because she had quit her job “without a good reason.” (Ex. 5.0)

² The record does not contain either the number of absences or the exact termination date.

PRINCIPLES OF LAW

This case involves the issue of whether or not the Division was correct when it imposed an Alaska Temporary Assistance program voluntary separation (job quit) penalty against the Claimant, which terminated her Temporary Assistance benefits for a one month period. The Division has the burden of proof³ by a preponderance of the evidence⁴ when it seeks to terminate or modify benefits.

A Temporary Assistance recipient is normally required to participate in work activities. If a recipient “voluntary[ly] separate[s] from suitable employment . . . without good cause,” she is not eligible to receive Temporary Assistance benefits for one month for a first time offense. AS 47.27.015(c). If a person is terminated from their job because of “action or inaction with the individual’s control,” that termination is a “voluntary separation” for Temporary Assistance purposes. 7 AAC 45.970(e).

Alaska Temporary Assistance regulation 7 AAC 45.990(b) defines a “voluntary separation” from employment as:

- (1) voluntary termination of employment by an employee;
- (2) intentional misconduct by an employee on the job, causing the employer to terminate the employment; or
- (3) failure of an employee to show up for work as scheduled.

The Temporary Assistance regulations allow a person to be exempted from the work requirement for good cause. 7 AAC 45.261(a). Among the list of good cause exemptions is where “the recipient is a single parent of a child under age six years and child care is not appropriate or available.” 7 AAC 45.261(a)(1).

ANALYSIS

The issue in this case is whether or not the Division was correct when it imposed a voluntary separation (job quit) penalty against the Claimant because she was fired from her job.

The first step is to determine if the Claimant voluntarily separated from her job. It is undisputed that the Claimant was fired from her job with [REDACTED] due to excessive absences. This is a job termination for failure “to show up for work as scheduled,” which is defined by the applicable

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)

regulation as a voluntary separation. 7 AAC 45.990(b)(3). The Claimant therefore is considered as having voluntarily separated from her job, despite having been fired.

The Claimant argued that her work absences were justified because she was unable to obtain childcare for her one year old child once she moved from her parent's home. If she were a single parent with a one year old child, inability to obtain either appropriate or available childcare would constitute good cause for her work absences, which in turn would exempt her from being penalized for "voluntarily separating" from her job. 7 AAC 45.261(a)(1). However, the Claimant moved back in with her son's father on or about April 20, 2008. She was therefore not a single parent when [REDACTED] fired her in early May 2008. The good cause exception for childcare unavailability only applies to single parents.

Because the Claimant was not a single parent at the time she lost her job with [REDACTED], she is not able to claim a good cause exception based upon her difficulty obtaining childcare.

CONCLUSIONS OF LAW

1. The Claimant was fired from her job at [REDACTED] in early May 2008 due to excess absenteeism because she could not find childcare for her one year old son. This was a voluntary separation from employment as defined in the Temporary Assistance regulations.
2. Because the Claimant was living with her son's father at the time she was fired, she was not a single parent. As such, she did not have a childcare related good cause reason that exempted her from the Temporary Assistance voluntary separation from employment (job quit) penalties.
3. The Division was therefore correct when it imposed a penalty making the Claimant not eligible for Temporary Assistance benefits for a one month period.

DECISION

The Division was correct to impose a job quit penalty against the Claimant on June 3, 2008, that made her ineligible to receive Alaska Temporary Assistance benefits for a one month period beginning July 1, 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 28th day of August, 2008.

/Signed/
Larry Pederson
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 28th 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