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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-681
)	
Claimant.)	Division Case No. ██████████
_____)	

FAIR HEARING DECISION

STATEMENT OF THE CASE

██████████ (Claimant) applied for Alaska Temporary Assistance (Temporary Assistance) benefits on August 15, 2008. (Ex. 1.0) The Division of Public Assistance (Division) denied her application on September 2, 2008. (Ex. 2.3) The Claimant requested a fair hearing on September 11, 2008. (Ex. 3.0). This office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to Claimant's request, a hearing was held on October 21 and November 25, 2008. The Claimant appeared telephonically and represented herself at the October 21, 2008 hearing. The Claimant's husband, ██████████ (Husband), appeared telephonically and represented the Claimant at the November 25, 2008 hearing.

██████████. Public Assistance Analyst with the Division, attended in person, on both hearing dates, and represented the Division. ██████████, a Division Social Services coordinator, attended telephonically on November 25, 2008, and testified on behalf of the Division.

ISSUE

Was the Division correct to deny the Claimant's August 15, 2008 Temporary Assistance application?

FINDINGS OF FACT

1. The Claimant, her husband, and their minor children, moved voluntarily from [REDACTED] to [REDACTED], Alaska in early August 2008. (Ex. 2.8; Husband testimony) The husband came up first with three of the children without intending to look for work, essentially to camp out for the rest of the summer. (Husband testimony) The Claimant and the rest of the parties' children joined her husband later. *Id.*
2. On August 15, 2008, the Division received a Temporary Assistance application from the Claimant and her husband. (Ex. 1)
3. At the time of the Temporary Assistance application, the Claimant and her husband had received over 60 months total of Temporary Assistance benefits from the states of [REDACTED] and Alaska. (Ex. 2.1)
4. On August 25, 2008, after receiving the Claimant's Temporary Assistance application, Division staff discussed the application with the Claimant, and her husband, to determine whether the Claimant's family qualified for an extension to the Temporary Assistance program's 60 month limit. (Exs. 2.1 – 2.2)
5. During the August 25, 2008 discussion, the Claimant agreed that her family did not qualify for "the extension criteria under domestic violence, physical or mental inability to perform gainful activity or caring for disabled child or relative." (Ex. 2.1) The Claimant, however, maintained that her family qualified for an extension to the Temporary Assistance program's 60 month limit under the hardship exception. *Id.*
6. The Division sent the Claimant written notice on September 2, 2008, notifying her that her Temporary Assistance application was denied because the family had already received the 60 month Temporary Assistance program limit, and did not qualify for an extension. (Ex. 2.3)
7. The family was and is staying with friends, i.e. not homeless, and receives Food Stamp benefits and Family Medicaid benefits. ([REDACTED] testimony)
8. The Claimant left the State of Alaska in September 2008 to attend college. Her husband and their children stayed in Petersburg. (Husband testimony)
9. The husband was not employed at the time of the application, nor was he looking for work. As of the November 25, 2008 hearing date, he was not employed. Neither he or the children have health issues that prevent him from working. He was not able to use childcare assistance benefits and obtain work because he was home schooling the older children. (Husband testimony)

PRINCIPLES OF LAW

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

Temporary Assistance is a benefit program provided to financially eligible families with minor children. AS 47.27.010. A family may not normally receive Temporary Assistance benefits from any state (or states) for a total period of more than 60 months. AS 47.27.015(a)(1).

The law allows an exception to the 60-month time limit in the case of family hardship. AS 47.27.015(a)(1)(D). The applicable federal regulations do not define hardship, but rather leave its definition up to the State. 45 CFR 264.1(c)(1). Alaska regulations reference both “hardship” and “circumstances outside the family’s control” as providing grounds for an extension of benefits. 7 AAC 45.610(g).

Hardship is defined as a term that means “a family experiences circumstances outside of its control that prevent the caretaker relative from participating in work activities or becoming self-sufficient, and the loss of ATAP benefits would result in conditions that threaten the health or safety of the family.” 7 AAC 24.990(c). Hardship includes a lack of “sufficient income or resources to provide for housing, food, transportation, or other essential needs.” 7 AAC 45.610(g)(2)(A).³

DISCUSSION

The facts in this case are undisputed. The Claimant, her husband, and their children, voluntarily moved to [REDACTED]. The Claimant and her husband applied for Temporary Assistance. At the time, they had already used up 60 months of Temporary Assistance benefits. As a result, in order to qualify for additional Temporary Assistance benefits, they would need to qualify for an exception to the Temporary Assistance 60 month time limit.

No one in the family is disabled. The Claimant, as of the date of the hearing, was actually attending college outside Alaska. The husband, who is taking care of the children, is not disabled. He was not working either at the time of the application or the hearing, but he was home schooling the older children. The family has a place to live and is receiving Food Stamp benefits. In other words, they are not in need of shelter or food.

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 the normal standard of proof in an administrative proceeding. *Amerada Hess Pipeline v. Alaska Public Utilities Comm’n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986). Preponderance of the evidence is defined as “[e]vidence 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)

³ There are other exceptions which are not applicable to this case: domestic violence, physical or mental inability to work, or caring for a disabled child or relative. *See* AS 47.27.015(a)(1)(A)-(C); 7 AAC 45.610(d) – (f).

was home schooling the older children. The family has a place to live and is receiving Food Stamp benefits. In other words, they are not in need of shelter or food. Because the husband was not working by choice, i.e. he was home schooling the older children, and because the family was housed and fed, the family did not fall within the hardship exception to the Temporary Assistance program's 60 month time limit. Because the family did not fall within the hardship exception, the Division correctly denied the Claimant's August 15, 2008 Temporary Assistance application.

CONCLUSIONS OF LAW

1. The Claimant and her husband were not qualified receive Temporary Assistance benefits, because they had already used up over 60 months of Temporary Assistance benefits, unless they fit within one of the hardship exceptions to the Temporary Assistance program's 60 month time limit.
2. The Claimant and her husband did not fit within any other the Temporary Assistance hardship exception categories. They were able to work, they and their children were not disabled, and they had shelter and food.
3. The Division was correct when it denied the Claimant's August 15, 2008 Temporary Assistance application.

DECISION

The Division was correct when it denied the Claimant's August 15, 2008 Temporary Assistance application.

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 31st day of December 2008.

Larry Pederson
Hearing Authority

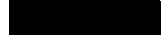
CERTIFICATE OF SERVICE

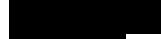
I certify that on this 31st day of
December 2008, true and correct


Copies of the foregoing were sent to:

Claimant – Certified Mail, Return Receipt Requested.

, Fair Hearing Representative

, Director

, Policy and Program Development

, Staff Development & Training

Al Levitre, Law Office Assistant I