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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-692  
 )  
 Claimant. ) Division Case No. [REDACTED]  
 )  
 \_\_\_\_\_ )

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

[REDACTED] (Claimant) was receiving Alaska Temporary Assistance (ATAP), Family Medicaid, and Food Stamp benefits (Ex. 1). On or about September 11, 2008 the State of Alaska Division of Public Assistance (DPA or Division) notified the Claimant that her ATAP and Medicaid benefits were being terminated, and that her Food Stamp benefits were being reduced, because her daughter was no longer living in her home (Exs. 3.0, 3.1, 4.0, 4.1). On or about September 12, 2008 the Claimant requested a fair hearing (Ex. 5.2). This office has jurisdiction pursuant to 7 AAC 49.010.

A hearing was held on November 18 and December 11, 2008. The Claimant appeared telephonically. The Claimant's mother, [REDACTED], appeared telephonically, represented the Claimant, and testified on behalf of the Claimant. [REDACTED] testified telephonically on behalf of the Claimant. [REDACTED], Public Assistance Analyst with the Division, attended in person to represent and testify on behalf of the Division. [REDACTED] and [REDACTED] testified telephonically on behalf of the Division.

**ISSUE**

Was the Division correct to terminate the Claimant's ATAP and Medicaid benefits, and to reduce the Claimant's Food Stamp benefits, based on the allegation that the Claimant's daughter was no longer living in her home?

## FINDINGS OF FACT

1. Prior to September 11, 2008 [REDACTED] (Claimant) and her daughter [REDACTED] were receiving Alaska Temporary Assistance (ATAP), Family Medicaid, and Food Stamp benefits (Ex. 1).
2. On or about July 21, 2008 a proceeding seeking the establishment of a guardianship for a minor (Case No. 3PA-08-144 Pr.) was filed by the Claimant's mother, [REDACTED] (Ex. 27). The child for which the guardianship was sought was the Claimant's daughter, [REDACTED] (Ex. 27).
3. A report by DPA Eligibility Technician [REDACTED] dated September 9, 2008 (Ex. 2) indicates that on that date Ms. [REDACTED] received information from the Claimant's parents, [REDACTED], that the Claimant's child [REDACTED] (also referred to as Katie) had been living with them for the past three (3) months. It was clarified at the hearing that this information had been received from [REDACTED] only, and not from [REDACTED].
4. Ms. [REDACTED]'s report dated September 9, 2008 (Ex. 2) also indicates that on that date she spoke with [REDACTED] of the Infant Learning Program (ILP); that Ms. [REDACTED] advised Ms. [REDACTED] that an ILP employee had visited the home of [REDACTED] and [REDACTED]; and that said visit indicated that [REDACTED] was there but that [REDACTED] was not there.
5. Ms. [REDACTED]'s report dated September 9, 2008 (Ex. 2) also indicates that on that date she spoke with the Claimant's landlord [REDACTED], and that Ms. [REDACTED] said that she had only seen [REDACTED] at the Claimant's apartment on one occasion.
6. A report dated September 10, 2008 (Ex. 3.2) by [REDACTED], an Investigator with the DPA Fraud Control Unit, indicates that the following occurred on September 9, 2008:

I called [REDACTED], 376-7572 and later went to his home at [REDACTED]. [REDACTED] was there. He said that he has been the full time care giver of [REDACTED] since they (he and his wife Dawn) took her in June 2008. [The Claimant] was living in a tent in the Lake Lucille campground with [REDACTED] her boyfriend. He said he would testify at an [administrative] hearing if needed [REDACTED] has been with them except for two nights and one or two day visits. They filed for guardianship of [REDACTED] with the courts [on] 7/21/08.
7. The above conversation between Ms. [REDACTED] and Mr. [REDACTED] was recorded. See Paragraph 22, below.
8. Based on the information received by the Division, on September 11, 2008 the Division sent the Claimant a notice informing her of the termination of her ATAP and Family Medicaid benefits, and the reduction of her Food Stamp benefits (Ex. 5.3).
9. The stated basis for the Division's termination of the Claimant's ATAP benefits was in relevant part that "there is no longer an ATAP eligible child in your home", and that "[REDACTED] is

not currently living in your home” (Ex. 4.0). The ATAP notice further indicated that closure of the Claimant’s ATAP case also terminated her ability to use Medicaid coupons (Ex. 4.0).

10. The stated basis for the Division’s reduction of the Claimant’s Food Stamp benefits was “ATAP ended and [REDACTED] has been removed from your case” (Ex. 4.1).

11. A hearing on [REDACTED]’s petition for Guardianship was held before [REDACTED] in [REDACTED], Alaska on October 8, 2008 (Claimant Exs. 1D, 1G). Letters of Guardianship, appointing [REDACTED] as the Guardian of [REDACTED], were recommended for approval by [REDACTED] on October 8, 2008 and were approved by Superior Court Judge [REDACTED] on October 9, 2008 (Claimant Exs. 1- 1c).

12. At the hearing, the Claimant testified that she lives with her daughter [REDACTED] (born [REDACTED]), her boyfriend [REDACTED], and two roommates, a husband and a wife. She stated that on a typical day on which she has [REDACTED] (Monday through Thursday) she is at home with her daughter. She stated that [REDACTED] would sometimes spend time with one of her ([REDACTED]’s) great-grandparents, and with the Claimant’s sister. Approximately twice per month [REDACTED] stays overnight at her great-grandparents home without the Claimant.

13. At the hearing, the Claimant testified that she had [REDACTED] “since the day she was born.” She stated that she had [REDACTED] on the weekdays and that her parents had [REDACTED] on the weekends. She said that her mother had some of Kateryna’s possessions at her house, “but what grandmother doesn’t”.

14. The Claimant’s mother, [REDACTED], testified on behalf of the Claimant at the hearing and stated as follows:

She, and not her husband [REDACTED], had been appointed Guardian for [REDACTED] on October 8, 2008. “The Guardianship is temporary, for one year”, only until the Claimant “could get back on her feet.”

No one from the Division had ever spoken to her regarding [REDACTED]’s living situation.

Ms. [REDACTED] had never been at her home.

[REDACTED] “is at my house every single weekend” but that [REDACTED] “is with her mother all week long.” She said “I pick her up on Friday when I get off work, and I return her on Monday.”

The Claimant takes care of [REDACTED] “when I am at work and when [REDACTED] is on the slope.” [REDACTED] works on the slope “for six weeks at a time” and then was only “home for one week.”

“On the date of the Fraud investigation [the Claimant] was in Anchorage with me at [Alaska Native Medical Center].”

15. [REDACTED] also testified that the calendars introduced by her as Claimant's Exs. 3b-3f were kept by her on a daily basis and contained an accurate record of the days which [REDACTED] spent with the Claimant and with Ms. [REDACTED], respectively. The calendars indicate that, during the period June 2008 through October 2008, the Claimant had possession of [REDACTED] from Monday through Thursday of each week (4 days per week), and that [REDACTED] had possession of [REDACTED] from Friday through Sunday of each week (3 days per week). Thus, according to Claimant Exs. 3b-3f, the Claimant had possession of [REDACTED] 4 days out of 7, or 57% of the time.

16. [REDACTED]'s testimony was consistent with the written statement dated November 14, 2008 which she introduced as Ex. 3a.

17. [REDACTED], an employee of the [REDACTED] Motel, also testified on behalf of the Claimant. She testified that she began working full-time in the office of the motel in September 2008. She said that the Claimant moved-in to the motel on Saturday, September 13, 2008. She said that, since that time, she has worked at the motel where the Claimant lives from 8:15 a.m. through 4:30 p.m. Monday through Friday; that she sees the Claimant and her boyfriend and daughter "quite often," "almost every day," and "all the time;" and that [REDACTED] lives at the motel with the Claimant. She said that she usually sees the Claimant and her daughter each day between 10:30 a.m. – noon.

18. [REDACTED] testified on behalf of the Division at the hearing. She stated that she was the Eligibility Technician assigned to the Claimant's case since April 2008. She requested a home visit with the Claimant. This request was prompted by receiving a written statement from the Claimant's step-father, [REDACTED], stating that the Claimant's daughter [REDACTED] had been living at his home since June 2008. Ms. [REDACTED] also had a subsequent telephone conversation with Mr. [REDACTED] which essentially confirmed the written statement.

19. Ms. [REDACTED] also testified as follows:

On or about September 9, 2008 Ms. [REDACTED] contacted the Claimant's landlord, who told her that the lease was for the Claimant and one child, but that she (the landlord) had only seen the child at the apartment on one occasion.

On or about September 9, 2008 Ms. [REDACTED] contacted the Infant Learning Center, who advised her that their representative had been to [REDACTED] and [REDACTED]'s home recently and that [REDACTED] and her possessions were at this home at that time.

Ms. [REDACTED] had spoken with the Claimant on September 12, 2008. She said that the Claimant told her that her parents had been appointed as guardians for [REDACTED] so that the child "would not be taken from her".

Ms. [REDACTED] had spoken in November 2008 with a representative of the Alaska Choice Inn Motel and that said representative told her that Kateryna was there "sometimes"; and

The DPA fraud investigation report prepared by ██████████ confirmed the information that Ms. ██████████ had received from the persons that Ms. ██████████ had contacted.

20. ██████████ also testified on behalf of the Division. She stated that she received a request for a home visit for the Claimant on September 9, 2008 and went to the Claimant's apartment. When she arrived, she could see a man and a woman inside the apartment, but no one would answer the door.

21. Ms. ██████████ testified that she had spoken with ██████████ by phone, and that he had told her that ██████████ had been living at his home since June 2008. She said that Mr. ██████████ had told her that, prior to June 2008, ██████████ had been living with the Claimant at a campground on Lake Lucille, and that these living arrangements caused Mr. ██████████ and his wife to seek custody of ██████████.

22. At the hearing, Ms. ██████████ played a digital recording of a telephone conversation of September 9, 2008 that she had with Mr. ██████████. In that recording, Mr. ██████████ stated in relevant part that "the [Claimant's] child is living with me." The Claimant confirmed during the hearing that the person with whom Ms. ██████████ was speaking during the recorded telephone conversation was in fact Mr. ██████████, so there is no issue regarding the authenticity of that recording.

23. Ms. ██████████ testified that, after the telephone conversation with Mr. ██████████ referenced above, she visited Mr. ██████████'s home, and that ██████████ and various of her belongings were there.

24. ██████████ was not called as a witness by either the Claimant or the Division. Mr. ██████████'s statements to Ms. ██████████ during the recorded telephone conversation of September 9, 2008 directly conflicted with the hearing testimony of Mr. ██████████'s wife ██████████.

## PRINCIPLES OF LAW

### I. Burden of Proof and Standard of Proof.

Ordinarily, the party seeking a change in the status quo has the burden of proof. State of Alaska Alcoholic Beverage Control Board v. Decker, 700 P.2d 483, 485 (Alaska 1985). This case involves the Division's termination and reduction of various benefits. Accordingly, the Division has the burden of proof here because it is attempting to change the existing status quo by reducing and/or terminating benefits.

A party in an administrative proceeding can assume that preponderance of the evidence is the applicable standard of proof unless otherwise stated. Amerada Hess Pipeline Corp. v. Alaska Public Utilities Commission, 711 P.2d 1170 (Alaska 1986). The regulations applicable to this case do not specify any particular standard of proof. Therefore, the "preponderance of the evidence" standard is the standard of proof applicable to this case. This standard is met when the evidence, taken as a whole, shows that the fact sought to be proved is more probable than not or more likely than not. Black's Law Dictionary 1064 (5<sup>th</sup> Ed. 1979).

II. The Alaska Temporary Assistance Program.

The Alaska Temporary Assistance Program (“ATAP”) is a program created by the Alaska Statutes. See A.S.47.05.010(1); A.S.47.27.005 – A.S.47.27.990. Because ATAP is a state program, its governing regulations are found in the Alaska Administrative Code. The Alaska Temporary Assistance Program’s regulations are set forth in 7 AAC 45.149 – 7 AAC 45.990.

7 AAC 45.335 provides in relevant part as follows:

- (a) An ATAP assistance unit consists of those individuals whose needs are considered in determining eligibility for assistance and the amount of the ATAP payments. An assistance unit may include (1) a caretaker relative and any number of dependent children with an eligible relationship to the caretaker relative; (2) dependent children with an eligible relationship to the caretaker relative; (3) one caretaker relative and no child if the caretaker relative is a pregnant woman eligible for ATAP benefits under 7 AAC 45.510; or (4) two parents and any number of dependent children.

Pursuant to 7 AAC 45.210(a)(4), ‘to be eligible for ATAP benefits, an applicant or recipient, as applicable, must meet the requirements for . . . (4) living in the home of a caretaker relative, as set out in 7 AAC 45.225.’”

7 AAC 45.225 provides in relevant part as follows:

- (a) To be eligible for ATAP benefits a dependent child must be living with a caretaker relative in the home of that caretaker relative.
- (b) When determining if a child is living in the home of a caretaker relative, the department will consider the location of the child to be the primary determining factor. Except in the case of a temporary absence of the child or caretaker relative from the usual place of residence, the child's home is the place where the child resides more than half of the time in a month. . . .

\* \* \* \* \*

7 AAC 45.990 (8) defines "caretaker relative" in relevant part as follows:

[A]n individual who provides the care and control of a dependent child; a "caretaker relative" does not include a guardian . . . .

\* \* \* \* \*

7 AAC 45.990 (23) defines "home" in relevant part as follows:

[T]he family setting maintained, or in the process of being established, as evidenced by assumption and continuation of responsibility for day-to-day care of the child by the caretaker relative with whom the child is living; a home exists as long as the relative

exercises responsibility for the care and control of the child, even though the child or the caretaker relative is temporarily absent from the family setting . . . .

### III. The Medicaid Program.

Because Medicaid is a federal program, many of its requirements are contained in the Code of Federal Regulations (CFRs). The Medicaid program's general eligibility requirements are set forth at 42 CFR Sections 435.2 – 435.1102. However, the federal Medicaid regulations do not state what percentage of time a person must live with a household to be considered a part of the household for Medicaid purposes.

The State of Alaska's statutes implementing the federal Medicaid program are set forth at A.S. 47.07.010 – A.S.47.07.900. The State of Alaska's regulations implementing the Family Medicaid program (the particular Medicaid program involved in this case) are set forth at 7 AAC 100.100 – 7 AAC 100.199.

The Medicaid program has a large number eligibility groups; it covers needy individuals in a variety of circumstances. See 7 AAC 100.002. Among its various eligibility groups, the Medicaid program provides medical coverage for financially eligible households that include minor children. See 7 AAC 100.002(a)(1)(B); 7 AAC 100.100. This particular type of Medicaid coverage is known as Family Medicaid. *Id.*

Pursuant to 7 AAC 100.104, certain persons must be included within a Family Medicaid household in order for that household to be eligible for benefits. Where a household consists of a parent or caretaker relative and one or more dependent children, the dependent child or children must be living in the home of the parent or caretaker relative in order to maintain Family Medicaid eligibility. 7 AAC 100.104(a); 7 AAC 100.110(a).

Alaska Family Medicaid Manual Section 711-6A provides in relevant part that “a Temporary Assistance home is the place where the child resides more than half of the time in a calendar month.”

7 AAC 100.110(b) provides in relevant part that “the department will consider a dependent child to be living with a caretaker relative if the caretaker relative maintains a home for the child and is responsible for the care and control of the child. . . .”

7 AAC 100.199, titled “Family Medicaid definitions”, provides in relevant part as follows:

In 7 AAC 100.100 - 7 AAC 100.199, unless the context requires otherwise . . . . (4) "home" means the family setting maintained, or in the process of being established, as evidenced by assumption and continuation of responsibility for day-to-day care of the child by the caretaker relative with whom the child is living; a home exists as long as the relative exercises responsibility for the care and control of the child, even though the child or the caretaker relative is temporarily absent from the home . . . .

#### IV. The Food Stamp Program.

The Food Stamp program was established by the federal Food Stamp Act of 1977, codified at 7 USC Sections 2011 – 2029. The United States Department of Agriculture’s Food and Nutrition Service has promulgated regulations to implement the Food Stamp Act. These regulations are codified primarily at 7 CFR Sections 271-274.

The Food Stamp Program has been delegated to the states for administration. 7 CFR Section 271.4. The Department of Health and Social Services (DHSS) administers the Food Stamp program in Alaska. AS 47.25.975. DHSS has promulgated regulations which adopt the federal regulations (with certain minor variations as allowed by federal law). 7 CFR Section 272.7; 7 AAC Sections 46.010 - .990.

A household’s eligibility for the Food Stamp program, and the amount of Food Stamp benefits that a household receives, is based upon the number of household members. 7 CFR 273.10(E)(1)(i)(A).

27 U.S.C. Section 2012(i)(1)(B) and 7 CFR Section 273.1(a)(3) each define “household” in relevant part as “a group of individuals who live together and customarily purchase food and prepare meals together for home consumption.” However, neither the statute nor the regulation state what percentage of time a person must live with a household to be considered a part of the household for Food Stamp purposes.

7 CFR Section 273.1(c) states as follows:

For situations that are not clearly addressed by the provisions of paragraphs (a) and (b) of this section, the State agency may apply its own policy for determining when an individual is a separate household or a member of another household if the policy is applied fairly, equitably, and consistently throughout the State.

The State of Alaska’s regulations implementing the Food Stamp program, 7 AAC Sections 46.010 - .990, do not state what percentage of time a person must live with a household to be considered a part of the household for Food Stamp purposes.

Alaska Food Stamp Manual Section 600-2 provides in relevant part as follows:

To be considered under the parental control of an adult household member, children under 18 must be living with one or both parents or an adult who is caring for them as if he/she were their parent, i.e., providing for basic needs such as lodging, meals, etc.

Commentary to Alaska Food Stamp Manual Section 602-1(A)(2)(b) provides in relevant part as follows:

When the natural (i.e., biological) parent's rights are terminated as a result of adoption or other court action, the natural parent is no longer considered the child's parent for food stamp purposes.



## ANALYSIS

### I. Introduction.

The issue in this case is whether the Division was correct to terminate the Claimant's ATAP and Family Medicaid benefits, and to reduce the Claimant's Food Stamp benefits, based on the Division's conclusion that the Claimant's daughter [REDACTED] was no longer living in the Claimant's home. The ATAP, Family Medicaid, and Food Stamp programs each have their own standards for determining whether one recipient of benefits is living with another recipient. Accordingly, each benefit program will be analyzed separately in the order referenced above.

### II. The Alaska Temporary Assistance Program.

To be eligible for ATAP, a household must include a dependent child. See 7 AAC 45.210(a)(4), 7 AAC 45.225(a), and 7 AAC 45.335.<sup>1</sup> The Claimant was receiving ATAP benefits because she claimed that her daughter [REDACTED] was living with her. If [REDACTED] is not living with the Claimant, the Claimant is no longer eligible for ATAP benefits. *Id.* Whether [REDACTED] is living with the Claimant is determined by applying 7 AAC 45.225(b) and 7 AAC 45.990(23) to the facts. 7 AAC 45.225(b) provides in relevant part as follows:

(b) When determining if a child is living in the home of a caretaker relative, the department will consider the location of the child to be the primary determining factor. Except in the case of a temporary absence of the child or caretaker relative from the usual place of residence, the child's home is the place where the child resides more than half of the time in a month. . . .

7 AAC 45.990 (23) defines "home" in relevant part as follows:

[T]he family setting maintained, or in the process of being established, as evidenced by assumption and continuation of responsibility for day-to-day care of the child by the caretaker relative with whom the child is living; a home exists as long as the relative exercises responsibility for the care and control of the child, even though the child or the caretaker relative is temporarily absent from the family setting . . . .

Thus, for purposes of the ATAP program, there are two factors relevant to whether a child is living in the home of a benefit claimant or recipient. The first factor, pursuant to 7 AAC 45.225(b), is whether the child resides in the home of the claimant or recipient "more than half of

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<sup>1</sup> 7 AAC 45.335 appears to contain an exception to this rule, at subsection 3, for "one caretaker relative and no child if the caretaker relative is a pregnant woman eligible for ATAP benefits under 7 AAC 45.510." However, neither party asserted that this provision was applicable or introduced evidence to support its application.

the time in a month.” The second factor, pursuant to 7 AAC 45.990(23), is who has the “assumption and continuation of responsibility for day-to-day care of the child.”

In this case, the factual issue of whether [REDACTED] spends more than half of the month with the Claimant, or more than half of the month with [REDACTED], was hotly contested. The hearing testimony of [REDACTED] and [REDACTED] on this issue was credible. These witnesses were disinterested and had no reason not to testify truthfully. However, the only first-hand evidence that they were able to present was that [REDACTED] was not at the home of the Claimant, or that she was at the home of [REDACTED] and [REDACTED], on one or two specific days. Accordingly, their testimony, by itself, is not conclusive on the issue of who [REDACTED] was primarily living with.

The Claimant, her mother [REDACTED], and [REDACTED] all testified that [REDACTED] spent most of her time with the Claimant. The only first-hand testimony to the contrary was the recorded testimony of [REDACTED].

The hearing testimony of the Claimant was less credible than the hearing testimony of Ms. [REDACTED], Ms. [REDACTED], and Mr. [REDACTED]. This is because her testimony was somewhat vague and was self-serving due to her financial interest in the case.

The hearing testimony of [REDACTED] was also less credible than the hearing testimony of Ms. [REDACTED], Ms. [REDACTED], and Mr. [REDACTED]. This is largely because her testimony that [REDACTED] was primarily residing with the Claimant was in direct conflict with her actions in establishing a guardianship, the effect of which was to take the primary right to custody of [REDACTED] away from the Claimant. Also, because [REDACTED] is the Claimant’s mother, there is more of a chance that Ms. [REDACTED]’s testimony was biased (whether consciously or unconsciously) in favor of the Claimant due to the close family relationship.

The hearing testimony of [REDACTED] was also less credible than the hearing testimony of Ms. [REDACTED], Ms. [REDACTED], and Mr. [REDACTED]. It was apparent from Ms. [REDACTED]’s testimony that, over time, her relationship with the Claimant had become more of a friendly or social relationship and less of a strict business relationship. Accordingly, there is more of a chance that Ms. [REDACTED]’s testimony was biased, whether consciously or unconsciously, in favor of the Claimant.

The recorded testimony of [REDACTED] was very credible. His testimony was against his own paternal and financial interests (which were to assist in obtaining benefits for his daughter), and was also against his interest in preserving family harmony (his testimony was directly contrary to the testimony of his wife). Accordingly, there is no reason that Mr. [REDACTED] would have testified as he did if he had not believed that his statements were true.

[REDACTED]’s recorded testimony was also consistent with, and thus reinforced by, Ms. [REDACTED]’s reports and hearing testimony that (1) the Claimant’s landlord had told her that she had only seen [REDACTED] at the Claimant’s apartment on one occasion; and (2) the Infant Learning Center had told her that their representative had been to [REDACTED] and [REDACTED]’s home recently and that [REDACTED] and her possessions were at this home at that time. See Findings of Fact at Paragraph 19, above. It is therefore appropriate to give the testimony of [REDACTED] more weight than the

testimony of the Claimant, Ms. [REDACTED], and Ms. [REDACTED]. Considering the DPA's reports and the witnesses' hearing testimony together, the weight of the evidence is that [REDACTED] was spending more than half her time in the home of [REDACTED] and [REDACTED] at all times relevant hereto.

The factual conclusion that [REDACTED] was spending more than half her time with [REDACTED] and [REDACTED] is also consistent with and reinforced by the fact that, pursuant to 7 AAC 45.990(23), the child's home is with the person who has the "assumption and continuation of responsibility for day-to-day care of the child." As Guardian, [REDACTED] has, as a matter of law, primary responsibility for [REDACTED]. See A.S. 13.26.070 ("[a] guardian of a minor has the powers and responsibilities of a parent . . .").

In summary, as a factual matter, the weight of the evidence indicates that [REDACTED] resides at the home of [REDACTED] and [REDACTED] more than half of the time in a month. Moreover, as a matter of law, [REDACTED]'s home is the home of [REDACTED] and [REDACTED] based on [REDACTED]'s status as [REDACTED]'s legal guardian. Accordingly, the Division correctly found that [REDACTED] is living with [REDACTED] and [REDACTED] for purposes of the ATAP program.

### III. The Family Medicaid Program.

Where a household consists of a parent or caretaker relative and one or more dependent children, the dependent child or children must be living in the home of the parent or caretaker relative in order to maintain Family Medicaid eligibility. 7 AAC 100.104(a); 7 AAC 100.110(a).<sup>2</sup>

The analysis of whether [REDACTED] was living with the Claimant is essentially the same under the Family Medicaid program as under the ATAP program. As with the ATAP program, there are two factors relevant to whether a child is living in the home of a benefit claimant or recipient. The first factor, pursuant to Alaska Family Medicaid Manual Section 711-6A, is whether the child resides in the home of the claimant or recipient "more than half of the time in a calendar month." The second factor, pursuant to 7 AAC 100.110(b), is whether the Claimant "maintains a home for the child and is responsible for the care and control of the child." Similarly, pursuant to 7 AAC 100.199, the "home" of the child is the place where the person lives who has "assumption and continuation of responsibility for day-to-day care of the child;" "a home exists as long as the relative exercises responsibility for the care and control of the child . . .".

As discussed above in Section II with regard to ATAP, the weight of the evidence is that [REDACTED] was spending more than half of each calendar month with [REDACTED] and [REDACTED] at all times relevant hereto. Accordingly, [REDACTED] was living with Ken and [REDACTED] for purposes of Alaska Family Medicaid Manual Section 711-6A.

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<sup>2</sup> There are also references in the DPA's ATAP termination notice indicating that the Division may also have asserted that the Claimant remained eligible for Family Medicaid benefits only so long as she remained eligible for ATAP benefits. See Ex. 4.0. However, because participation in the Family Medicaid program (like participation in the ATAP program) is contingent on whether the dependent child lives in the applicant or recipient's household, and because it is concluded that [REDACTED] no longer lives with the Claimant, it is not necessary to address this additional argument.

The conclusion that [REDACTED] was living with [REDACTED] and [REDACTED] for purposes of the Family Medicaid program is reinforced by the fact that, pursuant to 7 AAC 100.110(b) and 7 AAC 100.199, the child's home is with the person who has the "assumption and continuation of responsibility for day-to-day care of the child." As discussed in Section II, above, [REDACTED], as Guardian, has primary responsibility for [REDACTED]. See A.S. 13.26.070 ("[a] guardian of a minor has the powers and responsibilities of a parent . . ."). Accordingly, [REDACTED]'s "home" is the home of [REDACTED] and [REDACTED] pursuant to 7 AAC 100.110(b) and 7 AAC 100.199.

In summary, as a factual matter, the weight of the evidence indicates that [REDACTED] resided at the home of [REDACTED] and [REDACTED] more than half of the time in a month. Moreover, as a matter of law, [REDACTED]'s home is the home of [REDACTED] and [REDACTED] based on [REDACTED]'s status as [REDACTED]'s legal guardian. Accordingly, the Division correctly found that [REDACTED] is living with [REDACTED] and [REDACTED] for purposes of the Family Medicaid program.

#### IV. The Food Stamp Program.

A household's eligibility for the Food Stamp program, and the amount of Food Stamp benefits that a household receives, is based upon the number of household members. 7 CFR 273.1. As stated in the Principles of Law, above, neither the State of Alaska's nor the federal government's statutes or regulations concerning the Food Stamp program discuss what percentage of time a person must live with a household to be considered a part of the household for Food Stamp purposes. However, 7 CFR Section 273.1(c) states in relevant part that, for matters not covered by the federal regulations:

The State agency may apply its own policy for determining when an individual is a separate household or a member of another household if the policy is applied fairly, equitably, and consistently throughout the State.

The policies of the State of Alaska Division of Public Assistance on these issues are set forth in the Alaska Food Stamp Manual. Alaska Food Stamp Manual Section 600-2 provides that:

To be considered under the parental control of an adult household member, children under 18 must be living with one or both parents or an adult who is caring for them as if he/she were their parent, i.e., providing for basic needs such as lodging, meals, etc.

The Commentary to Alaska Food Stamp Manual Section 602-1(A)(2)(b) provides that:

When the natural (i.e., biological) parent's rights are terminated as a result of adoption or other court action, the natural parent is no longer considered the child's parent for food stamp purposes.

Thus, pursuant to the Alaska Food Stamp Manual, the question of whether a child is included in a claimant or recipient's household is not dependent on the percentage of time that the child spends with the claimant or recipient, but rather on who is caring for the child as if he or she was the parent, and who has the greater parental rights.

A.S.13.26.045 provides in relevant part that “the court may appoint a guardian for an unmarried minor if all parental rights of custody have been terminated or suspended by circumstances or prior court order.” Pursuant to that statute, the fact that [REDACTED] was appointed as [REDACTED]’s guardian necessarily means that the Claimant’s parental rights have been terminated or suspended. Accordingly, pursuant to the Commentary to Alaska Food Stamp Manual Section 602-1(A)(2)(b), the Claimant is no longer considered to be [REDACTED]’s parent for food stamp purposes. The Division therefore correctly reduced the Claimant’s Food Stamp benefits based on the finding that the Claimant’s daughter was no longer living in her home.

### **CONCLUSIONS OF LAW**

1. The Division correctly determined, pursuant to 7 AAC 45.225(b), 7 AAC 45.990(23), and A.S. 13.26.070, that [REDACTED] was living with [REDACTED] and [REDACTED] for purposes of the ATAP program.
2. The Division correctly determined, pursuant to Alaska Family Medicaid Manual Section 711-6A, 7 AAC 100.110(b), 7 AAC 100.199, and A.S. 13.26.070, that [REDACTED] was living with [REDACTED] and [REDACTED] for purposes of the Family Medicaid program.
3. The Division correctly determined, pursuant to Alaska Food Stamp Manual Section 600-2, the Commentary to Alaska Food Stamp Manual Section 602-1(A)(2)(b), and A.S.13.26.045, that [REDACTED] was living with [REDACTED] and [REDACTED] for purposes of the Food Stamp program.
4. The Division was therefore correct to terminate the Claimant’s ATAP and Family Medicaid benefits, and to reduce the Claimant’s Food Stamp benefits, based on the finding that the Claimant’s daughter was no longer living in her home.

### **DECISION**

The Division was correct to terminate the Claimant’s ATAP and Family Medicaid benefits, and to reduce the Claimant’s Food Stamp benefits, based on the finding that the Claimant’s daughter was no longer living in her home.

### **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 \_\_\_\_\_ day of January, 2009.

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Jay Durych  
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this \_\_\_\_\_ day of January, 2009, 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

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Al Levitre  
Law Office Assistant I