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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-729
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) applied for Alaska Temporary Assistance Program (ATAP) benefits on September 15, 2008 (Ex. 1). On or about October 14, 2008 the State of Alaska Division of Public Assistance (DPA or Division) notified the Claimant that her application for ATAP benefits had been approved effective September 2008 (Ex. 2.3). However, the Division also notified the Claimant that a one month period of ineligibility had been imposed (ending September 17, 2008) due to the Claimant's voluntary termination of employment without good cause (Ex. 2.2).¹ On October 10, 2008 the Claimant requested a fair hearing (Ex. 3.1). This office has jurisdiction pursuant to 7 AAC 49.010.

A hearing was held on November 20, 2008 and December 18, 2008. The Claimant appeared in person and represented herself. [REDACTED], a Public Assistance Analyst with the Division, attended in person to represent and testify on behalf of the Division.

¹ The Division's notices (Exs. 2.2, 2.3, and 3.0) are somewhat confusing. However, construing the notices together, and in the context of the hearing testimony of [REDACTED] and the Claimant, it appears that the Claimant was deemed ineligible for the period August 18 – September 17, 2008, but eligible for the period beginning on September 18, 2008. In any event, this case concerns whether a period of ineligibility should have been imposed rather than the start date, end date, or duration of that period.

ISSUE

Was the Division correct to impose a one month period of ineligibility for ATAP benefits (covering the period August 18, 2008 – September 17, 2008) based on the allegation that the Claimant had voluntarily terminated her employment without good cause?

FINDINGS OF FACT

1. The Claimant has three children who, at the time of the events at issue here, were ages ■, ■, and ■ (Ex. 2.6, Claimant hearing testimony).
2. At all times relevant hereto prior to August 18, 2008 the Claimant was employed full time by the ■ of the city of ■ as an administrative secretary (Ex. 4).
3. The Claimant began experiencing bouts of abdominal pain on her left side in or about February – March 2008 (Ex. B.0018). The bouts usually lasted several hours and the pain was severe (Ex. B.0003).
4. On or about June 1, 2008, the Claimant was seen by the Emergency Department at ■ Medical Center complaining of abdominal pain, and was apparently admitted to the hospital and kept overnight (Exs. A.0003-A.0006, A.0013 – A.0025).
5. On or about July 11, 2008, the Claimant was again admitted to ■ Medical Center complaining of abdominal pain (Exs. A.0029, 2.9). The Claimant was discharged on July 13, 2008 (Exs. A.0029, 2.9).
6. On or about August 18, 2008 the Claimant resigned from her employment with the ■ of the city of ■ (Exs. 2.8, 4). Her letter of resignation stated in relevant part that “my health has become a major concern and returning home [to Anchorage, Alaska] and getting the support I need from family and friends is my number one priority” (Exs. 2.8, 4).
7. On or about September 15, 2008 the Claimant applied for Alaska Temporary Assistance Program (ATAP) benefits, Food Stamp benefits, and Medicaid benefits for herself and her children (Exs. 2.0, 2.6, 2.7). The Claimant attended an in-person eligibility interview on September 24, 2008 (Ex. 2.0). The Claimant stated at the interview that she had resigned from her job in ■ because she was hospitalized and also because her kids were alone (Exs. 2.1, 2.4).
8. On or about October 3, 2008 the Division mailed the Claimant a notice advising her that her September 15, 2008 ATAP application had been denied ² (Exs. 2.2, 3.0). The notice stated in relevant part:

² As noted in Footnote 1, above, the Division’s notices (Exs. 2.2, 2.3, and 3.0) are somewhat confusing. Rather than stating that her ATAP application had been denied, the DPA’s notice dated October 3, 2008 should have

Your family's application for [ATAP] received on September 15, 2008 is denied because a member of your family quit or refused a job . . . without good reason You quit your job for medical reasons but could not provide proof that a medical provider stated you could not work Since this is your first penalty for refusing work, it will last until September 18, 2008, making your family ineligible the month of September.

9. On or about October 14, 2008 the Division mailed the Claimant a notice advising her that her ATAP application of September 2008 had been approved and that she would be paid benefits beginning with the month of September 2008 (Ex. 2.3).

10. During the six week period ending October 21, 2008 the Claimant was forced to go to a hospital emergency room on three occasions due to severe abdominal pain (Ex. B.0014).

11. The doctor's notes from an emergency room visit on October 10, 2008 state in relevant part as follows (Ex. B.0003):

The patient . . . has her knees drawn up to her chest and is making sounds . . . like . . . dry heaving She appears quite uncomfortable She was initially reluctant to cooperate with the exam due to her pain.

12. The doctor's notes from an emergency room visit on October 17, 2008 state in relevant part as follows (Ex. B.0001):

[The patient is] a very uncomfortable lady, writhing on the bed, going from a fetal position to almost a knee-chest position.

13. On October 30, 2008 and November 3, 2008 the Claimant underwent additional testing to determine the cause of her abdominal pain (Exs. B0025 – B0028). The medical testing employed was invasive. *Id.*

14. At the hearing, the Division relied primarily on the medical and employment records which were admitted as exhibits. Mr. [REDACTED]'s testimony was consistent with the content of the exhibits as stated above.

15. At the hearing, the Claimant testified that the cause of her recent medical problems is still unknown, but that she has been treated for gastritis and for h-pylori. She testified that the symptoms are a pain in her abdomen, and that, "when it does happen I cannot take a breath, I cannot talk . . . just breathing hurts. I'm usually doubled-over." The Claimant testified that,

informed the Claimant that her application had been approved, but that a one month period of ineligibility had been assessed. In any event, as previously noted, this case concerns whether a period of ineligibility should have been imposed rather than the start date, end date, or duration of that period.

when these abdominal pains have occurred, they are so severe that she has been unable to drive herself to the hospital for treatment.

16. At the hearing, the Claimant testified that in [REDACTED] she had a good job and home but no family or other persons to turn to for help or support. She stated that “I quit my job because of ongoing health concerns . . . my resignation letter stated so . . . I was hospitalized for three days and during that time my kids were left home alone . . . I didn’t have family there and I didn’t have day care . . . I didn’t know I was going to be hospitalized . . . I would not have quit my job if I didn’t have kids that would have been left home alone in the event that this [hospitalization] had happened again”. The Claimant testified that “I did have [child] care Monday through Friday, 8:00 a.m. to 5:00 p.m. . . . but the circumstances [were] that . . . the three days in the hospital [were] from Friday to Sunday.”

17. The Claimant further testified that “What it comes down to . . . is the safety and concern of my kids The State . . . is saying . . . ‘leave your kids home alone,’ . . . when [that would be] against the law, and [the children] could have been taken away. The week I did quit my job, I started to get sick again . . . this wasn’t a one time . . . event . . . this has happened several times . . . here in Alaska as well as [REDACTED] The last time it happened was in October I keep having this issue, and it is completely debilitating when it does happen. . . . Moving to Alaska was out of concern . . . for my kids.

18. The Claimant summarized her position by stating “I believe that [what] the State should be looking at [is] does the person leave their kids home alone . . . and continue with the job, or go to where they do have support, and that is why I moved back to Alaska . . . because I do have support here”

19. The testimony of Mr. [REDACTED] was credible. The testimony of Ms. [REDACTED] was also credible.

20. The parties did not formally stipulate to any facts. However, based on the hearing testimony of the parties, there was no disagreement between the parties as to any facts material to any matters at issue in this case.

PRINCIPLES OF LAW

I. Burden of Proof and Standard of Proof.

This case involves the Division’s denial of the Claimant’s initial application for ATAP benefits. 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). The Claimant is attempting to change the existing status quo by obtaining ATAP benefits. Accordingly, the Claimant bears the burden of proof in this case.

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 (5th Ed. 1979).

II. The Alaska Temporary Assistance Program.

The Temporary Aid to Needy Families (TANF) program was created by Congress when it passed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law No. 104-193, 110 Stat. 2105 (Aug. 22, 1996); 42 U.S.C. § 601 et seq. Under TANF, each state receives a predetermined block of funding to distribute as the state sees fit. 42 U.S.C.A. § 601 et seq.

The Alaska Temporary Assistance Program (ATAP) is a state program created to implement the federal TANF program in the state of Alaska. See A.S.47.05.010(1); A.S.47.27.005 – A.S.47.27.990. The Alaska Temporary Assistance Program’s governing regulations are found in the Alaska Administrative Code at 7 AAC 45.149 – 7 AAC 45.990.

Alaska Statute Section 47.27.005 provides in relevant part as follows

The department shall . . . (2) establish, by regulation, program standards for incentives to work, incentives for financial planning, cash assistance, diversion payments, self-sufficiency services, and other opportunities to develop self-sufficiency

7 AAC 45.980, titled “reduction in cash assistance due to noncompliance”, provides in relevant part as follows:

(a) The reductions in cash assistance due to noncompliance with program requirements, as set out in AS 47.27.085 (a), apply to the failure to . . . (2) participate in work activities, as required by AS 47.27.035 . . .

Alaska Statute Section 47.27.015(c) provides in relevant part as follows:

(c) A family is not eligible for cash assistance for the following time periods if the family's demonstrated need for cash assistance is due to a refusal of or *voluntary separation from* suitable employment by the adult applicant, or a custodial parent or caretaker, *without good cause*: (1) one month for the first refusal or separation without good cause; (2) six months for the second refusal or separation *without good cause*; and (3) 12 months for the third and subsequent refusal or separation *without good cause*. (Emphasis added).

7 AAC 45.970, titled “penalties for refusal or voluntary termination of employment”, provides in relevant part as follows:

(a) If an adult applicant or a custodial parent or caretaker refuses or *voluntarily terminates* suitable employment, as defined in 7 AAC 45.990, *without good cause*, as described in 7 AAC 45.261, within 60 days before submitting an application for ATAP benefits, a rebuttable presumption is established that the assistance unit's demonstrated need for ATAP benefits is due to that refusal or termination, and the department will impose upon the assistance unit the appropriate period of ineligibility under AS 47.27.015 (c). If the individual's refusal or voluntary termination occurs 60 or more days before submitting the application for ATAP benefits, this presumption and the period of ineligibility do not apply. (Emphasis added).

7 AAC 45.990, titled “Definitions,” provides in relevant part as follows:

(b) In AS 47.27.015 , "voluntary separation" means (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.

7 AAC 45.261(a) provides in relevant part as follows:

(a) For the purposes of determining "good cause" under AS 47.27.015 (c) (refusal of or voluntary separation from suitable employment), AS 47.27.085 (a) (failure to comply with a condition of the FSSP under AS 47.27.030 and failure to participate in work activities under AS 47.27.035), and 7 AAC 45.495(a) (reduction of income), the following circumstances may constitute good cause:

* * * * *

(4) a sudden and temporary situation beyond the control of the family, affecting health of a member or ability to comply, including family illness or death or tragedies of nature;

* * * * *

7 AAC 45.970, titled “penalties for refusal or voluntary termination of employment”, provides in relevant part as follows:

(d) For the purposes of enforcing the period of ineligibility under AS 47.27.015 (c), a month is considered 30 calendar days. For an applicant, the period begins on the date that suitable employment is refused or voluntarily terminated. If an applicant refuses or voluntarily terminates employment after the date of application but before eligibility is determined, the period begins on the date of application. For a recipient, the period begins on the first of the month following

the month in which the department provides the recipient with a notice of proposed agency action in accordance with 7 AAC 49.060. Once begun, the period of ineligibility runs uninterrupted until the period expires.

(e) If the department determines that an individual's termination from suitable employment was caused by action or inaction within the individual's control, the department will consider the termination as a voluntary separation under AS 47.25.015, and the department will enforce the period of ineligibility specified in AS 47.27.015 (c).

* * * * *

ANALYSIS

I. Introduction.

A. Sixty Day "Look-Back" Period.

As a preliminary matter it should be noted that this case arose because the Claimant applied for ATAP benefits within the 60 day "look-back" period prescribed by 7 AAC 45.970. That regulation, titled "penalties for refusal or voluntary termination of employment," provides in relevant part as follows:

(a) If an adult applicant or a custodial parent or caretaker refuses or *voluntarily terminates* suitable employment, as defined in 7 AAC 45.990, *without good cause*, as described in 7 AAC 45.261, *within 60 days before submitting an application for ATAP benefits, a rebuttable presumption is established that the assistance unit's demonstrated need for ATAP benefits is due to that refusal or termination* If the individual's refusal or voluntary termination occurs 60 or more days before submitting the application for ATAP benefits, this presumption and the period of ineligibility do not apply. (Emphasis added).

In this case, the Claimant quit her job in [REDACTED] on August 18, 2008 (Exs. 2.8, 4). She applied for ATAP benefits on September 15, 2008 (Exs. 2.0, 2.6, 2.7). Because the Claimant applied for ATAP benefits within 60 days after quitting her job, the above regulation, 7 AAC 45.970(a) creates a rebuttable presumption³ that the need for assistance was caused by the Claimant's voluntary termination of her employment.⁴ However, this same regulation provides for rebuttal of this presumption if there was "good cause," as described in 7 AAC 45.261, for termination of the employment.

³ A rebuttable presumption is "a presumption which may be rebutted by evidence . . . a species of legal presumption which holds good until evidence contrary to it is introduced." Black's Law Dictionary at 1139 (West Publishing Co., 5th Edition, 1979).

⁴ Had the Claimant waited to apply for ATAP benefits until after the expiration of 7 AAC 45.970's 60 day disqualification period (i.e. until October 19, 2008 or later), then the issue of whether the Claimant had good cause to quit her job would not have been relevant.

B. Precise Issues to be Determined.

The preceding section explained the sixty day “look-back” period which applies when ATAP claimants or recipients voluntarily terminate their employment, and how the “look-back” regulation (7 AAC 45.970(a)) creates a rebuttable presumption that a Claimant’s need for ATAP benefits was caused by the preceding job quit. The remainder of the analysis examines those factors which may rebut that rebuttable presumption.

The first factor relevant to this case which may rebut the rebuttable presumption created by 7 AAC 45.970(a) is whether the Claimant’s job quit was voluntary. See A.S.47.27.015(c) and 7 AAC 45.990(b). The second factor relevant to this case which may rebut the rebuttable presumption created by 7 AAC 45.970(a) is whether the Claimant had good cause to quit her job. See 7 AAC 45.261(a). In this case, the fact that the Claimant was separated from her employment was not disputed. Accordingly, pursuant to A.S.47.27.015(c), 7 AAC 45.990(b), and 7 AAC 45.261(a), the precise issues to be determined are:

- (1) Was the Claimant’s separation from her employment voluntary ?
- (2) If so, did the Claimant have good cause to voluntarily terminate her employment?

These issues will be addressed below in the order referenced. Because the Claimant is attempting to change the existing status quo by obtaining ATAP benefits, the Claimant bears the burden of proof on these two issues (see discussion in Principles of Law at page 4, above).

II. Was the Claimant’s Separation from Her Employment Voluntary?

The first issue to be addressed pursuant to A.S.47.27.015(c) is whether the Claimant’s separation from her employment was voluntary. 7 AAC 45.990(b) defines “voluntary separation” in relevant part as “voluntary termination of employment by an employee” However, the regulation is not helpful in this case because it does not define when separation from or termination of employment by an employee is “voluntary”. Accordingly, it is necessary to reference other authorities to determine the meaning of “voluntary.”

Business Dictionary.com defines “voluntary” as “proceeding from an act of will and involving choice between or among alternatives.” Princeton University’s online dictionary defines voluntary in relevant part as “of your own free will or design; done by choice; not forced or compelled.” Merriam-Webster’s online dictionary defines “voluntary” in relevant part as “proceeding from the will or from one’s own choice or consent . . . done by design or intention . . . done of one’s own free will . . . “. Black’s Law Dictionary (West Publishing Co., 5th Edition, 1979) defines “voluntarily” as “[d]one by design or intention, intentional, proposed, intended, or not accidental Intentionally and without coercion.”

In this case, the Claimant resigned from her employment with the Department of Parks and Recreation of the city of [REDACTED] by writing a letter of resignation (Exs. 2.8, 4). Her

letter of resignation stated in relevant part that “my health has become a major concern and returning home [to Anchorage, Alaska] and getting the support I need from family and friends is my number one priority” (Exs. 2,8, 4). The fact that the Claimant wrote a letter of resignation shows that her separation from employment was done “by design or intention” and was not accidental. Further, the fact that the Claimant explained her reasons for leaving her job shows that her decision to quit involved a “choice between or among alternatives.”

Accordingly, it is clear that, although the Claimant’s health problems and child care concerns may have been the genesis for her decision to move from ██████ to Alaska, her decision to leave her job was never-the-less “voluntary” based on the accepted meaning of that term. The next issue under A.S.47.27.015(c) is whether the Claimant had good cause to terminate her employment.

III. Did the Claimant Have Good Cause to Terminate Her Employment?

As demonstrated above, the Claimant voluntarily terminated her employment in ██████ on August 18, 2008. Accordingly, the next issue is whether the Claimant had good cause to terminate her employment pursuant to A.S. 47.27.015(c). At the hearing, the Claimant asserted that she quit her job due to health problems and a concern that her health problems would adversely affect her ability to provide child care for her children. See Findings of Fact at Paragraphs 15-18, above. The Claimant asserts that her health problems and her resulting concerns about providing adequate child care constitute good cause for the voluntary termination of her employment in ██████.

7 AAC 45.261(a) defines “good cause” for purposes of the ATAP program. The subsection of the regulation that applies to this case is subsection (4).⁵ The regulation provides in relevant part as follows:

For the purposes of determining "good cause" under AS 47.27.015(c) (refusal of or voluntary separation from suitable employment) . . . the following circumstances may constitute good cause: (4) a *sudden* and *temporary* situation *beyond the control* of the family, *affecting health* of a member or ability to comply, including family illness or death (Emphasis added).

Examination of 7 AAC 45.261(a)(4) reveals that it has four factors or elements. First, the situation constituting good cause must be *sudden*. Second, the situation constituting good cause must be *temporary*. Third, the situation constituting good cause must be *beyond the control* of

⁵ The Claimant also appeared to argue the applicability of 7 AAC 45.261(a)(1). However, that subsection does not apply to the facts of this case. The subsection provides in relevant part that, “for the purposes of determining "good cause" under AS 47.27.015(c) (refusal of or voluntary separation from suitable employment) . . . the following circumstances may constitute good cause: (1) *the recipient is a single parent of a child under age six years and child care is not appropriate or available . . .*.” (Emphasis added). In this case, however, the ages of the Claimant’s three children, at the time of the events at issue here, were ██████ and ██████ (Ex. 2.6, Claimant hearing testimony). Accordingly, 7 AAC 45.261(a)(1) does not apply because the Claimant had no children under the age of six at the time she terminated her employment.

the family member. Fourth, the situation constituting good cause must *affect the health of a member* of the applicant's family. Accordingly, it is necessary to apply 7 AAC 45.261(a)(4) to the facts of this case to determine whether the Claimant's situation satisfies the regulation's four criteria.

The first factor is whether the situation is *sudden*. The onset of the Claimant's abdominal pains is clearly sudden. When the pains occur, there is no time to make an appointment with a doctor; the Claimant is forced to go to a hospital emergency room for treatment. Indeed, these pains have caused her to be admitted to the hospital on at least two occasions and to be seen at an emergency room on at least three additional occasions. See Findings of Fact at Paragraphs 4, 5, 10, 11, and 12. The Claimant's abdominal pains are therefore sudden.

The second factor is whether the situation is *temporary*. The Claimant's abdominal pains are clearly not constant. Rather, they may occur every few weeks or every few months, and when they occur, they may last for only three hours. See Findings of Fact at Paragraphs 3, 4, 5, 10, 11, and 12. The Claimant's abdominal pains are therefore temporary.

The third factor is whether the situation is *beyond the control* of the family. The Claimant's abdominal pains are clearly beyond her control. She began seeking medical help to control these pains at least 2.5 months before she quit her job. See Findings of Fact at Paragraphs 4 – 6. She was still seeing doctors to try to identify the source of her medical problems more than 2.5 months after she quit her job. See Findings of Fact at Paragraph 13. The abdominal pains continued to occur despite various treatments. See Findings of Fact at Paragraph 15. The Claimant's abdominal pains are therefore beyond her control.

The fourth and final factor is whether the Claimant's abdominal pains *affect the health of a family member*. The Claimant's abdominal problems clearly affect her health. These pains have caused her to be admitted to the hospital on at least two occasions, and to be seen at an emergency room on at least three additional occasions. See Findings of Fact at Paragraphs 4, 5, 10, 11, and 12. The Claimant's abdominal pains therefore affect her health, which means they affect the health of a family member.

In summary, the Claimant has satisfied her burden of proof. She has proven, by a preponderance of the evidence, that she had good cause to terminate her employment pursuant to 7 AAC 45.261(a)(4) and AS 47.27.015(c). Accordingly, the Division erred when it imposed a one month period of ineligibility for ATAP benefits (covering the period August 18, 2008 – September 17, 2008) based on the allegation that the Claimant had voluntarily terminated her employment without good cause.

CONCLUSIONS OF LAW

1. The Claimant proved, by a preponderance of the evidence, that she had good cause to terminate her employment pursuant to 7 AAC 45.261(a)(4) and AS 47.27.015(c).
2. Accordingly, the Division erred when it imposed a one month period of ineligibility for Alaska Temporary Assistance Program benefits (covering the period August 18, 2008 –

September 17, 2008) based on the allegation that the Claimant had voluntarily terminated her employment without good cause.

DECISION

The Division erred when it imposed a one month period of ineligibility for Alaska Temporary Assistance Program benefits (covering the period August 18, 2008 – September 17, 2008) based on the allegation that the Claimant had voluntarily terminated her employment without good cause.

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 February, 2009.

Jay Durych
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on the 13th day of February, 2009, a true and correct copy of this decision was mailed to the Claimant, and that on the 17th day of February, 2009, a true and correct copy of this decision was sent electronically to the other parties, as follows:

Claimant – Certified Mail, Return Receipt Requested.

_____, Director
_____, Policy & Program Development
_____, Staff Development & Training
_____, Fair Hearing Representative

Al Levitre
Law Office Assistant I