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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-838
)	
Claimant.)	Division Case No. ██████████
_____)	

FAIR HEARING DECISION

STATEMENT OF THE CASE

██████████ (Claimant) applied for Alaska Temporary Assistance (Temporary Assistance) benefits on September 18, 2008. (Ex. 1.0) The Division of Public Assistance (Division) sent him an October 28, 2008 written notice his Temporary Assistance application was denied. (Ex. 2.5) The Claimant requested a fair hearing on November 4, 2008. (Ex. 3.0) This Office has jurisdiction pursuant to 7 AAC 49.010.

A hearing was originally scheduled for December 18, 2008. The hearing was postponed several times at the Claimant's request. The hearing was held on June 16 2009.

The Claimant appeared in person for the hearing and testified on his own behalf. He was represented by ██████████, Esq. ██████████, Public Assistance Analyst with the Division, attended the hearing in person. She represented the Division and testified on its behalf. ██████████, a Hmong language interpreter with Optimal Interpreter Services, attended telephonically and translated for the parties during the hearing.

ISSUE

Was the Division correct to deny the Claimant's September 18, 2008 application for Temporary Assistance benefits?

FINDINGS OF FACT

The following facts are established by a preponderance of the evidence.

1. The Claimant had been living in [REDACTED] and moved to Alaska in September 2008. (Division Ex. 2.0; Claimant testimony) He applied for Alaska Temporary Assistance benefits on September 18, 2008. (Division Ex. 1; Claimant testimony) The Division interviewed the Claimant about his application on October 2, 2008. (Ex. 2.0)
2. The Division contacted the State of [REDACTED] and was informed that the Claimant's family was receiving Temporary Assistance benefits in [REDACTED] under the Claimant's wife's name. (Division Ex. 2.3)
3. On October 28, 2008, the Division sent the Claimant written notice that his Temporary Assistance application was denied because he "was getting benefits from another state." (Division Ex. 2.5) The same notice explained further that the denial was based upon the Claimant's wife having an active Temporary Assistance case in [REDACTED] during the month of October 2008. *Id.*
4. On November 4, 2008, the Claimant requested a fair hearing challenging the denial of his application for Temporary Assistance. (Division Ex. 3) The fair hearing request reads: "I'm file for a Fair hearing because my wife did not receive any TANIF cash assistance in [REDACTED]. My wife is on SSI since 2001. So, she has nothing to do with my case." *Id.*
5. After the fact of the denial, the Division learned in mid December 2008 that neither the Claimant nor his wife had an open Temporary Assistance case in [REDACTED] in either September or October 2008. (Division Exs. 2.6 – 2.10) Specifically, the Division learned the Claimant's family reached the maximum 60 month lifetime limit for receiving Temporary Assistance benefits as of May 31, 2005. From that point forward, the family received [REDACTED] financial assistance, not through the Temporary Assistance program, but rather from a [REDACTED] program called "[REDACTED]" that only aided the children. (Division Ex. 2.9)
6. On December 22, 2008, after the Claimant had been sent the October 28, 2008 denial notice and after he had requested this fair hearing, the Division sent the Claimant notice that it was denying his September 18, 2008 Temporary Assistance application because his "family has already received 60 months of Temporary Assistance and your family does not qualify for an extension to the 60 – month time limit." (Division Ex. 2.11) The Division reached this conclusion after the Claimant's eligibility worker and a supervisor reviewed the Claimant's intake interview information. ([REDACTED] testimony) The normal procedure using a team of three persons for an extension staffing review was not followed. *Id.*

7. No one from the Division contacted the Claimant to discuss extension of Temporary Assistance benefits before the Division sent him its December 22, 2008 denial letter. (Claimant testimony)

8. The Claimant does not speak, read, or write the English language. (Claimant testimony) He has taken English language classes but cannot comprehend English and forgets it after class. *Id.*

9. The Claimant was offered a job working cleaning planes at the airport in the spring of 2009. However, it was a night shift position (10 p.m. to 7 a.m.) and he had applied for an earlier shift. He turned the night shift position down because his wife is disabled and he had to take care of his children and make sure they got to school. (Ex. 7; Claimant testimony)

10. On June 8, 2009, after the Claimant submitted a new application for Temporary Assistance benefits, the Division reviewed his application to determine if he qualified to receive Temporary Assistance benefits for longer than the 60 month lifetime limit (Extension staffing). The Claimant met with two Division personnel and a work services specialist to determine whether the Claimant could receive Temporary Assistance benefits for longer than the 60 month lifetime limit. The Division determined the Claimant was not eligible for extended benefits. (Ex. 7)

PRINCIPLES OF LAW

This case involves the denial of an application for benefits. When the Division denies 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 (lifetime limit). AS 47.27.015(a)(1).

The Temporary Assistance program rules allow an exception to the 60 month lifetime limit when domestic violence, physical or mental inability to work, or caring for a disabled child or relative, interfere with a recipient's ability to work. *See* AS 47.27.015(a)(1)(A)-(C); 7 AAC 45.610(d) – (f). The Temporary Assistance program rules

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)

also allow an exception to the 60 month lifetime limit for family hardship. AS 47.27.015(a)(1)(D); 7 AAC 45.610(g).

Hardship is defined as being when “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 45.990(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).

Family hardship also includes a “functional impairment that interferes with the individual’s ability to earn a wage sufficient to support the family.” 7 AAC 45.610(g)(1)(B). Although the regulation does not elaborate on the concept of a “functional impairment,” the Division’s Temporary Assistance Manual states that “[l]imited English proficiency which affects the potential for employment and which the individual is working to overcome” is a functional impairment. *Alaska Temporary Assistance Manual* § 701-4(2).

The Division is required to review a family’s request that it be allowed to receive Temporary Assistance benefits for longer than 60 months:

(c) Upon a family’s request, the department will conduct an extension review to determine the eligibility of the family for an extension of the 60-month limit in AS 47.27.015(a). This review will be conducted by a staffing team that will include the family’s case manager and other persons the department determines appropriate.

7 AAC 45.610(c).

In *Allen v. State, Dept. of Health and Social Services, Division of Public Assistance*, 203 P.3d 1155 (Alaska 2009), the Alaska Supreme Court stated that public assistance benefit recipients are entitled to adequate notice “detailing the reasons” for the agency action. *Allen* at 1167. In its decision, the Court stated:

If a major purpose served by benefit change or denial notices is protecting recipients from agency mistakes, then it stands to reason that such notices should provide sufficient information to allow recipients to detect and challenge mistakes.

Id. at 1168. A defective notice cannot be cured by the Claimant going through the hearing process and obtaining the information the initial notice should have contained. *Id.* fn. 68 at 1169.

ANALYSIS

The Claimant applied for Temporary Assistance benefits in September 2008. As an applicant, he has the burden of proof by a preponderance of the evidence.

It is undisputed that the Division denied the Claimant's application. The reason given the Claimant was that his family was receiving Temporary Assistance benefits in the State of California. It is undisputed that the Claimant's family, in fact, was not receiving Temporary Assistance benefit from the State of [REDACTED]. The denial notice sent to the Claimant was erroneous. The Division's mistaken denial notice was based upon incorrect information it received from the State of [REDACTED].

After the Claimant filed his November 8, 2008 request for this fair hearing, the Division subsequently found out, in December 2008, that it had received incorrect information from the State of [REDACTED]. The Division did find out the Claimant's family had already received a total of 60 months of Temporary Assistance benefits which would normally cause his family to no longer be eligible to receive Temporary Assistance benefits. *See* AS 47.27.015(a)(1). The Division then determined he did not qualify to for an exception to the 60 month time limit for receipt of Temporary Assistance benefits. The Division reached this determination without assembling a normal staffing team, without consulting the Claimant or asking for his input, based solely upon a review of the Claimant's October 2, 2008 intake interview. *See* Findings of Fact 6 and 7 above. The Division then sent the Claimant written notice that he was not entitled to an extension of his Temporary Assistance benefits on December 22, 2008.

In June 2009, after the Claimant had reapplied for Temporary Assistance, the Division assembled a staffing team, in which the Claimant participated, and the Division then determined the Claimant did not qualify for an exception to the 60 month time limit for receipt of Temporary Assistance benefits.

A review of the facts in this case shows the Claimant was sent an initial incorrect notice about the denial of his September 2008 application for Temporary Assistance. Once the Division found out from [REDACTED] that the Claimant had exhausted his 60 month Temporary Assistance limit, it sent the Claimant a new denial notice. However, the Alaska Supreme Court recently held that public assistance benefit recipients are entitled to adequate notice "detailing the reasons" for the agency action. *Allen v. State, Dept. of Health and Social Services, Division of Public Assistance*, 203 P.3d 1155, 1167 (Alaska 2009). A defective notice cannot be cured by the Claimant going through the hearing process and obtaining the information the initial notice should have contained. *Id.* fn. 68 at 1169.

The Division's efforts to cure its earlier erroneous denial, as shown by its subsequent December 22, 2008 notice informing the Claimant he was not entitled to Temporary Assistance due to the 60 month lifetime limit having been exceeded, clearly arose as a result of the Claimant asserting his fair hearing rights on November 8, 2008. The Division's remedial efforts, in December 2008 and June of 2009, to review the

Claimant's eligibility for an extension of the Temporary Assistance 60 month lifetime limit, do not cure the earlier defective notice. *Allen* fn. 68 at 1169.

The only issue in this case is therefore whether the Division was correct when it denied the Claimant's September 2008 Temporary Assistance application for the reasons provided in its original denial notice. Those reasons were that the Claimant's family was already receiving Temporary Assistance benefits in the State of [REDACTED]. The undisputed evidence shows the Claimant's family was not receiving Temporary Assistance benefits in the State of [REDACTED] when he applied for Temporary Assistance benefits in Alaska in September 2008. As a result, the Claimant has met his burden of proof by a preponderance of the evidence. The Division was not correct when it denied the Claimant's September 18, 2008 application for Temporary Assistance benefits.³

CONCLUSIONS OF LAW

1. The Claimant's September 18, 2008 Temporary Assistance application was denied by the Division for an incorrect reason that the Division arrived at based upon incorrect information the Division received from the State of [REDACTED].
2. The Division could not "correct" its October 28, 2008 denial notice by issuing a new denial notice that had a different reason for denial, because its subsequent denial actions occurred after it received the Claimant's November 4, 2008 fair hearing request.
3. The Division was therefore not correct when it denied the Claimant's September 18, 2008 Temporary Assistance application.

DECISION

The Division was not correct when it when it denied the Claimant's September 18, 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

³ This Decision does not address the issue of whether the Claimant qualifies for an exception to the 60 month lifetime limit for receiving Temporary Assistance benefits.

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 3rd day of August 2009.

Larry Pederson
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 3rd day of August 2009, true and correct copies of the foregoing were sent to:

██████████, Esq., ALSC by First Class Mail, Certified, Return Receipt Requested.

And to the following by email:

██████████, Fair Hearing Representative

██████████, Director

██████████, Director's Office

██████████, Policy & Program Development

██████████, Policy & Program Development

██████████, Staff Development & Training

J. Albert Levitre, Jr., Law Office Assistant I