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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-0940
)
 Claimant,)
) Division Case No. [REDACTED]
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (hereinafter "Claimant") applied for Temporary Assistance, Food Stamps, and Medicaid benefits on November 10, 2008. (Ex. 2). On December 17, 2008, the Division of Public Assistance (hereinafter "Division") determined she was eligible for Food Stamps and Medicaid, but was not eligible for Temporary Assistance benefits. (Ex. 4). On December 18, 2008, the Division sent Claimant notice she was not eligible for Temporary Assistance benefits. (Ex. 5 & 6). On December 29, 2008, Claimant requested a fair hearing. (Ex. 6.1). This office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to the Claimant's request, a hearing was held on January 21, 2009. The Claimant attended the hearing, but did not testify. She was primarily represented by [REDACTED], who also testified. [REDACTED], her spouse, was also present and testified on Claimant's behalf. [REDACTED] and [REDACTED] testified on the Claimant's behalf. [REDACTED], Public Assistance Analyst with the Division, attended in person to represent and testify on the Division's behalf. [REDACTED], from Optimal Interpreter Service, interpreted the hearing in [REDACTED] for the Claimant.

STATEMENT OF THE ISSUES

The Division identified the following issue: "The agency denied Mr. [sic] [REDACTED]'s November 2008 Alaska Temporary Assistance (TA) application for job quit and December 2008 for excess income."

The Claimant's Fair hearing request stated the following: "I disagree with the countable income stated on the denial letter. I enclosed record of my pay check stubs from the previous months. I (██████████) have not received EDD income yet. Please call EDD office to verify. Thank you."

The Claimant's fair hearing request did not mention the issue regarding the job quit. At hearing, no evidence was brought forward regarding a job quit. Therefore, the issue is as follows:

Was the Division's December 17, 2008 denial of Claimant's November 10, 2008 Application for Temporary Assistance benefits due to excess income correct?

FINDINGS OF FACT

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

1. Claimant and her spouse voluntarily quit work in ██████████ on November 8, 2008, so they could move to Alaska with their family. (Ex. 3 & 3.5)
2. On November 10, 2008, the Claimant signed and submitted an Application for Temporary Assistance, Food Stamps and Medicaid to the Division. (Ex. 2) Her household consisted of eight members including herself, her spouse, and children. (Ex. 2)
3. On November 25, 2008, Claimant met with Division personnel for an intake interview. (Ex. 3) At that time, Claimant informed the Division her husband had secured employment in Alaska working full-time. (Ex. 3.0) The Division personnel told Claimant she must apply for unemployment benefits with the State of ██████████ (Ex. 3.1) Furthermore, she must supply an employment verification form completed by her spouse's employer indicating the date he began employment, the date he will be first paid, the amount his first paycheck will be, and amount of hours he will work on average per week, and his wages per hour. (Ex. 3.0 - 3.1)
4. Claimant provided an employment statement showing her spouse began work on November 20, 2008. He worked 35-40 hours per week for \$9.75 per hour. (Ex. 4 & 4.10) This employment statement was received by the Division on December 8, 2008 (Ex. 4.10) The Division also noted Claimant's ██████████ unemployment claim began on November 30, 2008. (Ex. 4)
5. Based on the information from the spouse's employer as set forth in the employment statement mentioned above, and from the ██████████ unemployment claim, the Division determined the total gross monthly household income for December 2008 was \$2,211.19. (Ex. 4.8) Claimant's spouse's income calculation is as follows: 37.5 hours per week x \$9.75 per hour x conversion factor 4.3 = \$1,572.19. (Ex. 4.8) Claimant's unemployment was expected to be \$639.00 in the month of December 2008. (Ex. 4.8)
6. The Division made a determination of benefits on December 17, 2008. (Ex. 4) It approved Claimant for Food Stamps and Medicaid, but not for Temporary Assistance. (Ex. 4) The Division mailed Claimant notice December 18, 2008, regarding the denial of Temporary

Assistance benefits. (Ex. 4.0, 5 & 6) Based on the information provided, the Division imposed a job quit penalty on the Claimant from November 8, 2008 through December 7, 2008. (Ex. 5) Therefore, Claimant was not eligible for Temporary Assistance benefits during that time.

7. The Division denied Claimant's Temporary Assistance benefits after December 8, 2008 because Claimant's spouse's earnings and Claimant's unemployment benefits put the household over the income limit. (Ex. 4 & 4.8) The Division sent Claimant a notice of this denial on December 18, 2008, stating the Claimant's countable income was \$2,121.19 and the income limit was \$2,000.00. (Ex. 5)

8. Claimant submitted a pay stub from her spouse's employer indicating her spouse was working considerably less than 35 – 40 hours per week, and therefore had a reduced income. (Ex. 6.4) This information was provided on December 29, 2008, after the Division's determination. The finding regarding the date of receipt is based on a credibility determination after a review of the following evidence:

a. Claimant provided three witnesses that testified emphatically the date the pay stubs were provided to the Division was December 8, 2008. (Testimony of [REDACTED], [REDACTED] & [REDACTED]) However, this testimony is contradicted by evidence and later testimony, making the testimony regarding the December 8, 2008 not credible. The earliest issuance date of the pay stubs was December 12, 2008. (Ex. 6.4) When the issuance date of the stubs was noticed, a Claimant's witness then testified the stubs may have been provided later than December 8, 2008, but were provided before December 17, 2008, the date of the Division's determination. (Testimony of [REDACTED])

b. The Division contends the pay stubs were provided on December 29, 2008, after it had made its determination. The Division's contention is supported by the Division date stamp on the document, making its position credible. (Ex. 6.4) A date stamp is placed on every document received by the Division on the date that document is received by the Division. (Testimony of [REDACTED])

c. The record remained open so the Claimant could submit documentation from the employer stating the payroll checks were distributed prior to the December 12, 2008 issuance date. The Claimant failed to provide any documentation to that effect. Failure to provide supporting documentation further discredits Claimant's position.

9. On December 29, 2008, the Claimant requested a fair hearing. (Ex. 6.1) Her request stated: "I disagree with the countable income stated on the denial letter. I enclosed record of pay check stubs from the previous months. I ([REDACTED]) have not received my EDD income yet. Please call EDD office to verify. Thank you.)" (Ex. 6.1)

10. On January 3, 2009, Claimant supplied the Division with documentation indicating Claimant was not eligible for unemployment benefits in [REDACTED]. (Ex. B) At a January 5, 2009 meeting, Division personnel told Claimant the denial of Temporary Assistance benefits was based on the information provided before December 17, 2008. (Ex. 7) If conditions changed, Claimant should reapply for benefits. (Ex. 7)

PRINCIPLES OF LAW

“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). The standard of proof in an administrative proceeding is a “preponderance of the evidence,” unless otherwise stated. *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Com’n*, 711 P.2d 1170, 1183 (Alaska 1986). “Where one has the burden of proving asserted facts by a preponderance of the evidence, he must induce a belief in the minds of the triers of fact that the asserted facts are probably true.” *Robinson v. Municipality of Anchorage*, 69, P.3d 489, 493 (Alaska 2003).

The Temporary Assistance Program uses what is referred to as prospective income determination. When calculating benefits, the Division is required to make its “best estimate” of what income a recipient will receive during a particular eligibility month. 7 AAC 45.425(a). If the exact amount of expected income is uncertain, the Division is to use “only that amount that can be anticipated with reasonable certainty.” 7 AAC 45.425(c).

The maximum Temporary Assistance income eligibility standard a family of eight, two of whom are parents in calendar year 2008, is \$2,000.00. 7 AAC 45.520; *Alaska Temporary Assistance Manual Addendum 2*.

“Except as otherwise specified in applicable federal regulations and 7 AAC [49.160](#), the role of the hearing authority is limited to the ascertainment of whether the laws, regulations, and policies have been properly applied in the case and whether the computation of the benefit amount, if in dispute, is in accordance with them.” 7 AAC 49.170.

ANALYSIS

The issue in this case is whether the Division’s December 17, 2008 denial of Claimant’s Application for Temporary Assistance benefits was correct. Since Claimant is the party wishing to change the status quo, she has the burden of proof by a preponderance of the evidence.

The issue in this case is limited to whether the agency acted correctly when making its determination. 7 AAC 49.170. Therefore, this decision can only determine whether the Division acted correctly given the information it had at the time it made its determination. The Division made its determination on December 17, 2008, and sent notice to the Claimant regarding that determination on December 18, 2008. The Division used the prospective income determination, trying to find the best estimate as to Claimant’s household income. 7 AAC 45.425(a). When calculating benefits, the Division was required to make its “best estimate” of what income a recipient will receive during a particular eligibility month. 7 AAC 45.425(a).

In making its December 17, 2008 determination, the Division used the only information it had at the time and made a “best estimate” of the Claimant’s household income for December 2008.

Specifically, it relied upon the information and documents provided by the Claimant before December 17, 2008. The Claimant provided an employment statement that was received by the Division that was received by the Division on December 8, 2008 showing her spouse began work on November 20, 2008.¹ This document also stated he would work 35-40 hours per week for \$9.75 per hour. Accordingly, Division personnel calculated his gross wages to be \$1,572.19 for the month of December. In addition, the Division received information that the Claimant would receive unemployment benefits as of November 30, 2008, in the amount of \$639.00.

Based upon the information provided, the Division expected Claimant to receive unemployment benefits and her spouse to work full-time. The information the Division had at the time of its determination demonstrated the Claimant's household gross monthly income for the month of December 2008, would be \$2,211.19. (Ex. 4.8). The Division used the only information it had at the time to make its determination. Because the maximum gross monthly income the Claimant could receive and still be eligible for Temporary Assistance benefits was \$2,000.00, and because Claimant's household income was expected to be \$2,211.19, the Division was correct to deny Claimant's application for Temporary Assistance benefits.

CONCLUSIONS OF LAW

The Claimant failed to meet her burden by a preponderance of the evidence that the Division was incorrect in denying her November 10, 2008 Application for Temporary Assistance benefits because of excess income.

DECISION

The Division's decision to deny Claimant's November 10, 2008 Application for Temporary Assistance benefits is affirmed.

This decision is supported by the above mentioned citations as well as 7 AAC 49 et seq.

APPEAL RIGHTS

If the Claimant is dissatisfied with this decision for any reason, the Claimant has the right to appeal by requesting a review by the Director. To do this, send a written request directly to:

Director, Division of Public Assistance
Department of Health and Social Services
PO Box 110640
Juneau, AK 99811-0640

If the Claimant appeals, the Claimant must send the request within 15 days from the date the Claimant receives this letter. Filing an appeal with the Director could result in the reversal of the Hearing Authority's decision.

¹ This fact is set forth in Finding of Fact number 5.

Dated: May _____, 2009.

Patricia Huna-Jines
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this __ day of May, 2009, true and correct copies of the foregoing document were sent to the Claimant via certified mail, return receipt requested, and to the remainder of the service list by e-mail, as follows:

Claimant – Certified Mail, Return Receipt Requested.

██████████, Director
██████████, Policy & Program Development
██████████, Staff Development & Training
Office of Fair Hearing Representative
██████████, Administrative Assistant II
██████████, Eligibility Technician I

Al Levitre
Law Office Assistant I