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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-941
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) began receiving Interim Assistance benefits in November 2005. (Ex. 1) On December 19, 2008, the Division of Public Assistance (Division) sent the Claimant written notice it was terminating her Interim Assistance benefits on December 31, 2008. (Ex. 3) The Claimant requested a fair hearing on December 24, 2008. (Ex. 5.2) This office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to the Claimant's request, a hearing was held on February 10, 2009 and March 3, 2009. The Claimant attended the hearing telephonically, represented herself and testified on her own behalf. [REDACTED], Public Assistance Analyst with the Division, attended in person and represented the Division.

ISSUE

Was the Division correct to terminate the Claimant's Interim Assistance benefits effective December 31, 2008?

FINDINGS OF FACT

1. The Claimant has been receiving Interim Assistance benefits continuously from November 2005. (Ex. 1)
2. The Claimant applied for Social Security Supplemental Security Income on October 19, 2005. (Ex. 2.1) The Social Security Administration denied her Supplemental Security Income application in July 2008. (Ex. 2.0) She appealed the denial of her Supplemental Security Income application to the

Social Security Administration's Appeals Council, which denied her appeal on November 13, 2008. (Ex. 2.0)

3. On December 18, 2008, the Social Security Administration informed Division staff that its Appeals Council had denied the Claimant's appeal on November 13, 2008. (Ex. 2.0) On December 19, 2008, the Division sent the Claimant written notice her Interim Assistance benefits would be terminated effective December 31, 2008. (Ex. 3)

4. The Claimant testified that she has appealed her Supplemental Security Income application denial to federal court.

PRINCIPLES OF LAW

This case involves a termination of benefits. The Division has the burden of proof¹ by a preponderance of the evidence.²

An applicant for Adult Public Assistance benefits is also required to apply for and qualify for Supplemental Security Income benefits from the Social Security Administration.³ 7 AAC 40.030; 7 AAC 40.060. The State of Alaska provides a limited monthly cash benefit payment, known as Interim Assistance, to eligible⁴ Adult Public Assistance applicants while they are waiting for the Social Security Administration to process their Supplemental Security Income application. 7 AAC 40.170(a) and (b); 7 AAC 40.375; AS 47.25.455.

If the Social Security Administration denies a Temporary Assistance recipient's Supplemental Security Income application, and the recipient has waived or exhausted her administrative appeals, the Division is required to terminate the recipient's Interim Assistance benefits:

Interim assistance will end upon the division's receipt of notification of the Social Security Administration's final determination of eligibility or ineligibility for SSI benefits. An applicant will continue to receive interim assistance until the applicant

- (1) is approved for SSI;
- (2) receives an adverse SSI decision and fails to appeal it to the next appeal level;
- (3) withdraws or abandons an appeal at any level; or
- (4) receives a notice of dismissal or an adverse decision from the Social Security Appeals Council.

¹ "Ordinarily the party seeking a change in the status quo has the burden of proof." *State, Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985)

² Preponderance of the evidence is the normal standard of proof in an administrative proceeding. *Amerada Hess Pipeline v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986). Preponderance of the evidence is defined as "[e]vidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th Ed. 1979)

³ While there are some exceptions to this rule, they are not relevant to this case.

⁴ Eligibility requirements for Interim Assistance applicants are contained at 7 AAC 40.090; 7 AAC 40.170 – 190.

7 AAC 40.160(a).

ANALYSIS

The facts in this case are not disputed. The Claimant has received Interim Assistance benefits from the State of Alaska continuously from November 2005 onward, while the Social Security Administration was processing her Supplemental Security Income application. The Social Security Administration denied the Claimant's Supplemental Security Income application at the Appeals Council level on November 13, 2008. After the Division found out the Claimant's Supplemental Security Income application had been denied at the Appeals Council level, it notified the Claimant it was terminating her Interim Assistance benefits effective December 31, 2008.

As the facts are not in dispute, this case presents a purely legal issue. Was the Division correct to terminate the Claimant's Interim Assistance benefits because her Supplemental Security Income application had been denied by the Social Security Administration's Appeals Council?

The Claimant testified that she appealed her Supplemental Security Income application denial to federal court. She opposed termination of her Interim Assistance benefits because of her pending appeal in federal court.

The Alaska regulation regarding the effect of a Supplemental Security Income application denial by the Social Security Administration's Appeals Council is clear and unambiguous:

Interim assistance will end upon the division's receipt of notification of the Social Security Administration's final determination of eligibility or ineligibility for SSI benefits. An applicant will continue to receive interim assistance until the applicant

* * *

(4) receives a notice of dismissal or an adverse decision from the Social Security Appeals Council.

7 AAC 40.160(a). The regulation does not contain an exception to the termination requirement when an applicant appeals her adverse Appeals Council decision to federal court.

The Claimant's eligibility for Interim Assistance benefits ended when the Social Security Administration's Appeals Council denied her application for Supplemental Security Income. As a result, the Division was required to terminate her Interim Assistance benefits.

CONCLUSIONS OF LAW

1. The Division was required by the explicit terms of its regulation, 7 AAC 40.160(a)(4), to terminate the Claimant's Interim Assistance benefits when the Social Security Administration's Appeals Council denied her Supplemental Security Income application, which occurred on November 13, 2008.

2. The Division was therefore correct when it terminated the Claimant's Interim Assistance benefits effective December 31, 2008.

DECISION

The Division was correct when it terminated the Claimant's Interim Assistance benefits effective December 31, 2008.

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

An appeal request must be filed within 15 calendar days from the date of receipt of this Decision. Filing an appeal with the Director could result in the reversal of the Hearing Authority's decision.

DATED this 27th day of April 2009.

Larry Pederson
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 27th day of April 2009, true and correct copies of the foregoing was sent:

By First Class Mail, Certified, Return Receipt Request to the Claimant;

and to the following by electronic mail:

[REDACTED], Division Hearing Representative
[REDACTED], Director
[REDACTED], Director's Office
[REDACTED], Policy & Program Development
[REDACTED], Policy & Program Development
[REDACTED], Staff Development & Training

Larry Pederson