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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. 09-FH-89
)
 Claimant.) Division Case No. [REDACTED]
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED], (Claimant) applied for Alaska Temporary Assistance Program benefits (Application) on November 19, 2008. (Ex. 2.0-2.9) The Division of Public Assistance (Division) granted her four months of extended benefits beginning November 19, 2008 through February 28 2009.¹ The Division notified Claimant of this decision on February 3, 2009. (Ex. 6) Claimant requested a Fair Hearing on February 5, 2009.² (Ex. 7.0) This Office has jurisdiction under authority of 7 AAC 49.010 and AS 47.27.080.

¹ Claimant previously had received the maximum 60 months of benefits under the Alaska Temporary Assistance Program and was notified by the Division that she was not eligible for benefits. (Ex. 3.0) However, Claimant requested her Application be considered as a request for extended benefits. (Ex. 3.0) On January 27, 2009, Claimant was granted an additional four months of benefits, pursuant to AS 47.27.015(a)(1)(A) and 7 AAC 45.610(d). (Ex. 4)

² Claimant signed the Fair Hearing Request (Request), dated it “3-5-09” and wrote “on 2-27-09 I was granted a 4 month extension...” Ex. 7.0. These dates cannot be correct. The Division stamped the date of its receipt of the Fair Hearing Request as February 5, 2009. (Ex. 7.0) At the hearing, Claimant testified that a date she wrote on the Request should have been February 2, 2009 not March 2, 2009. This testimony, coupled with the Division’s date stamp showing a February 5 receipt date, is convincing that February 5 is the correct date Claimant made her Fair Hearing Request. Hence, references on the Fair Hearing Request to dates subsequent to February 5th are incorrect.

Claimant's Fair Hearing was held on March 17, 2009. The Claimant appeared in person and testified. The Division was represented by [REDACTED], Fair Hearing Representative, who appeared in person and testified on behalf of the Division.

ISSUE

Claimant requested a Fair Hearing on three issues: 1) did the Division correctly calculate her monthly benefit, especially as to shelter costs; 2) was the Division correct to establish November 2008 as the initial benefit month and to pro-rate the November 2008 benefit amount; and 3) was the Division timely in issuing Claimant's benefits? (Ex. 7.0)

FINDINGS OF FACT

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

1. Claimant completed, signed and submitted an application for the Alaska Temporary Assistance Program (Application) on November 19, 2008. (Ex. 2.0-2.9) Her application identified one adult and three minor dependent children in her household. (Ex. 2.1) Claimant wrote that she had no expenses pertaining to shelter or utilities. (Ex. 2.5) Claimant identified her income as a monthly \$150 child support payment and \$13,072 of Permanent Fund Dividends (PFD) received in September for her household and no employment income. (Ex. 2.2-2.3)
2. Claimant participated in an eligibility interview on December 10, 2008 with the Division Eligibility Technician. (Ex. 3.0) The Technician learned Claimant's family was living at the AWAIC shelter and therefore incurred no costs pertaining to shelter or home utilities. (Ex. 3.0)
3. Also at the interview, the Technician noted Claimant had fully used the maximum of 60 months of cash assistance benefits allowed by law. (Ex. 3.0) Claimant requested that her Application be considered as a request for extended benefits. (Ex. 3.0)
4. On Tuesday, January 27, 2009, Claimant participated in an extension review meeting with at least 3 other persons from the Division to consider Claimant's request for extended benefits. Claimant was granted a four-month extension of Program benefits, beginning with the month of Claimant's application dated November 19, 2008 and ending on February 28, 2009. (Ex. 4)
5. On Monday, February 2, 2009, the Division had calculated the amount of Claimant's extended benefit for November 2008 as \$247; December 2008 as \$619; January 2009 as \$625; and February 2009 as \$625. (Ex. 5.0) Claimant learned of the amounts on February 2, 2009. (Ex. 5.0)
6. Claimant reacted to information concerning the benefit amounts on February 2, 2009 by stating that she was informed by one of the persons at the January 27, 2009 review meeting that she would receive the "maximum benefit for her and 3 children" of

\$1,025 per month and that the November 2008 and February 2009 benefits would be prorated. (Ex. 5.0)

7. The Division caseworker informed Claimant that because Claimant had no “rent obligation in the months” for which she received benefits, Claimant “wasn’t given the rent deductions and that is why she did not receive full benefit amount.” (Ex. 5.0)

8. On February 3, 2009, the Division sent Claimant a written notice of the approval of her benefit extension request and stating the November 2008 benefit amount was \$247 and December 2008 benefit amount \$619. (Ex. 6.0) The notice also stated income of \$150.00 was used to calculate the benefit amount for November and December 2008.³ (Ex. 6.0) The notice did not mention shelter costs. (Ex. 6.0)

9. The Division received Claimant’s request for a Fair Hearing on February 5, 2009.⁴ (Ex. 7.0)

10. On February 12, 2009, Claimant participated in a pre-hearing conference to discuss her concerns as identified in her Fair Hearing Request. (Ex. 7.1) The case note record of this conference stated Claimant was concerned about not receiving the “full benefit amount of \$1127” monthly, and about receiving a pro-rata amount of benefits in November 2008. (Ex. 7.1) Also, Claimant believed her “case was not worked” on January 28 through February 2nd “like she was told” and therefore she had to waste funds on a hotel, having lost her spot at [REDACTED].⁵ (Ex. 7.1)

11. The Division calculated Claimant’s benefits the same way for each of the four months of November 2008 through February 2009. (Exs. 5.0-5.36)

12. The process by which the Division calculated the monthly benefit was the same for each month and each calculation was done by completing a formula “Temporary Assistance Budget Worksheet” (Worksheet). (Exs. 5.1-5.2; 5.11-5.12; 5.19-5.20; 5.27-5.29) On the Worksheet, the Division attributed \$150 monthly income and zero shelter costs in its calculations for each month. (Ex. 6; Ex. 7.1; and Exs. 5.2; 5.12; 5.20; 5.29)

³ Although Claimant’s household received income of \$13,072 in September 2008 from Permanent Fund Dividends (Ex. 2.3), this amount was not included as income in the benefit calculations. At the eligibility interview on December 10, 2008, Claimant disclosed that the \$13,072 PFD income had been fully spent by the end of October 2009. (Ex. 3.0)

⁴ See footnote 2 hereinabove. On the Fair Hearing Request, Claimant wrote “on 2-27-09, I was granted a 4 month extension on cash benefits to get housing.” (Ex. 7.0) At the Hearing, Claimant testified repeatedly that she attended the January 27, 2009 meeting at which time she learned she was eligible for four months of extended benefits. Therefore, Claimant was mistaken when she wrote “2-27-09” on her Request.

⁵ Claimant testified that she had a balance outstanding at [REDACTED] and could not live there until the balance was paid. Claimant testified she could not pay the balance until she received the cash benefits. See Exhibit B.

13. The “Temporary Assistance Budget Worksheet” formula “Payment Calculation” shows the Division calculated as follows:

- a) Claimant’s monthly income of \$150 and a “Family Need Standard of \$1,538 in 2008 (Exs. 5.2; 5.12) and of \$1,627 in 2009 (Exs. 5.20; 5.29);
- b) The monthly “maximum shelter allowance” (fixed at 30% of the “need standard”) of \$461.00 in 2008 and of \$488.10 in 2009; (*Id.*)
- c) Subtraction of zero shelter costs and \$150 net countable income; (*Id.*)
- d) A resulting “Amount of Need” of \$926.60 in 2008 and of \$988.90 in 2009; (*Id.*)
- e) The “Percent of Need Payable” is a percentage resulting from a “ratable reduction,”⁶ which is an amount fixed by law on January 1st of each year, and was 66.87 in 2008 and 63.22 in 2009; (*Id.*)
- f) A resulting monthly “Payment Amount”; (*Id.*) and
- g) For the initial month of November 2008 only, the “initial month proration percentage” of .40 was applied. (Ex. 5.2)

14. ██████████ testified that for the November and December 2008 benefit months, the Division applied the 2008 “Family Need Standard”⁷ amount of \$1,538.00. (Ex. 17; Ex. 5.1; Ex. 5.11) ██████████ also testified that in November and December 2008, the full amount of \$461.40 “Maximum Shelter Allowance” was deducted because Claimant’s household was not incurring any shelter costs. (Ex. 5.1; 5.12) The result was an “Adjusted Need” of \$1,076.60.” (*Id.*)

15. Also in November and December 2008, the Division reduced the “Adjusted need” amount by the household’s \$150 monthly income. (Ex. 5.2; 5.12) This resulted in an “Amount of Need” of \$926.60 per month. (Ex. 5.2; 5.12)

16. As a consequence of the remaining required calculations,⁸ that is, multiplying the Amount of Need by the Percent of Need Payable of 66.67%, (Ex. 16.1), Claimant’s benefit amount was \$619.62 in November 2008 and December 2008.

⁶ The Percentage of Need results from application of the “ratable reduction”: it is a percentage derived by calculating a ratio established under 7 AAC 45.525(c). Neither the Percentage of Need nor the ratable reduction are at issue in this case.

⁷ The Family Need Standard is a dollar amount fixed by law each year adjusted according to the number in the household and/or household circumstances. See Ex. 17.

⁸ The “Amount of Need” is then adjusted by multiplying it by a percentage remaining after subtracting the “Ratable Reduction” from 100%. The “Ratable Reduction” reduces the benefit amount to less than 100 percent of need and is a fixed percentage which is applied to all eligible applicants. (Ex. 16.0; Ex. 17) In

17. The Division received Claimant's Application on November 19, 2008 and determined November to be the initial benefit month. (Ex. 2.0; Ex. 4; Ex. 6) November's benefit amount was subjected to the "Initial Month Proration Percentage." (Ex. 5.2) The Division applied a formula to pro-rate the \$619.62 benefit amount, resulting in a benefit payment amount of \$ 247.00 for November 2008. (Ex. 5.2; 5.9)

18. The Division calculation formula was repeated to compute the December 2008 benefit amount, without pro-ration, and consequently Claimant received the "Payment Amount" of \$619. (Ex. 5.12; Ex. 5.18; Ex. 6)

19. In 2009, the "Family Need Standard" for a household of one caretaker relative and three children in 2009 is \$1,627. (Ex. 15) Also in 2009, the Claimant's "Maximum Shelter Allowance" for 2009 is \$488.10 and the "Percent of Need Payable" is 63.22%. (Ex. 15.2; Ex. 16.1; Ex. 5.20; Ex. 5.29) These amounts were used by the Division in calculating the January and February 2009 benefit amounts. (Ex. 5.20; Ex. 5.29)

20. For each of the months of January and February 2009, Claimant's benefit amount was calculated at \$625.00 (*Id.*)

21. Claimant testified, in part, as follows:

a. She should have gotten a greater benefit amount, i.e., \$1,025.00 or \$1,127.00 because other families living at the [REDACTED] shelter told her that was the maximum benefit and she should get it; (See also Ex. 7.0; 7.1)

b. The Division should have informed her that her benefit amount would be reduced if she had no shelter costs and, if it had informed her, she would have requested her benefits be paid starting January 2009;

c. If she had known that her November 2008 benefits would be pro-rated, she would have had the benefit payments start a later month so that she could get the full amount of the four-month extended benefits;

d. She repeatedly requested the Division to issue her benefits immediately after the January 27, 2009 approval of extended benefits because she needed the money to pay an outstanding bill at [REDACTED] so that she would not lose her "spot" there;

e. The Division's delay in paying her the benefits until February 2, 2009 resulted in her losing her "spot" at [REDACTED], her "wasting \$700"

2008, the "Ratable Reduction" amount was 33.13%, meaning the "Percentage of Need Payable" was 66.78%. (Ex. 17) Thus, in 2008, the Amount of Need is multiplied by 66.78% to yield the monthly benefit amount. In 2009, the "Ratable Reduction" was 36.78% because the "Percent of Need Payable" was 63.22%. (Ex. 5.20; Ex. 5.29)

making a car payment to ensure her family would have housing, and her paying \$363.95 for hotel accommodations between February 2 and February 6, 2009;⁹ (Ex. A) (Ex. B)

f. Because she was in desperate need and because the Division's delay in issuing benefits caused her to expend substantial funds which she otherwise would not have expended, she deserves to receive the full benefit for each of the four months of extended benefits, without proration and without deduction for shelter costs.

PRINCIPLES OF LAW

I. Burden of Proof

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).

II. Standard of Proof

The regulations applicable to this case do not specify any particular standard of proof. A party in an administrative proceeding can assume that preponderance of the evidence is the standard of proof unless otherwise stated. *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 follows:

Evidence 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)

"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).

Therefore, the "preponderance of the evidence" 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.

⁹ Claimant testified she had to leave AWAIC on February 2, 2009, that her household could not stay at Safe Harbor until she paid a past due bill, and that the money she was anticipating from ATAP benefits would have been allocated to pay the past due bill. It is unclear exactly when Claimant received the cash benefits but certain they were available on Monday, February 2, 2009 because she used the money to pay for a hotel stay. (See Ex. A)

III. Alaska Temporary Assistance Program

Alaska Statute (AS) 47.27.010 states that parents with physical custody of at least one dependent related child may apply for Alaska Temporary Assistance Program cash assistance benefits.

The cash assistance payments of the Alaska Temporary Assistance Program are for the dependent children of families.¹⁰ AS 47.27.025. AS 47.27.025(a) provides: “[e]ach dependent child in the family is eligible for cash assistance....”

The amount of cash assistance paid for a dependent child is based on the dependent child’s circumstances and is subject to a maximum amount set by statute. AS 47.27.025(b).

A. Benefit Period under the Alaska Temporary Assistance Program (ATAP)

AS 47.27.015(a)(1) limits the duration of these cash benefits to a maximum of 60 months. This statute also provides exceptions to the 60 month maximum and provides for extended benefits to qualified applicants. In this case, AS 47.27.015(a)(1)(A) is the relevant exception and permits extended benefits to:

(A) a person who the department has reasonable cause to believe is or recently has been the victim of domestic violence, as defined in AS 18.66.990, and the physical, mental, or emotional well-being of the victim would be endangered by a strict application of the time limit otherwise applicable under this subsection....

This statute is implemented by regulation 7 AAC 45.610 which states, in part:

(a) When implementing the provisions of AS 47.27.015(a)(1) regarding application of the 60-month time limit on assistance under ATAP, the department will extend the period of eligibility in accordance with the procedures and criteria in this section and will regularly review all relevant circumstances of each family for which the department has granted an extension, to determine the family’s eligibility for continuing the extension.

....

(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. The team shall document issues that are keeping the family from becoming self-sufficient,

¹⁰ Alaska Temporary Assistance Program benefits are paid to “assistance units,” which also are called family units, or a family.

recommend activities to address those issues, determine whether the family meets the criteria for an extension, and, if the family does, recommend the length of time until the next extension review.

B. Calculation of the Monthly Benefit

Eligibility is based on the configuration of the family assistance unit according to a “Need Standard” adjusted each year. 7 AAC 45.520. Once eligibility has been determined, the “Family Need Standard” is established.

The “Family Need Standard” is a maximum amount of monthly benefit available to the family as determined by the circumstances of the dependent child(ren) and is set by statute. AS 47.27.025(b); 7 AAC 45.523.

Then, the “Family Need Standard” amount of benefit is reduced by the family’s shelter allowance, which is comprised of various shelter costs. AS 47.27.025(d). It is essential to distinguish between “shelter allowance” and “shelter costs.” The “shelter allowance,” which is fixed at a maximum of 30 percent of the family’s “Need Standard,” is a gross sum unrelated to a claimant’s actual “shelter costs.” The “shelter costs” are the actual expenses which a claimant family pays for rent and other items. A claimant’s monthly benefit amount is designed to include the shelter costs and no more. Therefore, the shelter allowance is adjusted by the family’s shelter costs. AS 47.27.025(d) defines the shelter allowance and costs. It provides, in relevant part:

[t]he department shall reduce the cash assistance under this section to the extent that the family’s shelter costs are lower than the standard shelter allowance used by the department for similar families. The shelter allowance for a family whose costs are below the standard allowance shall be an amount equal to the family’s actual verified shelter costs. In this subsection,

(1) “shelter allowance” means the portion of the cash assistance provided under this section that is allocated by the department for shelter costs;

(2) “shelter costs” means

(A) rental payments or mortgage payments for the family’s housing, including payments made for property or mortgage insurance and property taxes; and ...

Regulation 7 AAC 45.527 establishes the shelter allowance as thirty percent of the family’s “Need Standard.”¹¹

¹¹ It states: (a) [t]her portion of the ATAP payment allocated as the standard shelter allowance under AS 47.27.025(d) is 30 percent of the assistance unit’s need standard, as determined under 7 AAC 45.520.

Subsection (b) of 7 AAC 45.527 specifies that shelter costs which are below the shelter allowance amount (called “low shelter costs”) are used to reduce the amount of the family’s “Need Standard” amount. It states, in relevant part:

the amount of the reduction required by 7 AAC 45.525 for low shelter costs is calculated by subtracting from the standard shelter allowance the amount of the assistance unit’s allowable shelter costs established under 7 AAC 45.528.¹² If the amount calculated is less than \$1, the amount for the low shelter costs is \$0.

The monthly benefit amount is determined further under 7 AAC 45.525. This regulation describes the reductions to the family’s “Need Standard,” including a reduction for the shelter allowance which is built into the “Need Standard” amount. Subsections (b)(1) and (2) of 7 AAC 45.525 mandate that the countable income and the low shelter costs are subtracted from the family’s “Need Standard.”

If the family has zero shelter costs, it will not receive a shelter allowance and the family’s “Need Standard” amount is reduced by the whole shelter allowance. 7 AAC 45.525 and 7 AAC 45.527.

After the family’s “Need Standard” is reduced by the shelter allowance and the countable income, an “amount of need” has been established. 7 AAC 45.525(b) This “amount of need” is then adjusted by a percentage called the “ratable reduction.”¹³

After this percentage has been applied, the monthly amount of the benefit payment has been determined as a payment amount.

C. Proration of first monthly benefit

¹² 7 AAC 45.528 titled “Allowable shelter costs” describes various costs which may be included in the shelter allowance calculation. 7 AAC 45.529 through .530 governs other costs pertaining to the shelter allowance. Because Claimant in this case had no shelter costs, these regulations do not apply.

¹³ Neither the ratable reduction, nor the resulting “Percent of Need Payable” are at issue in this case but a clear understanding of the methodology used to derive the monthly benefit amount requires mention of them. The ratable reduction is a percentage derived by calculating a ratio established under 7 AAC 45.525(c), which states: [t]he ATAP payment for the assistance unit is the product of the amount determined under (b) of this section multiplied by the maximum payment level payable to an assistance unit of two individuals under 7 AAC 45.523(a)(1), divided by the need standard applicable to an assistance unit of two individuals under 7 AAC 45.520(a)(1).

The Division has named this percentage the “ratable reduction.” ATAP Manual, Section 780-1G states: A ratable reduction is a percentage reduction in a benefit amount to less than 100% of need. Once a Temporary Assistance family's amount of need is determined, the payment amount is calculated by multiplying the amount of need by the percentage of need payable. Effective January 2009, Temporary Assistance payments are 63.22% of need, a ratable reduction of 36.78%.

The month Alaska Temporary Assistance Program (ATAP) benefits are first paid is set by law at 7 AAC 45.540. Subsection (a) states:

For the purpose of calculating the amount of the first ATAP payment, an approved applicant's eligibility for ATAP benefits begins

(1) on the date that a district office of the division handling public assistance matters in the department receives the applicant's identifiable application, as described in 7 AAC 45.150; or

(2) if the applicant was initially determined to be ineligible, on the date that the department determines the applicant to be eligible.

This regulation, 7 AAC 45.540, also discusses the initial payment and provides that if an applicant applies after the first day of a month, the initial payment of Alaska Temporary Assistance Program benefits must be prorated. 7 AAC 45.540 also provides the formula by which the pro-ration must take place:

[t]o prorate, the department will calculate and round the payment as if the applicant were entitled to a full month's benefits and will then multiply the full month's payment amount by the quotient of dividing the number of the days remaining in the month, including the day of receipt of the application in the district office, by the total number of days in the month.

D. Timely Issuance of benefits.

An applicant for Alaska Temporary Assistance Program benefits must be notified of eligibility or non-eligibility within 30 days after the Division receives a completed application. 7 AAC 45.205.

Additionally, the Division "will issue an initial payment within 10 days after finding that an assistance unit is eligible for ATAP benefits." 7 AAC 45.540.

ANALYSIS

I. Burden of Proof

This case involves Claimant's Application for the Alaska Temporary Assistance Program (ATAP) benefits. An application is deemed a change in the status quo. 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). Accordingly, the Claimant has the burden of proof.

II. Standard of Proof

A party in an administrative proceeding can assume that preponderance of the evidence is the standard of proof unless otherwise stated. *Amerada Hess Pipeline v. Alaska Public*

Utilities Comm'n, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986). This standard is met when the evidence, taken as a whole, shows that the fact sought to be proved is probably true. “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 Claimant must meet her burden of proof by a preponderance of the evidence.

III. Issues

Claimant asked for a Fair Hearing on three grounds:

- A) benefit amounts for the months of November 2008, December 2008, January 2009 and February 2009 were too low because the Division incorrectly calculated the effect of her zero shelter costs on her benefits and she deserved the maximum benefit;
- B) the Division inappropriately pro-rated her November 2008 benefits; and
- C) the Division failed to issue her benefits promptly.

A. Calculation of the amount of monthly benefit.

Neither party disputes the fact that Claimant’s monthly income is \$150 and that her family had zero shelter costs until after she received Alaska Temporary Assistance benefits. Likewise, neither party disputes that the Division used these numbers in an arithmetic formula applicable to a family consisting of one parent and three minor children to calculate a monthly benefit amount. It is also not disputed that a complex formula is used to determine the benefit amount. (See Ex. 5.0-5.36)

Based on this complex formula, the Division determined that the monthly benefit amount for November 2008 (before proration) and December 2008 was \$619.87 and for January and February 2009 was \$625.18. (Exs. 5.2; 5.12; 5.20; 5.29)

Claimant disputes the Division’s calculation and asserts she should have received either \$1,025 (Ex. 5.0) or \$1,127 (Ex. 7.0; Ex. 7.1) for each benefit month of eligibility. She argues these amounts should have been paid to her, unreduced by the shelter allowance because she had zero shelter costs and she deserves the maximum benefit amount.

Although Claimant did not supply evidence explaining why she should have received \$1,025 and \$1,127, she testified that other families at the [REDACTED] shelter told her they received these amounts of benefits. See also Ex. 5.0. These amounts are the monthly maximum payments for a single parent family of four and of five, respectively, for 2009. (Ex. 15.0) Alaska Temporary Assistance Manual, Addendum 2, Adult Included Standards chart. Because Claimant is the single parent of three children, the maximum amount for Claimant’s family in 2009 is \$1,025: the \$1,127 amount is irrelevant to

Claimant's circumstances. In 2008, the "Need Standard" would be less because it is adjusted yearly by a cost-of-living percentage. AS 47.27.020; 7 AAC 45.520.

The "Need Standard" of \$1,025, which Claimant believes to be the maximum benefit amount and which she wants to receive, is only the starting point for the individual calculation of a family's benefit amount and not an end point. 7AAC 45.520. As explained in the Principles of Law section hereinabove at III. B., the "Need Standard" is the result of calculations to determine if an applicant is eligible for Program benefits. Subsequently, the financial circumstances of an applicant are applied in the benefit calculation formula that yields a monthly benefit amount specific to that applicant. In short, the \$1,025 amount Claimant misconstrues as a benefit amount is actually a qualifying determinant and starting point for calculation of Claimant's benefit amount.

Secondly, Claimant asserts she should have a greater benefit because the Division miscalculated the effect of her zero shelter costs. Claimant mistakenly believes that shelter costs are paid in addition to and added into a monthly benefit amount. In fact, it is the opposite. Because the family's Need Standard includes a dollar amount called the shelter allowance, when a claimant has no shelter costs, the shelter allowance must be subtracted from the family's Need Standard.¹⁴ AS 47.27.025(d). The law does not allow a claimant to receive money for shelter costs when the claimant pays no shelter costs.

The shelter allowance is set by law as thirty percent of Claimant's family's Need Standard and the Division has no discretion to either alter the percentage or to not deduct the shelter allowance from the Claimant's family Need Standard. 7 AAC 45.525. Claimant's assertion "I am requesting the full amount due to homeless and domestic violence, and that my case was not worked on the 27, 28, 30, 31, or 2nd like I was told" cannot overcome the mandate of the law. (Ex. 7.0) The Division correctly followed the law by not paying Claimant any shelter allowance because Claimant had zero shelter costs. The Division correctly reduced the Claimant's Need Standard by the shelter allowance. (Exs. 5.2; 5.12; 5.20; 5.29)

Thirdly, Claimant argues that had she known her family's monthly benefit would be reduced by the shelter allowance, she would have postponed receipt of benefits until she incurred shelter costs so that she could get the full benefit amount. Again, Claimant appears to misunderstand that shelter costs are off-sets that Claimant does not get to keep but pays out for rent, etc. Claimant's shelter allowance in 2008 was \$461.40 and in 2009 was \$488.10. Thus, if Claimant paid shelter costs in any amount up to \$461.40 in 2008 or \$488.10 in 2009, her benefit amount would include the amount of her actual shelter costs but not the whole shelter allowance. The net effect would be zero dollars in Claimant's pocket. Claimant's argument that her family's benefit amount was too low because the Division misapplied the shelter allowance-shelter costs calculation is not persuasive.

¹⁴ It is essential to distinguish between "shelter allowance" and "shelter costs." The "shelter allowance," which is fixed at a maximum of 30 percent of the family's "Need Standard" is a gross sum unrelated to a claimant's actual "shelter costs." The "shelter costs" are the actual expenses which a claimant family pays for rent and other items. A claimant's monthly benefit amount is designed to include the shelter costs and no more. Therefore, the shelter allowance is adjusted by the family's shelter costs.

Finally, Claimant did not offer proof of any error in the Division's calculations. Nevertheless, a step by step review of the Division's formulaic calculations for each month, using the undisputed amounts of income and zero shelter costs and applying the relevant law,¹⁵ results in a determination that the Division did not err in its calculation. Consequently, the Claimant has failed to meet her burden of proof that the Division incorrectly computed Claimant's family's monthly benefit amount.

B. Prorated Benefit Amount for the First Month

Claimant argued at the Fair Hearing that if she were awarded a full month of benefits then she should get the full amount of monthly cash benefit and not a pro-rated amount for the first month. She testified that had she known the first month's benefits would be pro-rated, she would have started the benefits another month. Claimant does not argue the Division incorrectly applied the formula: she argues the formula should not be applied at all and that she should receive a full month's cash benefit, or alternatively, she should be able to set the initial month at a date later than her date of eligibility.

It is undisputed that Claimant filed her application on November 19, 2008. (Ex. 2.0-2.9) It is also undisputed that Claimant learned on December 10, 2008 she was not eligible for Program benefits because she had exceeded the 60 month maximum benefit period and on that date requested her application be considered for extended benefits. (Ex. 3.0) On January 27, 2009, Claimant attended the meeting at which she learned that four months of extended benefits were authorized and would begin November 19, 2008 and end February 28, 2009. (Ex. 4)

Regulation 7 AAC 45.540(a)(2) contemplates an applicant may initially be determined ineligible and then later eligible, and provides that the Division will determine the date the benefit begins. Claimant has three possible dates of eligibility: November 19, 2008 when she filed her application for Program benefits; December 10, 2008 when she requested the application be converted to one for extended benefits; or January 27, 2009 when the extended benefits were approved. Although under the circumstances of this case¹⁶ it appears Claimant could have requested the Division start her benefits at any of these three points, Claimant did not make such a request. The Division is empowered to determine the date of eligibility, and hence the date of the first monthly benefit. 7 AAC 45.540(a)(2).

Once the initial benefit month is determined, the initial benefit amount must be pro-rated to the day, according to a uniform formula. 7 AAC 45.540(b). Of the three possible dates of Claimant's initial eligibility, the Division determined the application date of

¹⁵ See Principles of Law section, hereinabove.

¹⁶ It is unclear whether Claimant's November 19, 2008 Application was, or should have been, closed when it was determined she had expended the 60 month maximum benefit. If closed, Claimant would have been required to re-apply and that would have set a new date of application. It appears the Claimant requested her application be converted to one for extended benefits and hence her request did not trigger a new date of application, but instead provided another possible date for the initial benefit month.

November 19, 2009 applied. If Claimant's initial benefit date had been deemed January 27, 2009 instead of November 19, 2008, she would have received less of the benefit amount; if it had been deemed December 10, 2008, she would have received about 8 days more benefits than if November 19, 2008 were the initial benefit date.

Under the circumstances, the Division did not err in determining the initial benefit date to be November 19, 2008. Claimant did not meet her burden of proving the Division erred in determining November 2008 to be the initial benefit month.

C. Timely Issuance of the Benefit Amount

Claimant alleges the Division failed to promptly issue her benefits and consequently she incurred about \$1,095.00 of expenses for housing which she otherwise would not have had to pay. Claimant specifically asserts that the Division lagged between January 28 and February 2, 2009 in providing her with the cash benefits. (Claimant testimony; Ex. 7.0)

Claimant requested extended Alaska Temporary Assistance benefits which required an extension review conducted by a staffing team to consider her eligibility for such benefits. 7 AAC 45.610(a) and (c). The extension review took place on January 27, 2009 and Claimant was present at the review meeting. (Ex. 4) At the meeting, the Division found Claimant eligible for extended benefits. The Division calculated Claimant's benefit amounts for each month and issued them to Claimant by Monday, February 2, 2009.

Claimant testified that although she wanted to receive the cash benefits by Friday, January 30, 2009 and did everything she could to obtain them, the Division delayed issuance until February 2, 2009. Claimant testified this delay resulted in her inability to timely pay a past due obligation to [REDACTED] and consequently she was unable to move her family to [REDACTED] until after she had spent money for housing at a hotel and a car payment.

The period between January 27, 2009 and February 2, 2009 is 7 days of which three are working weekdays. The Division is required to "issue an initial payment within 10 days after finding that an assistance unit is eligible for ATAP benefits." 7 AAC 45.540. A three-day period for processing and issuing benefits is neither unreasonable nor outside the scope of the law. Thus, Claimant has not met her burden of proving the Division delayed issuing her benefits.

CONCLUSIONS OF LAW

1. Claimant failed to prove by a preponderance of the evidence that:
 - a. The Division incorrectly calculated her family's Alaska Temporary Assistance benefit amounts for November 2008 through February 2009.
 - b. The Division incorrectly determined the initial month of benefits to be November 2008 and incorrectly pro-rated the initial benefit amount; and

c. The Division was not timely in issuing the four months of extended benefits on February 2, 2009.

DECISION

The Division’s calculation of Claimant’s family’s Alaska Temporary Assistance Program benefits between November 19, 2008 and February 28, 2009 was correct and the benefits were timely paid as required by law. In addition, the Division was correct to determine that November 2008 was the initial benefit month and to pro-rate the November 2008 benefit amount.

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
P.O. 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.

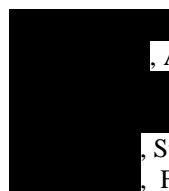
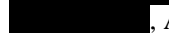
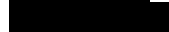
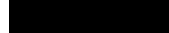
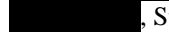
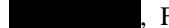
Dated May 18th, 2009

Claire Steffens
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this ___ day of
May, 2009 true and correct copies of
the foregoing were sent to:

Claimant, Certified Mail, Return Receipt Requested.
and by e-mail to the following:

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

Al Levitre, Law Office Assistant I