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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. 09-FH-126
)	
Claimant.)	Division Case No. ██████████
_____)	

FAIR HEARING DECISION

STATEMENT OF THE CASE

██████████ (Claimant) received Child Care Assistance benefits through the end of April 2007. The Division of Public Assistance sent the Claimant notice, on January 5, 2009, that she was required to repay the Division \$3,168 in Child Care Assistance benefits that she had allegedly received improperly during the months of March and April 2007. (Ex. 26)

The Claimant, on January 18, 2009, requested that the Division administratively review its demand for repayment. (Ex. 27a) On February 5, 2009, after its administrative review, the Division upheld its original determination that the Claimant was liable for repayment of the Child Care Assistance benefits. (Ex. 28) The Division received the Claimant's fair hearing request on March 3, 2009. (Ex. 29) This office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to the Claimant's request, a hearing was held on April 21, 2009 before Hearing Officer Jay Durych. The Claimant and her mother, ██████████, who represented the Claimant, attended the hearing in person. Both the Claimant and her mother testified. ██████████, a Program Coordinator with the Division's Child Care Assistance office, attended in person and represented the Division.

Following the hearing, this case was reassigned to Hearing Officer Larry Pederson, who reviewed the entire case file and listened to the entire recording of the hearing before issuing this Decision.

ISSUE

The Division argued that the Claimant failed to notify it when she stopped working, which caused her to receive Child Care Assistance benefits during March and April 2007 that she was not entitled to receive. The Claimant argued she did not receive childcare services for her

children during March and April 2007, and that the childcare provider improperly billed the Division and received payment from the Division for childcare services that the childcare provider did not actually provide.

The resulting issue is:

Was the Division correct to require the Claimant to reimburse the Division for Child Care Assistance benefits it paid to the Claimant's childcare provider for the months of March and April 2007?

FINDINGS OF FACT

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

1. The Claimant began work in mid August 2006. (Ex. 1) At the time, she was approved for Child Care Assistance benefits for her three children. (Ex. 2)
2. The Claimant applied to renew her Child Care Assistance benefits on December 14, 2006. (Ex. 11a) She was approved for continued benefits on December 15, 2006. *Id.* The written notice informing the Claimant her continued Child Care Assistance benefits were approved also notified her that she "must report changes to [her] case within 7 days of the date of change." *Id.*
3. The Claimant lost her job on January 4, 2007. (Ex. 14) She did not notify Alaska Family Services, the agent that handled Child Care Assistance program benefits for the Division, she had lost her job. (Ex. 15) The Division's records contain a case note authored on January 29, 2007 showing that the Claimant's mother informed a Division Eligibility Technician, during a Food Stamp interview, that the Claimant was not working, and that the Eligibility Technician contacted the Claimant's former employer and verified the information. (Ex. 14)
4. On February 14, 2007, Alaska Family Services received a handwritten work calendar, showing the actual days and specific hours the Claimant worked, signed by the Claimant on February 12, 2007, showing that the Claimant had been employed fulltime in January 2007. (Ex. 8)
5. The Claimant worked in a temporary position for 11 days, February 14, 2007 through February 24, 2007. (Ex. 16a) The Claimant did not notify Alaska Family Services within 7 days that that she was no longer working. (Ex. 15)
6. The Claimant signed a work calendar, showing the actual days and specific hours the Claimant worked, on February 28, 2007¹ showing the Claimant had been employed fulltime in February 2007. (Ex. 9a)
7. On April 4, 2007, Alaska Family Services received a signed and completed work calendar, showing the actual days and specific hours the Claimant worked, showing the Claimant

¹ There is no evidence in the record showing when Alaska Family Services received the work calendar, and the stamp on the document showing the date received is so faint that it is illegible. (Ex. 9a)

was employed fulltime in the month of March 2007. (Ex. 10a) The Claimant purportedly signed that calendar. *Id.* No work calendar was submitted for the month of April 2007. (Ex. 24a)

8. The Claimant's childcare provider billed the Division for childcare services for the Claimant's children during the months of March and April 2007.² (Ex. 24a) The Division paid the childcare provider \$1,584 for childcare services for the Claimant's children for the month of March 2007. (Ex. 24a) The Division paid the childcare provider \$1,584 for childcare services for the Claimant's children for the month of April 2007. *Id.*

9. The Claimant does not have a high school diploma. (██████████ testimony)

10. The Claimant was not employed during March or April of 2007. (██████████ testimony)

11. The Claimant testified to the following:

a. She did not fill in the work hours on monthly work calendars, showing the actual days and specific hours she worked, she was required to submit to the Division. Her childcare provider filled in the hours and the Claimant signed the calendars.

b. She did not sign the March 2007 work calendar that showed she was employed fulltime during March 2007. (Ex. 10a)

c. She did not receive childcare services during the months of March or April 2007.

12. The Claimant's testimony, as stated in Finding 11 above, was credible for the following reasons:

a. The Claimant did not sign the March 7, 2007 work calendar, as shown by the fact that the signature purported to be the Claimant's signature on this document (Ex. 10a) is markedly different from the Claimant's signature contained on (i) the October and November 2006 work calendars (Exs. 5a and 6a); (ii) the January and February 2007 work calendars (Exs. 8 and 9a), (iii) the Claimant's September 1, 2006 Child Care Assistance application (Exs. 3d and e); (iv) the Claimant's January 18, 2009 request for administrative review (Ex. 27a); and (v) the Claimant's February 27, 2009 request for Fair Hearing (Ex. 29e – d).

b. The Claimant did not fill in the work hours on her monthly work calendars as is shown by the fact that the writing style for the work hours involved is identical for all the work hour calendars contained in the record, including the March 7, 2007 work calendar which the Claimant did not sign. (*See* Exs. 5a, 6a, 8, 9a, and 10a)

c. There is no evidence contained in the record that contradicts or impeaches the Claimant's testimony that she did not receive childcare services during March or April of 2007.

² The billing statements from the childcare provider are not contained in the record.

13. The Claimant also provided a written statement her childcare provider filled out and turned in the January 2007 work calendar, and that she “assumed that [her childcare provider] turned one in for February. I never saw any of the completed work calendars and do not know what was filled out.” (Ex. 29f) This statement is not credible. All of the referenced work calendars, with the exception of the March 2007 work calendar (Ex. 10a), bear the Claimant’s signature. *See* Findings 12(a) and (b) above.

14. The Claimant met with [REDACTED] of the MatSu Child Care Assistance office on or about April 25, 2007. (Exs. 21 –22) [REDACTED] wrote a case note on April 27, 2007, where she indicated the Claimant had discussed her work history, that the Claimant had not looked at her childcare provider billings, and that she had not used the hours of childcare for which her childcare provider had billed the Division. (Ex. 15)

15. The Division then reviewed the Claimant’s case and on May 30, 2007 made an initial determination the Claimant had received Child Care Assistance benefits in March and April 2007 to which she was not entitled. (Ex. 24a) The Claimant’s case was then referred to the Division’s Benefit Issuance and Recovery Unit on December 13, 2008. (Ex. 25a)

16. On January 5, 2009, the Division sent the Claimant notice it was holding her financially responsible for having received “\$3,168.00 too much from the Child Care Assistance Program for the month of March 2007 and April 2007.” (Ex. 26)

17. The Claimant requested an administrative review, because she “did not receive childcare in March & April of 2007 . . . The Child Care Assistance in [REDACTED] is fully aware that the childcare giver falsified documents stating that I was receiving care when I wasn’t.” (Ex. 27a)

18. The Division’s February 5, 2009 response to the Claimant’s request for an administrative review was to uphold the finding the Claimant was liable for the March and April 2007 Child Care Assistance benefits. (Ex. 28) The Division stated that the childcare provider “has closed her business and at this time it would be very difficult for you to prove you did not utilize the care that was billed.” (Ex. 28d) The only evidence presented about what the provider may have stated in response to the Division’s inquiry about this matter is unsworn and contained in the Division’s February 5, 2009 response to the Claimant’s request for an administrative review:

- a. The “provider indicated that she completed your work calendars at your request . . . [She] reported to CCA that she did not sign the work calendar for March.” (Ex. 28c)
- b. “Review of the file, billing and attendance records and documented conversations with you and the CCA office and your child car provider and the CCA office, reveal discrepancies regarding the dates of child care used. Both you and your provider acknowledge that your provider actually completed and submitted some of your work calendars.” (Ex. 28c)

PRINCIPLES OF LAW

In an administrative proceeding, the party who seeks to change the status quo has the burden of proof. *State, Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985). Preponderance of the evidence is the standard of proof.³ *Amerada Hess Pipeline v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986).

Child Care Assistance is a program that assists in paying day care costs for qualifying individuals and households. AS 47.25.001. The Division may delegate administration of the program. 7 AAC 41.015(a). An individual who is adversely affected by the Division's, or its agent's, action may request an administrative review of the action. 7 AAC 41.435(a). If the administrative review finds against the individual, that individual may request a fair hearing under 7 AAC 49. 7 AAC 41.440(c).

A parent is only eligible to receive childcare assistance when the parent is actually working, in school, or looking for a job (limited to 80 hours in a 12 month period). 7 AAC 41.310.

A family receiving child care assistance is required to notify the Division "within seven days after . . . a change in a work activity. . . . failure to give notice as required under this paragraph may result in a determination of overpayment of program benefits." 7 AAC 41.320(c)(2).

"Overpayment of program benefits occurs if a family or provider receives benefits it is not entitled to under AS 47.25.001 – 47.25.095 and this chapter." 7 AAC 41.420(a)

ANALYSIS

This case involves the issue of whether or not the Division was correct to require the Claimant to reimburse the Division for Child Care Assistance benefits it paid to the Claimant's childcare provider for the months of March and April 2007.

Because the Division is requesting that the Claimant reimburse it for funds expended on her behalf, the Division is the party seeking to change the status quo. The Division therefore has the burden of proof by a preponderance of the evidence.

The undisputed facts in this case show the Division paid the Claimant's childcare provider a total of \$3,168.00 for childcare services allegedly provided the Claimant during the months of March 2007 and April 2007. The Claimant admittedly did not work during these months. The Claimant does not claim she was entitled to receive childcare assistance during these months.

The heart of this case revolves around the Claimant's assertions that she did not receive childcare services during the months of March and April 2007, and that her childcare provider submitted false billings showing childcare services were provided, which actually were not provided. In

³ 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)

order to prevail in this case, the Division needed to establish, by a preponderance of the evidence, that the Claimant “receive[d] benefits [she] [was] not entitled to” in the months of March and April 2007. 7 AAC 41.420(a). Alternatively, the Division needed to prove that the Claimant was involved in the childcare provider’s submission of false billings.

The Division did not submit any evidence substantiating that the Claimant actually utilized childcare services in the months of March and April 2007. While there was a work calendar provided for March 2007, purportedly showing the Claimant was employed full time, the Division did not introduce any of the childcare provider’s billings into evidence. The provider did not testify. No written provider statement was supplied. There was no investigator testimony. There is no evidence contained in the record that contradicts or impeaches the Claimant’s testimony that she did not receive childcare services during March or April of 2007.

As is discussed in Findings of Fact 11 and 12 above, the Claimant was credible on the point that she did not utilize childcare services in March and April 2007. As is discussed in Finding of Fact 18 above, the Division, which had the burden of proof, introduced very scant unsworn evidence regarding what statements or proof the Claimant’s childcare provider gave the Division about the Claimant’s use of her childcare services in the months of March and April 2007. What little information was supplied substantiates the Claimant’s sworn testimony that the provider filled out the Claimant’s work calendars, showing the days and times the Claimant purportedly worked during the applicable month, for her. *See* Findings 11, 12, and 18. Further, the Division’s most incriminating piece of evidence against the Claimant, the March 2007 work calendar, was obviously not signed by the Claimant. *See* Findings 11 and 12 above.

While it is clear the Claimant (1) did not report the fact she lost her job in early January 2007 within the seven day time period required by the Child Care Assistance program⁴ or timely report her temporary job in February 2007, and (2) signed work calendars for January and February that misstated her work hours, this action does not involve a request to recover any Child Care Assistance benefits paid during January or February 2007. This action only involves the Division’s attempt to recover those Child Care Assistance benefits paid during March and April 2007. The Division has not shown the Claimant either (1) received childcare services during March or April 2007, or (2) that she was complicit in submitting false childcare provider billings for the months of March or April 2007.

The Division’s best argument, given the facts of this case, is that the Claimant by not timely reporting the fact of her unemployment gave the childcare provider an opportunity to submit false billing statements. The Claimant, however, did not submit the false billing. The Claimant did not prepare, sign, or submit the March 2007 work calendar that supported the false billing. The Division has not shown the Claimant knew or reasonably should have known or anticipated that her childcare provider was going to submit the false billing. The submission of the false billing by the childcare provider was a superseding cause that relieves the Claimant of liability for her failure to notify the Division that she was unemployed in March and April 2007.

The Division had the burden of proof in this case. It did not meet it.

⁴ The record contains a casenote showing the Division was notified on January 29, 2007 that the Claimant was unemployed. *See* Finding 3 above.

CONCLUSIONS OF LAW

1. The Division did not prove, by a preponderance of the evidence, that the Claimant received Child Care Assistance benefits in March or April 2007.
2. The Division did not prove, by a preponderance of the evidence, that the Claimant participated in the submission of false childcare bills to the Division, or that the Claimant knew or reasonably should have known that her childcare provider was going to submit false childcare bills to the Division, for the months of March and April 2007.
3. The Division was therefore not correct to require the Claimant to reimburse the Division for Child Care Assistance benefits it paid to the Claimant's childcare provider for the months of March and April 2007.

DECISION

The Division was not correct to require the Claimant to reimburse the Division for Child Care Assistance benefits it paid to the Claimant's childcare provider for the months of March and April 2007.

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, the Claimant must 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 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 22nd day of June 2009.

Larry Pederson
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 22nd day of June 2009, true and correct copies of the foregoing were sent to:

Claimant by USPS First Class Certified Mail, Return Receipt Requested.

And to the following by email:

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

Larry Pederson