

Office of Hearings and Appeals  
3601 C Street, Suite 1322  
P. O. Box 240249  
Anchorage, AK 99524-0249  
Ph: (907) 334-2239  
Fax: (907) 334-2285

**STATE OF ALASKA  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
OFFICE OF HEARINGS AND APPEALS**

In the Matter of )  
 )  
 [REDACTED], )  
 ) OHA Case No. 09-FH-220  
 )  
 Claimant. ) Division Case No. [REDACTED]  
 \_\_\_\_\_ )

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

Ms. [REDACTED], (Claimant) received Alaska Temporary Assistance Program (Program) benefits on October 10, 2008. (Ex. 1) As a condition of her continued receipt of full benefits, Claimant was required to participate in completing a Family Self-Sufficiency Plan (FSSP). (Exs. 2.1-2.2) The Division of Public Assistance (Division) alleged Claimant did not comply with the requirements of the FSSP and a penalty was imposed beginning April 1, 2009. (Exs. 3, 4, 6) The Division notified Claimant of this decision on March 3 and March 5, 2009. (Exs. 5, 7) Claimant requested a Fair Hearing on March 31, 2009. (Exs. 11.0, 11.1) This Office has jurisdiction under authority of 7 AAC 49.010 and AS 47.27.080.

Claimant's Fair Hearing was held on May 19th, 2009. The Claimant appeared telephonically and testified. The Division was represented by Ms. [REDACTED], Fair Hearing Representative, who appeared in person and testified on behalf of the Division. Ms. [REDACTED], representative from Maximus, the agency administering the FSSP, appeared telephonically and testified on behalf of the Division.

**ISSUE**

Was the Division correct to impose a penalty against Claimant's Alaska Temporary Assistance benefits beginning April 1, 2009 for her failure to comply with her family self-sufficiency plan?

## FINDINGS OF FACT

The parties have supplied the following facts, which they have proven by a preponderance of the evidence:

1. Claimant was determined to be eligible for the Alaska Temporary Assistance Program (Program) starting October 10, 2008. (Ex. 1)

2. As part of her receipt of Alaska Temporary Assistance benefits, Claimant and her caseworker at Maximus Alaska Works (Maximus) developed a family self sufficiency plan (FSSP).<sup>1</sup> (Exs. 2.1-2.2) Claimant signed the plan on January 30, 2009. (Exs. 2.2) The FSSP required Claimant to start performing the agreed upon steps not later than February 6, 2009 and to complete or review her performance on several steps by certain dates. (Ex. 2.1) The steps in Claimant's FSSP include:

- a) Update her AlexSys résumé and create at least two résumés with two different job titles by February 7, 2009;
- b) Increase office skills with Beginning and Advanced Quickbooks and Small Business classes by March 31, 2009;
- c) Attend a career support and training workshop by March 31, 2009;
- d) Pursue Work Keys registration with Maximus or Department of Labor by February 28, 2009;
- e) Make two job contacts daily and record them on a Daily Work Search Log and review the log with the case manager by March 31, 2009; and
- f) Attend a job development workshop by February 25, 2009.

The FSSP does not include participation in Work Express classes. (Exs. 2.1-2.2; [REDACTED] testimony) Claimant could complete nearly all the steps in her FSSP online or at home. ([REDACTED] testimony) The remaining steps of the FSSP could be completed in classes with small numbers of attendees. ([REDACTED] testimony)

The "Changes to this plan" section clearly states: "I understand that I must contact my case manager if I want to make any changes to this plan."(Ex. 2.2)

3. On January 30, 2009 Maximus received a report from Claimant's doctor stating Claimant could work full time but had medical conditions which "limit her ability to tolerate stress and to deal with others." (Ex. 24) In April 2009, Claimant's doctor prescribed that she should not attend morning Work Express classes. (Claimant testimony)

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<sup>1</sup> Maximus Alaska Works is a designee of the State of Alaska.

4. Claimant's case manager attempted, without success, on several occasions both by telephone and in writing to elicit Claimant's participation and cooperation in the steps of the FSSP. (Exs. 2.0; 3; 5; 7; 8; 9; Exs. 10.0-10.1; Exs. 13; 15)

5. The Division determined that Claimant had failed to perform most, if not all<sup>2</sup>, of the steps of her FSSP on March 2, 2009. (Ex. 4) A penalty was imposed on Claimant's Alaska Temporary Assistance benefits for failure to perform work activities under the FSSP. (Ex. 6)

6. On March 31, 2009, Claimant requested a fair hearing concerning the penalty for failure to perform work activities set to begin April 1, 2009. (Ex. 11.1)

7. Claimant testified she should not be penalized because she had completed some steps as required by the Plan and as follows:

a. She obtained a prescription from her doctor on April 6, 2009 which she delivered to the Division and which stated that she should be excused from Work Express morning classes;

b. She completed a resume online but did not know how to print it or that she was expected to deliver a copy of it to her caseworker, she does not need the resource classes;

c. She is doing workforce classes (Work Keys) on line and she has trouble because "time passes without my appreciation of it";

d. She completed the job application steps online but did not report it because her computer broke down;

e. She did not attend the classes identified in her Plan because she thought they were Work Express classes taught only in the mornings. Mornings are difficult for her because of her medication, and she did not know that the classes in her Plan were not Work Express classes and they could be attended at times other than mornings;

f. She is [REDACTED] years old and does not need some of the preliminary work activities which are part of the steps in her Plan; and

g. Her work as a part-time bartender may have precipitated the latest round of medical problems and likely was an ill-advised choice of work because she has a "problem being in public."

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<sup>2</sup> The Division was unclear whether the résumé Claimant alleged to have completed on the AlexSys website pre-dated the FSSP or had been developed subsequently. Claimant did not clarify this matter.

## 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 (5<sup>th</sup> 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.

### III. Alaska Temporary Assistance Program

Alaska Statute (AS) 47.27.010 provides cash assistance to families with physical custody of at least one dependent related child. A recipient of benefits from the Alaska Temporary Assistance Program (Program) is required to sign a cooperatively developed family self-sufficiency plan (FSSP) which sets out steps the family will take to become self-sufficient and establishes the time period for the achievement of self-sufficiency. AS 47.27.030.

A recipient of Alaska Temporary Assistance Program cash assistance is required to “participate in work activities as assigned by the department or its designee in order for the family to continue to receive cash assistance or self sufficiency services....” AS 47.27.035.

A recipient of Alaska Temporary Assistance Program cash assistance may be exempted from a requirement of AS 47.27.030 or AS 47.27.035 for “good cause” as provided by AS 47.27.035 and 7 AAC 45.261.

The “good cause” exceptions by which a recipient may be exempted from the work participation requirement of the Alaska Temporary Assistance Program are several: those pertinent to this case concern AS 47.27.035(c)(2) or (3). AS 47.27.035(c)(2) states an exemption from the work participation requirements of a family sufficiency plan if the “parent or caretaker establishes an inability to participate for medical reasons supported by documentation from a physician or other licensed medical professional.” AS 47.27.035(c)(3) likewise exempts a recipient from work participation requirements if “the participation would impose an unreasonable hardship on the family.”

The “good cause” exceptions established by regulation which apply to the conditions of a family self-sufficiency plan are found at 7 AAC 45.261. None of these exceptions are pertinent to this case under the facts supplied by the parties and therefore are not enumerated.

A recipient who does not comply with the requirements of the family self-sufficiency plan (FSSP) or does not participate in work activities is subject to reductions in the cash assistance or other benefits available from the Alaska Temporary Assistance Program and may have other sanctions imposed. AS 47.27.085. A recipient who fails to comply with the FSSP “shall” have their cash benefits reduced. *Id.*

When a non-compliance penalty is imposed, a reduction in the amount of cash assistance is established beginning the day the department makes a finding of non-compliance and continuing up to four months from that date at the rate of a forty-percent reduction in cash benefits. AS 47.27.085(a)(1). The non-compliance penalty ceases on the day the department determines the family has acted in compliance with the FSSP and/or required work activities. *Id.* Non-compliance continued beyond the first four months results in the further reduction of cash assistance depending on the length of time which the non-compliance endures. AS 47.27.085(a)(2) and (3)

## ANALYSIS

### I. Issue

Was the Division correct to impose a penalty against Claimant’s Alaska Temporary Assistance benefits beginning April 1, 2009 for her failure to comply with her family self-sufficiency plan?

### II. Burden of Proof

This case involves the Division’s reduction of Claimant’s Alaska Temporary Assistance Program (ATAP) benefits through imposition of a penalty. Reduction of benefits 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 Division has the burden of proving Claimant failed to comply with the terms of her FSSP as required by the Alaska Temporary Assistance Program.

### III. 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). The Division must meet its burden of proof by a preponderance of the evidence.

### IV. Did Claimant comply with the provisions of her family self-sufficiency plan?

First, it must be determined whether the Division has proven Claimant violated the law or regulations pertaining to the Alaska Temporary Assistance Program such that Claimant may be penalized by a reduction of benefits. Then, whether the penalty was correctly imposed must be determined.

A recipient of benefits from the Alaska Temporary Assistance Program (Program) is required to sign a cooperatively developed family self-sufficiency plan (FSSP), which sets out steps the family will take to become self-sufficient and establishes the time period for the achievement of self-sufficiency. AS 47.27.030.

Claimant developed and signed a family self-sufficiency plan (FSSP) on January 30, 2009 (Ex. 2.0-2.1). Claimant's case manager's undisputed testimony was that Claimant participated in person in developing the Plan, that the selection of each step of the FSSP was discussed with Claimant, and that Claimant agreed to the FSSP before signing it. Thus, Claimant complied with AS 47.27.030.

A recipient of Alaska Temporary Assistance Program benefits also is required to "participate in work activities as assigned by the department or its designee in order for the family to continue to receive cash assistance or self sufficiency services...." AS 47.27.035.

By March 2, 2009, the Division had determined Claimant failed to perform several, if not all, of the steps of the family self-sufficiency plan she had agreed to on January 30, 2009. (Ex. 4) As part of her FSSP, Claimant had agreed to "[u]pdate AlexSys resume" and "Create at least two Resumes with two different job titles" by February 7, 2009. (Ex. 2.1) Claimant testified she completed a résumé online but she did not update it or complete a second one. Thus, Claimant failed to complete this step of her FSSP.

Claimant testified that she participated in the Work Keys training but did not dispute her case manager's testimony that she completed only about 10 hours of the 80 hours of training. Thus, Claimant failed to complete this other step of the Plan.

When Claimant signed the second page of her FSSP she expressly agreed to contact her case manager if she wanted to make any changes to the plan. (Ex. 2.2) Claimant failed to contact her case manager and instead of performing the steps of the FSSP, she took a part-time job bartending. Also, Claimant failed to keep her appointments and failed to connect with her case manager telephonically. (Ex. 11.3)

Thus, although arguably Claimant did complete a résumé, started to pursue Work Keys online, and may have actively pursued some other steps to become self-sufficient, she did not carry out all of the steps of the FSSP which she agreed to carry out when she signed it on January 30, 2009.

Claimant offered several explanations why she had failed to comply with the steps of the Plan she signed on January 30, 2009. See Findings of Fact number 7. However, it was undisputed that Claimant did not cooperate with Maximus to create changes in her FSSP for any of the steps in which she was non-compliant. (Exs. 3; 4; 11.3; Johnson testimony) Claimant was non-responsive to Maximus' attempts to contact her and to work with her to successfully complete the FSSP. Claimant did not comply with her family self-sufficiency plan.

#### A. Did Claimant have good cause for failing to comply with her FSSP?

When a recipient of Alaska Temporary Assistance benefits fails to complete a FSSP, the recipient may escape penalty if good cause for the failure is shown. 7 AAC 45.261; AS 47.27.035. Although Claimant did not expressly assert she failed to comply with her FSSP for good cause, she did assert that she believed she did not need some of them and that she experienced hardship in completing them due to her medication, her trouble with perception of time, and her problems with her computer. Thus, the good cause exceptions available to her by law must be considered.

There are no applicable good cause exceptions identified at 7 AAC 45.261.<sup>3</sup> AS 47.27.035(c)(2) or (3) are the good cause exceptions potentially applicable here.

Alaska Statute 47.27.035(c)(2) states an exemption from the work participation requirements of a family sufficiency plan if the “parent or caretaker establishes an inability to participate for medical reasons supported by documentation from a physician or other licensed medical professional.”

Claimant testified her doctor gave her a medical prescription excusing her from attending morning Work Express classes. However, Claimant was not required to participate in Work Express classes and therefore this prescription did not apply to her FSSP. Her doctor's prior statement indicated Claimant could work full time with consideration for her inability to “tolerate stress and to deal with others.” (Ex. 24) These conditions were accommodated under her FSSP, which permitted her to complete the steps online and attend classes with small numbers of attendees. (██████████ testimony) Hence Claimant's failure to comply with her FSSP is not excused by this good cause exception.

AS 47.27.035(c)(3) exempts a recipient from work participation requirements of a FSSP if “the participation would impose an unreasonable hardship on the family.” Claimant did not provide evidence that completing the FSSP would cause her hardship except to claim she had computer difficulties, had trouble with her perception of time, that the medication she takes causes her difficulty with morning classes and that she did not

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<sup>3</sup> The one found at 7 AAC 45.261(a)(3) concerning the “limited strength and stamina” of an Alaska Temporary Assistance recipient over the age of 59 does not apply because Claimant is █████ years old. (Ex. 1)

believe that at age ■ she needed some of the steps in her FSSP. Claimant participated in formulating the FSSP and agreed to it by signing it. It is reasonable to believe that Claimant would not have agreed to perform the FSSP steps if she thought any would cause her hardship.

Additionally, each of Claimant's concerns were addressed in her FSSP. (Ex. 2.1) Claimant has not supplied evidence of any "unreasonable hardship" such as would meet the requirements of AS 47.27.035(c)(3).

None of Claimant's explanations fall within the "good cause" exceptions found in 7 AAC 45.261 or AS 47.27.035(c)(2) or (3). Accordingly, the Division has proven by a preponderance of the evidence that Claimant failed to comply with the steps of her family self-sufficiency plan without good cause, and accordingly that Claimant is in violation of the Alaska Temporary Assistance Program.

V. Was the Division correct to impose a reduction of benefits as a penalty on Claimant?

Because Claimant has been determined to have failed to complete her plan without good cause, the Division must impose a penalty. AS 47.27.085(a). Once a non-compliance penalty is imposed, a reduction of benefits takes effect. AS 47.27.085(a)(1). The Division properly did impose the penalty beginning April 1, 2009 on Claimant's benefits for non-compliance with her FSSP.

**CONCLUSIONS OF LAW**

1. The Division proved by a preponderance of the evidence Claimant failed to comply with one or more provisions of her family self-sufficiency plan without good cause.
2. The Division was correct to impose a penalty against the Claimant's Alaska Temporary Assistance Program benefits beginning April 1, 2009 for her failure to comply with her family self-sufficiency plan.

**DECISION**

The Division was correct to impose a penalty and reduce Claimant's Alaska Temporary Assistance Program benefits beginning April 1, 2009.

**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 July \_\_\_\_, 2009

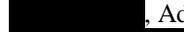
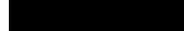
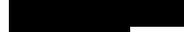
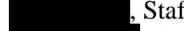
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Claire Steffens  
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this \_\_\_ day of  
July 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

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Al Levitre, Law Office Assistant I