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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-228
	)	
Claimant.	)	Division Case No. ██████████
_____	)	

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

██████████ (Claimant) was receiving Alaska Temporary Assistance (Temporary Assistance) benefits in April of 2009. (Ex. 1.0) The Division of Public Assistance (Division) sent her written notice on April 6, 2009, her Temporary Assistance benefits would be terminated as of April 30, 2009 and she would not receive an extension. (Ex. 4.0) The Claimant requested a fair hearing on April 10, 2009. (Ex. 5.0) This Office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to Claimant's request, a hearing was held on May 26, 2009. The record remained open until May 29, 2009 so that Claimant could provide additional documentation and the Division would have an opportunity to respond.

Claimant attended telephonically and represented and testified on her own behalf. ██████████, Public Assistance Analyst with the Division, attended in person. She represented the Division and testified on its behalf.

## ISSUE

Was the Division correct to deny Claimant's request for an extension of Temporary Assistance benefits after she had reached the 60 month lifetime limit for those benefits on April 30, 2009?

## FINDINGS OF FACT

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

1. The Claimant receives Temporary Assistance benefits. (Ex. 1) Her household consists of herself, an adult domestic partner, and her four children. Her domestic partner is the father of the youngest two children. *Id.*
2. There is no dispute that as of April 30, 2009, Claimant had been on Temporary Assistance benefits for a total of 60 months.
3. On February 11, 2009, the Division held an extension staffing because Claimant was getting close to the sixtieth month limit for Temporary Assistance benefits. At the extension staffing, the Division determined Claimant did not meet any of the criteria that would allow her to receive Temporary Assistance benefits for longer than 60 months. (Ex. 2.0).
4. On April 6, 2009, the Division mailed a notice to Claimant informing her that her Temporary Assistance case would close April 30, 2009. (Ex. 4)
5. On April 10, 2009, Claimant requested a fair hearing. (Ex. 5)
6. On April 14, 2009, Claimant submitted an "ATAP Extension Review Form," requesting a new extension staffing because she was caring for a disabled child and relative. (Ex. 6-6.2).
7. On May 4, 2009, Claimant participated in a new extension staffing with the Division. Again, the Division determined she did not meet any of the criteria that would allow for an extension of benefits. (Ex. 7).
8. Claimant is not a victim of domestic violence. Claimant can perform gainful activity, although she does have a hearing problem. (Testimony of Claimant) Claimant's child has a learning disability, but does not require additional care from Claimant that would interfere with Claimant's ability to work. (*Id.*) Claimant's domestic partner is disabled, but does not require additional care from Claimant that would interfere with Claimant's ability to work. (*Id.*).
9. Claimant's household receives approximately \$2,560 in income per month in addition to the Temporary Assistance. (Testimony at hearing).

## **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).

Temporary Assistance is a benefit program provided to financially eligible families with minor children. AS 47.27.010. A family may not normally receive Temporary Assistance benefits from any state (or states) for a total period of more than 60 months (lifetime limit). AS 47.27.015(a)(1).

The Temporary Assistance program rules allow an exception to the 60 month lifetime limit when domestic violence, physical or mental inability to work, or caring for a disabled child or relative, interfere with a recipient’s ability to work. *See* AS 47.27.015(a)(1)(A)-(C); 7 AAC 45.610(d) – (f). The Temporary Assistance program rules also allow an exception to the 60 month lifetime limit for family hardship. AS 47.27.015(a)(1)(D); 7 AAC 45.610(g).

Hardship is defined as “a family experiences circumstances outside of its control that prevent the caretaker relative from participating in work activities or becoming self-sufficient, and the loss of ATAP benefits would result in conditions that threaten the health or safety of the family.” 7 AAC 45.990(c). Hardship includes a lack of “sufficient income or resources to provide for housing, food, transportation, or other essential needs.” 7 AAC 45.610(g)(2)(A).

## **DISCUSSION**

Because the Claimant seeks to obtain an extension to her Temporary Assistance benefits by submitting an “ATAP Extension Review Form,” Claimant is attempting to change the status quo. Accordingly, Claimant has the burden of proof by a preponderance of the evidence. *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Com’n*, 711 P.2d 1170, 1183 (Alaska 1986).

The facts of this case are clear and undisputed. Claimant is not a victim of domestic violence. Claimant can perform gainful activity, although she does have a hearing problem. (Testimony of Claimant) Claimant’s child has a learning disability, but does not require additional care from Claimant that would interfere with Claimant’s ability to

work. (*Id.*) Claimant's domestic partner is disabled, but does not require additional care from Claimant that would interfere with Claimant's ability to work.

Claimant's household income is approximately \$2,560 per month, not including Temporary Assistance benefits. Therefore she has sufficient income to provide for housing, food, transportation, and other essential needs.

Based on all of these facts, Claimant does not meet any exceptions to the 60 month lifetime limit. Claimant has failed to meet its burden of proof and has not established, by a preponderance of the evidence, that she qualifies for an extension to the Temporary Assistance program's 60 month lifetime limit. The Division was correct to terminate the Claimant's Temporary Assistance benefit when she reached her 60 month lifetime limit, which occurred on April 30, 2009.

### **CONCLUSIONS OF LAW**

1. The Claimant was not eligible for an extension of her Temporary Assistance benefits beyond April 30, 2009, because she did not qualify for any of the hardship exception categories. She was able to work. Neither her son nor her domestic partner's conditions prevented her from employment. Furthermore, the household had shelter and food.

2. Therefore, the Claimant has failed to meet her burden of proof by a preponderance of the evidence that Division was not correct to close her Temporary Assistance benefits as of April 30, 2009.

### **DECISION**

The Division was correct when it terminated the Claimant's Temporary Assistance benefits as of April 30, 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  
PO 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 this 4th day of August 2009.


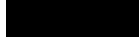
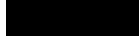
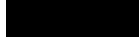
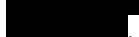

Patricia Huna-Jines  
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 4<sup>th</sup> day of August 2009, true and correct copies of the foregoing were sent to:

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

And to the following by email:

, Fair Hearing Representative  
, Director  
, Director's Office  
, Policy & Program Development  
, Policy & Program Development  
, Staff Development & Training

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Al Levitre, Law Office Assistant I