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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-229
Claimants.) Division Case No. ██████████)
_____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

██████████ and ██████████, (Claimant) began receiving Food Stamps and Alaska Temporary Assistance Program benefits for their household on January 8, 2009.¹ (Ex. 1) As a condition of continued receipt of full benefits, Claimant was required to carry out the steps of a Family Self-Sufficiency Plan (FSSP), which he had developed and signed on January 23, 2009. (Ex. 2.5-2.6) The Division of Public Assistance (Division) alleged Claimant did not comply with the requirements of the FSSP and imposed penalties. (Exs. 4, 5.0, 5.1, 8) Claimant was notified telephonically that he was not in compliance with his FSSP. (Ex. 4, 6.0, 13) The penalties reduced Claimant's Alaska Temporary Assistance and Food Stamp benefits beginning March 1, 2009. On

¹ The ██████████ received benefits as a household. During the hearing, Mrs. ██████████ testified under oath that she delegated to Mr. ██████████ permission to address all issues and to respond for her and on her behalf. Mrs. ██████████ took no further part in the hearing. Therefore, the household is addressed through Mr. ██████████ for purposes of this Decision. Although the language of the Decision addresses Mr. ██████████ actions in regards to his family self-sufficiency plan and does not address Mrs. ██████████ actions in regards to her family self-sufficiency plan, this Decision applies to both Mr. and Mrs. ██████████. Because the Division has been found correct in penalizing the household through Mr. ██████████, no further analysis is required.

March 2, 2009, the Division notified Claimant of the decision to impose penalties.² (Ex.8)

Claimant requested a Fair Hearing on April 9, 2009. (Ex. 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 26, 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. [REDACTED], an Employment Security Specialist with the Department of Labor, the agency administering the FSSP, appeared telephonically and testified on behalf of the Division.

ISSUE

Was the Division correct to penalize Claimant by reducing his Alaska Temporary Assistance and Food Stamp benefits beginning March 1, 2009 because he allegedly had not complied with the terms of his Family Self-Sufficiency Plan (FSSP)?

FINDINGS OF FACT

1. Claimant began receiving Alaska Temporary Assistance and Food Stamp benefits on January 8, 2009 (Ex. 1)
2. Claimant completed and signed a Family Self-Sufficiency Plan (FSSP) with his case manager on January 23, 2009. (Ex. 2.0, 2.5-2.6) The FSSP required Claimant to do the following between January 26 and February 16, 2009:
 - a. Apply for a minimum of 5 jobs daily, Monday through Friday, for 10 days;
 - b. E-mail work search logs daily to his case manager at the state web address;
 - c. Register for work with the State system and post his resume on-line;
 - d. E-mail Claimant's case manager a copy of his current resume;
 - e. Provide proof of CPR/First Aid certification;
 - f. Provide proof of a back ground check;
 - g. Get a TB test; and
 - h. Contact his case manager by telephone or e-mail with a progress report for all assigned activities, i.e., a through g above.

² The Division also sent two notices on February 17, 2009. One notice pertained to Food Stamps and the other to the Alaska Temporary Assistance Program. (Ex. 7.1; 7.2) These notices were mailed to Claimant at General Delivery in [REDACTED] but the Division had a specific street and post office box in [REDACTED], Alaska as Claimant's address. (Ex. 1) The rule that a letter properly directed and mailed creates a presumption that it reached its destination in usual time and was actually received by the person to whom it was addressed, adopted in *Rosenthal v. Walker*, 111 U.S. 185, 193-94 (1884), does not apply for these notices because they were not properly addressed and therefore could not have reached Claimant. However, the Division previously had notified Claimant by voice mail message (Exs. 4, 5.5, 6.0) of his non-compliance and penalty imposition and therefore Claimant had received the required notice. Moreover, Claimant testified that he received Division telephone messages and responded to them as he was able.

Because Claimant's employment goal was to be a care provider, Claimant was given vouchers to pay the costs of the TB test, background check and CPR/First Aid classes. (Ex. 2.3-2.5; Olmstead testimony)

3. Claimant did not complete any part of the FSSP.³ (Claimant testimony; Olmstead testimony)

4. On February 4, 2009, Claimant's case manager telephoned his home and left a message notifying him he was not in compliance with his FSSP and requesting he respond by telephone or e-mail. (Ex. 4) Claimant did not respond by February 9, 2009. (Ex. 5)

5. On February 9, 2009, Claimant's case manager requested the imposition of a "work activities" penalty beginning March 1, 2009 because Claimant failed to perform any of the steps on his FSSP. (Ex. 5.1-5.2) This work activities penalty was imposed against Claimant's Alaska Temporary Assistance benefits beginning March 1, 2009. (Ex. 7.0) As a consequence of the penalty to the family's Alaska Temporary Assistance benefits, the penalty reducing the household's Food Stamp benefits necessitated by law also was imposed by the Division. (Ex. 7.0)

6. On February 9, 2009, Claimant's case was transferred to a new case manager with Maximus Alaska Works.⁴ (Ex. 5.5) This case worker was unable to engage Claimant in participating or completing any of the steps of his FSSP. (Exs. 5.5, 6.0)

7. During the hearing Claimant testified and stated the following:

a. He agreed he had not performed any step of his FSSP.

b. He is fully occupied with caring for his wife and does not get a full night of sleep because he needs to assist her during the night. Claimant needs to sleep during the day to make up for his intermittent night sleep and therefore Claimant turns off the family telephone when he or his wife do not wish to be disturbed. Claimant returned the Division's calls as he was able and left detailed messages in the general voice-mail. (*See also*, Exs. 12; 14.1)

³ Mrs. [REDACTED] was required by her family self-sufficiency plan to provide a Medical Report Form from a neurologist and a doctor's note stating that her husband needed to provide her with 24 hour care. (Ex. 2.10) This requirement was to be completed or reviewed by February 6, 2009. (Ex. 2.10) Mrs. [REDACTED] met this requirement. (Ex. 19.1-19.2) There is no date stamp showing when the Division received the Medical Report Form. (Ex. 19.1-19.2) However, the Division case note records that the Medical Report Form was received on April 10, 2009 and is based on a doctor's examination of April 6, 2009. (Ex. 19.0) It appears Mrs. [REDACTED] came into compliance with her family self-sufficiency plan after the penalty was imposed on the household.

⁴ Maximus Alaska Works is a designee of the State of Alaska.

c. He finds it difficult to leave the house and get his mail, which is delivered to the Miller's Trading Post in Houston.

d. He did not get the TB test, background check or complete the CPR and First Aid steps of his Family Self-Sufficiency Plan because he learned that he could not be paid for taking care of his spouse.

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).

III. Alaska Temporary Assistance Program

Alaska Statute (AS) 47.27.010 provides cash assistance to families. 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; 7 AAC 45.257.

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); *see also* 7 AAC 45.257; 7 AAC 45.260.

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(c) and 7 AAC 45.261. 7 AAC 45.257(d).

The “good cause” exceptions by which a recipient may be exempted from the work activities requirement of the Alaska Temporary Assistance Program are several. AS 47.27.035(c) and 7 AAC 45.261(a)(1-18).⁵ Based on the evidentiary record, the potential good cause exception pertinent to this case concerns AS 47.27.035(c)(3), “where participation would impose an unreasonable hardship on the family....”

A recipient who does not comply with the steps of the family self-sufficiency plan (FSSP) or who 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; 7 AAC 45.257(d). A recipient who fails to comply with the FSSP “shall” have their cash benefits reduced. AS 47.27.085 and 7 AAC 45.257(d). *See also*, AS 47.27.085(a) and 7 AAC 45.980.

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); 7 AAC 45.980. 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. AS 47.27.085(a)(2) and (3); 7 AAC 45.980.

The Food Stamp program authorizes the Division to impose a 25% reduction in the household’s monthly benefit if an Alaska Temporary Assistance benefit reduction penalty is imposed “because of a failure of a food stamp household member to perform an action required under the assistance program....” 7 CFR 273.11(j).

ANALYSIS

I. Issue

Was the Division correct to reduce the household’s Alaska Temporary Assistance and Food Stamp benefits beginning March 1, 2009 because Claimant allegedly failed to comply with the steps, including work activities, of his family self-sufficiency Plan (FSSP)?

II. Burden of Proof

This case involves the Division’s reduction of Claimant’s Alaska Temporary Assistance Program (ATAP) and Food Stamp benefits through imposition of a penalty. Reduction of benefits is deemed a change in the status quo. Ordinarily the party seeking a change in

⁵ 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 enumerated at 7 AAC 45.261(a)(1-18) potentially apply in this case.

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 his FSSP.

III. Standard of Proof

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

IV. Did Claimant Fail to Comply with his Family Self-Sufficiency Plan (FSSP)?

The Division alleged that Claimant performed none of the steps of his FSSP. (Exs. 4, 6.4, 7.0; Olmstead testimony) Claimant agreed. Thus, the Division has proven by a preponderance of the evidence that Claimant did not comply with the requirements of the FSSP, which is required to participate in the Alaska Temporary Assistance Program.

However, Claimant asserted through his testimony that he had good cause for not performing the required steps of his FSSP. Therefore, his assertions must be examined to determine if the law permits a “good cause” exception. When a recipient of Alaska Temporary Assistance benefits fails to complete a Plan, the recipient may escape penalty if good cause for the failure is shown. 7 AAC 45.261;⁶ AS 47.27.035(c). If Claimant is not found in violation of the Alaska Temporary Assistance Program, he will not be subject to penalty under the Food Stamp Program. 7 CFR § 273.11(j).

Alaska Statute 47.27.035(c)(3) exempts a recipient of Alaska Temporary Assistance from a penalty for non-compliance with the recipient’s FSSP when “participation would impose an unreasonable hardship on the family....”

During the hearing, Claimant acknowledged he had failed to comply with his FSSP and asserted that his justification for failing to comply was three-fold: a) he is so busy caring for his wife that he cannot answer the telephone when it rings; b) because his wife needs his assistance during the night, his sleep is intermittent and he must sleep periodically during the day and therefore he “turns off” the telephone; and c) he finds it very difficult to leave the house to pick up his mail. Claimant’s testimony that he did not get the TB test because he learned spouses could not be paid for caring for spouses implies that he believed there was no point in taking the steps of the FSSP designed to make him eligible to be her caregiver.

⁶ 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. These exceptions generally fall into categories such as exceptions pertaining to care of young children, pertaining to escape from domestic violence, inability to perform due to incarceration, jury duty, weather, lack of transportation, and sudden death, temporary and sudden illness in the family, or tragedy of nature. 7 AAC 45.261(a)(1-8) The remaining exceptions at (a)(9-18) pertain to matters relating to an employed recipient and do not apply here.

These explanations do not fall within any “good cause” exemption provided by AS 47.27.035, except possibly subsection (c)(3), the hardship exception. Did Claimant provide evidence meeting the requirements of the hardship exception? The FSSP steps consist of two kinds of activities: first, work activities such as preparing a resume and e-mailing a copy to his case manager or applying for a minimum of 5 jobs daily for 10 days and reporting his work search logs to his case manager; (Ex. 2.5-2.6) and second, obtaining prerequisite tests and expertise required of paid care givers. (*Id.*)

The first kind of activities all are achievable by use of the computer and internet, can be done at home, and can be done in small segments which do not require a long block of time away from caring for Claimant’s wife. Accordingly, they do not impose hardship on Claimant. None of the reasons Claimant supplied as his justification for failing to comply with his FSSP supply good cause to exempt him from these steps. In fact, because Claimant believed he could not become a paid care giver for his wife, these steps are especially important to achieving family self-sufficiency and therefore are not an unreasonable hardship.

Claimant seeks exemption from the second kind of activities (have a TB test, complete CPR and First Aid certification, and get a background check) on grounds that even if he completed these steps, he could not become a paid care giver for his wife. The steps themselves do not impose a hardship on Claimant; Claimant was given vouchers to pay for them consequently there was no financial hardship; and Claimant did not assert achieving these steps would impose a hardship on his family.

Claimant participated in developing the FSSP and by signing it agreed that he would comply with the steps required of him in the Plan. This implies he did believe he could comply with it and compliance did not cause him unreasonable hardship. There is no evidence in the hearing record that he asserted it would be a hardship for him to comply with the FSSP steps. Moreover, if Claimant believed the steps no longer were valid to achieving his family’s self-sufficiency, he could have addressed this during his communications with his case manager(s) during his telephone messages, by e-mail, letter, or in person. (Ex. 2.6; Ex. 14.1)

Therefore, Claimant does not meet the requirements of AS 47.27.035(c)(3), the good cause exemption based on unreasonable hardship. The explanation given by Claimant for failing to complete any step of his FSSP do not fall within the “good cause” exceptions permitted by law. The Division has shown that Claimant failed to comply with the steps of his FSSP without good cause.

V. Was the Division Correct to Impose a Reduction of Alaska Temporary Assistance Benefits as a penalty on Claimant?

Because Claimant has been determined to have failed to complete any step of his FSSP without good cause, the Division must impose a penalty. AS 47.27.085(a); 7 AAC 45.257(d). Once a non-compliance penalty is imposed, a reduction in cash benefits takes effect and continues until the Division determines that Claimant is in compliance with his FSSP. AS 47.27.085(a)(1); 7 AAC 45.980.

The Division properly did impose the penalty reducing Claimant's Alaska Temporary Assistance benefits for non-compliance with his FSSP beginning March 1, 2009. The Division was correct in applying the penalty reducing Claimant's household's Food Stamp benefits as required by law because he failed to comply with his FSSP as required by the Alaska Temporary Assistance Program. 7 CFR § 273.11(j).

CONCLUSIONS OF LAW

1. The Division proved by a preponderance of the evidence that Claimant failed to comply with his Family Self-Sufficiency Plan and therefore was in violation of a provision of the Alaska Temporary Assistance Program.
2. The Division was correct to impose a penalty against the Claimant's household (DPA jargon- household) Alaska Temporary Assistance benefits beginning March 1, 2009 which reduced the family's benefits.
3. The Division was correct to impose a penalty beginning March 1, 2009 which reduced the household's Food Stamp benefit because Claimant failed to comply with his Family Self-Sufficiency Plan as required by the Alaska Temporary Assistance Program.

DECISION

The Division was correct to impose a penalty on Claimant's household's Alaska Temporary Assistance benefits beginning March 1, 2009 for his failure to comply with his Family Self-Sufficiency Plan. The Division also was correct to impose a penalty on the household's Food Stamp benefits beginning March 1, 2009 based on Claimant's failure to perform the FSSP required by the Alaska Temporary Assistance Program.

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

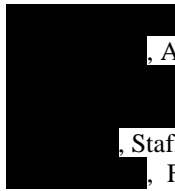
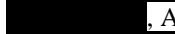
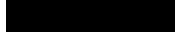
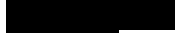
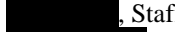

Claire Steffens
Hearing Authority

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

Al Levitre, Law Office Assistant I