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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-310
	)	
Claimant.	)	Division Case No. ██████████
_____	)	

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

██████████ (Claimant) receives Adult Public Assistance benefits from the State of Alaska. (Ex. 1.0) The Division of Public Assistance (Division) sent her an April 15, 2009 written notice her monthly Public Assistance benefit payment would change to \$362 for the month of May 2009. (Ex. 5) The Claimant requested a fair hearing on April 29, 2009. (Ex. 9.1) After the Claimant submitted her fair hearing request, the Division notified her on May 6, 2009 that her monthly Public Assistance benefit payment would change to \$323 for the month of June 2009. (Ex. 10) The Claimant did not file a separate hearing request on the June 2009 payment change; however the parties, by consent, dealt with both issues at the hearing. This Office has jurisdiction pursuant to 7 AAC 49.010.

The Claimant's hearing was held on June 24 2009. The Claimant appeared telephonically, represented herself and testified on her own behalf. ██████████ Public Assistance Analyst with the Division, attended the hearing in person. She represented the Division and testified on its behalf.

The record was held open until July 2, 2009 to allow the Claimant to submit additional exhibits. The Claimant did not supply any additional documents.

## ISSUES

1. Was the Division correct to reduce the Claimant's May 2009 Adult Public Assistance payment from \$521 to \$362?
2. Was the Division correct to reduce the Claimant's June 2009 Adult Public Assistance payment from \$521 to \$323?

## FINDINGS OF FACT

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

1. The Claimant is married. She resides with her husband and a minor child for whom she and her husband are not the parents, but rather the guardians. (Claimant testimony; Ex. 2.0) Neither the Claimant nor her husband receive any financial support for taking care of the child. (Claimant testimony)
2. The Claimant receives \$674 per month in Supplemental Security Income. (Ex. 7)
3. The Claimant was receiving a monthly Adult Public Assistance payment of \$521 in March and April 2009. (Ex. 4.5) This payment amount was based on the Claimant living in a household with her husband, with her household income (other than Adult Public Assistance) consisting of only her monthly Supplemental Security Income payment. (Ex. 4.5)
4. The Claimant's husband is not employed. (Ex. 2.2) He is not receiving Adult Public Assistance. (Ex. 1) His only income is back child support payments (for his now adult children), which total \$217.62 per month. (Ex. 7.2) Those payments were received sporadically in the past, but have been paid consistently since October 2008. (Claimant testimony; Ex. 7.2)
5. The Claimant's husband was jailed on April 5, 2009. (Claimant testimony; Ex. 4.4) He was subsequently released from jail on April 10, 2009. (Claimant testimony; Ex. 6)
6. On or about April 14, 2009, the Division became aware that the Claimant's husband had been jailed on April 5, 2009. (Ex. 4.0) Based upon that information, the Division determined that the Claimant no longer resided with her husband, and recalculated her Adult Public Assistant benefit, as though her household only included one adult, rather than two adults. *Id.*
7. On April 15, 2009, the Division sent the Claimant written notice it was reducing her Adult Public Assistance payment for May 2009 to \$362. (Ex. 5) The written notice informed the Claimant of the Division's reason for the change:

We received a report that [your husband] has been incarcerated with no release date. This is a required report of change for this program. We have removed him from your household and show that there is one adult in the home at this time.

*Id.* The Division's calculations of the May 2009 Adult Public Assistance payment are based upon the Claimant's income only being \$674 per month. (Ex. 7.4)

8. On April 22, 2009, the Claimant provided the Division with a Department of Corrections form showing that her husband was released from jail on April 10, 2009. (Ex. 6)

9. After the Division received the information from the Claimant that her husband had only been out of the home for 5 days in April 2009 (April 5 to April 10), the Division did not restore the Claimant's May 2009 Adult Public Assistance payment from \$362 to her previous payment amount of \$521. (Ex. 8) The Division sent the Claimant a notice on April 28, 2009 that explained its reasoning:

We did not make the change in May of adding [your husband] back to your house. If we make that change and add his child support income your check would have decreased for May. We will make the change in May for June benefits and you will receive a notice at that time explaining what you will receive and why.

(Ex. 8)

10. On May 6, 2009, the Division sent the Claimant notice her June 2009 Adult Public Assistance payment would be changed to \$323.00, because it considered her husband as part of her household, and it was counting his child support income as part of the household used in calculating her payment. (Ex. 10) The Division's calculations of the June 2009 Adult Public Assistance payment are based upon there being two adults in the home, and the Claimant's income only being \$674 per month (Supplemental Security Income) her husband's income only being \$217.62 per month (child support), and allowing her one deduction of \$20. (Exs. 7.0; 7.4)

11. The Division did not take the minor child in the Claimant's household into account when calculating the Claimant's monthly Adult Public Assistance payments because he "is not a dependent child & not related." (Ex. 7.0)

### **PRINCIPLES OF LAW**

This case involves the reduction of benefits. When the Division reduces benefits, the Claimant has the burden of proof<sup>1</sup> by a preponderance of the evidence.<sup>2</sup>

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<sup>1</sup> "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)

Adult Public Assistance is a cash benefit program provided to financially eligible persons who are “aged, blind, or disabled.” AS 47.25.430.

“The income and resources of an applicant’s spouse who is living with her are considered income and resources of the applicant.” 7 AAC 40.240(a). When an Adult Public Assistance recipient’s is “separated” from her spouse, who is not himself receiving Adult Public Assistance, the couple is “rebuttably presumed to no longer live together on the first day of the calendar month following the month of separation.” 7 AAC 40.240(c)(2).

Countable monthly income for Adult Public Assistance purposes is calculated by adding together an applicant’s and her spouse’s gross monthly income, both earned and unearned, and subtracting allowable income deductions. 7 AAC 40.310(a); 7 AAC 40.350.

The list of allowable deductions from an applicant’s income and her spouse’s income is provided in 7 AAC 40.320 and 7 AAC 40.330. There is a general deduction of \$20. 7 AAC 40.330(a)(23) Among the other possible deductions is one provided pursuant to federal regulation 20 CFR 416.1163. 7 AAC 40.330(b). This deduction is given only to households that include a spouse, who is not eligible for Adult Public Assistance, and one or more children: “[w]e then deduct an allocation for ineligible children in the household in the household.” 20 CFR 416.1163(b). An “ineligible child” is defined as an individual’s “natural child or adopted child, or the natural or adopted child of [their] spouse, or the natural or adopted child of [their] parent or of [their] parent’s spouse . . . who is under age 21, lives in the same household with you, and is not eligible for SSI benefits.” 20 CFR 416.1160(d).

If an applicant is financially eligible for Adult Public Assistance, the Division subtracts her countable household income from the Adult Public Assistance payment standard. 7 AAC 40.370(b). The difference is the applicant’s monthly Adult Public Assistance benefit amount. The 2009 payment standard for a married couple residing together in their own home, when only one is eligible for Adult Public Assistance, is \$1,195. 7 AAC 40.370(c)(2) and (d); *Alaska Adult Public Assistance Manual Addendum 1*. The 2009 payment standard for a person residing by herself is \$1,036. *Id.* The Adult Public Assistance regulation does not provide for an increased payment standard when there are more than two persons residing in a household. *Id.*

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<sup>2</sup> Preponderance of the evidence is the normal standard of proof in an administrative proceeding. *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 “[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)

The term “applicant” as used in the Adult Public Assistance regulations includes both applicants for Adult Public Assistance and those already receiving Adult Public Assistance. 7 AAC 40.900(1).

“The division shall give written notice to the client at least 10 days before the date the division intends to take action denying, suspending, reducing, or terminating assistance.” 7 AAC 49.060. The “written notice . . . must detail the reasons for the proposed adverse action, including the statute, regulation, or policy upon which that action is based.” 7 AAC 49.070.

### ANALYSIS

The issue in this case is whether or not the Division was correct when it reduced the Claimant’s monthly Adult Public Assistance payment from \$521 per month to \$362 for May 2009 and to \$323 for June 2009. Because the Division is seeking to reduce the Claimant’s benefits, the Division has the burden of proof by a preponderance of the evidence. Each benefit month (May and June 2009) shall be addressed separately.

The following undisputed facts are pertinent to this discussion:

1. The Claimant’s only income is \$674 in monthly Supplemental Security Income.
2. The Claimant’s husband’s only income is \$217.62 in monthly child support. The Claimant’s husband is not receiving Adult Public Assistance himself.
3. The Claimant’s husband was out of the home for a brief time from April 5, 2009 to April 10, 2009.
4. The Claimant and her husband have a minor child in their home who is not their child, but for whom they are the guardians. They do not receive any payment for his care.

A. May 2009

The Division reduced the Claimant’s monthly Adult Public Assistance payment, which had been \$521, to \$362 for the month of May 2009. The Division’s action was based upon it finding out the Claimant’s husband was jailed on April 5, 2009. The Claimant’s husband, however, had been released from jail on April 10, 2009. The Division’s written notice informing the Claimant her May 2009 Adult Public Assistance payment was reduced was sent on April 15, 2009, after the Claimant’s husband had already been released from jail.

On April 22, 2009, the Claimant notified the Division her husband had been released from jail on April 10, 2009. This rebutted the presumption that the Claimant and her husband had been separated. *See* 7 AAC 40.240(c)(2). At this point, the Division should

have rescinded its action and restored the Claimant's Adult Public Assistance payment to its previous level of \$521.

The Division did not restore the Claimant's Adult Public Assistance payment to its previous level of \$521. Instead, it found another basis for justifying its reduction in the Claimant's payment, being that the Claimant's husband had child support income which needed to be counted as part of the household's income. This was an entirely brand new reason, which the Division had not given the Claimant before. The Division sent the Claimant written notice of its additional reason for reducing her May 2009 Adult Public Assistance payment on April 28, 2009, which was only two days before May 1, 2009, the first day of the affected benefit month.

The Division's April 28, 2009 notice did not comply with regulatory requirements that required the Division to provide the Claimant with a minimum of 10 days advance notice before it reduced her benefits: "[t]he division shall give written notice to the client at least 10 days before the date the division intends to take action denying, suspending, reducing, or terminating assistance." 7 AAC 49.060. The adverse action notice must also notify the Claimant of the reasons for the reduction. 7 AAC 49.070. The Division therefore could not reduce the Claimant's May 2009 Adult Public Assistance payment without giving her written notice containing the reasons for the reduction in her payment at least 10 days before May 1, 2009. It did not.

In summary, the Division erred when it reduced the Claimant's May 2009 Adult Public Assistance payment for two reasons. First, the Claimant's husband was only jailed between April 5, 2009 and April 10, 2009, and the Claimant provided the Division proof on April 22, 2009, i.e. before May 1, 2009, that her husband was released from jail on April 10, 2009. The Division should therefore have reinstated the Claimant's May 2009 Adult Public Assistance payment to \$521. Second, the Division could not reduce the Claimant's May 2009 Adult Public Assistance payment for a totally different reason than provided in its original April 15, 2009 notice without providing the Claimant with a new timely (minimum of 10 days before the proposed action) and adequate (listing the new reason for reduction) written notice.

B. June 2009

The Division reduced the Claimant's June 2009 Adult Public Assistance payment to \$323. The basis for its action was its determination that the Claimant's husband's monthly child support income of \$217.62 was countable household income. The Division was correct to consider the Claimant's husband's child support income as part of the household income. 7 AAC 40.310(a); 7 AAC 40.350.

However, the Division did not allow the Claimant an income deduction for the minor child who resides with the Claimant and her husband. The Division did not allow the deduction because the child "is not a dependent child & not related." *See* Finding of Fact 11 above. The Adult Public Assistance regulation that grants an income deduction from the husband's income when there is a child in the home does not specify that the child in

the home must be either a “dependent” or “related.” Instead, the Adult Public Assistance regulation simply refers to the federal regulation 20 CFR 416.1163. 7 AAC 40.330(b).

The federal regulation, 20 CFR 416.1163(b) simply states that “[w]e then deduct an allocation for ineligible children in the household in the household.” The federal regulations then define the term “ineligible” child to require that the child be the natural or adoptive child of either the Claimant, her spouse, the Claimant’s parents, or her spouse’s parents. 20 CFR 416.1160(d).

Because the child who resides in the Claimant’s house is not her or her husband’s natural or adoptive child,<sup>3</sup> but merely their ward, the child is not an “ineligible child” as defined in the pertinent federal regulation, 20 CFR 416.1160(d). The Claimant is therefore not allowed a deduction from her husband’s child support income for the child who resides in her home.

The Division was therefore correct to count the Claimant’s husband’s child support payments as income to the Claimant, and to not allow the Claimant an income deduction for the minor child living in her home. The Claimant’s household’s total monthly income was therefore \$891.62 (\$674 Supplemental Security Income and \$217.62 child support). The Claimant is allowed the general deduction of \$20 provided for by 7 AAC 40.330(a)(23). This would bring her total countable monthly income to \$872 (rounded up).

The Adult Public Assistance payment standard for a household of the Claimant’s type, one individual receiving Adult Public Assistance with a spouse who is not receiving Adult Public Assistance, is \$1,195. 7 AAC 40.370(c)(2) and (d); *Alaska Adult Public Assistance Manual Addendum 1* The monthly Adult Public Assistance payment is the difference between the payment standard and the household’s countable monthly income. 7 AAC 40.370(b). In this case, that comes to \$323 (\$1,195 payment standard minus \$872).

The Division’s calculations in this case follow the Adult Public Assistance regulations. It arrived at the Claimant’s June 2009 Adult Public Assistance payment of \$323 based upon there being two adults in the home, the Claimant’s income only being \$674 per month (Supplemental Security Income) her husband’s income only being \$217.62 per month (child support), and allowing her one deduction of \$20. (Exs. 7.0; 7.4) *See* Finding of Fact 10 above. Consequently, the Division met its burden of proof by a preponderance of the evidence, and was correct to reduce the Claimant’s June 2009 Adult Public Assistance payment to \$323.

### **CONCLUSIONS OF LAW**

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<sup>3</sup> The record does not contain any information as whether the child is a natural or adoptive child of either the Claimant’s parents or the Claimant’s husband’s parents.

1. The Division did not meet its burden of proof by a preponderance of the evidence and establish that the Claimant's May 2009 Adult Public Assistance payment should be reduced from \$521 to \$362 for two reasons:

- a. The Claimant's husband did not move out of the Claimant's home. His absence from the home was a short one, from April 5 2009 to April 10, 2009, and the Claimant notified the Division of his return to the home on April 22, 2009, before May 1, 2009.
- b. The Division could not use an entirely new reason, i.e. the Claimant's husband's monthly child support income, to support its reduction of the Claimant's May 2009 Adult Public Assistance payment without first providing the Claimant with timely adequate notice that complied with 7 AAC 49.060 – 070 (minimum of 10 days before the effective date of the proposed action), which it did not do.

2. The Division therefore was not correct when it reduced the Claimant's May 2009 Adult Public Assistance payment from \$521 to \$362.

3. The Division met its burden of proof by a preponderance of the evidence and established that the Claimant's June 2009 Adult Public Assistance payment should be reduced to \$323, because the household was not entitled to receive a deduction from the Claimant's husband's monthly child support income due to there being a child in the home.

4. The Division therefore was correct when it reduced the Claimant's June 2009 Adult Public Assistance payment from \$521 to \$323.

### **DECISION**

1. The Division was not correct to reduce the Claimant's May 2009 Adult Public Assistance payment from \$521 to \$362.

2. The Division was correct to reduce the Claimant's June 2009 Adult Public Assistance payment from \$521 to \$323.

### **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




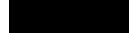
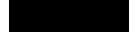
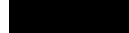
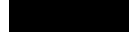

If the Claimant appeals, the request must be sent within 15 days from the date of receipt of this Decision. Filing an appeal with the Director could result in the reversal of this Decision.

DATED this 13th day of August 2009.

/Signed/  
Larry Pederson  
Hearing Authority

#### CERTIFICATE OF SERVICE

I certify that on this 13th 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

\_\_\_\_\_  
J. Albert Levitre, Jr., Law Office Assistant I