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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-326
)	
Claimant.)	Division Case No. ██████████
_____)	

FAIR HEARING DECISION

STATEMENT OF THE CASE

██████████ (Claimant) was a recipient of Alaska Temporary Assistance (Temporary Assistance) benefits. (Ex. 1) On March 19, 2009, the Division of Public Assistance (Division) sent the Claimant written notice her Temporary Assistance benefits would be reduced to \$377 per month beginning with the month of April 2009. (Ex. 12) The Claimant requested a fair hearing on March 26, 2009. (Ex. 13.0) This office has jurisdiction pursuant to 7 AAC 49.010.

A hearing began, pursuant to Claimant's request, on June 25, 2009 before Hearing Officer Jay Durych. The hearing was continued at the Claimant's request. The hearing reconvened on August 25, 2009 before Hearing Officer Larry Pederson.

The Claimant appeared telephonically; she represented herself and testified on her own behalf.

██████████, Public Assistance Analyst with the Division, attended in person; she represented the Division and testified on its behalf. ██████████, a work services specialist with Nine Star Enterprises (Nine Star)¹, appeared telephonically on August 25, 2009, and testified on behalf of the Division. ██████████, the employment training manager with Nine Star, appeared telephonically on August 25, 2009, and testified on behalf of the Division.

¹ Nine Star Enterprises is a private company contracted by the Division that provides employment training and support services for Temporary Assistance recipients.

STATEMENT OF ISSUES

Was the Division correct to impose a penalty against the Claimant's Temporary Assistance benefits, which reduced the amount of her monthly Temporary Assistance payment, because she allegedly failed to comply with the terms of her Family Self-sufficiency Plan (FSSP)?

FINDINGS OF FACT

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

1. The Claimant is [REDACTED] years old (birthdate [REDACTED]). (Ex. 1) She has a [REDACTED] year old daughter (birthdate [REDACTED]) and has been receiving Temporary Assistance benefits from the State of Alaska continuously since August 2008. *Id.*
2. On February 5, 2009, the Division sent the Claimant notice she would receive a penalty, reducing her Temporary Assistance monthly benefit amount to \$377 beginning with the month of March 2009. (Ex. 3) The Division penalized the Claimant because she had not completed her Family Self-sufficiency Plan (FSSP). *Id.*
3. The Claimant met with a work services specialist at Nine Star on February 19, 2009 and completed her FSSP. (Ex. 4.0; [REDACTED] testimony) The Claimant signed the FSSP on February 19, 2009. (Exs. 4.2 – 4.3) As a result, the Claimant's Temporary Assistance penalty was lifted. (Exs. 4.0 – 4.1; [REDACTED] testimony)
4. The FSSP required the Claimant to attend the CDC (Career Development Center) beginning on February 23, 2009 through March 26, 2009 and to attend an appointment with her case manager on March 26, 2009. (Exs. 4.2 – 4.3) The FSSP notified the Claimant that if she “fail[ed] to follow through with this plan and complete work activities” she could lose “some or all of [her] temporary assistance benefits.” *Id.*
5. The Claimant attended the Career Development Center for three days, February 23 to February 25, 2009. (Exs. 5.0 – 5.2; [REDACTED] testimony)
6. The Claimant stopped attending the Career Development Center after February 25, 2009. (Ex. 8.1; [REDACTED] testimony)
7. On March 19, 2009, the Division sent the Claimant written notice she would receive a penalty, reducing her Temporary Assistance monthly benefit amount to \$377 beginning with the month of April 2009. (Ex. 12) The Division's reason for the penalty was because the Claimant had not been “participating with the activities in her self-sufficiency plan.” *Id.* The notice further informed the Claimant that she needed to “attend 20 consecutive days of participation in activities assigned by her case manager” in order to be in compliance with her FSSP. *Id.*

8. The Claimant admittedly stopped attending the Career Development Center after February 25, 2009. (Claimant testimony) She testified regarding the reasons for her stopping her attendance at the Career Development Center as follows:

- a. During her FSSP meeting with Mr. [REDACTED] on February 19, 2009, she requested that she be allowed to participate in a three month training course for medical billing instead of attending the Career Development Center and that Mr. [REDACTED] told her that she was too old.
- b. She had a loud verbal altercation with the supervisor at North Star's Mountain View office about the fact her mailing address was different from her physical address.
- c. She had been a victim of domestic violence in the past, and was assaulted by the father of her child in March 2009, after he was released from jail.
- d. She had a six month doctor's authorization releasing her from work requirements, issued in late January 2009, which she had turned into Nine Star and which it did not have a record of. She had tried to get a copy of the authorization from her doctor, but he refused to give her a copy.
- e. Her mother, who lives in [REDACTED], had severe health issues, which caused the Claimant to go to [REDACTED]. She first went to [REDACTED] in March 2009 for several weeks. She returned to Anchorage, and has been back to [REDACTED] twice since her return to Anchorage.

9. Mr. [REDACTED], who is a work development specialist at Nine Star, testified as follows:

- a. He did not witness an altercation between the Claimant and the supervisor.
- b. When he met with the Claimant on February 19, 2009, she informed him that she had been a victim of domestic violence four years ago, but it was not a current problem.
- c. The Claimant did not ask him about attending a training course when they prepared her FSSP on February 19, 2009. She did ask him about it on her third day at the Career Development Center (February 25, 2009). He was busy at the time and asked her to come early the next day to speak to him about the course. She did not show up at the Career Development Center the next day. He did not tell her that she was too old to attend a training course.
- d. That after the Claimant failed to return to the Career Development Center after February 25, 2009, he made a series of attempts to contact her, including two telephone calls on March 3, 2009, and telephone calls on March 10 and 12, 2009. The first time the Claimant contacted Nine Star was on March 18, 2009.

10. Ms. [REDACTED] who is the employment and training manager at Nine Star, testified as follows:

- a. She did not witness any altercation between the Claimant and Nine Star staff at the Mountain View Office.
- b. There is no doctor's report excusing the Claimant from work activities for six months in the Nine Star files.

PRINCIPLES OF LAW

This case involves the issue of whether or not the Division was correct when it imposed a financial penalty that reduced the Claimant's monthly Temporary Assistance benefit amount. Because this case involves the reduction of benefits, the Division has the burden of proof² by a preponderance of the evidence.³

The Alaska Temporary Assistance program requires that its adult participants participate in the development of an FSSP. AS 47.27.030(a). If a Temporary Assistance recipient, without good cause, does not comply with the terms of the FSSP, the Division "will impose a penalty upon the family in accordance with 7 AAC 45.980." 7 AAC 45.257(d). The penalty is a reduction in the amount of the Temporary Assistance the family receives. AS 47.27.085(a); 7 AAC 45.980(a)(1).

The Alaska Temporary Assistance program regulations provide a list of allowable good cause exceptions for non-compliance with a condition of an FSSP:

- a. when the recipient is the single parent of a child who is under 6 years old and childcare is either inappropriate or unavailable;
- b. when participation would interfere with a recipient's attempts to avoid or escape domestic violence;
- c. the recipient is over the age of 59 and unable to participate due to limited strength or stamina;
- d. there is a sudden and temporary situation beyond the recipient's control, affecting the recipient's health or ability to comply;

² "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)

³ 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)

- e. a court appearance or jury service;
- f. unavailability of transportation; or
- g. inclement weather that limits travel.

7 AAC 45.261(a).⁴

Alaska Statute 47.27.035 provides additional good cause reasons for failure to participate in an FSSP. These include when there is a child less than a year old in the household, the recipient is caring for a disabled household member who requires 24 hour care, there is a medically documented inability to participate, and when participation would cause unreasonable hardship. AS 47.27.035(b) and (c).

ANALYSIS

The issue in this case is whether the Division was correct when it imposed a penalty, which reduced the amount of her monthly Temporary Assistance payment beginning with the month of April 2009, because she allegedly failed to comply with the terms of her Family Self-sufficiency Plan (FSSP). The Division has the burden of proof by a preponderance of the evidence.

The undisputed facts show the Claimant was receiving a penalty against her Temporary Assistance benefits in February 2009 because she had not completed an FSSP. She eliminated the penalty by meeting with her caseworker at Nine Star and completing and signing an FSSP on February 19, 2009. The FSSP required that she attend the Career Development Center from February 23, 2009 through March 26, 2009. The Claimant admittedly complied with the FSSP for less than a week, when she stopped going to the Career Development Center after only three days; her last day at the Career Development Center was February 25, 2009. In other words, the Claimant failed to comply with the terms of her FSSP.

The Claimant presented several reasons to justify her non-compliance with the FSSP:

- a. Being told on February 19, 2009, the date she completed the FSSP, that she was too old to take a training course;
- b. Having a doctor's statement excusing her from work activities for 6 months, that she said she received from her doctor in January 2009, and had turned into Nine Star, but that Nine Star did not have a copy of;
- c. Being a victim of domestic violence, which she said occurred in the first part of March 2009; and

⁴ There are other good cause reasons listed in the regulation, however they pertain to when recipients quit their employment or refuse to participate in work related activities. See 7 AAC 45.261(a).

- d. Her verbal altercation with the Mountain View Nine Star supervisor about her mailing address.
- e. Her stay in [REDACTED] due to her mother's illness.

The Claimant's testimony on the above points, with the exception of the domestic violence incident and her mother's illness, was contradicted by Mr. [REDACTED]'s and Ms. [REDACTED]' testimony. However, it is not necessary to determine credibility in this case, because the Claimant's testimony, taken at face value, does not provide good cause for her decision to stop attending the Career Development Center, as discussed below.

The first reason, being told that she was too old to take a training course, per the Claimant's testimony occurred on February 19, 2009. However, she completed and signed the FSSP on February 19, 2009 and then attended the Career Development Center on three subsequent days, February 23, 24, and 25 2009.

If the Claimant believed that she had been treated impermissibly on February 19, 2009 by allegedly being told that she was too old to take a training course, she should have refused to complete her FSSP or followed up on the issue with Mr. [REDACTED] or his supervisor. Further, after completing the FSSP, she attended the Career Development Center for three consecutive days after she was allegedly told she was too old to take a training course. She then stopped attending the Career Development Center. Her reason for her decision to stop attending the Career Development Center, even taken at face value, is not consistent with her actions. She effectively gave up her right to object to not being approved for a training course when she agreed to the FSSP.

The second reason, that she had a doctor's note excusing her from work activities, was not supported by the evidence in this case. There was no doctor's note in the Nine Star files. The Claimant did not provide one. The Claimant testified she could not get a copy of the doctor's note from her doctor. This was the Claimant's obligation. Without a written authorization from the doctor, she did not satisfy the good cause exception which requires there be a medically documented inability to participate in the FSSP. *See AS 47.27.035(c)*. Additionally, the Claimant said the doctor's note was provided in January 2009. However, she agreed to the FSSP on February 19, 2009 without mention of a medical excuse. Her subsequent consent to the FSSP, despite her argument she had an earlier doctor's note excusing her from work activities, was an implicit concession that she no longer required an exemption.

The third reason, domestic violence, does not establish grounds for a good cause exception to FSSP participation. First, the domestic violence occurred in the first part of March 2009. The Claimant stopped attending the Career Development Center after February 25, 2009. She cannot use a subsequent event, the March domestic violence assault, as an after the fact justification for her decision to stop attending the Career Development Center. Second, in order to serve as a good cause exception, FSSP participation must interfere with the Claimant's attempts to escape or avoid domestic violence. 7 AAC 45.261(a). The Claimant did not present any evidence that would support a conclusion that her FSSP participation interfered with her attempts to escape or avoid domestic violence.

The fourth reason, her verbal altercation with the Mountain View Nine Star supervisor, may have been grounds for filing a complaint, but it does not fall within any of the good cause exceptions for failure to participate in an FSSP.

The Claimant's fifth reason, her mother's illness in [REDACTED], also does not constitute good cause for her failure to comply with her FSSP. A sudden family health related emergency is listed among the listed good cause exceptions for non-compliance with an FSSP. 7 AAC 45.261(a)(4). However, the Claimant testified she went to [REDACTED] in March 2009. The Claimant stopped attending the Career Development Center after February 25, 2009. She cannot use a subsequent event, her mother's March illness, as an after the fact justification for her earlier decision to stop attending the Career Development Center.

In summary, the facts of this case show that the Claimant was receiving a penalty in March 2009 against her Temporary Assistance benefits, because she had not completed an FSSP. She had the penalty eliminated when she met with her Nine Star case manager on February 19, 2009 and completed and signed an FSSP. She complied with the terms of her FSSP for less than a week, by stopping her required attendance at the Career Development Center after February 25, 2009.

The Claimant was certainly aware that she could be penalized for non-compliance with the terms of her FSSP, as shown by the fact that she had just had a penalty lifted. Her stated reasons for stopping her required attendance at the Career Development Center after February 25, 2009, as discussed above, do not establish good cause for non-compliance. *See* 7 AAC 45.261(a); AS 47.27.035(b) and (c).

The Division had the burden of proof in this case by a preponderance of the evidence. It satisfied its burden and demonstrated that it was correct when it imposed a penalty, which reduced the amount of the Claimant's monthly Temporary Assistance payment beginning with the month of April 2009, because she did not comply with the terms of her Family Self-sufficiency Plan (FSSP).

CONCLUSIONS OF LAW

1. The Claimant did not establish good cause for her failure to comply with the terms of her February 19, 2009 FSSP.
2. The Division satisfied its burden of proof by a preponderance of the evidence and proved that the Claimant failed to comply with the terms of her February 19, 2009 FSSP when she stopped attending the Career Development Center after February 25, 2009.
3. The Division was therefore correct when it imposed a penalty, which reduced the amount of the Claimant's monthly Temporary Assistance payment beginning with the month of April 2009, because she failed to comply with the terms of her FSSP.

DECISION

The Division was correct to impose a penalty, which reduced the amount of the Claimant's monthly Temporary Assistance payment beginning with the month of April 2009, because she failed to comply with the terms of her Family Self-sufficiency Plan (FSSP).

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 31st day of August, 2009.

Larry Pederson
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 31st day of August 2009, true and correct copies of the foregoing were sent to:
Claimant by First Class Mail, Certified Mail, Return Receipt Requested.
And to the following by email:

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

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