

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)
)
)
)
 a/k/a)
 a/k/a)
) OHA Case No. 09-FH-337
)
 Claimant.) Division Case No.)
)

FAIR HEARING DECISION

STATEMENT OF THE CASE

Ms. [REDACTED]¹, (Claimant) applied for extended Alaska Temporary Assistance Program benefits (Application) on April 6, 2009. (Ex. 1; Ex. 2.1-2.10) The Division of Public Assistance (Division) denied her Application for an extension to the lifetime limit of 60 months on May 12, 2009. (Ex. 5) The Division notified Claimant of this decision on May 13, 2009. (Ex. 6) Claimant requested a Fair Hearing on May 19, 2009. (Ex. 7.1) This Office has jurisdiction under authority of 7 AAC 49.010 and AS 47.27.080.

Claimant's Fair Hearing was held on July 14, 2009. Claimant appeared in person and testified. Claimant's mother, Ms. [REDACTED], also appeared in person and testified on behalf of Claimant. The Division was represented by Ms. [REDACTED], Fair Hearing Representative, who appeared in person and testified on behalf of the Division. Ms. [REDACTED], Quality Assurance Manager for Nine Star Enterprises, a contractor working for the Department of Public Assistance, appeared telephonically and testified on behalf of the Division.

¹ Ms. [REDACTED] completed the initial line of the Application as [REDACTED] but thereafter refers to herself as [REDACTED]. However, the Division identified her as Ms. [REDACTED]. During the hearing, Claimant explained that during her divorce proceedings, she was re-adopting her maiden name of [REDACTED] and abandoning her married name of [REDACTED]. Some of Claimant's children have surnames of [REDACTED] but Claimant never was known by the name of [REDACTED]. (Claimant testimony)

ISSUE

Did the Division properly deny Claimant's April 6, 2009 Application for extended benefits from the Alaska Temporary Assistance Program?

FINDINGS OF FACT

The following facts have been proven by a preponderance of the evidence:

1. Claimant completed and signed an application for benefits from the Alaska Temporary Assistance Program (Application) on April 1, 2009. (Ex. 2.1-2.10) The Division of Public Assistance stamped the date of receipt of her Application as April 6, 2009. (*Id.*) Claimant participated in an interview for expedited public assistance benefits on April 6, 2009. (Ex. 2.0)
2. During the interview for expedited benefits, Claimant disclosed she had last received benefits in February 2009 from California and had moved to Alaska in March 2009. (Ex. 2.0) Claimant's Application corroborated she received benefits through February 2009. (Ex. 2.2) Claimant asserted she had received 36 months of public benefits in [REDACTED]. (Ex. 3.0)
3. The Division researched Claimant's statement and learned that Claimant had already received 60 months of cash assistance. (Ex. 3.0) Claimant's Application was treated as a request for extended benefits under the Alaska Temporary Assistance Program. (Ex. 3.0)
4. The Claimant's case manager discussed the Claimant's circumstances pertaining to Claimant's request for extended benefits. ([REDACTED] testimony) Claimant requested 12 additional months of benefits because she wanted to pursue her bachelor's degree. ([REDACTED] testimony) Claimant wanted to go beyond her Associate of Arts degree in childhood development so that she could better provide for her family's needs. ([REDACTED] testimony) Claimant had told her case manager she quit² two jobs in [REDACTED] so that she could come to Alaska. ([REDACTED] testimony; Exhibits C; D³) Claimant stated to the Division she had relocated to Alaska to be with and support her [REDACTED] year old daughter, who was having issues with her father. ([REDACTED] testimony)
5. As a consequence of Claimant's request for extended benefits, the Division held an interview on May 11, 2009. ([REDACTED] testimony, Ex. 4.0-4.1) Claimant participated in person and the Division was represented in person by Claimant's case manager at Nine

² Immediately before Claimant moved to Alaska in March 2009, Claimant held two jobs concurrently. (Exs. C; D; [REDACTED] testimony) Claimant quit one job and "her employment terminated" after approximately three years at the other job. (*Id.*)

³ At the hearing, Claimant supplied Exhibits C and D as proof of her quit and termination. Claimant also provided documentation of having applied for five jobs in Alaska. This documentation disclosed she had been employed consistently from May 2005 to March 2009. (Ex. E, pp. 1-5)

Star, Ms. [REDACTED], Quality Assurance Manager, and by a Division representative who participated telephonically. (Ex. 4.0; [REDACTED] testimony)

6. At this interview, called a staffing interview, Claimant was specifically asked to provide any information in support of her request for extended benefits under the Alaska Temporary Assistance Program. ([REDACTED] testimony; Ex. 4.0) In particular, Claimant was asked to state any reason why she would not be able to work. (*Id.*) Claimant's election to not work until the child care facility of her choice had space for her children was discussed. ([REDACTED] testimony; Claimant testimony) The Division considered each criteria under which Claimant might be granted extended benefits. (Ex. 4.0-4.1)

7. Also during the staffing interview, the Division particularly investigated whether there was a hardship preventing Claimant from working. ([REDACTED] testimony; Ex. 4.0-4.1) Claimant stated she had no trouble getting work, and although she had a felony conviction years ago, it did not interfere with her getting work. ([REDACTED] testimony) The Division did not specifically ask Claimant about domestic violence because there was no hint of domestic violence suggested by Claimant. ([REDACTED] testimony)

8. Claimant was asked specifically several times to provide information that she felt would show she was prevented from working. ([REDACTED] testimony) Claimant was asked this because she was upset that her request for extended benefits had been denied. ([REDACTED] testimony) Claimant was invited to provide information from any source and in any form which Claimant desired to support her claim that she was eligible for extended cash benefits. ([REDACTED] testimony)

9. During the interview, Claimant did not provide any information that would prevent her from getting a job. ([REDACTED] testimony) Claimant appeared assertive, expressed herself well and did not appear intimidated. ([REDACTED] testimony) Claimant did not express any fears and did not disclose or give any reasons to believe there was any domestic violence going on with her.⁴ ([REDACTED] testimony)

10. Division concluded Claimant had the personal resources to obtain the child care she needed and that she was making a personal choice to wait until her preferred child care had space. ([REDACTED] testimony) The Division concluded there was no other reason limiting Claimant's ability to work. ([REDACTED] testimony)

11. The Division denied Claimant's request for extended benefits at the extension staffing interview on May 11, 2009. The Division wrote Claimant of its denial on May 12, 2009. (Exs. 4.1; 5; 6)

12. On May 19, 2009, Claimant signed a Fair Hearing Request stating she felt intimidated during the extension staffing interview and was unable to disclose domestic violence information. (Ex. 7.1)

⁴ Claimant testified during the fair hearing that she was convicted of two felony counts several years ago and these did not pertain to domestic violence.

13. At the fair hearing on July 14, 2009, Claimant testified she quit one job (Exhibit C) and that her second job was terminated (Exhibit D). Claimant is skilled at sales, telemarketing and providing administrative assistance. (Ex. E, pp.2-4) Claimant testified she had kept facts of domestic violence “secret for so long” that she “just didn’t know how to get it out at that time” (meaning the staffing interview) and also that she did not mention the domestic violence during the staffing interview because she “was afraid and still is afraid”. Claimant also testified that when she attended the staffing interview she felt unsupported as a consequence of a comment that she could work because she had an associate’s degree”.

14. At the fair hearing on July 14, 2009, Claimant presented her case articulately and was well prepared. Also at the hearing, Claimant and her mother presented a domestic violence order that expired October 2008 and testimony concerning the behavior of Claimant’s children’s father (Ruffin) which showed he had been incarcerated and had had no recent contact with Claimant. (Ex. B) The Division testified it did not have this information at the time of the staffing. (██████ testimony)

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).

“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. Benefit Period under the Alaska Temporary Assistance Program (ATAP)

AS 47.27.015(a)(1) limits the duration of Alaska Temporary Assistance Program cash benefits to a maximum of 60 months. This statute also provides exceptions to the 60

month maximum and provides for extended benefits to qualified applicants. In this case, AS 47.27.015(a)(1)(A) is the relevant exception and permits extended benefits to:

(A) a person who the department has reasonable cause to believe is or recently has been the victim of domestic violence, as defined in AS 18.66.990, and the physical, mental, or emotional well-being of the victim would be endangered by a strict application of the time limit otherwise applicable under this subsection....

This statute is implemented by regulation 7 AAC 45.610 which states, in part:

(d) The department will extend, under AS 47.27.015(a)(1)(A), the 60-month limit for a caretaker relative or pregnant woman if the department determines (1) that the caretaker relative or pregnant woman is or recently has been a victim of domestic violence; and (2) as a result of domestic violence, the victim's physical, mental, or emotional well-being would be endangered by a strict application of the 60-month limit, as evidenced by the person's inability to participate in work activities as defined in AS 47.27.900 or to accept or retain employment at a level that allows the family to be self-sufficient.

ANALYSIS

I. Burden of Proof

This case involves Claimant's Application for extended Alaska Temporary Assistance Program (ATAP) benefits. An application 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 Claimant has the burden of proof.

II. 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 Claimant must meet her burden of proof by a preponderance of the evidence.

III. Issue

Did the Division properly deny Claimant's April 6, 2009 Application for extended benefits from the Alaska Temporary Assistance Program?

IV. Staffing Interview

Claimant testified that she did not disclose facts concerning domestic violence in her background at the May 11, 2009 staffing interview because she had kept the facts of

domestic violence “secret for so long” that she felt she could not discuss it. The Division’s witness testified that at the staffing interview Claimant was articulate and gave no evidence of being intimidated. (██████ testimony) Claimant’s statement in her fair hearing request that she was intimidated at the staffing interview is not credible because there were only two persons present, one of whom was her case manager, and only one person on the telephone and because Claimant is an adult who has maintained employment for over four years, in part as a salesperson and telemarketer. Such a skill set defies a claim of intimidation during a meeting with only two other persons physically present.

The preponderance of the evidence is that Claimant sought extended Alaska Temporary Assistance benefits so she could attend school and that she had been employed just prior to coming to Alaska. Claimant provided documents at the hearing proving she had been concurrently employed as recently as March 2009 in two jobs, just before she arrived in Alaska. (Exs. C; D) The Division considered this information at the staffing interview and invited Claimant to state why she could not continue to work.

Day care was discussed as it applied to Claimant’s ability to work. Claimant elected to wait until her preferred day care provider had space for her children: this election constitutes a voluntary decision not to work and not a circumstance preventing her from working.

The Division considered the information presented by Claimant at the staffing interview in deciding to deny Claimant’s request for extended benefits. It could not know that Claimant kept “secret” the facts of domestic violence in her past. She did not present any facts of having recently been a victim of domestic violence or of being unable to participate in work activities as a consequence of domestic violence. Claimant did not provide the Division with any basis on which to grant her request for extended benefits.

Moreover, Claimant first mentioned domestic violence in her request for the fair hearing. Claimant did not mention domestic violence to the Division caseworker or when she participated at the staffing interview. Claimant first disclosed domestic violence as a basis for claiming she could not work during the fair hearing. Claimant offered no facts at the staffing interview on which basis the Division might have granted extended benefits.

Assuming *arguendo* that Claimant had raised the domestic violence issue during the staffing interview, Claimant probably would not have met her burden of proving she qualified for extended benefits, based on what she presented at the fair hearing. Specifically, at the fair hearing, Claimant offered a domestic violence order which expired at least 6 months prior to termination of her employments in March 2009. She had maintained employment since 2006, apparently before and after the period of domestic violence. Second, Claimant’s two jobs did not end until the very month she moved to Alaska. Thus, Claimant proved she could work notwithstanding the alleged threat of potential domestic violence. Finally, Claimant had no recent contact with the person she allegedly feared.

Clearly, given the facts presented at the staffing interview, Claimant did not meet the statutory and regulatory requirements permitting the Division to allow Claimant extended benefits. Thus, the Division was correct in denying Claimant's April 6, 2009 Application for extended Alaska Temporary Assistance program benefits.

CONCLUSIONS OF LAW

Claimant failed to prove by a preponderance of the evidence that the Division incorrectly denied her April 6, 2009 Application for Alaska Temporary Assistance extended benefits.

DECISION

The Division was correct to deny Claimant's April 6, 2009 Application for Alaska Temporary Assistance extended benefits.

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

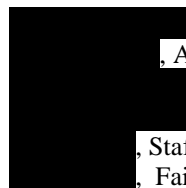
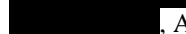
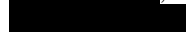
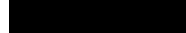
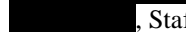
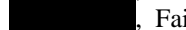
If the Claimant appeals, the request must be sent within 15 days from the date of receipt of this Decision. Filing an appeal with the Director could result in the reversal of this Decision.

Dated August 18th, 2009

Claire Steffens
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this ___ day of
August 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