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**STATE OF ALASKA  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
OFFICE OF HEARINGS AND APPEALS**

In the Matter of )  
 )  
 [REDACTED] ) OHA Case No. 09-FH-339  
 )  
 Claimant. ) Division Case No. [REDACTED]  
 )  
 \_\_\_\_\_ )

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

[REDACTED] (Claimant) is a former recipient of Child Care Assistance benefits. On May 20, 2009, the Division of Public Assistance (Division) sent the Claimant written notice she had received a total of “\$26,590 too much from the Child Care Assistance Program for the months of May 2008 through April 2009.” (Ex. 21) The Division’s May 20, 2009 notice required the Claimant to repay the Division \$26,590. *Id.* The Claimant requested a Fair Hearing on May 26, 2009. (Ex. 18)

This Office has jurisdiction pursuant to 7 AAC 41.420(b)(4)(B) and 7 AAC 49.010.

The Claimant’s hearing was initially scheduled for June 30, 2009. The hearing was rescheduled numerous times. The hearing was then held on July 13, 2010 and September 30, 2010.

The Claimant was represented by [REDACTED], Esq., who appeared in person. The Claimant attended the hearing in person and testified on her own behalf. The Claimant’s other witnesses were as follows: [REDACTED], the Claimant’s father, who testified in person on July 13, 2010; and [REDACTED], who testified in person on September 30, 2010.

The Division was represented by Assistant Attorney General [REDACTED], Esq., who appeared telephonically. The Division’s witnesses were as follows: [REDACTED], Program Coordinator with the Division’s Child Care Assistance office, who testified in person on July 13, 2010; [REDACTED], a Public Assistance Analyst with the Division’s Child Care Assistance office, who testified telephonically on July 13, 2010; [REDACTED], the Claimant’s husband, who testified telephonically on July 13, 2010; [REDACTED], the Claimant’s father-in-law,

who testified telephonically on July 13, 2010; and ██████████, who testified telephonically on July 13, 2010.

The record was held open after the September 30, 2010 hearing for submission of a transcript of a September 2010 Superior Court hearing<sup>1</sup> in the Claimant's divorce case, Case No. 3KN-09-██████ Civil, and for post-hearing briefing. The transcript was received on October 7, 2010. (Division Ex. 52) The post-hearing briefing was completed on December 7, 2010.

### **STATEMENT OF ISSUES**

The Division alleges that the Claimant received \$26,590 in Child Care Assistance benefits, during the months of May 2008 through September 2008 and November 2008 through April 2009, that she was not entitled to receive. The Division argued that the Claimant's husband resided in the family household during the entire time period in question and that his income made the family financially ineligible for Child Care Assistance benefits.

The Claimant did not disagree with the fact she received Child Care Assistance during the months in question, the amount of Child Care Assistance received, or with the fact that her husband's income made her family financially ineligible for Child Care Assistance. Instead, the Claimant generally argued that her husband's income should not be considered in determining her financial eligibility for Child Care Assistance. She raised separate arguments with regard to the time periods of May 2008 through September 2008 and November 2008 through April 2009.<sup>2</sup>

With regard to the time period of May 2008 through September 2008, the Claimant argued that her husband was not residing with her and their children in the family home or supporting the family during those months, and that as a result she was financially eligible for Child Care Assistance during those months.

With regard to the months of November 2008 through April 2009, the Claimant admitted her husband shared the family residence with her and the children during that time period. She argued, however, that because of her and her husband's living arrangements, where the children stayed in the family home and the parents would stay there separately, i.e. the Claimant would stay there nights when her husband wasn't there and the husband would stay there nights that the Claimant wasn't there, that she was financially eligible for Child Care Assistance during those months.

Because the Claimant did not dispute the Division's factual argument that her husband's income caused her family to be financially ineligible for Child Care Assistance, the issues in this case are as follows:

1. Did the Claimant's husband live in the family home during the months of May 2008 through September 2008?

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<sup>1</sup> The transcript does not indicate the exact date of the Superior Court hearing. (Ex. 52)

<sup>2</sup> The Claimant did not receive Child Care Assistance during the month of October 2008. (Ex. 37)

2. Did the Claimant's and her husband's living arrangement during the months of November 2008 through April 2009 excuse the husband's income from being counted for the purposes of determining financial eligibility for Child Care Assistance benefits?

### **SUMMARY OF DECISION**

The Division had the burden of proof, by a preponderance of the evidence, in this case to establish that the Claimant had received Child Care Assistance benefits to which she was not entitled.

The Division did not meet its burden of proof with regard to the Child Care Assistance benefits the Claimant received during the months of May 2008 through September 2008, because it failed to prove that the Claimant's husband lived in the family home during those months. As a result, the Claimant was financially eligible to receive Child Care Assistance benefits during the months of May 2008 through September 2008. Consequently, the Division was not correct to require the Claimant to repay the Child Care Assistance benefits she received during those months.

The Division met its burden of proof with regard to the Child Care Assistance benefits the Claimant received during the months of November 2008 through April 2009, because it proved that the Claimant's husband was a part of the Claimant's Child Care Assistance "family" during those months, regardless of the family's "shared" living arrangement. The husband's income **alone** caused the "family" to be financially ineligible for Child Care Assistance benefits during the months of November 2008 through April 2009. Consequently, the Division was correct to require the Claimant to repay the Child Care Assistance benefits she received during those months in the amount of \$13,560.50.

### **FINDINGS OF FACT**

The following facts were proven by a preponderance of the evidence:

1. The Claimant is a married woman with five children. During the times relevant to this case, with the exception of several short time periods, she and her children resided at the family home located at [REDACTED], Kenai, Alaska. (Claimant testimony)
2. The Claimant applied to receive Child Care Assistance for her six person family, consisting of her and five children, on September 28, 2007. (Division Exs. 24a – 24e) The Claimant did not list her husband as residing in the household. *Id.* The Claimant was approved to receive Child Care Assistance for the period of October 1, 2007 through March 31, 2008. (Division Ex. 28)
3. The Claimant applied to renew her Child Care Assistance on February 19, 2008 for her six person family, consisting of her and five children. (Division Exs. 29a – 29f) The Claimant did not list her husband as residing in the household. *Id.* As part of her application process, the Claimant informed the Division that she had a verbal agreement with her husband to receive \$1,500 in monthly child support payments, but that she had only received a total of \$3,000 in child support payments over the past six month period. (Division Ex. 29j) The Claimant was

approved to receive Child Care Assistance for the period of April 1, 2008 through September 30, 2008. (Division Ex. 32a)

4. The Claimant did not submit a renewal application for Child Care Assistance benefits before the end of September 30, 2008 and her Child Care Assistance case was closed on September 30, 2008. (Division Ex. 37)

5. The Claimant applied to receive Child Care Assistance for her six person family, consisting of her and five children, on November 20, 2008. (Division Exs. 38a – 38e) The Claimant did not list her husband as residing in the household. *Id.* As part of her application process, the Claimant informed the Division that she had received child support payments of \$500 for the months of January through March 2008, \$0 for the months of April through October 2008, and \$1100 in November 2008. (Division Ex. 38m) The Claimant was approved to receive Child Care Assistance for the period of November 20, 2008 through April 30, 2009. (Division Ex. 41a)

6. On August 21, 2008, [REDACTED], who was then employed by the local Kenai administrator for the Child Care Assistance program, prepared an “Erroneously Obtained Benefits Preliminary Review” report that stated she had “reason to believe [Claimant] & her husband are still living together & that there is unreported income from her husband working.” (Division Ex. 1; [REDACTED] testimony)

7. [REDACTED] is a public assistance analyst with the Child Care Assistance program. ([REDACTED] testimony) Part of her job is researching whether Child Care Assistance benefits have been overpaid or underpaid. *Id.* When her office received the “Erroneously Obtained Benefits” report from the Kenai local Child Care Assistance program administrator, she researched the issue of whether the Claimant and her husband were residing together at the time the Claimant was receiving Child Care Assistance benefits. *Id.* She reviewed a number of computer databases and determined the following:

- a. The Claimant’s husband stated, on an occupational license as an Assistant Guide (May 9, 2008), on a hunting license (May 12, 2008), and on a vehicle registration form (May 14, 2008), that his physical address was [REDACTED], Kenai, Alaska.
- b. The Claimant and her husband stated on their 2008 Permanent Fund Dividend applications that their physical address was [REDACTED], Kenai, Alaska, and they used each other as verifiers on both applications. The 2008 Permanent Fund Dividend applications were both filed on January 5, 2008.
- c. When the Claimant’s income and her husband’s income, as shown in Alaska Department of Labor records, are combined, the Claimant was not financially eligible for Child Care Assistance benefits from May 2008 through April 2009.

([REDACTED] testimony)

8. The Claimant received a total of \$26,587.50 in Child Care Assistance benefits during the months of May 2008 through September 2008 and November 2008 through April 2009 as follows:

May 2008 – September 2008

November 2008 – April 2009

<u>Month</u>	<u>Amount</u>
May 2008	\$2,305
June 2008	\$2,651
July 2008	\$2,652
August 2008	\$2,652
September 2008	<u>\$2,767</u>

<u>Month</u>	<u>Amount</u>
November 2008	\$ 742.50
December 2008	\$2,625
January 2009	\$2,593
February 2009	\$2,141
March 2009	\$2,974
April 2009	<u>\$2,485</u>

TOTALS \$13,027

\$13,560.50

(Division Exs. 16a – b, 17a – 17ss; ██████████ testimony)

9. During the months of May 2008 through September 2008 and November 2008 through April 2009, the Claimant's husband, according to Alaska Department of Labor records, earned the following gross monthly income:

May and June 2008:	\$7,449.37
July, August, and September 2008:	\$6,295.26
November and December 2008:	\$6,283.07
January, February, and March 2009:	\$6,115.37
April 2009:	\$6,857.22

(Division Ex. 49)

10. During the months of May 2008 through September 2008 and November 2008 through April 2009, the gross monthly income limit for Child Care Assistance eligibility for a family of seven persons was \$4,917. (Division Ex. 50) The Claimant's husband's income made the family not eligible to receive Child Care Assistance benefits during those months. (██████████ testimony)

11. The Claimant testified that her husband did not reside with the family during the time period from April 2008 through September 2008 with the exception of one or two nights, which were not continuous. In November 2008, she and her husband attempted reconciliation and he came back to the family home. She testified that she did not sleep overnight in the home during most of the time period from December 2008 through April 2009 as follows:

- a. During December 2008, she would sleep in the upstairs office at the day care where she worked and then go to the home about 5 a.m. and get the children ready for school.
- b. During January 2008 through April 2009, she would again sleep at the day care except when her husband was not at home. She estimated that she spent four to five nights per week at the day care, with the remaining two to three nights per week at the family home.

12. The children stayed in the family home during the time period of November 2008 through April 2008. (Claimant testimony)

13. The Claimant's husband testified that he spent the entire time at the home in the period of May 2008 through April 2009, and that he was not gone for "any significant" time periods with the exceptions of approximately three to three and one-half weeks from mid May to Mid June 2008, when he was [REDACTED].

14. During the period of May 2008 through April 2009, the Claimant and her husband, as revealed through their hearing testimony, had a very contentious relationship which continued through the time of this hearing, with allegations of infidelity, illegal drug use, and financial mismanagement including an ongoing failure by the husband to make mortgage payments. *See e.g.* Claimant's Exs. 1a – 1k. During this hearing, the Claimant and her husband were involved in an adversarial divorce, which was filed in July 2009,<sup>3</sup> involving child custody issues.<sup>4</sup>

15. [REDACTED] [REDACTED], the Claimant's father-in-law testified. He lives in Anchorage. He stated that he physically visited the Claimant's family home twice in August 2008, and saw his son there. Mr. [REDACTED] further stated that he would telephone the home approximately once per month during the times in question (May 2008 – April 2009) and that his son was generally there to speak to him.

16. [REDACTED], the Claimant's father, testified. He lives in Anchorage. He stated that he visited the Claimant at the family home and stayed overnight there in May 2008, June 2008, and the first part of July 2008. Mr. [REDACTED] further stated that he did not see the Claimant's husband during any of those visits. He was out of state for medical treatment from late July 2008 through December 2008, and did not visit the family home from the end of July 2008 through February 2009.

17. [REDACTED] [REDACTED] testified. She is a close friend of the Claimant. She and the Claimant would watch each other's children. She testified about her visits to the Claimant's home as follows:

- a. During the months of May, June, and July 2008, she lived several blocks away from the Claimant. She visited frequently, 4 to 5 times per week, sometimes daily. She did not observe the Claimant's husband in the residence.
- b. During part of August 2008, there was a time period when she did not see the Claimant for about two and one-half weeks. On August 22, 2008, she lost a baby, and visited every single day at the Claimant's residence for the next several months, sometimes staying there overnight, because the Claimant was providing her emotional support.
- c. She only saw the Claimant's husband once at the home during the months of May 2008 through September 2008, which was in the fall of 2008, possibly in

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<sup>3</sup> The Claimant's testimony provides that she initially tried to file a divorce proceeding in May 2008. The 2008 divorce filing was rejected by the trial court. She then refiled the divorce in July 2009.

<sup>4</sup> *See e.g.* the transcript of a September 2010 Superior Court hearing in the Claimant's divorce case, Case No. 3KN-09-[REDACTED] Civil, filed herein as Division Ex. 52.

September. In her visits to the home, she did not see the husband's clothes in the bedroom.

- d. During the months of November and December 2008, she also spent a great deal of time at the Claimant's home.
- e. Beginning in January 2009 and continuing through May 2009, Ms. [REDACTED] saw less of the Claimant. She only saw the Claimant at her home once or twice. However, she saw the Claimant at daycare, or at the football field.

18. [REDACTED] is the owner of a day care in Soldotna. ([REDACTED] testimony) Her day care began caring for the Claimant's children in January or February of 2008. *Id.* The Claimant began working for her, at the day care, in September of October of 2008. *Id.* Around Thanksgiving 2008, the Claimant asked her if she could stay at the day care and she told the Claimant she could. *Id.* She did not know how many times the Claimant stayed at the day care. *Id.*

### PRINCIPLES OF LAW

A party to an administrative hearing, who is seeking a change in the status quo, has the burden of proof by a preponderance of the evidence. *State, Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985); *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, 495 (Alaska 2003).

Child Care Assistance is a program that assists in paying child daycare costs for qualifying individuals and households. AS 47.25.001.

Financial eligibility for Child Care Assistance is determined based upon a "family's monthly income." 7 AAC 41.325(a). The "family income" is derived by "totaling (A) the monthly gross earned income of each parent," self-employment income, and unearned income (which includes child support). 7 AAC 41.325(a)(1).

If the monthly family income exceeds the "maximum family monthly income . . . in the *Family Income and Contribution Schedule*" the family is not eligible for Child Care Assistance. 7 AAC 41.335(b). The monthly family income limit in effect for a family of seven persons, during the time periods involved in this case, was \$4,917. *Family Income and Contribution Schedule* revised as of September 2002, and adopted by reference in 7 AAC 41.335(a).<sup>5</sup> (*See* Division Ex. 50)

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<sup>5</sup> 7 AAC 41.335(a) was amended effective November 1, 2010 to adopt a revised *Family Income and Contribution Schedule*. (Register 196) However, at all times pertinent to this case the September 2002 *Family Income and Contribution Schedule* was in effect.

The Child Care Assistance regulations define a “family” for Child Care Assistance purposes as follows:

- 7 AAC 41.013. Family.** For purposes of this chapter, a family is
- (1) one parent, and that parent’s children under 18 years of age, **living together in a household;**
  - (2) two parents who are married to each other, and the children under 18 years of age of either or both parents, **living together in a household;** or
  - (3) the two biological parents of a child who are not married to each other, that child, and any other children under 18 years of age of either of those parents, **living together in a household.**

“Overpayment of [Child Care Assistance] program benefits occurs if a family or provider receives benefits it is not entitled to under AS 47.25.001 – 47.25.095 and this chapter.” 7 AAC 41.420(a).

If the Division “determines there is a reasonable evidence of an overpayment of [Child Care Assistance] program benefits to ... a participating family,” the Division is required to investigate and determine whether an overpayment occurred. 7 AAC 41.415(a) and (c). If the Division determines that an overpayment of Child Care Assistance benefits occurs, the Division is required to institute collection efforts. 7 AAC 41.420(b).

### ANALYSIS

This case involves the Division requesting a repayment of \$26,587.50 in allegedly overpaid Child Care Assistance benefits from the Claimant, which the Claimant received during the months of May 2008 through September 2008 and November 2008 through April 2009 as follows:

<u>May 2008 – September 2008</u>		<u>November 2008 – April 2009</u>	
<u>Month</u>	<u>Amount</u>	<u>Month</u>	<u>Amount</u>
May 2008	\$2,305	November 2008	\$ 742.50
June 2008	\$2,651	December 2008	\$2,625
July 2008	\$2,652	January 2009	\$2,593
August 2008	\$2,652	February 2009	\$2,141
September 2008	<u>\$2,767</u>	March 2009	\$2,974
		April 2009	<u>\$2,485</u>
<b>TOTALS</b>	<b>\$13,027</b>		<b>\$13,560.50</b>

Because the Division is seeking an affirmative recovery from the Claimant, it is the party seeking to change the status quo. The Division therefore has the burden of proof by a preponderance of the evidence.

A. Issues



The facts of this case present two issues requiring resolution. The first issue is a purely factual one, whether the Claimant's husband lived in the family home with the Claimant and their children during the months of May 2008 through September 2008. The second issue requires a factual resolution of what the Claimant's domestic living arrangements with her husband were during the months of November 2008 through April 2009, given that it is undisputed the Claimant's husband was living in the family home with the children in November 2008, and whether those living arrangements excused the husband's income from being counted for the purposes of determining Child Care Assistance financial eligibility. Each of those two issues will be addressed below.

B. Undisputed Facts

The undisputed evidence in this case shows that the Claimant and her husband were married and had five children during the time in question. The Claimant's husband had a gross monthly income of over \$6,000 per month during each of the months in question, May 2008 through September 2008 and November 2008 through April 2009. *See* Finding of Fact 9 above. The Claimant's husband's income **alone**, as a matter of law, exceeded the \$4,917 monthly income limit then in effect for a family of seven (two parents and five children). *Family Income and Contribution Schedule* revised as of September 2002, and adopted by reference in 7 AAC 41.335(a). (*See* Division Ex. 50)

It is also undisputed that the Claimant received a total of \$26,587.50 in Child Care Assistance benefits during the time in question, as listed above.

C. Discussion

1. Did the Claimant's husband reside in the family home during the months of May 2008 through September 2008?

There is conflicting evidence on this issue. The Claimant, her friend Ms. [REDACTED], and the Claimant's father testified that the Claimant's husband did not live in the family home during the months of May 2008 through September 2008. However, the Claimant's husband and his father testified that he did reside in the family home during the months of May 2008 through September 2008.

The Claimant and her husband had a very contentious relationship during the months of May 2008 through September 2008, and were involved in an equally contentious divorce and child custody proceeding at the time of the hearing in this case. Due to their mutual animosity, they both have ample motivation to make the other look poorly.

The collateral evidence as to the Claimant and husband's residency during May 2008 through September 2008 is contradictory. On one hand, the Claimant states, in her September 28, 2007 and February 19, 2008 Child Care Assistance applications that her household consists of her and the children, i.e. they omit the husband from the household. On the other hand, her and her husband's 2008 Permanent Fund Dividend applications were filed on the same day (January 5, 2008), used each other as verifiers, and used the same address, i.e. the 2008 Permanent Fund

applications created the impression that the Claimant and her husband were living together as of January 4, 2008. *See* Finding of Fact 7 above. Shortly after the January 5, 2008 Permanent Fund Dividend application, the Claimant stated in her February 18, 2008 Child Care Assistance application that she had a verbal agreement to receive child support. Child support would not normally be paid by the husband if he resided in the family home; additionally, the claim of child support payments is not supported by any financial records.<sup>6</sup>

However, both the 2008 Permanent Fund Dividend application date (January 5, 2008) and the February 18, 2008 Child Care Assistance application date predate the time period for this case, which begins in May 2008. To draw any inference either way regarding whether the husband was living in the home during the time period from May 2008 through September 2008, from the inconsistent 2008 Permanent Fund Dividend applications, which state mutual residency in the family home, or the February 19, 2008 Child Care Assistance application, which states the husband is absent from the home, would be entirely speculative. This decision will therefore not consider the inconsistencies between the 2008 Permanent Fund Dividend applications and the Claimant's February 18, 2008 Child Care Assistance application.

The Claimant's husband stated on three separate documents filed during the month of May 2008 (occupational license as an Assistant Guide - May 9, 2008, hunting license - May 12, 2008, vehicle registration form - May 14, 2008) that he physically resided at the family home. However, since it is not uncommon for separated couples to use the same address, this evidence does not establish that the husband was living in the home as of May 2008.

It is next necessary to examine the testimony of the Claimant's father, the husband's father, and [REDACTED].

The Claimant's father's testimony and the husband's father's testimony are also suspect due to their inherent bias in favor of their own children. In addition, both reside in Anchorage and had limited physical visits to the Kenai home during this time period. In other words, they had little actual personal knowledge of the Claimant's and her husband's living arrangements.

The most credible witness with regard to the factual issue of whether the Claimant's husband was living in the family home during the months of May 2008 through September 2008 was [REDACTED]. Although her testimony shows that she is a very close friend of the Claimant's, and certainly had the motivation to be less than truthful in her testimony, the wealth of detail provided in her testimony and her explanation of how much time she spent in the Claimant's home made her a very convincing witness. One of the most convincing details was her explanation that she spent a great deal of time at the Claimant's house, including spending the night there on occasion, after she lost a baby on August 22, 2008. Given the amount of time she spent at the Claimant's house, she would have known if the husband was living in the home.

Ms. [REDACTED]'s credible testimony therefore established that during the months of May 2008 through September 2008, she was a very frequent visitor to the Claimant's home, and that in all those months, she saw the Claimant's husband there once. Her credible testimony therefore

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<sup>6</sup> There would not have been any court ordered child support during the entire time period of this case, May 2008 through April 2009, because the Claimant's divorce action was not filed until July 2009. *See* fn. 3 above.

establishes that the Claimant's husband did not reside in the family home during the months of May 2008 through September 2008.

The Child Care Assistance regulations define a "family" as being comprised of the parent (or parents) and their children "living together in a household." 7 AAC 41.013. Because the Claimant's husband was not living in the Claimant's household during the months of May 2008 through September 2008, he was not part of the Claimant's "family", as defined in the Child Care Assistance regulations, during the months of May 2008 through September 2008.

The "family's" financial eligibility for the Child Care Assistance program is determined by totaling up the monthly income of the parents in the "family." 7 AAC 41.325(a). Because the Claimant's husband was not part of the Claimant's "family" during the months of May 2008 through September 2008, his income was not required to be counted for the purposes of determining if the Claimant qualified financially for Child Care Assistance during those months.

The Division's claim for repayment of the Child Care Assistance benefits received by the Claimant during the months of May 2008 through September 2008 was premised upon its factual argument that since the Claimant's husband lived in the family home, his income made the Claimant financially ineligible to receive Child Care Assistance benefits. However, the Division had the burden of proof by a preponderance of the evidence to demonstrate that the Claimant's husband lived in the family home, during that time period, in order for his income to be counted. As is shown above, the Claimant's husband did not live in the family home during that time period. As a result, the Division did not prove the Claimant received benefits she was not entitled to receive during the months of May 2008 through September 2008. The Claimant is therefore not required to repay the Division the Child Care Assistance benefits she received during the months of May 2008 through September 2008.

2. Did the Claimant's and her husband's living arrangement during the months of November 2008 through April 2009 excuse the husband's income from being counted for the purposes of determining financial eligibility for Child Care Assistance benefits?

The undisputed evidence in this case is that the Claimant's husband was living in the family home during the months of November 2008 through April 2009. The children were also living in the family home during this entire time. The husband testified he lived in the home the entire time. However, the Claimant testified that she and her husband had a shared living arrangement, as discussed below.

The Claimant testified that the husband moved into the home in November 2008 and that she and her husband had a shared living arrangement after November 2008. In December of 2008, she spent most nights at the day care. Beginning in January 2009 and continuing through April 2009, she spent four to five nights per week sleeping, not at the home, but at the day care where she worked. The other two to three nights per week, when her husband was not at the home, she spent at the home.

While there is a slight factual discrepancy between the Claimant's testimony and that of her husband, i.e. was he living there fulltime or merely part time, it is not necessary to reconcile this

discrepancy. The Claimant's testimony, taken in light most favorable to the Claimant, demonstrates that her husband lived in the home with the children beginning November 2008, continuing through December 2008, and that he lived in the home with the children for the clear majority of the time (four to five nights per week) for the months of January 2009 through April 2009.

The Claimant argued, in her closing brief at pp. 4-6, that the Claimant's living arrangement with her husband essentially made him a babysitter for the children and not part of the family household. However, given that the Claimant's husband lived in the family home with the children during November 2008, December 2008, and the clear majority of the time for the months of January 2009 through April 2009, he was living in the household together with his children. The husband was therefore a part of the Child Care Assistance "family" unit as defined in Child Care Assistance regulation 7 AAC 41.013.

The "family's" financial eligibility for the Child Care Assistance program is determined by totaling up the monthly income of the parents in the "family." 7 AAC 41.325(a). Because the Claimant's husband was part of the "family" during the months of November 2008 through April 2009, his income was required to be counted for the purposes of determining if the Claimant qualified financially for Child Care Assistance during those months.

The Claimant's husband had a gross monthly income of over \$6,000 per month during the months of November 2008 through April 2009. *See* Finding of Fact 9 above. The Claimant's husband's income **alone**, as a matter of law, exceeded the \$4,917 monthly income limit then in effect for a family of seven (two parents and five children). *Family Income and Contribution Schedule* revised as of September 2002, and adopted by reference in 7 AAC 41.335(a). (*See* Division Ex. 50)

The Division had the burden of proof by a preponderance of the evidence to demonstrate that (1) the Claimant's husband lived in the family home during the months of November 2008 through April 2009, and (b) that his monthly income exceeded the Child Care Assistance program's monthly income limit of \$4,917. The Division has met its burden and proved both of these elements.

The Claimant was therefore not financially eligible to receive Child Care Assistance benefits during the months of November 2008 through April 2009. Consequently, the Division was correct, as required by 7 AAC 41.420(b), to require the Claimant to repay the Child Care Assistance benefits she received during those months in the amount of \$13,560.50.

### **CONCLUSIONS OF LAW**

1. The Division had the burden of proof, by a preponderance of the evidence, to establish that the Claimant had received Child Care Assistance benefits to which she was not entitled.
2. The Division did not meet its burden of proof with regard to the Child Care Assistance benefits the Claimant received during the months of May 2008 through September 2008, because it failed to prove that the Claimant's husband lived in the family home during those months.



Certificate of Service

I certify that on this 31st day of January 2011, true and correct copies of the foregoing were sent to:

[REDACTED], Esq., Attorney for Claimant, via USPS., Certified Mail  
[REDACTED], Esq., Assistant Attorney General, via USPS First Class Mail  
and to the following by e-mail:

[REDACTED], Child Care Program Office  
[REDACTED], Policy & Program Development  
[REDACTED], Staff Development & Training  
[REDACTED], Administrative Assistant II  
[REDACTED], Eligibility Technician I

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J. Albert Levitre, Jr. Law Office Assistant I