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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-364
)	
Claimant.)	Division Case No. ██████████
_____)	

FAIR HEARING DECISION

STATEMENT OF THE CASE

██████████ (Claimant) was a recipient of Food Stamp, Alaska Temporary Assistance Program (ATAP), and Medicaid benefits. (Ex. 1). The State of Alaska Division of Public Assistance (DPA or Division) mailed to the Claimant a notice prior to June 2, 2009 requesting that the Claimant provide certain information (Ex. 2). The Claimant contacted DPA on June 2, 2009 in response to this notice (Ex. 2). On June 3, 2009 the Claimant had a face-to-face meeting with a DPA representative and was orally advised that she was not eligible for Food Stamp benefits (Ex. 3.0). On that date the Claimant requested a fair hearing with regard to her Food Stamp benefits (Exs. 3.0, 3.8).

On June 8, 2009 DPA determined that the Claimant had been overpaid Food Stamp benefits during the period June 2008 through May 2009 (Exs. 4.0 – 4.9). On June 9, 2009 DPA mailed to the Claimant a notice regarding her Food Stamp benefits (Exs. 5.0 – 5.1) The notice (1) asserted that the Claimant had been overpaid Food Stamp benefits; (2) stated that the amount of the Claimant’s household’s Food Stamp benefits would therefore decrease; and (3) requested repayment of the overpaid benefits (Exs. 5.0 – 5.10). On June 24, 2009 DPA mailed an additional notice to the Claimant advising that her household’s Food Stamp benefit for the month of July 2009 would be \$215.00 (Ex. 7.2). On June 25, 2009 DPA mailed a corrective notice to the Claimant advising that her household’s Food Stamp benefit for the month of July 2009 would be \$564.00 and not \$215.00 (Ex. 7.3).

On or about June 22 – 23, 2009 DPA received information which led DPA to believe that the Claimant was no longer eligible for certain benefits (Exs. 6.0 – 6.2). On June 24, 2009 DPA mailed the Claimant a notice stating that her ATAP benefits were being terminated effective June

30, 2009 (Ex. 7.0). Also, on June 24, 2009 DPA mailed to the Claimant another notice stating that the Claimant's Medicaid benefits were being terminated effective June 30, 2009 (Ex. 7.2). On July 17, 2009 DPA mailed to the Claimant a notice stating that her ATAP *application* "received on May 15, 2009" had been denied (Ex. 7.1).¹

On June 24, 2009 the Claimant requested a fair hearing with regard to the termination of her Alaska Temporary Assistance Program and Medicaid Program benefits (Ex. 8.3). This Office has jurisdiction to resolve this case pursuant to 7 AAC 49.010.

A hearing was held on August 5, 2009 before Hearing Officer Jay Durych. The Claimant attended the hearing telephonically, represented herself, and testified on her own behalf. The Claimant's husband, [REDACTED], also attended telephonically and testified on the Claimant's behalf. [REDACTED], a Public Assistance Analyst with the Division, attended the hearing in person and represented and testified for the Division.

At the hearing of August 5, 2009 it became apparent that the Division had opened a second Fair Hearing Case with this Office (OHA Case No. 09-FH-384) based on the same Food Stamp notices and hearing requests at issue in this case (see Exs. 5.0 – 5.1 and 3.8 in this case and Exs. 3.0 – 4.0 in OHA Case No. 09-FH-384). The parties stipulated on the record that the Food Stamp issues were being addressed in this case and that there was no need to hold a hearing in OHA Case No. 09-FH-384. Accordingly, the hearing in companion Case No. 09-FH-384 was vacated, and that case was dismissed, by order dated August 10, 2009.

At the hearing of August 5, 2009 the parties confirmed that the only matters still at issue were the Claimant's ATAP benefits and the Claimant's Food Stamp Program benefits. Accordingly, any Medicaid Program issues were waived or abandoned by the parties.

ISSUES

1. Was the Division correct to terminate the Claimant's Food Stamp benefits effective June 30, 2009 based on the Claimant's 1998 conviction?
2. Was the Division correct when on June 9, 2009 it sought repayment of \$1,995.00 in Food Stamp benefits, issued to the Claimant from June 2008 through May 2009, based on the Claimant's 1998 conviction?
3. Was the Division correct to terminate the Claimant's Alaska Temporary Assistance Program benefits effective June 30, 2009 based on the assertion that there was no longer an eligible / dependent child living in the Claimant's home?

¹ The record does not contain a copy of the "application" referenced in this notice, nor is there any other reference in the record to denial of an initial application as opposed to the termination of existing benefits.

FINDINGS OF FACT

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

A. Facts Relevant to Food Stamp Program Issues.

1. The Claimant was convicted of violating A.S. 11.71.030(a)(1) (Misconduct Involving a Controlled Substance in the Third Degree) on or about [REDACTED], 1998 (Exs. 3.1 – 3.7). The record does not clearly reflect the date(s) on which the act(s) leading to the conviction took place. The charges were filed on [REDACTED], 1997 (Ex. 3.7), so it is clear that the act(s) occurred on or prior to that date. However, it is not clear from the record whether the act(s) leading to the Claimant's conviction occurred *before* August 22, 1996, or whether they occurred *on or after* August 22, 1996.

2. A computerized court docket search provided by the Division indicates that on [REDACTED], 1998 the Claimant was given a suspended imposition of sentence (Ex. 3.5), and that the Claimant's conviction was set aside on [REDACTED], 2002 (Ex. 3.4). However, there is no indication in the court docket computer printout provided by the Division that the Claimant's conviction was ever expunged.

3. The Claimant was receiving Food Stamp Program benefits prior to June 2009 (Ex. 1). The Division became aware of the Claimant's 1998 conviction on or before June 2, 2009 and sent the Claimant a notice requesting additional information (Exs. 2-3). The Claimant responded to the notice and spoke with a DPA representative on June 2 and June 3, 2009 (Exs. 2, 3). On June 3, 2009 the DPA representative told the Claimant that her Food Stamp benefits would be terminated effective June 30, 2009, and that she would have to repay any overpayments of Food Stamp benefits received from July 2008 forward (Exs. 2, 3, and DPA hearing testimony). On that date the Claimant requested a fair hearing with regard to her Food Stamp benefits (Exs. 3.0, 3.8).

4. On June 8, 2009 DPA determined that the Claimant had been overpaid Food Stamp benefits during the period June 2008 through May 2009 (Exs. 4.0 – 5.10). On June 9, 2009 DPA mailed to the Claimant a notice regarding her Food Stamp benefits (Exs. 5.0 – 5.10). The notice (1) asserted that the Claimant had been overpaid Food Stamp benefits in the amount of \$1,995.00; (2) stated that the amount of the Claimant's household's Food Stamp benefits would therefore decrease; and (3) requested repayment of the \$1,995.00 in overpaid benefits (Exs. 5.0 – 5.10). The notice further stated that these benefit changes were made because "you are a convicted drug felon and not eligible for Food Stamps" (Ex. 5.0).

5. On June 24, 2009 DPA mailed an additional notice to the Claimant advising that her household's Food Stamp benefit for the month of July 2009 would be \$215.00 (Ex. 7.2). On June 25, 2009 DPA mailed a corrective notice to the Claimant advising that her household's Food Stamp benefit for the month of July 2009 would be \$564.00 and not \$215.00 as previously stated (Ex. 7.3). Both the June 24, 2009 notice and the June 25, 2009 notice stated that the change in Food Stamp benefits was based on Food Stamp Manual Section 602-1 (Exs. 7.2 and 7.3).

6. The Claimant asserted at the hearing that she had advised DPA of her 1998 conviction on numerous prior occasions. DPA did not assert that the alleged Food Stamp Program overpayments were the result of any misrepresentation or omission by the Claimant. Thus, the undisputed facts show that the Food Stamp overpayments were the result of DPA error.

B. Facts Relevant to Alaska Temporary Assistance Program Issues.

1. The Claimant was a recipient of Alaska Temporary Assistance Program (ATAP) benefits. (Ex. 1).

2. On March 2, 2009 DPA received information that the Claimant's daughter [REDACTED] had attained the age of 18 (Ex. 8.5).

3. On March 25, 2009 DPA received information that the Claimant's daughter [REDACTED] was no longer attending school (Ex. 8.5).

4. On April 20, 2009 DPA received information that the Claimant's daughter [REDACTED] was no longer living in the Claimant's home (Ex. 8.5).

5. On June 22, 2009 the Claimant informed DPA that her daughter [REDACTED] had moved to Missouri and was no longer living in the Claimant's home (Exs. 6.0, 8.5).

6. On June 22, 2009 DPA received voice mail from an individual ([REDACTED]) who stated that she was [REDACTED]'s guardian and that [REDACTED] had been living with her since March 2009 (Ex. 6.0). A DPA representative had a telephone conference with Ms. [REDACTED] on June 23, 2009 (Ex. 6.1). During this telephone conference Ms. [REDACTED] also asserted that the Claimant's daughter A [REDACTED] was no longer living in the Claimant's home and was instead living with her boyfriend (Ex. 6.1).

7. Later on June 23, 2009 a DPA representative spoke directly to the Claimant's daughter [REDACTED] (Ex. 6.2). [REDACTED] stated that she had moved to Missouri on March 25, 2009 and that she had not lived with the Claimant for approximately six (6) months prior to that date (Ex. 6.2). [REDACTED] also stated that the Claimant had told her that [REDACTED] had been living with her boyfriend for approximately 1-2 months (Ex. 6.2).

8. By letter dated June 24, 2009 the Matanuska-Susitna Borough School District advised DPA in relevant part as follows:

. . . as of this date [REDACTED] is not enrolled but she is eligible to enroll the week of August 3 [2009] to begin her sophomore year. [REDACTED] may attend school until she reaches 20 years of age. If this happens during a semester she is eligible to complete that semester.

9. On June 24, 2009 a DPA representative had telephone contact with the Claimant's daughter [REDACTED] (Exs. 8.0 – 8.1). The DPA representative asked [REDACTED] where she was living

(Ex. 8.1). [REDACTED] stated that she stayed 1-2 days per week with her boyfriend, but that she lived the remainder of the time with the Claimant (Ex. 8.1).

10. On June 24, 2009 DPA mailed the Claimant a notice which stated in relevant part as follows (Ex. 7.0):

Your [ATAP] case is closed and your benefits will end on June 30, 2009 [because] there is no longer an eligible child living in your home. This action is supported by [ATAP] Manual Sections 712 and 715 and 7 AAC 45.225. We have received information that [REDACTED] is no longer living in your home – that she is now living in Missouri. We have also [received] information that [REDACTED] is no longer living in your home.

11. On June 24, 2009 the Claimant requested a fair hearing with regard to the termination of her Temporary Assistance benefits (Ex. 8.3).

12. On July 17, 2009 DPA mailed the Claimant a notice stating that her ATAP *application* “received on May 15, 2009” had been denied because:

There is no ATAP eligible child in the home. This action is based on . . . 7 AAC 45.225 [REDACTED] is no longer considered a dependent child due to her age and no confirmed enrollment in school. This is based on MS 711-2 and MS 711-3 . . .

See Ex. 7.1. However, there is no evidence in the record that the Claimant ever applied for Temporary Assistance benefits in May 2009.

13. At the hearing of August 5, 2009 the Claimant admitted that her daughter [REDACTED] had moved to Missouri indefinitely and that she should no longer be considered a member of the Claimant’s household (see also Exs. 5, 9). The evidence was conflicting as to why [REDACTED] had moved to Missouri. However, why [REDACTED] moved to Missouri is not relevant to the issues in this case.

14. At the hearing of August 5, 2009 the Claimant testified that her daughter [REDACTED]:

- a. Turned 18 in March 2009.
- b. Has not yet graduated from high school.
- c. Was withdrawn from school in March or April 2009 for medical reasons.
- d. Is not currently registered for school; however, registration for the upcoming school year does not begin until August 10, 2009.
- e. Plans on attending school during the 2009-2010 school year.
- f. Spends approximately 25% of her time with her boyfriend and 75% of her time at the Claimant’s home.

- g. Generally eats and sleeps at the Claimant's home.
- h. The Claimant still supports, feeds, and clothes ██████████.

PRINCIPLES OF LAW

I. Burden of Proof and Standard of Proof.

This case involves the Division's termination of existing Food Stamp Program and ATAP benefits, and its request to recover excess Food Stamp benefits allegedly paid to the Claimant. The party seeking a change in the status quo normally has the burden of proof.² In this case the Division is attempting to change the status quo or existing state of affairs by terminating existing Food Stamp and ATAP benefits, and by recovering previously paid Food Stamp benefits. Accordingly, the Division bears the burden of proof in this case.

The regulations applicable to this case do not specify any particular standard of proof. Therefore, the "preponderance of the evidence" standard is the standard of proof applicable to this case.³ This standard is met when the evidence, taken as a whole, shows that the facts sought to be proved are more probable than not or more likely than not.⁴

II. State Law Relevant to Claimant's 1998 Conviction.

An individual commits the crime of Misconduct Involving a Controlled Substance in the Third Degree under AS 11.71.030(a)(1) if, under circumstances not otherwise proscribed under AS 11.71.020(A)(2-6), he or she manufactures or delivers any amount of a schedule IIA or IIIA controlled substance or possesses any amount of a schedule IIA or IIIA controlled substance with the intent to manufacture or deliver. This is a class B felony. AS 11.71.030(c).

III. The Food Stamp Program.

The Food Stamp Act of 1977 is a federal program. The statutes comprising the Act are codified at 7 U.S.C. 2011 – 2029. The federal regulations implementing the program are promulgated by the United States Department of Agriculture and are found primarily at 7 C.F.R. 271 – 274.

² *State of Alaska Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

³ A party in an administrative proceeding can assume that preponderance of the evidence is the applicable standard of proof unless otherwise stated. *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Commission*, 711 P.2d 1170 (Alaska 1986).

⁴ *Black's Law Dictionary* at 1064 (West Publishing, 5th Edition, 1979).

The Food Stamp Program is administered by the states. 7 CFR 271.4(a). The State of Alaska has adopted regulations to implement the Food Stamp Program. Those regulations are found at 7 AAC 46.010 - 7 AAC 46.990.

Individuals who are ineligible under 7 CFR §273.11(m) because of a drug-related felony conviction may not receive Food Stamp benefits. 7 CFR 273.1(b)(7)(vii). 7 CFR 273.11(m) defines what constitutes a drug-related felony:

(m) Individuals convicted of drug-related felonies. An individual convicted (under Federal or State law) of any offense which is *classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance . . .* shall not be considered an eligible household member unless the State legislature of the State where the individual is domiciled has enacted legislation exempting individuals domiciled in the State from the above exclusion. If the State legislature has enacted legislation limiting the period of disqualification, the period of ineligibility shall be equal to the length of the period provided under such legislation. *Ineligibility under this provision is only limited to convictions based on behavior which occurred after August 22, 1996*

7 CFR 273.11(m) (emphasis added).

IV. The Alaska Temporary Assistance Program.

The Alaska Temporary Assistance Program (“ATAP”) is a program created by the Alaska Statutes. See AS 47.05.010(1); AS 47.27.005 – AS 47.27.990. Because ATAP is a state program, its governing regulations are found in the Alaska Administrative Code. The Alaska Temporary Assistance Program’s regulations are set forth in 7 AAC 45.149 – 7 AAC 45.990.

7 AAC 45.335 provides in relevant part as follows:

(a) An ATAP assistance unit consists of those individuals whose needs are considered in determining eligibility for assistance and the amount of the ATAP payments. An assistance unit may include (1) a caretaker relative and any number of dependent children with an eligible relationship to the caretaker relative; (2) dependent children with an eligible relationship to the caretaker relative; (3) one caretaker relative and no child if the caretaker relative is a pregnant woman eligible for ATAP benefits under 7 AAC 45.510; or (4) two parents and any number of dependent children.

7 AAC 45.225 provides in relevant part as follows:

(a) To be eligible for ATAP benefits a *dependent child* must be living with a caretaker relative in the home of that caretaker relative. [Emphasis added].

(b) When determining if a child is living in the home of a caretaker relative, the department will consider the location of the child to be the primary determining factor. Except in the case of a temporary absence of the child or caretaker relative from the usual place of residence, the child's home is the place where the child resides more than half of the time in a month. . . .

* * * * *

7 AAC 45.990(a)(13) states that "dependent child" or "dependent children" means the same as in AS 47.27.900. Pursuant to AS 47.27.900(9), a "dependent child" is an individual who either (1) has not yet attained the age of 18 and is not himself or herself an applicant for benefits; or (2) has not yet attained the age of 19 and is a full-time student in a secondary school or in the equivalent level of vocational or technical training; and is not himself or herself an applicant for benefits.

Alaska Temporary Assistance Manual Section 711-3A defines "Dependent Child" as a child who is under 18 years of age, *or* a child who is age 18 and enrolled full-time in a high school, *GED* program, or an equivalent level of vocational or technical training, *and* who is not a Temporary Assistance applicant himself or herself.

Alaska Temporary Assistance Manual Section 715-1 provides that, "except as provided in section 715-2 below, a dependent child must be under the age of 18 to qualify for Temporary Assistance. Eligibility continues through the month in which the child reaches age 18."

Alaska Temporary Assistance Manual Section 715-2 A provides as follows:

A child who is age 18 meets the age requirement for a dependent child if: (1) The 18-year-old is enrolled full-time in a high school or *GED* program, or a high school or *GED* correspondence course; or (2) The 18-year-old has not completed high school or a *GED* and is enrolled full-time in an equivalent course of study in a vocational or technical training program.

Full time enrollment is defined by the school. Summer vacations are considered part of the school year.

Alaska Temporary Assistance Manual Section 715-2 B. provides that "eligibility ends effective the last day of the month of course completion, withdrawal of the child from enrollment, or the child's 19th birthday, whichever occurs first."

ANALYSIS

The issues raised with regard to the Claimant's Food Stamp Program benefits are substantially different from the issues raised with regard to the Claimant's ATAP benefits. Accordingly, each of these two programs will be addressed separately below.

Because the DPA is seeking to alter the existing state of affairs by terminating current Food Stamp and ATAP benefits, and by recouping previously paid Food Stamp benefits, the DPA

bears the burden of proving its case, as to each of the two programs, by a preponderance of the evidence. See discussion in Principles of Law at page 6, above.

I. The Food Stamp Program Issues.

The case involving the Claimant's Food Stamp Program benefits contains two sub-issues:

1. Was the Division correct to terminate the Claimant's Food Stamp benefits effective June 30, 2009 based on the Claimant's 1998 conviction?
2. Was the Division correct when on June 9, 2009 it sought repayment of \$1,995.00 in Food Stamp benefits, issued to the Claimant from June 2008 through May 2009, based on the Claimant's 1998 conviction?

These two sub-issues are addressed separately below.

A. Was The Division Correct To Terminate The Claimant's Food Stamp Benefits Effective June 30, 2009 Based On The Claimant's 1998 Conviction?

The DPA's notice dated June 9, 2009 (Exs. 5.0 – 5.10) stated in relevant part that the amount of the Claimant's household's Food Stamp benefits would decrease because "you are a convicted drug felon and not eligible for Food Stamps" (Ex. 5.0). The DPA's subsequent notices dated June 24, 2009 and June 25, 2009 each stated that the change in the Claimant's household's Food Stamp benefits was based on Food Stamp Manual Section 602-1 (Exs. 7.2 and 7.3). Food Stamp Manual Section 602-1 discusses, among other things, exclusion of persons convicted of certain drug-related felonies from the Food Stamp Program (see Ex. 10.3). Finally, the only basis for Food Stamp Program disqualification urged by DPA in its Fair Hearing Position Statement and at hearing was the "convicted drug felon" provisions.

Thus, the only basis for Food Stamp Program disqualification and/or recoupment that was properly noticed and asserted by DPA are the "drug-related felony" provisions of 7 CFR § 273.1(b)(7)(vii) and 7 CFR § 273.11(m). Accordingly, the record must be examined to determine whether DPA proved, by a preponderance of the evidence, that the Claimant is disqualified from the Food Stamp Program because she is a "convicted drug felon" as defined by these provisions.

DPA is correct in asserting that, pursuant to 7 CFR § 273.1(b)(7)(vii), individuals who have been convicted of "drug-related felonies" (as defined by 7 CFR § 273.11(m)) may not receive Food Stamp benefits. The issue is whether the Claimant's 1998 conviction constitutes a "drug-related felony" under 7 CFR 273.11(m). That regulation provides in relevant part as follows:

Individuals convicted of drug-related felonies. An individual convicted . . . of any offense which is *classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance* . . . shall not be considered an eligible household member unless the State legislature of the State where the individual is domiciled has enacted

legislation exempting individuals domiciled in the State from the above exclusion *Ineligibility under this provision is only limited to convictions based on behavior which occurred after August 22, 1996* [Emphasis added].

The Claimant's [REDACTED] conviction for violating AS 11.71.030(a)(1) (Misconduct Involving a Controlled Substance in the Third Degree) is clearly classified as a felony under Alaska law. Further, the Claimant's [REDACTED], [REDACTED] conviction for violating AS 11.71.030(a)(1) clearly has, as one of its elements, the distribution of a controlled substance. However, 7 CFR 273.11(m) specifically provides that "ineligibility under this provision is only limited to convictions based on behavior which occurred after August 22, 1996

The Division presented evidence that the Claimant was not *convicted* until after August 22, 1996. See Exhibits 3.1 – 3.7. However, the Division presented no evidence whatsoever regarding *when the behavior on which the conviction was based was committed*. The mere fact that the case against the Claimant was filed in 1997 (Exs. 3.1 - 3.2) does not exclude the possibility that the acts constituting the crime were committed on or before August 22, 1996.

In summary, DPA had the burden of establishing the Claimant's disqualification by a preponderance of the evidence. DPA failed to meet this burden of proof because it failed to establish that the behavior on which the Claimant's conviction was based was committed after August 22, 1996. Because the Division failed to prove this required element of its case by a preponderance of the evidence, the Division erred when it terminated the Claimant's Food Stamp benefits, effective June 30, 2009, based on the Claimant's 1998 conviction.

B. Was The Division Correct When On June 9, 2009 It Sought Repayment Of \$1,995.00 In Food Stamp Benefits, Issued To The Claimant From June 2008 Through May 2009, Based On The Claimant's 1998 Conviction?

The DPA's recoupment notice dated June 9, 2009 (Exs. 5.0 – 5.10) was based on the assertion that the Claimant is "a convicted drug felon and not eligible for Food Stamps" (Ex. 5.0). As demonstrated above, the DPA failed to prove, by a preponderance of the evidence, that the Claimant was convicted of a "drug-related felony" as defined by 7 CFR 273.11(m). Accordingly, the Division erred when on June 9, 2009 it sought repayment of \$1,995.00 in Food Stamp benefits, issued to the Claimant from June 2008 through May 2009, based on the Claimant's 1998 conviction.

II. Alaska Temporary Assistance Program Issues.

To be eligible for ATAP a household must include a dependent child. See 7 AAC 45.210(a)(4), 7 AAC 45.225(a), and 7 AAC 45.335.⁵ The Claimant was receiving ATAP benefits because,

⁵ 7 AAC 45.335 appears to contain an exception to this rule, at subsection 3, for "one caretaker relative and no child if the caretaker relative is a pregnant woman eligible for ATAP benefits under 7 AAC 45.510." However, neither party asserts that this provision is applicable here.

prior to March, 2009, she had at least one dependent child living with her (see Findings of Fact at B1 – B5, above).

On June 24, 2009 DPA mailed to the Claimant a notice which stated in relevant part as follows (Ex. 7.0):

Your [ATAP] case is closed and your benefits will end on June 30, 2009 [because] there is no longer an eligible child living in your home. This action is supported by [ATAP] Manual Sections 712 and 715 and 7 AAC 45.225. We have received information that [REDACTED] is no longer living in your home – that she is now living in Missouri. We have also [received] information that [REDACTED] is no longer living in your home.

On July 17, 2009 DPA mailed to the Claimant a second notice (Ex. 7.1) which further stated that “[REDACTED] is no longer considered a dependent child due to her age and no confirmed enrollment in school based on MS 711-2 and MS 711-3

In summary, DPA notified the Claimant (1) that DPA was terminating the Claimant’s ATAP benefits based on the allegation that there were no longer any ATAP - eligible children living in the Claimant’s home; and (2) that [REDACTED] was no longer considered dependent (ATAP – eligible) because of her age and because she was no longer enrolled in school.

The Claimant did not dispute that her daughters [REDACTED] and [REDACTED] were no longer living in the Claimant’s home (See Findings of Fact at B4 – B5). Rather, the Claimant asserted that she was still eligible for ATAP benefits because her daughter [REDACTED] still spent 75% of her time at the Claimant’s home, and because [REDACTED] was still dependent on the Claimant (i.e. because the Claimant still supported, fed, and clothed [REDACTED]).

7 AAC 45.225(a) requires that, to be eligible for ATAP benefits, a child must (among other things) be a “dependent” child. 7 AAC 45.990(a)(13) states that "dependent child" or "dependent children" means the same as in AS 47.27.900. Pursuant to AS 47.27.900(9), a "dependent child" is an individual who either (1) has not yet attained the age of 18 and is not himself or herself an applicant for benefits; or (2) has not yet attained the age of 19 and is a full-time student in a secondary school or in the equivalent level of vocational or technical training; and is not himself or herself an applicant for benefits. Thus, the issue here is whether [REDACTED] is a dependent child as defined by AS 47.27.900(9).

The Claimant did not dispute that her daughter [REDACTED] had attained the age of 18 prior to the DPA’s notice of termination of ATAP benefits (Claimant hearing testimony; Ex. 8.5). Likewise, there was no assertion that [REDACTED] was herself an applicant for ATAP benefits so as to be considered independent on that basis. Accordingly, pursuant to AS 47.27.900(9) the Claimant’s eligibility for ATAP benefits hinges upon whether [REDACTED] has attained the age of 19, and whether [REDACTED] is a full-time student in a secondary school or in the equivalent level of vocational or technical training.

The Claimant's undisputed hearing testimony was that ██████ would not be 19 until March 2010. Accordingly, A ██████ meets that portion of the test. However, the Claimant also testified that A ██████ was withdrawn from school in March or April 2009 for medical reasons; and that although A ██████ intended to attend school during the 2009 – 2010 school year, registration for the 2009 – 2010 school year would not begin until August 10, 2009. The DPA's ATAP termination notices were sent on June 24 and July 17, 2009. Accordingly, it is clear that, at the time DPA terminated the Claimant's ATAP benefits, A ██████ was not a full-time student. Because ██████ was not a full-time student, she was not a "dependent child" as defined by AS 47.27.900(9). And because ██████ was not a "dependent child" as defined by AS 47.27.900(9), ██████ was not eligible for ATAP benefits pursuant to 7 AAC 45.225(a).

In summary, DPA correctly determined that ██████ was not a dependent child for purposes of ATAP eligibility. Accordingly, DPA was correct to terminate the Claimant's Alaska Temporary Assistance Program benefits effective June 30, 2009 based on the assertion that there was no longer an eligible / dependent child living in the Claimant's home.

CONCLUSIONS OF LAW

1. The Division failed to carry its burden of proof and failed to prove, by a preponderance of the evidence, that:
 - a. It correctly terminated the Claimant's Food Stamp benefits effective June 30, 2009 based on the Claimant's 1998 conviction.
 - b. It is entitled to repayment of \$1,995.00 in Food Stamp benefits paid to the Claimant from June 2008 through May 2009 based on the Claimant's 1998 conviction.
2. The Division therefore erred when it terminated the Claimant's Food Stamp Program benefits effective June 30, 2009, and when on June 9, 2009 it sought repayment of \$1,995.00 in Food Stamp benefits paid to the Claimant from June 2008 through May 2009.
3. The Division carried its burden and proved, by a preponderance of the evidence, that the Claimant's daughter ██████ was not a dependent child for purposes of ATAP eligibility.
4. Accordingly, DPA was correct to terminate the Claimant's Alaska Temporary Assistance Program benefits effective June 30, 2009 based on the assertion that there was no longer an eligible / dependent child living in the Claimant's home.

DECISION

The Division erred when it terminated the Claimant's Food Stamp benefits effective June 30, 2009 based on the assertion that the Claimant's 1998 conviction made her ineligible for benefits.

The Division erred when on June 9, 2009 it sought repayment of \$1,995.00 in Food Stamp benefits, paid to the Claimant from June 2008 through May 2009, based on the assertion that the Claimant's 1998 conviction made her ineligible for benefits.

The Division was correct when it terminated the Claimant's Alaska Temporary Assistance Program benefits effective June 30, 2009 based on the assertion that there was no longer an eligible / dependent child living in the Claimant's home.

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 _____ day of September, 2009.

Jay Durych
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this _____ day of September 2009 true and correct copies of the foregoing document were sent to the Claimant via U.S.P.S. mail, and to the remainder of the service list by e-mail, as follows:

Claimant – Certified Mail, Return Receipt Requested

_____, Director
_____, Policy & Program Development
_____, Administrative Assistant II
_____, Eligibility Technician I
_____, Staff Development & Training
_____, Fair Hearing Representative

J. Albert Levitre, Jr.
Law Office Assistant I