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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-365
)
 Claimant.) Division Case No. [REDACTED]
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) is a recipient of Alaska Temporary Assistance Program (ATAP) benefits (Ex. 1). On March 4, 2009 the Claimant submitted a completed Eligibility Review Form (form Gen-72) to the State of Alaska Division of Public Assistance (DPA or Division) (Exs. 2.0 – 2.3). On March 12, 2009 the Claimant participated in an eligibility review interview (Ex. 3). At this interview the Division determined that the Claimant was no longer exempt from participating in work activities (Ex. 3, DPA hearing testimony). Accordingly, the Claimant was referred to the DPA’s contractor Maximus for employment-related assistance (Ex. 3, DPA hearing testimony). The Division mailed a written notice to the Claimant on March 13, 2009 confirming that her work exemption had expired and that she was required to search for and obtain a job (Ex. 5).

On March 10, 2009 the Claimant met with her Maximus case manager to develop a Family Self-Sufficiency Plan (FSSP) (Exs. 4.0 – 4.2). Pursuant to the Claimant’s FSSP, she was to begin attending the Work Success program on March 16, 2009 (Exs. 4.0 – 4.2).

The Claimant did not attend the Work Success program (Ex. 13) for reasons discussed below. On May 8, 2009, the Division mailed to the Claimant a notice stating that her ATAP benefits would decrease for the month of June 2009, because the Claimant had not complied with her FSSP by attending the Work Success program (Ex. 14.0). On June 3, 2009 the Claimant requested a fair hearing with regard to the Division’s imposition of the ATAP FSSP non-compliance penalty (Ex. 18.1). This Office has jurisdiction to resolve this case pursuant to 7 AAC 49.010.

A hearing was begun on August 5, 2009 before Hearing Officer Jay Durych. That hearing was postponed to August 26, 2009, at the Claimant’s request, to enable the Claimant to attend the hearing in person. The hearing was postponed before reaching the merits of the case.

The hearing continued on August 26, 2009 before Hearing Officer Patricia Huna-Jines.¹ The Claimant attended the hearing telephonically, represented herself for a portion of the hearing, and testified on her own behalf. [REDACTED] and [REDACTED] also attended telephonically and testified on the Claimant's behalf. [REDACTED] represented the Claimant during the majority of the hearing. [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 26, 2009, the Claimant requested a continuance so as to obtain expert (medical) testimony to establish that (1) the Claimant's daughter has seizures; and (2) that most childcare providers will not accept a child who has seizures, because of the additional liability involved, unless the childcare provider has a health care professional available on-site. The Claimant also requested that the DPA representative be required to provide evidence as to whether DPA ever advised the Claimant in writing that DPA would pay for childcare. Finally, the Claimant requested an opportunity to submit the Claimant's daughter's surgical and post-surgical reports. These requests were opposed by DPA.

The Hearing Officer ruled that no continuance would be granted for the production of any evidence which could have been produced by the Claimant to DPA prior to the DPA's decision on May 8, 2009. The Claimant's representative did not identify any evidence which could not have been produced by the Claimant to DPA prior to the DPA's decision on May 8, 2009. Accordingly, the record was closed; the hearing was concluded; and the case was submitted for decision.

ISSUE

Was the Division correct to impose a non-compliance penalty with regard to the Claimant's Alaska Temporary Assistance Program (ATAP) benefits on May 8, 2009, based on the assertion that the Claimant had failed to comply with the requirements of her Family Self-Sufficiency Plan (FSSP)?

FINDINGS OF FACT

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

1. The Claimant is a recipient of Alaska Temporary Assistance Program (ATAP) benefits (Ex. 1).
2. The Claimant completed an Eligibility Review Form for ATAP, Food Stamp, and Medicaid benefits on February 27, 2009 (Ex. 2.3). This form indicated that the Claimant's household consisted of the Claimant, her adult sister [REDACTED], her minor son [REDACTED], and her minor daughter [REDACTED] (date of birth [REDACTED]) (Ex. 2.0). This Eligibility Review Form was received by DPA on March 4, 2009 (Ex. 2.0).
3. The Claimant's daughter receives Social Security SSI disability benefits (Ex. 2.2).

¹ Following completion of the hearing, this case was reassigned to Hearing Officer Jay Durych. Mr. Durych reviewed the case file and listened to the digital recording of the hearing prior to his preparation and issuance of this decision.

4. The Claimant participated in a telephonic interview with a DPA representative on March 12, 2009 (Ex. 3). The Claimant's Eligibility Review Form was approved and the Claimant was referred to Maximus for implementation of a Family Self-Sufficiency Plan (FSSP) (Ex. 3).^{1a}

5. On March 10, 2009, the Claimant met with her Maximus case manager and entered into a Family Self-Sufficiency Plan (Exs. 4.1 – 4.2). Step 1 of the FSSP required in relevant part that the Claimant attend a “work success” class Monday through Friday beginning on March 16, 2009 (Ex. 4.1).

6. With regard to childcare arrangements, the FSSP stated in relevant part (Ex. 4.1):

As soon as you find childcare for your two children, contact your [case manager] to set up your childcare paperwork contact Childcare Connection [at] 373-5024 to review options to secure alternate care

7. There is no indication in Maximus / DPA's interview notes of March 10, 2009 (Ex. 4.0) that the Claimant had any concern about obtaining childcare for her daughter as of that date.

8. On March 13, 2009 DPA mailed to the Claimant a notice which stated in relevant part as follows (Ex. 5):

[Claimant] is no longer exempt from [ATAP] work requirements. [Claimant] must do the work activities that are included in [her FSSP]. [Claimant] may be asked to do a work search to find a job. If [Claimant] cannot find a job, [she] may be asked to take part in another work activity such as volunteer or community work experience.

If [you] do not complete these activities, and do not have good reason, your monthly payment may go down or your cash assistance may end.

. . . . *Your family may also get help with child care, transportation, and other work-related costs.* [Emphasis added].

The reason [Claimant] is no longer exempt from work requirements is: The medical exemption form on file expired February 2009.

If you continue to need a work exemption you will need to submit an updated work exemption form completed by your doctor. [Emphasis added].

This action is based on state regulations at 7 AAC 45.257, 7 AAC 45.260, and 7 AAC 45.980.

9. On March 16, 2009, (the first day that Claimant was scheduled to attend the “Work Success” class), the Claimant contacted her Maximus case manager to advise of a medical emergency involving her daughter (Ex. 6). The Claimant expressed concern that she would not be able to attend “Work

^{1a} Maximus is a private entity which performs certain case management functions under contract with DPA.

Success” because of her daughter’s illness (Ex. 6). The Claimant indicated that she would obtain and complete a form explaining how long the Claimant would need to care for her child (Ex. 6).

10. On April 2, 2009, the Claimant contacted her Maximus case manager (Ex. 7). As of that date she had not yet begun “Work Success” (Ex. 7). The Claimant stated that her daughter’s doctor had told her that her daughter would not be able to attend daycare for about 6 weeks (Ex. 7). The case manager told the Claimant that if she would bring in a doctor’s note, her FSSP would be amended to reflect her daughter’s illness and whether the Claimant would need to stay home to act as primary caregiver (Ex. 7). The Claimant stated that she had been unable to obtain a doctor’s note yet because (a) the doctor’s office wanted \$10.00 to complete the form, and (b) her vehicle’s engine had failed and she currently had no transportation (Ex. 7).

11. On April 20, 2009, the Claimant again contacted her Maximus case manager (Ex. 8). The Claimant advised that she would call her daughter’s doctor on that date and try to have the doctor send by fax the necessary medical opinion to Maximus (Ex. 8).

12. On April 23, 2009, the Claimant’s Maximus case manager entered a note stating “impose [penalty] – customer has not been participating in work activities (Ex. 9).

13. On April 28, 2009, the Claimant’s Maximus case manager entered a note stating that the Claimant had called and stated that she had gone to Dr. [REDACTED]’s office on Friday, April 24th and that his office was to have sent a note by fax to the case manager regarding her daughter’s illness (Ex. 10). The case manager indicated that no note had yet been received and suggested that the Claimant follow-up with the doctor’s office (Ex. 10).

14. On April 30, 2009, the Claimant’s Maximus case manager e-mailed a DPA representative and advised that the Claimant was not in compliance with her FSSP and that a noncompliance penalty should be imposed (Ex. 11).

15. On May 4, 2009, the Claimant’s Maximus case manager telephoned the Claimant and advised that Maximus had still not received anything from the doctor’s office (Ex. 12). The Claimant stated that she would follow-up with the doctor’s office on that issue (Ex. 12).

16. On May 7, 2009, DPA made the decision to impose a noncompliance penalty (Ex. 13). On May 8, 2009 DPA mailed a notice to the Claimant regarding the noncompliance penalty (Ex. 14.0). The notice stated in relevant part as follows (Ex. 14.0):

Your family’s [ATAP] benefit for June 2009 will go down because you . . . did not complete the following [FSSP] or work activity: [The Claimant] has not been attending work search activities as agreed or provided proof of good cause reason.

* * * * *

The decrease in your benefits will continue until you . . . [follow] through with the planned activity

* * * * *

You may have a good reason for not taking part in this activity that you have not told me about. If so, please call me to explain the situation If your reason is determined “good cause” your family will not receive this penalty. [Emphasis added].

This action is based on chapters 719, 723, and 737 of the [ATAP] manual.

To cure this penalty [the Claimant] will need to attend 5 consecutive days of work search activities or provide a doctor note stating why and length of time your child is unable to attend daycare

17. The next day (May 8, 2009) the Claimant’s Maximus case manager received a telephone call from the Claimant (Ex. 14.1). The Claimant stated that no one at Dr. [REDACTED]’s office would write the necessary note even though she had already paid \$10.00 for the note (Ex. 14.1).

18. On May 19, 2009, the Claimant’s Maximus case manager received a telephone call from the Claimant (Ex. 15.0). The Claimant stated that she had received the penalty notice and was still trying to get the necessary doctor’s note (Ex. 15.0). She stated that she had an appointment scheduled for May 27, 2009 but the doctor’s office moved the appointment back to June 10, 2009 (Ex. 15.0).

19. On May 26, 2009, the Claimant’s Maximus case manager telephoned the Claimant to inquire as to whether the doctor’s note had been received (Ex. 15.1). The Claimant stated that she was going to go to the doctor’s office and show them the penalty letter, which she asserted they caused (Ex. 15.1).

20. On May 27, 2009, Dr. [REDACTED]’s office (Anchorage Neurological Associates, Inc.) sent a fax to the Claimant’s case manager (Ex. 16). The fax stated in relevant part as follows (Ex. 16):

Re: [Claimant’s daughter]. Diagnosis: proximal ventriculoperitoneal shunt failure. Surgery on 03/12/09 for a proximal ventriculoperitoneal shunt revision, new ventricular catheter placement. Patient was scheduled for a follow-up appointment on [May 6th] which was rescheduled to [May 8th] due to Dr. [REDACTED]’s schedule. The patient’s mother rescheduled the [May 8th] appointment to [May 27th] due to transportation problems. The patient’s mother has rescheduled the [May 27th] appointment to 06-10-09. Until the patient is seen Dr. [REDACTED] will not fill out TA-10 form.

21. On May 28, 2009, the Claimant’s Maximus case manager telephoned Dr. [REDACTED]’s office to inquire as to whether the Claimant’s daughter could attend daycare (Ex. 17.1). [REDACTED] of Dr. [REDACTED]’s office stated that she did not understand why the child had not been in daycare (Ex. 17.1). She stated that Dr. [REDACTED] is a surgeon and that he felt a pediatrician would be in a better position to explain whether the child should be in daycare or not (Ex. 17.1). Finally, she stated that the Claimant had cancelled numerous appointments and that no note could be written until the Claimant’s daughter was seen by the doctor (Ex. 17.1).

22. On June 3, 2009, the Claimant telephoned a DPA representative to request a hearing on the noncompliance penalty assessed by DPA (Exs. 18.0 – 18.1). The DPA’s electronic notes of that conversation state in relevant part as follows:

Issue: [Claimant] believes she is needed for home care for her disabled child with recent surgery and has had difficulties obtaining doctor [confirmation] that home care is needed.

* * * * *

[Prior DPA case notes reflect that] transportation discussed and when asked if an issue, [the Claimant] states no as she has access to transportation. Sister is currently in home and can bring her and child to doctor appointments.

* * * * *

. . . . [The Claimant] called today . . . stating the hardship of the penalty during a time she is needed to care for her disabled child. [The Claimant] stated SSI worker told her that if she is getting [an] SSI check then the medical records they have confirm the child is disabled. We discussed that [whether] the child is [disabled] . . . is not being disputed What is being asked of her is to turn in a doctor's statement that she is needed for care in the home.

[The Claimant] reports that she [checked] several daycares within walking distance of her home and they would not take her child due to the child's health condition. She states she has confirmation that she tried to obtain child care.

[The Claimant] reports that she is needed for home care but the doctor will not provide a statement to confirm that. [The Claimant] states she has an appointment for her child in July . . .

* * * * *

Explained the fair hearing process and continued benefits. [The Claimant] is requesting a fair hearing and *continued benefits* [Emphasis added].

Action: Completed [hearing] request [which] will be faxed to Field Services today *Alert E.T. for continued benefits*. [Emphasis added].

23. At the hearing of August 5, 2009, the Claimant stated that she wanted the Division to make [REDACTED] of Maximus available as a witness at the continued hearing. The DPA representative stated that she would arrange this. However, at the hearing of August 26, 2009 the Claimant did not call Ms. [REDACTED] as a witness.

24. At the hearing of August 26, 2009, the Claimant testified telephonically in relevant part that:
- a. Her work exemption had been revoked or terminated *at her own request* because she was going "stir-crazy" sitting at home.
 - b. Her daughter has seizures. There is currently no daycare facility in [REDACTED] which will accept a child with seizures. Accordingly, there is no appropriate child care available for the Claimant's daughter.

c. Her daughter has been referred to a neurologist (Dr. [REDACTED]). However, since her surgery her daughter has only been seen by her surgeon [REDACTED], M.D.

d. At the time of the hearing she was performing volunteer work for Steve [REDACTED] and Rhonda [REDACTED].

e. She went to see [REDACTED], a supervisor at Maximus, "a few weeks ago." She informed Ms. [REDACTED] that she had been volunteering about 50 hours per week. Ms. [REDACTED] then advised the Claimant that she was in compliance with her FSSP.

f. She is exempt from participation in FSSP work activities pursuant to AS 47.27.035(c)(3-4) and pursuant to ATAP Manual Section 730-2 ((Ex. 20.0) ("caretaker of a disabled child").

g. She agrees that because the FSSP noncompliance penalty had ended effective August 1, 2009, the only months for which a FSSP non-compliance penalty is still at issue are June 2009 and July 2009.

25. At the hearing of August 26, 2009 [REDACTED] testified telephonically in relevant part that she:

a. Owns a business which she operates from her property.

b. Sometimes watches the Claimant's daughter.

26. At the hearing of August 26, 2009 Steve [REDACTED] testified telephonically in relevant part that:

a. The DPA's imposition of the noncompliance penalty caused the Claimant to be evicted from her home in or about July 2009 because she could not afford to pay the rent.

b. The Claimant was not able to obtain childcare for her daughter because her daughter has seizures.

c. The Claimant had no childcare available for her daughter in June and July 2009.

d. The Claimant's daughter was just recently enrolled in preschool. This preschool has a Registered Nurse on staff. The preschool provides oversight for the Claimant's daughter for approximately 3.5 hours per day.

e. The Claimant had a hardship because DPA required the Claimant to work such that she could not herself provide child care, but refused to provide any funding for childcare.

f. An exemption to the work activities requirement should be available pursuant to ATAP Manual Section 730-2 (Exhibit 20.1) because the Claimant's child was under six years old, the Claimant could not afford to pay for child care, and the Division did not agree to pay for child care.

g. The Claimant was entitled to child care paid for by DPA. Had DPA provided childcare for the Claimant's daughter, the Claimant would have been able to engage in work activities as required by her FSSP.

h. The Claimant was not able to obtain medical re-certification of her daughter's disability status because the doctors required payment for an appointment, but the Claimant's Medicaid benefits had been terminated and so the Claimant had no money to pay the doctors to obtain the recertification.²

27. At the hearing of August 26, 2009, Public Assistance Analyst [REDACTED] testified in relevant part that:

a. The Division does not dispute that the Claimant's daughter is disabled. Rather, the Division asserts only that, pursuant to AS 47.27.035(c)(1), it requires verification from a medical professional that the Claimant is needed to provide 24 hour-per-day home care for her daughter.

b. If a person is participating in a DPA program, DPA will pay for child care. The Claimant "was never declined child care funds" by DPA.

c. Ms. [REDACTED] had informed her that the FSSP noncompliance penalty had ended effective August 1, 2009. Thus, the only months for which a FSSP non-compliance penalty is still at issue are June 2009 and July 2009.

PRINCIPLES OF LAW

I. Burden of Proof and Standard of Proof.

This case involves the Division's imposition of a noncompliance penalty on a claimant already receiving ATAP benefits. The party seeking a change in the status quo normally has the burden of proof.³ In this case the Division is attempting to change the status quo or existing state of affairs by imposing a noncompliance penalty with regard to the Claimant's ATAP 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.⁴ This

² The Division's records indicate, however, that this is not correct and that the Claimant's family was covered by Family Medicaid from May 2008 through September 2009. See Exhibit 1.

³ *State of Alaska Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

⁴ 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).

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.⁵

II. 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.

Alaska Statute AS 47.27.030, titled “Family self-sufficiency services,” provides in relevant part as follows:

(a) A participant in the Alaska temporary assistance program shall cooperate with the department, or its designee, to develop and sign a family self-sufficiency plan

* * * * *

Alaska Statute AS 47.27.035, titled “Participation in work activities,” provides in relevant part as follows:

(a) An Alaska temporary assistance program participant shall . . . participate in work activities as assigned by the department or its designee in order for the family to continue to receive cash assistance or self-sufficiency services . . . unless the participant is exempt from the work participation requirements under one or more of the exemptions set out in (b) - (d) of this section.

* * * * *

(c) A parent or caretaker may be exempt from work participation requirements in the family self-sufficiency plan if (1) the parent or caretaker is providing home care for a child who is experiencing a disability or a related, disabled person who requires 24-hour care (3) the participation would impose an unreasonable hardship on the family; or (4) there is a dependent child in the home that has not yet attained six years of age and the parent or caretaker demonstrates an inability to obtain needed child care because appropriate child care is not available.

(d) The department may not require a person to participate in work activities under (a) of this section (1) if the person is the sole custodial parent for a child under six years of age unless the department agrees to pay for the costs of child care determined by the department to be necessary for the person's participation; and (2) unless the department agrees to pay for transportation expenses determined by the department to be necessary for the person's participation in the activity.

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

* * * * *

AS 47.27.085, titled “Sanctions; recovery of costs,”, provides in relevant part as follows:

(a) Except as provided in (b) of this section, the department shall reduce the amount of cash assistance provided to the family of an Alaska temporary assistance program applicant or participant who, without good cause, fails to comply with a condition of the family self-sufficiency plan, who fails to participate in work activities required as a part of the Alaska temporary assistance program, or who fails to cooperate with the child support services agency as required under AS 47.27.040

* * * * *

7 AAC 45.257(d) provides in relevant part as follows:

(d) If an applicant or recipient, without good cause as defined in 7 AAC 45.261, fails to cooperate with the department to develop and to sign the FSSP, fails to comply with a provision of the FSSP, or fails to participate in an assessment as described in (b) of this section, the department will impose a penalty upon the family in accordance with 7 AAC 45.980.

7 AAC 45.261(a) provides in relevant part as follows:

(a) For the purposes of determining "good cause" under AS 47.27.015 (c) (refusal of or voluntary separation from suitable employment), AS 47.27.085 (a) (failure to comply with a condition of the FSSP under AS 47.27.030 and failure to participate in work activities under AS 47.27.035), and 7 AAC 45.495(a) (reduction of income), the following circumstances may constitute good cause . . . (1) the recipient is a single parent of a child under age six years and child care is not appropriate or available, as specified in AS 47.27.035 and defined in 7 AAC 45.260

7 AAC 45.980 provides in relevant part as follows:

(a) The reductions in cash assistance due to noncompliance with program requirements, as set out in AS 47.27.085 (a), apply to the failure to (1) comply with an FSSP, as required by AS 47.27.030 ; (2) participate in work activities, as required by AS 47.27.035

* * * * *

Alaska Temporary Assistance Manual Section 719 essentially restates the FSSP requirements otherwise stated in the statutes and regulations quoted above.

Alaska Temporary Assistance Manual Section 723 essentially restates the noncompliance penalty provisions and “good cause” exceptions otherwise stated in the statutes and regulations quoted above.

Alaska Temporary Assistance Manual Section 730-2 states in pertinent part that the exemption provided for the caretaker of a disabled child “must be documented by a physician or other licensed medical professional.”

Alaska Temporary Assistance Manual Section 730-2 states in pertinent part that the “family hardship” exemption applies “when the family shows that circumstances outside of their control prevent the caretaker relative from participating in work activities.” Section 730-2 provides that family hardship “includes such things as illness or death in the family, or an immediate crisis.”

Alaska Temporary Assistance Manual Section 730-2 states in pertinent part that “a caretaker qualifies for an exemption from work activities if the local Child Care Resource and Referral Agency verifies the lack of care that the family requires and it appears that suitable informal care is not available to the family.”

Alaska Temporary Assistance Manual Section 737 essentially restates the FSSP requirements and the noncompliance penalty provisions otherwise stated in the statutes and regulations quoted above.

ANALYSIS

The ultimate issue to be decided is whether the Division was correct to impose a non-compliance penalty with regard to the Claimant’s Alaska Temporary Assistance Program (ATAP) benefits on May 8, 2009, based on the assertion that the Claimant had failed to comply with the requirements of her Family Self-Sufficiency Plan (FSSP).

The Claimant never disputed that she had failed to comply with the requirements of her FSSP. See Findings of Fact at Paragraph 24(f) above. Rather, the Claimant asserts that her failure to comply with the requirements of her FSSP is excused for the following reasons:

1. The Claimant is providing home care for her daughter who is experiencing a disability; and her daughter requires 24-hour care (see Findings of Fact at Paragraph 24(f) above).
2. The Claimant has a dependent child in the home that has not yet attained six years of age, and the Claimant has been unable to obtain needed child care because appropriate child care is not available (see Findings of Fact at Paragraphs 24(b) and 26(b) above).
3. Participation in the FSSP would impose an unreasonable hardship on the Claimant’s family (see Findings of Fact at Paragraph 26(e) above).
4. The Division did not pay for the cost of the childcare required to allow the Claimant to participate in the FSSP (see Findings of Fact at Paragraph 26(e-g) above).
5. The Division did not pay for the transportation expenses necessary for the Claimant’s participation in the FSSP (see Findings of Fact at Paragraphs 10 and 20 above).

These five potential defenses will be addressed separately in the order stated above. If one or more of the defenses is supported by the applicable facts and law, then the Division erred in imposing the noncompliance penalty. If none of the defenses are supported by the applicable facts and law, then the Division was correct to impose the noncompliance penalty.

I. Was The Claimant Excused From Complying With Her FSSP Pursuant To AS 47.27.035(c)(1)?

The Claimant's first argument as to why she should be excused from compliance with her FSSP is that she is providing home care for her daughter, who is experiencing a disability, and her daughter requires 24-hour care. See Findings of Fact at Paragraph 24(f) above. This argument is based on Alaska Statute AS 47.27.035(c)(1), which provides that "a parent or caretaker may be exempt from work participation requirements in the family self-sufficiency plan if (1) the parent or caretaker is providing home care for a child who is experiencing a disability or a related, disabled person who requires 24-hour care"

The Division did not dispute that the Claimant's daughter was disabled or that she might need 24 hour-per-day care. The Division asked only that the Claimant provide medical documentation to support the exemption. The Division was justified in requiring the medical documentation pursuant to Alaska Temporary Assistance Manual Section 730-2. Section 730-2 states in pertinent part that the exemption provided for the caretaker of a disabled child "must be documented by a physician or other licensed medical professional."

The record is clear that the Division stated and restated the medical documentation requirement to the Claimant on numerous occasions from March 16, 2009 through the date the noncompliance penalty was assessed on May 7, 2009. See Findings of Fact at Paragraphs 9-16. However, it is undisputed that the Claimant never provided the Division with medical documentation of her daughter's disability and need for 24-hour-per-day care.

In summary, the Claimant never provided the medical documentation required by Alaska Temporary Assistance Manual Section 730-2. Because of this, the Claimant was not entitled to claim the exemption from FSSP work activities which would otherwise have been provided by Alaska Statute AS 47.27.035(c)(1).⁶

⁶ The Claimant also asserted that she was excused from not providing the required medical documentation because (1) she could not afford to take her daughter to the doctor to get the necessary doctor's note because the Division terminated her Medicaid benefits and she could not otherwise pay the doctor's fees; and (2) because she had no transportation to get to the doctor's office in Anchorage. However, these arguments are not supported by the facts.

First, the Division's records indicate that the Claimant's family was covered by Family Medicaid from May 2008 through September 2009. See Exhibit 1. Thus, Medicaid would have paid for the doctor visit.

Second, Maximus' records dated April 2, 2009 do document that the Claimant stated on that date that her vehicle's engine had failed and that she currently had no transportation (Ex. 7). However, DPA case notes reflect that on other occasions the Claimant stated that she had access to transportation because her adult sister was currently living in her home and could take the Claimant and her daughter to doctor appointments (Exs. 18.0 – 18.1).

II. Was The Claimant Excused From Complying With Her FSSP Pursuant To AS 47.27.035(c)(4)?

The Claimant's second argument as to why she should be excused from compliance with her FSSP is that the Claimant has a dependent child in the home that has not yet attained six years of age, and the Claimant asserts that she has been unable to obtain needed child care because appropriate child care is not available. See Findings of Fact at Paragraphs 24(b) and 26(b) above. This argument is based on Alaska Statute AS 47.27.035(c)(4), which provides in relevant part that "a parent or caretaker may be exempt from work participation requirements in the family self-sufficiency plan if . . . (4) there is a dependent child in the home that has not yet attained six years of age and the parent or caretaker demonstrates an inability to obtain needed child care because appropriate child care is not available."

There are two problems with this argument. First, this argument was not asserted by the Claimant until the hearing, and so the Division had no opportunity to address the argument in the first instance.

More importantly, however, the Claimant's arguments under AS 47.27.035(c)(4) suffer from the same problem as do her arguments under AS 47.27.035(c)(1) (discussed above): lack of required documentation. Alaska Temporary Assistance Manual Section 730-2 states in pertinent part that "a caretaker qualifies for an exemption from work activities if the local Child Care Resource and Referral Agency verifies the lack of care that the family requires and it appears that suitable informal care is not available to the family." It was the Claimant's responsibility to request assistance from this agency in obtaining child care if needed (see Findings of Fact at Paragraph 6). The Claimant did not apply to the local Child Care Resource and Referral Agency for verification of the unavailability of appropriate child care. Accordingly, the verification required by Alaska Temporary Assistance Manual Section 730-2 was never obtained.

In summary, the Claimant never provided the verification from the local Child Care Resource and Referral Agency required by Alaska Temporary Assistance Manual Section 730-2. Because of this, the Claimant was not entitled to claim the exemption from FSSP work activities which might otherwise have been provided by Alaska Statute AS 47.27.035(c)(4).

III. Was The Claimant Excused From Complying With Her FSSP Pursuant To AS 47.27.035(c)(3)?

The Claimant's third argument as to why she should be excused from compliance with her FSSP is that participation in the FSSP would impose an unreasonable hardship on the Claimant's family. See Findings of Fact at Paragraph 26(e). This argument is based on Alaska Statute AS 47.27.035(c)(3), which provides in relevant part that "a parent or caretaker may be exempt from work participation requirements in the family self-sufficiency plan if . . . (3) the participation would impose an unreasonable hardship on the family"

Alaska Temporary Assistance Manual Section 730-2 states in pertinent part that the "family hardship" exemption applies "when the family shows that circumstances outside of their control prevent the caretaker relative from participating in work activities." Section 730-2 provides that family hardship "includes such things as illness or death in the family, or an immediate crisis."

The record arguably supports a finding that the Claimant's family had an illness or immediate crisis at or around the time that the Claimant's daughter had emergency surgery on March 12, 2009 (Ex. 16). Thus, the Division might have erred, pursuant to AS 47.27.035(c)(3), had it implemented a noncompliance penalty *during that time period*. However, the Division did not actually impose the noncompliance penalty until May 7, 2009 (Ex. 13). That was almost *two months* after the Claimant's daughter's emergency surgery. There is no evidence in the record that the Claimant's daughter remained seriously ill through May 7, 2009, or that there was still an "immediate crisis" situation at that time. Accordingly, AS 47.27.035(c)(3)'s 'unreasonable hardship' provision was not applicable at the time that the Division issued the noncompliance penalty and does not excuse the Claimant's lack of compliance with her FSSP.

IV. Was The Claimant Excused From Complying With Her FSSP Pursuant To AS 47.27.035(d)(1)?

The Claimant's fourth argument as to why she should be excused from compliance with her FSSP is that the Division did not pay for the cost of the childcare which the Claimant asserts was required to allow the Claimant to participate in the FSSP. See Findings of Fact at Paragraph 26(e-g). This argument is based on AS 47.27.035(d)(1), which provides in relevant part that "the department may not require a person to participate in work activities under (a) of this section (1) if the person is the sole custodial parent for a child under six years of age unless the department agrees to pay for the costs of child care determined by the department to be necessary for the person's participation"

The Division first informed the Claimant, in the text of the March 10, 2009 FSSP itself, that child care assistance was available ("contact Childcare Connection at 373-5024 to review options to secure alternate care" (Ex. 4.1). Next, the Division's notice to the Claimant dated March 13, 2009 (Ex. 5) expressly stated that "your family may also get help with child care, transportation, and other work-related costs." Finally, the Division's penalty notice dated May 8, 2009 (Ex. 14.0) stated in relevant part that "you may have a good reason for not taking part in this activity that you have not told me about. If so, please call me to explain the situation" However, the Claimant presented no evidence that she ever asked the Division for financial assistance for childcare prior to the hearing itself. Further, the DPA representative testified at the hearing that the Claimant "was never declined child care funds" by DPA.

In summary, the record is clear that the Claimant was informed of the availability of child care assistance from the Division, but never asked for it. Under these circumstances the Claimant is not entitled to claim the exemption that might otherwise be provided by AS 47.27.035(d)(1).

V. Was The Claimant Excused From Complying With Her FSSP Pursuant To AS 47.27.035(d)(2)?

The Claimant's fifth and final argument as to why she should be excused from compliance with her FSSP is that the Division did not pay for the cost of the transportation expenses which Claimant asserts were necessary for the Claimant's participation in the FSSP. See Findings of Fact at Paragraphs 10 and 20. This argument is based on AS 47.27.035(d)(2), which provides in relevant part that "the department may not require a person to participate in work activities under (a) of this section . . . (2) unless the department agrees to pay for transportation expenses determined by the department to be necessary for the person's participation in the activity."

The Division's notice to the Claimant dated March 13, 2009 (Ex. 5) expressly stated that "your family may also get help with child care, transportation, and other work-related costs." Accordingly, there is no question that the Claimant was informed that the Division could provide transportation assistance if requested.

It is clear that the Claimant *complained* of transportation problems on two occasions (see Exhibits 7 and 16). However, there is no evidence whatsoever in the record that the Claimant ever *requested transportation assistance* from the Division prior to the hearing. To the contrary, there is evidence in the record indicating that the Claimant informed the Division that she *did not need transportation assistance* (see Exhibits 18.0 – 18.1 – "sister is currently in home and can bring her and child to doctor appointments").

In summary, the record is clear that the Claimant was informed of the availability of transportation assistance from the Division, but never asked for it. Under these circumstances the Claimant is not entitled to claim the exemption that might otherwise be provided by AS 47.27.035(d)(2).

VI. Summary.

The Claimant never disputed that she failed to comply with the requirements of her FSSP. See Findings of Fact at Paragraph 24(f). Rather, the Claimant asserted that her failure to comply with the requirements of her FSSP was excused based on the five potential defenses discussed above. However, none of the five potential defenses asserted by the Claimant apply based on the facts of this case. Accordingly, the Division carried its burden and proved, by a preponderance of the evidence, that the Claimant failed to comply with the requirements of her Family Self-Sufficiency Plan (FSSP). The Division was therefore correct to impose a non-compliance penalty with regard to the Claimant's Alaska Temporary Assistance Program (ATAP) benefits on May 8, 2009.

CONCLUSIONS OF LAW

1. The Division carried its burden and proved, by a preponderance of the evidence, that the Claimant failed to comply with the requirements of her Family Self-Sufficiency Plan (FSSP), and that the potential defenses to FSSP compliance asserted by the Claimant were not supported by the evidence.
2. The Division was therefore correct to impose a non-compliance penalty with regard to the Claimant's Alaska Temporary Assistance Program (ATAP) benefits on May 8, 2009.

DECISION

The Division was correct to impose a non-compliance penalty with regard to the Claimant's Alaska Temporary Assistance Program (ATAP) benefits on May 8, 2009 based on the assertion that the Claimant had failed to comply with the requirements 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.

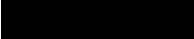
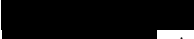
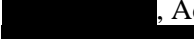
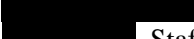
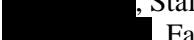

DATED this _____ day of September, 2009.

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