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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-457
)
 Claimant.) Division Case No. [REDACTED]
_____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) received Child Care Assistance benefits in the summer of 2009. She submitted a Child Care Assistance In-Home Billing Report form to the Division of Public Assistance Child Care Program Office (Division) on July 8, 2009. (Ex. 7a) The Division denied payment for the child care on July 21, 2009. (Ex. 7b)

The Claimant, on July 22, 2009, requested that the Division administratively review its denial of her request for child care payment. (Ex. 10) On August 5, 2009, after its administrative review, the Division upheld its original determination denying the Claimant's request for payment for her child care. (Ex. 11) The Division received the Claimant's fair hearing request on August 7, 2009. (Ex. 12) This office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to the Claimant's request, a hearing was held on September 10, 2009. The Claimant appeared in person, represented herself and testified on her own behalf. The Claimant's father, [REDACTED], appeared in person and testified on the Claimant's behalf.

[REDACTED], a Program Coordinator with the Division's Child Care Assistance office, attended in person; she represented the Division and testified on its behalf. [REDACTED], the associate administrator with the [REDACTED], attended telephonically and testified on behalf of the Division.

ISSUE

Was the Division correct to deny the Claimant's request for payment for her child care for the period from June 1, 2009 through July 7, 2009 because the Claimant changed child care providers without obtaining approval from the Division for the change?¹

FINDINGS OF FACT

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

1. The Claimant applied for Child Care Assistance benefits on March 5, 2009 for her two minor children. (Ex. 1a – 1e) Her primary child care provider was [REDACTED]. (Ex. 1d)
2. The Claimant was approved for Child Care Assistance benefits effective March 6, 2009 through May 31, 2009. (Exs. 2a, 2d, 3) The Claimant's father, [REDACTED], was approved as an in home child care provider. (Ex. 2c, 3) The Claimant was sent notice, on April 8, 2009, that her father was approved as the children's child care provider through May 31, 2009. (Ex. 3)
3. When the Claimant applied for Child Care Assistance benefits, she informed the Division that her father would be providing in home child care only during the school year, and that the [REDACTED] would be providing the child care services effective June 1, 2009. (Ex. 2d)
4. On May 27, 2009, the Claimant was sent notice that her Child Care Assistance benefits had been extended from June 1, 2009 through August 31, 2009 with the [REDACTED] as the approved child care provider. (Ex. 5a - 5b) The Claimant acknowledged having received that notice. (Claimant testimony)
5. The Claimant did not take her children to the [REDACTED] for her child care beginning on June 1, 2009.² (Claimant testimony) Instead, she used her father as her in home child care provider. *Id.*
6. The Claimant was aware that she was supposed to notify the Division if she changed child care providers. (Claimant testimony) However, she did not notify Division she was not using the [REDACTED] as her child care provider due to a variety of reasons:
 - a. Being exhausted due to illness (severe anemia);

¹ The Division initially refused to pay the Claimant's child care provider costs for the time period from June 1, 2009 through July 21, 2009. However, on October 9, 2009, the Division paid the Claimant's child care costs for the period from July 8, 2009 through July 21, 2009. *See* October 9, 2009 letter to the Claimant from the Division. (Ex. 18) This Decision will therefore only address the time period from June 1, 2009 through July 7, 2009.

² There is a discrepancy in the evidence regarding the reason why the Claimant did not avail herself of the [REDACTED] child care services. The Claimant testified that [REDACTED] program was full, so her children could not receive child care services from it. (Claimant testimony) [REDACTED] staff disagreed, stating there were program slots available for the Claimant's children. ([REDACTED] testimony) The Claimant then testified that due to her work hours and transportation problems, she was not able to take the children to the YMCA. (Claimant testimony) However, it is not necessary to resolve this factual dispute for the purposes of this Decision.

- b. Lack of telephone or free fax access both at home and at work;
- c. Not being able to afford to fax or mail notification to the Division; and
- d. She assumed that because her father had already been approved by the Division as a paid child care provider for her children, he was preapproved as a backup child care provider if she did not take the children to the [REDACTED].

(Claimant testimony; Ex. 12d)

7. The Claimant was not credible on the issue of not having telephone access because her March 2009 Child Care Assistance application and her July 22, 2009 Child Care Assistance application both list a home phone and a cell phone. (Exs. 1a and 9a)

8. The Claimant worked while she was ill. (Claimant testimony)

9. On July 8, 2009, the Claimant submitted an "IN-HOME BILLING REPORT FORM" to the Division. (Ex. 7a) It was signed by the Claimant and her father on July 6, 2009, and requested payment for child care provided by the Claimant's father to her children during the month of June 2009. *Id.* This was the first time the Division was informed that the Claimant was using her father as her child care provider for the period June 1, 2009 forward rather than the [REDACTED], her approved child care provider for the period June 1, 2009 through August 31, 2009. ([REDACTED] testimony)

10. On July 21, 2009, the Division denied payment for the Claimant's June 2008 child care because her children were not authorized to be cared for by her father. (Exs. 7b, 8)

PRINCIPLES OF LAW

In an administrative proceeding, the party who seeks to change the status quo has the burden of proof. *State, Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985). Preponderance of the evidence is the standard of proof.³ *Amerada Hess Pipeline v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986).

Child Care Assistance is a program that assists in paying day care costs for qualifying individuals and households. AS 47.25.001. The Division may delegate administration of the program. 7 AAC 41.015(a). An individual who is adversely affected by the Division's, or its agent's, action may request an administrative review of the action. 7 AAC 41.435(a). If the administrative review finds against the individual, that individual may request a fair hearing under 7 AAC 49. 7 AAC 41.440(c).

A family receiving child care assistance is required to notify the Division "within seven days after . . . any other change that would affect the family's benefits." 7 AAC 41.320(c)(2).

³ Preponderance of the evidence is defined as "[e]vidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." *Black's Law Dictionary* 1064 (5th Ed. 1979)

7 AAC 42.340. Child care authorization. (a) After the department or a designee determines a family is eligible to participate in the program, and that the provider selected by the family is an eligible provider, the department will or the designee shall issue to the family and that provider, a child care authorization that

- (1) identifies the children for whom child care is authorized;
- (2) identifies the provider selected by the family;

* * *

- (5) states the period of time for which the authorization is effective.

7 AAC 41.340(a).

ANALYSIS

This case involves the issue of whether or not the Division was correct to deny the Claimant's request for payment for her child care for the period from June 1, 2009 through July 7, 2009 because the Claimant changed child care providers without obtaining approval from the Division for the change.

The undisputed facts in this case are as follows:

1. The Claimant was approved to have her father as a paid care provider for her children through May 31, 2009.
2. The Claimant was approved to have the [REDACTED] as a paid care provider for her children from June 1, 2009 through August 31, 2009.
3. The Claimant elected, without notifying the Division, to continue having her father provide child care for her children from June 1, 2009 forward rather than using her approved child care provider the [REDACTED].
4. The Division did not become aware of the fact the Claimant was using her father for child care, rather than the [REDACTED], until July 8, 2009 when the Claimant submitted a billing form to the Division for her father's June 2008 child care services.
5. The Division denied the Claimant payment for her father's child care services because he was not her children's approved child care provider.

Because the Claimant changed her child care provider, without providing notice to the Division in advance, she is the party seeking to change the status quo. The Claimant therefore has the burden of proof by a preponderance of the evidence.

The Claimant's testimony presents two arguments. The first is that the Division should retroactively approve her father as a child care provider for the relevant period because her circumstances justify her admitted failure to notify the Division that she was not taking the children to the [REDACTED]. The second argument is that because her father had previously been

approved as a child care provider through May 31, 2009, she did not have to receive a re-approval for his service as a child care provider for June 1, 2009 onward.

The Claimant's first argument is that she should receive a good cause exception to the regulatory requirement that she notify the Division within 7 days of a change that affects her child care benefits. 7 AAC 41.320(c)(2). A change in the designated child care provider would be a change that affected her child care benefits; the Claimant would therefore be required to notify the Division of the change in her child care provider. The Claimant's claimed good cause consisted of her illness caused fatigue, an unavailability of telephone or free fax access, and an inability to afford sending notice to the Division by either mail or fax.

The Claimant's first argument fails. The Claimant had both a home phone and a cell phone. *See* Finding of Fact 7 above. Because she was able to work despite her illness, she was capable of using the telephone. *See* Finding of Fact 8 above. She could have called the Division, within 7 days after June 1, 2009, and notified it she wished to transfer her children's care back to her previously approved child care provider, her father, and complied with the 7 day change notice requirement. Because the Claimant could have contacted the Division by telephone, she did not require free fax access or need to pay to fax or mail notice to the Division.

The Claimant's second argument, that because her father had previously been approved as her child care provider through May 31, 2009, she did not have to receive approval for him as a child care provider for the time period June 1, 2009 forward, also fails. The Claimant was notified that her father was only approved as her child care provider for a specified period of time, through May 31, 2009. *See* Finding of Fact 2 above. She was then notified that the [REDACTED] would be her children's child care provider from June 1, 2009 through August 31, 2009. *See* Finding of Fact 4 above. The scheduled child care provider change was due to the Claimant's request that her children's child care be transferred from her father to the [REDACTED] effective June 1, 2009. *See* Finding of Fact 3 above.

The Claimant was therefore clearly on notice that the [REDACTED] was her children's care provider beginning on June 1, 2009. There was no ambiguity present. The Claimant's assumption that she could continue to use her father as her care provider beginning June 1, 2009 was unreasonable given the fact the Claimant specifically requested and was notified her child care provider would change to the [REDACTED] on June 1, 2009.

Further, the applicable regulation shows that approval of child care assistance benefits is not retroactive:

[a]fter the department or a designee determines a family is eligible to participate in the program, and that the provider selected by the family is an eligible provider, the department **will** or the designee shall **issue** to the family and that provider, a child care authorization . . .

7 AAC 41.340(a) (emphasis supplied). In other words, the child care authorization is issued after family and provider eligibility is determined. In this case, the Division did not pre-approve the Claimant's father as a child care provider for the period after June 1, 2009.

The Claimant had the burden of proof in this case by a preponderance of the evidence. She did not meet it. She did not establish or show good cause for her failure to notify the Division that she was changing her child care provider. She also did not have a reasonable basis for her assumption that her father would still be a valid child care provider for her children after May 31, 2009, given her previous request that her child care provider be changed to the [REDACTED] effective June 1, 2009 and the explicit notification she received from the Division that her child care provider was indeed changed to the [REDACTED] effective June 1, 2009.

The Division was therefore correct to deny the Claimant's request for payment for her child care for the period from June 1, 2009 through July 7, 2009.

CONCLUSIONS OF LAW

1. The Claimant did not prove, by a preponderance of the evidence, that she had good cause excusing her failure to notify the Division that she was going to be using her father as her children's child care provider effective June 1, 2009, rather than the [REDACTED].
2. The Claimant did not prove, by a preponderance of the evidence, that it was reasonable for her to assume that her father was an approved child care provider after May 31, 2009.
3. The Division was therefore correct to deny the Claimant's request for payment for her child care for the period from June 1, 2009 through July 7, 2009.

DECISION

The Division was correct to deny the Claimant's request for payment for her child care for the period from June 1, 2009 through July 7, 2009.

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, the Claimant must 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

An appeal 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.

