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

In the Matter of )  
 )  
 [REDACTED] )  
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 Claimant. ) OHA Case No. 09-FH-469  
 ) Division Case No. [REDACTED]  
\_\_\_\_\_ )

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

Ms. [REDACTED], (Claimant), applied for Adult Public Assistance on June 26, 2008, reporting that her husband, an [REDACTED] employee, was temporarily unemployed for the summer and would resume work in August 2008. (Exs. 2.0; 3.0; 6.0) Claimant was determined eligible for Adult Public Assistance and began receiving monthly benefits in July 2008. (Ex. 6.3)

The Division of Public Assistance (Division) alleges it overpaid Claimant Adult Public Assistance benefits. ([REDACTED] testimony) Specifically, the Division determined Claimant was overpaid benefits between September 2008 and May 2009 when she was not eligible to receive them. (Exs. 6.0, 6.1) On August 11, 2009, the Division notified Claimant of the overpayment and of its intention to recover the excess from Claimant. (Ex. 7, corrected)

On August 18, 2009, Claimant requested a Fair Hearing challenging the request for repayment. (Ex.8) Regulation 7 AAC 49.010 establishes jurisdiction with this Office.

Pursuant to Claimant's request, a Fair Hearing commenced on October 21, 2009. The Claimant appeared telephonically and testified in her own behalf. [REDACTED], the Division's Public Assistance Analyst, appeared in person and testified on behalf of the Division.

## ISSUE

Was the Division correct to seek reimbursement of excess Adult Public Assistance benefits paid to Claimant between September 2008 and May 2009?

## FINDINGS OF FACT

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

1. Claimant applied for the first time for Adult Public Assistance benefits on June 26, 2008. (Ex. 2.1, Claimant's testimony) Claimant completed and signed her Application for Services (Application) on June 27, 2008.<sup>1</sup> (Exs. 2.1- 2.9) The Division date stamped her Application as received on June 26, 2008. (Ex. 2.1)
2. In her Application, Claimant disclosed six persons in her household, including her husband and two children who were working or had worked. (Ex. 2.3, 2.4) Claimant also disclosed on the Application that her husband owned a vehicle which he used for "work" (Ex. 2.6) and that her husband had health insurance with [REDACTED]. (Ex. 2.8) Claimant disclosed that one child recently had terminated a job and that another adult child was employed full time. (Ex. 2.4) Claimant supplied proof of her husband's seasonal employment and income by supplying earnings statements for the period April 28, 2008 through June 8, 2008, showing his gross earnings of \$1,189.52, semi-monthly, from the [REDACTED]. (Ex. 2.12)
3. On June 27, 2008, Claimant participated in an intake eligibility interview at which her husband's seasonal employment and insurance with the [REDACTED] and the income of her employed children was noted, as well as other household income. (Ex. 2.0)
4. On July 10, 2008, Claimant participated in an eligibility interview. (Ex. 3.0) As a result of this interview, the Eligibility Technician noted Claimant's husband's last pay check was issued June 13, 2008, from the [REDACTED], in the amount of \$1,189.00. (Ex. 3.1) The Technician also noted Claimant's husband obtained health insurance through his work at the [REDACTED] and confirmed the amount of her employed child's monthly income as well as Claimant's Social Security Disability Income. (Exs. 3.0-3.1)
5. Claimant was approved to receive Adult Public Assistance benefits beginning July 2008. (Ex. 6.3) Claimant also was approved for Food Stamp benefits beginning September 2008. (Ex. 6.5)
6. As part of the Application process, Claimant certified she had read and understood the "Your Rights and Responsibilities" portion of the Application (Exs. 3.2-3.5) by signing a STATEMENT OF TRUTH. (Ex. 2.9) During the eligibility interview

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<sup>1</sup> The date of June 27, 2008 is deemed incorrect because the Division received the Application on June 26, 2008. The discrepancy in dates does not affect this Decision.

on July 10, 2008, Claimant discussed the Your Rights and Responsibilities portion of the Application with the Eligibility Technician, who noted Claimant's acknowledgement of her responsibilities as stated in the Application. (Ex. 3.0)

7. In particular, the Your Rights and Responsibilities text informed Claimant that she "must report changes in your household within 10 days of when you know of the change." (Ex. 3.2) At the July 10, 2008 interview, Claimant was also informed "[i]f you receive Adult Public Assistance ... you must report all changes...." (Ex. 3.2)

8. Claimant telephoned her case worker in August 2008 and informed her that Claimant's husband had started working at the [REDACTED] on August 14, 2008 or August 17, 2008. (Claimant testimony) There is no evidence Claimant reported her husband's income at that time. However, the Division issued Claimant Adult Public Assistance benefits without including Claimant's husband's wages in the calculation of the amount and therefore overpaid Claimant each month from September 2008 until May 2009. (Exs. 6.0-6.2; [REDACTED] testimony)

9. On October 2, 2008 and October 13, 2008, the Division sent Claimant notices requesting information. (Ex. 5.2) The back of these notices, and every notice sent to Claimant, contained text, nearly identical to the "Your Rights and Responsibilities" text in Claimant's Application and reminded Claimant to report changes in her household within 10 days of the date she knew of the change. (Ex. 5.3; [REDACTED] testimony)

10. On November 5, 2008, the Division terminated Claimant's Food Stamp benefits because it deemed her household income exceeded the eligibility income limit. (Ex. 5.2)

11. On December 17, 2008, the Division requested information from Claimant, received an employment statement, and decreased (by three dollars) the amount of Claimant's Adult Public Assistance benefits, effective January 2009. (Ex. 5.2; Ex. 6.3)

12. On April 22, 2009, the Division again requested information from Claimant. (Ex. 5.2) The Division received a letter from the [REDACTED] dated April 30, 2009 confirming Claimant's husband had been a regular, seasonal, employee of the [REDACTED] since October 16, 2000. (Ex. 4.0) The Division date stamped as received on May 1, 2009, several earnings statement showing Claimant's husband's income from December 28, 2008 through May 11, 2009.<sup>2</sup> (Exs. 4.1-4.4, 5.1) These earnings statements showed Claimant's husband's gross monthly earnings from December 22, 2008 to March 15, 2009 was \$2,479.00. (Exs. 4.2-4.4) Although incomplete, the earnings statements between March 16, 2009 through May 24, 2009 disclose the monthly income of \$2,479.00 each month. (Exs. 4.1, 5.1)

13. The Division attributed certain dollars of employment income to Claimant's husband between September 2008 and May 2009. (Ex. 6.0-6.2) It is unclear how the Division arrived at the dollar amount of the income it attributed as

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<sup>2</sup> Exhibit 5.1, an earnings statement for the period May 11 through May 24, 2009 was date stamped as received on June 2, 2009. The Division also received a second letter from the [REDACTED] dated June 2, 2009, which re-iterated the substance of the April 30, 2009 letter but specified the last day of employment as May 22, 2009. (Ex. 5.0)

the husband's income: The income attributed varied as \$2,542.83 monthly for August and September 2008; \$2,696.94 monthly for October through December 2008; \$2,322.67 monthly for January through March 2009; \$2,479.00 for April 2009; and \$2,479.50 for May 2009. (Ex. 6.0) Claimant disagrees with the dollars of employment income attributed by the Division as her husband's income between September 2008 and May 2009. (Claimant testimony)

14. On June 22, 2009, the Division calculated Claimant had been paid excess Adult Public Assistance benefits totaling \$4,701.00 between September 2008 and May 2009. (Ex. 6.0-6.2; Ex. 7) This excess payment amount was calculated using the income it attributed to Claimant's husband. (Ex. 6.1-6.2) On August 11, 2009, the Division requested Claimant repay \$4,701.00 as benefits overpaid. (Ex. 7)

15. Claimant requested a Fair Hearing on August 18, 2009. (Ex. 8)

16. During the hearing, Claimant's testimony included the following facts:

a. Claimant's husband resumed work at the Anchorage School District on August 14 or August 17, 2008 for the 2008-2009 school year. He was paid semi-monthly and his first pay check from that employment was received in September 2008. (Ex. 6.0) His gross earnings were \$1,239.50, paid semi-monthly, between December 2008 and May 2009. (Ex. 4.1-4.4; Ex. 5.1)

b. Claimant fully disclosed her husband's seasonal employment. Claimant responded each time the Division requested information and provided whatever documents the Division case worker requested. For example, in 2009, Claimant's husband hand carried a packet of his earnings statements to the Division office on Gambell Street and personally delivered them to the caseworker's mailbox inside the building but the caseworker said she had not received the documents. Claimant's husband repeated the hand delivery about 2 or 3 weeks later and the caseworker acknowledged receiving the documents on this second delivery. Claimant believes the overpayment was not her fault.

17. Claimant disagreed with the dollar amounts of Anchorage School District income attributed to Claimant's husband for the months of September 2008 to May 2009. Claimant also disagreed with the total amount of benefits the Division seeks her to repay.

## **PRINCIPLES OF LAW**

### **I. Burden of Proof**

Ordinarily the party seeking a change in the status quo has the burden of proof." *State, Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

## II. Standard of Proof

The regulations applicable to this case do not specify any particular standard of proof. A preponderance of the evidence is the normal standard of proof in an administrative proceeding. *Amerada Hess Pipeline v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986). Therefore, the standard of proof is the preponderance of the evidence.

Preponderance of the evidence is defined as follows:

Evidence 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 (5<sup>th</sup> Ed. 1979)

## III. Applicable Regulations

Regulation 7 AAC 40.440 requires that between the day of application until an applicant is determined to be not eligible for Adult Public Assistance, the applicant must report any change in circumstances which may affect eligibility for benefits within 10 days of the change. In particular, changes pertaining to household income must be reported. 7 AAC 40.440(b)(3).

Alaska Statute 47.25.500 provides for the recovery of Adult Public Assistance which has been improperly granted and establishes a claim by the state against a person who received an improper amount of assistance.

Regulation 7 AAC 40.480 applies to the repayment of overpaid Adult Public Assistance benefits. This regulation provides that repayment of excess benefits may be required regardless of fault as to why the overpayment occurred. 7 AAC 40.480(a)(c) and (d).

## **ANALYSIS**

### I. Issue

Was the Division correct to seek repayment from Claimant for Adult Public Assistance benefits overpaid to her between September 2008 and May 2009?

### II. Burden of Proof and Standard of Proof

The party seeking a change in the status quo has the burden of proof.” *State, Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985). The Division seeks to change the status quo by requiring Claimant to reimburse the State for excess Adult Public Assistance it paid to Claimant. Accordingly, the Division has the burden of proof.

The Division must prove by a preponderance of the evidence that it was correct to request repayment of \$4,701.00 of Adult Public Assistance benefits it overpaid to Claimant. To prove it was correct, the Division must also prove Claimant was not entitled to receive \$4,701.00 of the benefits the Division issued to Claimant. AS 47.25.500 and 7 AAC 40.480. Once the overpayment has been proven, the Division is correct to seek repayment from the Claimant, because it is immaterial why the overpayment occurred or who is at fault for causing the overpayment. (7 AAC 40.480(a)(c) and (d))

### III. The Requirement to Report Any Change in Household Circumstances Includes Changes in Income

Claimant reported her husband's resumption of work in August 2008 but did not report her husband's income until May 1, 2009, after being requested to provide wage statements. Claimant had an obligation to report the change within 10 days of knowing of the change. Claimant delayed 9 months in reporting the change in her husband's income.

Claimant knew she was required by regulation 7 AAC 40.440 to report any change in her circumstances to the Division. Claimant knew she was required to report changes in her household circumstances because she had acknowledged her obligation to report when she signed the STATEMENT OF TRUTH on her Application and when she had her eligibility interview on July 10, 2008. Thus, Claimant knew that as a recipient of Adult Public Assistance, she was required to report "all" changes because she not only had acknowledged her obligation to report as part of her Application process and during the eligibility interview but also from the reminders on the backs of the notices she had received. Likewise, Claimant knew she had to report any change pertaining to her household income within 10 days of the change. 7 AAC 40.440(b)(3). Claimant failed to comply with this responsibility.

#### A. Claimant did report the employment of her husband with the Anchorage School District.

Claimant is credible in her statements that she fully disclosed, in June and July 2008, her husband's seasonal employment with the Anchorage School District. In her Application of June 27, 2008 and during her eligibility interviews, (on June 27 and July 10, 2008), Claimant made clear to the Division that her husband worked regularly during the entire school year for the [REDACTED], received health insurance from the [REDACTED], used his vehicle for work, and had received his final 2007-2008 paycheck on June 13, 2008 in the amount of \$1,189.52. It is clear that at the time of her Application, Claimant was forthright in informing the Division that her husband regularly worked the school year and would be starting employment again in two months with the start of school in August.

In August 2008, Claimant telephoned her case worker and told her that her husband would be starting work on August 14 or 17, 2008. Clearly, Claimant's information was a sufficient report to the Division that her husband would be and was employed by the

Anchorage School District as of the start of the school year. Thus, Claimant did not fail to report the employment of her husband with the [REDACTED]. However, she did fail to report his income in August 2008 and did not report it until May 1, 2009, as is discussed below.

B. Claimant knew she had to report her husband's income, as well as any change in income, upon re-employment.

At the time of Application, when Claimant informed the Division that her husband was a seasonal employee of the [REDACTED], her husband's income was zero. He was unemployed because school was not in session in June and July 2008. Therefore, when Claimant's husband received his first pay check in September 2008, Claimant had an obligation to report the income because it was a change from zero income.

In August 2008, Claimant did not yet have her husband's wage statement and could not be expected to then disclose his change in income. Claimant's husband's first 2008-2009 school year pay check was received in September 2008. At the latest, Claimant was required to inform the Division of her husband's income by the 10<sup>th</sup> day after receiving it in September 2008. Because he is paid semi-monthly, the 10<sup>th</sup> day could be as late as September 25, 2008. There is no evidence that Claimant informed the Division of her husband's income in September 2008 or at any time until May 1, 2009, when she provided wage statements to the Division at its request.

Claimant also knew she was required to report her husband's income because it also was a change from the prior year's income. His income changed in both of two ways: first, his income went from zero, when unemployed during the summer, to \$1,239.50, when employed during the 2008-2009 school year. Second, his income increased from \$1,189.50 semi-monthly in the 2007-2008 school year to \$1,239.50 semi-monthly in school year 2008-2009. Claimant was required to report her husband's new income because it was a change from each of his incomes she previously had reported.

C. Claimant did not report her husband's income to the Division.

Claimant asserted that she responded to each of the Division's requests for information and fully complied with each request. The Division sent Claimant two notices in October 2008 asking for information. After it received information in response to the first request, the Division terminated her household's Food Stamp benefits in November 2008 due to the household income exceeding the amount allowed for eligibility.

Later in October 2008, the Division again asked Claimant for information. It then decreased Claimant's Adult Public Assistance benefits by only three dollars. This supports Claimant's assertion that she was responding to the Division's requests for information and that the Division was receiving information about changes in household income as early as October 2008.

However, the fact that the Division issued Claimant's benefits decreased very little proves it did not receive information about Claimant's husband's substantial employment

income. Had the Division received the income information, the Adult Public Assistance benefits would have been terminated.

Claimant provided income information in May 2009, about 9 months after her husband resumed working. Her obligation was to report it when she knew about it, not when she was asked for it.

Accordingly, the Division has met its burden of proving that Claimant failed to report to the Division the receipt of employment income within 10 days of knowing of the change in household income. The Division has also proved that as a consequence of Claimant's failure to report her husband's income, it calculated benefits based on underreported household income. This resulted in issuance of benefits exceeding the amount to which Claimant actually was entitled between September 2008 and May 2009.

#### IV. Amount of Excess Benefits to be Repaid

The Division calculated that Claimant would not have been entitled to any Adult Public Assistance benefits if her husband's income had been included in the eligibility calculation for the months of September 2008 through May 2009. Claimant disagrees with the amount of income the Division attributed to her husband in those months. Close scrutiny of Exhibit 6.0 appears to disclose the Division attributed a monthly income exceeding the actual income earned by Claimant's husband when compared to his wage statements. *See* Finding of Fact 8 and 15.

During the hearing, Claimant requested clarification of how the Division reached the total amount it is seeking to recover from Claimant but the Division did not explain in detail. The Division did explain that the total of \$4,701.00 represented the sum of the monthly Adult Public Assistance benefits paid to Claimant between September 2008 and May 2009. But the Division did not explain how it arrived at the income it attributed to the household or its calculations which supported its decision that Claimant was not eligible for any Adult Public Assistance benefits. The issue of how the Division arrived at the dollar amount to be repaid is not part of this hearing and therefore will not now be addressed.

The issue in this hearing was whether the Division was correct to request repayment of excess Adult Public Assistance benefits paid to Claimant between September 2008 and May 2009. The Division is correct to request repayment.

However, it is another matter whether the Division correctly calculated that Claimant's household income was such as to disqualify her from eligibility altogether or whether she may have been entitled to a reduced amount. Because it is unclear whether the Division attributed the correct income to the household during the months of September 2008 to May 2009, it is beyond this decision to determine the amount to be repaid is \$4,701.00. It is recommended the Division review its calculation of the overpayment and explain to Claimant what was considered and how it was applied in the calculation. After the calculations are explained to Claimant, she may request a Fair Hearing concerning the amount of overpayment, if necessary.



## CONCLUSION OF LAW

1. The Division has met its burden of proving by a preponderance of the evidence that Claimant knew she had an obligation to report her husband's income from his [REDACTED] employment within 10 days of learning of the change in his income;

2. The Division also proved Claimant did not report her husband's [REDACTED] income until May 1, 2009;

3. The Division proved it issued Adult Public Assistance benefits in excess of the amount which Claimant would have been eligible for, if Claimant was eligible at all, because it did not know Claimant's husband's income during the months of September 2008 through May 2009; and

4. The Division is correct in seeking repayment of the excess Adult Public Assistance benefits paid to Claimant from September 2008 through May 2009.

## DECISION

The Division was correct to seek repayment of the Adult Public Assistance benefits it overpaid to Claimant between September 2008 and May 2009.

Claimant may request a Fair hearing concerning the amount that needs to be repaid, if necessary.

## 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 November, 2009.


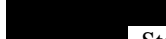
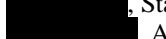
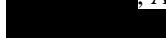


\_\_\_\_\_  
/Signed/  
Claire Steffens  
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this \_\_\_\_\_ day of  
November, 2009, true and correct  
copies of the foregoing were sent to:

Claimant, by U.S.P.S., Certified  
Mail, Return Receipt Requested

and to other listed persons by e-mail:

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

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J. Albert Levitre, Jr.  
Law Office Assistant I