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

In the Matter of)
)
 [REDACTED],)
)
 Claimant.) OHA Case No. 09-FH-483
) Division Case No. [REDACTED]
_____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

Mr. [REDACTED] (Claimant) was a recipient of the Alaska Temporary Assistance Program from the date of his initial application on January 11, 2006 through April 2009. (Exs. 2.4-2.11; 3; 7.6-7.9; 9) On August 6, 2009, the Division of Public Assistance (Division) sent Claimant a notice he had received an overpayment in benefits from the Alaska Temporary Assistance Program (Program) due to owning non-exempt resources valued in excess of \$2,000. (Ex. 9) The Division further informed him it was seeking recoupment of the overpayment. (Ex. 9)

On September 8, 2009, Claimant requested a Fair Hearing, asserting that the Division knew of the real property. (Ex. 10) The Office of Hearings and Appeals (Office) has jurisdiction under authority of 7 AAC 49.010 *et. seq.*

Claimant's Fair Hearing was held on November 18, 2009.¹ Claimant appeared in person and testified on his own behalf. Claimant's wife, Ms. [REDACTED], also appeared in person and testified on behalf of Claimant. Ms. [REDACTED], the Division's Public Assistance Analyst, appeared in person representing the Division and testified on behalf

¹ The hearing was held before Hearing Authority Jay Durych. Subsequently, the case was assigned to Hearing Authority Claire Steffens, who wrote this decision after reviewing the entire file and listening to the electronic record of the hearing.

of the Division. Mr. [REDACTED], another Public Assistance Analyst employed by the Division, observed the hearing and did not participate.

The parties agreed to leave the record open for additional documents to be provided by the Division at Claimant's request. The Division provided Exhibits A and B and the Claimant was given an opportunity to respond, but did not do so.

ISSUE

Was the Division correct to seek reimbursement from Claimant of Alaska Temporary Assistance benefits which were overpaid beginning January 2006 and ending April 2009?

FINDINGS OF FACT

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

1. Claimant applied for public assistance benefits, including from the Alaska Temporary Assistance Program (Program) on January 11, 2006. (Exs. 7.6-7.9) Claimant² re-applied for Program benefits on:

- a. July 3, 2007 (Exs. 2.5-2.11);
- b. December 6, 2007 (Ex. 3.0-3.7);
- c. June 19, 2008³ (Exs. 3.8-3.15);
- d. December 5, 2008 (Ex. 3.16-3.22);
- e. January 2, 2009 (Ex. 3.23-3.26); and
- f. May 29, 2009 (Exs. 8-8.4).

On each of these seven applications, Claimant did not disclose ownership of any interest in any real property. (Exs. 4; *Id.*)

2. Claimant and/or his wife participated in eligibility interviews in conjunction with most of these applications and did not disclose ownership of any real property during the interviews. (Exs 2.0; 2.2; 2.4; 3.10; 3.21; 7.6; 7.8-7.9)

² At times Claimant, alone, signed the applications (Exs. 2.9; 3.15) and at times Claimant's wife, alone, signed the applications, (Exs. 3.8; 3.9) and some applications were signed by both. (Exs. 2.10; 3.5; 3.6; 3.20; 3.26; 8.4) Irrespective of who signed an application, the Program benefits were paid to and received by the family as an "assistance unit," as provided by 7 AAC 45.335 and 7 AAC 45.990(a)(6). Therefore, all references to Claimant in this decision apply to the assistance unit, including both Claimant and his wife and all dependent children in the household.

³ The Eligibility Review Form first page is date stamped as received by the Division on June 19, 2008. However, various parts of this completed application have other June 2008 dates. Each application submitted by Claimant has a variety of dates for individual pages and therefore the date stamp showing receipt of the application has been chosen as the date of the application for purposes of this decision.

3. During the time period relevant to this case, from January 2006 to April 2009, Claimant received Program benefits. (Ex. 7.4-7.5)
4. On April 24, 2009 while participating in an interview to determine Claimant's eligibility for two other public assistance programs, the Eligibility Technician learned that Claimant owned real property in [REDACTED], Alaska and in Arizona, neither of which is Claimant's residence. (Ex. 4) The [REDACTED] property is co-owned with his sister. (Ex. 5) The Eligibility Technician deemed these lands to be resources and noted that Claimant had not disclosed these resources previously in any application or eligibility interview pertaining to the Alaska Temporary Assistance Program. (Ex. 4)
5. The value of Claimant's property in Arizona was \$22,500, according to the tax assessment of March 16, 2009 for tax year 2010. (Ex. 6.0) The Eligibility Technician excluded the value of Claimant's property in [REDACTED] from Claimant's total resource value because Claimant supplied a signed statement from his co-owner sister, asserting she was unwilling to sell the land and was not intending to do so. (Ex. 5; 6.3)
6. The Division reviewed Claimant's eligibility for Program benefits and concluded he had been overpaid between January 2006 and April 2009 because he had not reported the real property he owned in Arizona. (Ex. 9; Gagne testimony)
7. The Division calculated Claimant had been overpaid each month Claimant had received Program benefits because he was entitled to zero benefits beginning January 2006 through April 2009. (Ex. 7.0-7.3)
8. The Division calculated Claimant had received \$17,921.00 in overpaid benefits as a result of not knowing Claimant owned resources in excess of the \$2,000 eligibility limit. (Ex. 7.0-7.5; 8.0)
9. On April 24, 2009, the Eligibility Technician notified Claimant orally he could be liable to reimburse the State for "all benefits issued to him over the years when he was ineligible" due to his failure to disclose ownership of the two parcels of real property and that "this could become a fraud issue." (Ex. 4) On August 6, 2009, the Division notified Claimant of the error and its intent to seek recoupment of the overpayment. (Ex. 9)
10. Claimant does not dispute the fact there was an overpayment and does not dispute the amount of the overpayment. (Claimant testimony) Claimant does not dispute the Division's attribution of the Arizona land as a resource Claimant owned since at least January 2006. (Ex. 4; 5; 9) Claimant testified he believed it was the Division's fault that he received benefits for which he was ineligible and therefore he should not have to repay the excess benefits received. (Claimant testimony) Claimant's wife testified that she did not think about the real property when she answered the applications' question asking for disclosure of any property owned. ([REDACTED] testimony)

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 (5th Ed. 1979)

B. Alaska Temporary Assistance Program (ATAP)

Regulation 7 AAC 45.280(a) and (b) provides that an assistance unit is not eligible for ATAP benefits if the assistance unit has nonexempt resources with a total value in excess of \$2,000 on the day of the eligibility interview. Real property which is not a residence is not an exempt resource. 7 AAC 45.300.

Regulation 7 AAC 45.570 addresses the collection of an overpayment of Alaska Temporary Assistance Program (ATAP) benefits and states in relevant part:

(a) Except as provided in (k)⁴ of this section, the department will pursue collection from a current recipient of ATAP benefits or a former recipient of ATAP or AFDC benefits who received an overpayment, regardless of the amount or cause of the overpayment, unless the overpayment was caused by the department, in which case the department will pursue collection only if the overpayment exceeds \$100. ... The family is responsible for repayment...

(b) An individual who was a member of an assistance unit during a month in which that assistance unit received an overpayment is responsible for repaying the overpayment....

⁴ Subsection (k) addresses the suspension of collection activities under certain circumstances not at issue in this case.

* * *

(e) A current recipient of ATAP benefits must, within 30 days after the date printed on the overpayment notice, repay the total amount of the overpayment to the department, or the department will reduce that assistance unit's future ATAP payments by withholding 10 percent of the maximum amount payable to an assistance unit of the same size with no countable income for the number of months necessary to recover the overpayment.

* * *

(j) If a former recipient fails to repay an overpayment, the department may pursue other legal remedies against the income or resources of the former recipient.

ANALYSIS

I. Issue

Claimant argues he should not have to repay the Program benefits overpaid to him because it is the Division's fault it issued the benefits. The Division asserts the law requires it to seek recoupment irrespective of fault or the cause of overpayment.

Accordingly the issue is whether the Division is correct to seek reimbursement from Claimant of Alaska Temporary Assistance benefits which were overpaid to Claimant between January 2006 and ending April 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 is seeking to change the status quo by requiring Claimant to repay the Division for the Alaska Temporary Assistance benefits it overpaid beginning January 2006 through April 2009. Therefore, the Division has the burden of proving by a preponderance of the evidence that Claimant was overpaid Program benefits and must reimburse the State for the benefits he was overpaid.

III. Repayment of Overpaid Alaska Temporary Assistance Benefits.

All material facts in this case are undisputed. Claimant failed to disclose on each of the applications for Program benefits, beginning January 2006 and continuing to the application of May 29, 2009, the fact that he owned real property in [REDACTED], Alaska and Arizona. The value of the Arizona property is undisputed at \$22,500. The Arizona property is not Claimant's residence and has been owned by him between January 2006 and April 2009.

The Division determined that it had erred in paying Alaska Temporary Assistance benefits to Claimant because he owned resources valued in excess of \$2,000 based on his ownership of the real property in Arizona. The Division also determined that, consequently, Claimant was not eligible to receive Program benefits between January 2006 and April 2009. The Division calculated the amount of benefits overpaid to Claimant as a total of \$17,921.00. Claimant does not dispute the amount of overpayment.

The dispute in this case is whether claimant is required to repay the overpaid Alaska Temporary Assistance Program benefits. There is no dispute that Program benefits were overpaid and Claimant does not dispute the amount of overpayment. However, Claimant does argue that he should not be required to reimburse the overpayment because he did nothing wrong⁵ and the overpayment resulted from the Division's error.

The regulations concerning recoupment of overpaid ATAP benefits clearly require the Division to recoup overpaid benefits, irrespective of the cause of overpayment. *See* 7 AAC 45.570. Once overpayment is found to have occurred, regardless of fault or cause, the Division must seek recoupment. 7 AAC 45.570(a).

In this case, Claimant's assistance unit received ATAP benefits from the date of initial application in January 2006 continuing through April 2009 during which time, due to the ownership of real property, Claimant's assistance unit was not eligible for ATAP benefits.

The Division has proven Claimant's resource value far exceeded the \$2,000 maximum resources allowed for eligibility for Program benefits. Therefore, the Division has met its burden of proving it is entitled to recoup the excess Program benefits of \$17,921.00 paid to Claimant's assistance unit.

CONCLUSIONS OF LAW

1. The Division has proven by a preponderance of the evidence that Claimant was not eligible to receive Alaska Temporary Assistance Program benefits at any time because he owned real property constituting a nonexempt resource exceeding \$2,000 in value.
2. The Division has met its burden of proof by a preponderance of the evidence that Claimant was overpaid Alaska Temporary Assistance Program benefits in an amount of \$17,921.00 between January 2006 and April 2009.

⁵ In reviewing all of the evidence, including the seven applications that were submitted during the period from January 2006 through May 2009, it is clear that Claimant and his wife were dishonest in failing to disclose the ownership of two parcels of real property. Indeed, even after being advised on April 24, 2009 that their previous failure to disclose the property would cause them to have to repay the excess benefits and subject them to allegations of fraud, they still submitted their May 29, 2009 application without disclosing the property. (Ex. 8.1-8.2)

3. The Division has met its burden of proof that it is required by regulation 7 AAC 45.570 to recoup the benefits overpaid to Claimant between January 2006 through April 24, 2009 from Claimant's assistance unit.

DECISION

The Division was correct to seek recoupment of Alaska Temporary Assistance Program benefits overpaid to Claimant between January 2006 and April 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, 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.

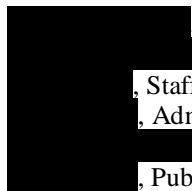
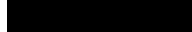
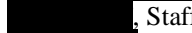
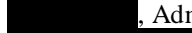
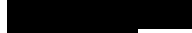
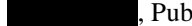
DATED this ____ day of January 2010.

Claire Steffens
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this _____ day of January 2010, true and correct copies of the foregoing were sent to:

Claimant by U.S.P.S., by 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
, Public Assistance Analyst

J. Albert Levitre, Jr.
Law Office Assistant I