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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-489
)
 Claimant.) Division Case No. [REDACTED]
)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) was a recipient of Adult Public Assistance benefits. (Ex. 1). On August 3, 2009 the Claimant submitted a recertification application to the Division of Public Assistance (Division). (Ex. 2) The Division denied this application on August 21, 2009 because his household total monthly income exceeded the income limit for the program. (Ex. 4) The Claimant requested a fair hearing on September 2, 2009 (Ex. 7.3)

This office has jurisdiction pursuant to 7 AAC 49.010.

A hearing was originally scheduled for November 17, 2009, but was rescheduled until December 22, 2009, because of Claimant's hospitalization. (Order Rescheduling Hearing, November 17, 2009) On December 22, 2009, the hearing was rescheduled to January 19, 2010 because the Claimant was not prepared. (Order Continuing Hearing, December 22, 2009) The January 19, 2010 hearing was continued to February 3, 2010. (Order Continuing Hearing, January 21, 2009) A hearing was held on February 3, 2010. The Claimant attended the hearing telephonically, represented himself and testified on his own behalf. [REDACTED] Public Assistance Analyst with the Division, attended the hearing in person and represented the Division.

ISSUE

The Division set forth the following issue in its position statement prior to the hearing: Was the Division correct to deny Claimant's recertification application for Adult Public Assistance benefits because of excess household income?

At the hearing, the Claimant redefined the issue to be: Was the Division correct for not excluding \$500.00 a month from Claimant's household income because the Claimant's wife was sending that amount of money to her children in the Philippines?

The issue in this case is:

Was the Division correct when, in calculating Claimant's household total monthly income to determine eligibility for Adult Public Assistance, it did not provide an income exclusion for the \$500.00 a month Claimant's wife sent to her children in the Philippines, thus resulting in household income exceeding the program limit and rendering the household not eligible for benefits after August 31, 2009?

FINDINGS OF FACT

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

1. Claimant was an Adult Public Assistance recipient. (Ex. 1)
2. On August 3, 2009, Claimant submitted a recertification application for continuing assistance. (Ex. 2).
3. Claimant's household had experienced a recent change in income. The Division calculated the Claimant's household income at \$1,693.00 per month. (Ex. 3.2) The Division made this calculation based on the household's net earned income (\$2,324.38 divided by 2 because of the age incentive = \$1,129.69) added to the household net unearned income (\$583.00 - \$20.00 = \$563.00).
4. The Division determined the maximum household income allowed under the Adult Public Assistance program is \$1,504.00. (Ex. 4) The Claimant does not dispute this limit.
5. On August 21, 2009, the Division sent notice to the Claimant it was closing his Adult Public Assistance case after August 31, 2009, because Claimant's household income of \$1,693.00 was over the \$1,504.00 income limit. (Ex. 4 and 3.2).
6. The Claimant contends his household income is \$1,576.00 per month. (Testimony at hearing) The Claimant made this calculation based on the household net earned income (\$2,207.39 divided by 2 because of the age incentive = \$1,071.20) added to the household net unearned income (\$525.00 - \$20 = \$505). (Testimony at hearing)
7. The Claimant testified at the February 3, 2010 hearing that his wife sends \$500.00 a month to her children in the Philippines because they were victimized by typhoons. (Testimony at hearing) The Claimant argues \$500.00 should be considered an income exclusion.

PRINCIPLES OF LAW

“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). The standard of proof in an administrative proceeding is a “preponderance of the evidence,” unless otherwise stated. *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Com’n*, 711 P.2d 1170, 1183 (Alaska 1986)

“Where one has the burden of proving asserted facts by a preponderance of the evidence, he must induce a belief in the minds of the triers of fact that the asserted facts are probably true.” *Robinson v. Municipality of Anchorage*, 69, P.3d 489, 493 (Alaska 2003)

Adult Public Assistance is a cash benefit program provided to financially eligible persons who are “aged, blind, or disabled.” AS 47.25.430.

“The income and resources of an applicant’s spouse who is living with him are considered income and resources of the applicant.” 7 AAC 40.240(a). Total monthly income for Adult Public Assistance purposes is calculated by adding together an applicant’s and her spouse’s gross monthly income, both earned and unearned, and subtracting allowable income exclusions. 7 AAC 40.300; 7 AAC 40.310(a); 7 AAC 40.350.

The Adult Public Assistance program’s list of allowable income that is excluded in determining the total monthly income for an applicant and his/her spouse is provided in 7 AAC 40.320 and 7 AAC 40.330. These are referred to as “income exclusions.” There is a general income exclusion of \$20 per month. 7 AAC 40.330(a)(23).

There is no deduction provided for utilities, mortgage payments, or childcare costs. *See* 7 AAC 40.320 - 330.

If an applicant, who is part of a married couple living together in their own home, where only one is eligible¹ for Adult Public Assistance, have a total monthly income that exceeds \$1,504, the applicant is not financially eligible for Adult Public Assistance. 7 AAC 40.310(a)(5) and (c); *Alaska Adult Public Assistance Manual Addendum 1*.

ANALYSIS

The issue in this case is whether the Division was correct when, in calculating Claimant’s household total monthly income to determine eligibility for Adult Public Assistance, it did not provide an income exclusion for the \$500.00 a month Claimant’s wife sent to her children in the Philippines, thus resulting in household income exceeding the program limit and rendering the household not eligible for benefits after August 31, 2009.

Because this case involves ongoing benefits, the Division is the party wishing to change the status quo, therefore it has the burden of proof by a preponderance of the evidence.

7 AAC 40.320 and 7 AAC 40.330 set forth income exclusions for the Adult Public Assistance program. The items listed in these regulations are not included when the Division calculates the

¹ 65 years of age or older, blind, or permanently and totally disabled. *See* 7 AAC 40.020 and 7 AAC 40.120.

total monthly income of an applicant and his spouse, in order to determine eligibility for Adult Public Assistance benefits. There are no exclusions listed in those regulations which even remotely address income used for the support of children living outside of the country. Therefore, Claimant's household income used for the support of his wife's children in the Philippines cannot be considered an income exclusion when calculating the household's income. In other words, the \$500 that is sent for the support of the children living outside of the country cannot be excluded when calculating the total monthly income for the household to determine eligibility for adult Public Assistance.

With the exclusion, the household income would be within the income limits of the program.² However, there is no dispute that, without a \$500.00 income exclusion, the Claimant's household total monthly income is in excess of the Adult Public Assistance program limit. (See, Finding of Facts 3, 4, and 6) Since there is no income exclusion, the Claimant's household total monthly income is in excess of the Adult Public Assistance program limit.

CONCLUSIONS OF LAW

1. The Claimant failed to meet his burden by a preponderance of the evidence that the Division was not correct to include the \$500.00 that was sent to the children of the Claimant's spouse, when it calculated the Claimant's household total monthly income to determine eligibility for Adult Public Assistance.
2. The Division was correct when it determined the Claimant's total monthly household income exceeded the income limit for the Adult Public Assistance program.
3. The Division's action terminating Claimant's Adult Public Assistance benefits after August 31, 2009 was therefore correct.

DECISION

The Division was correct to terminate Claimant's Adult Public Assistance benefits after August 31, 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

² The Division calculated the Claimant's household total income at \$1,694.00 per month. If \$500.00 is excluded from this amount, it would be \$1,194.00, which is less than the \$1,504.00 Adult Public Assistance income limit. The Claimant contends his monthly income is \$1,576.00. The result would be the same if the \$500.00 is excluded because the income would equal \$1,076, which is also less than the Adult Public Assistance monthly income limit.

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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.

DATED this 16th day of February, 2010.



Patricia Huna
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 16th day of February 2010, true and correct copies of the foregoing were sent to:

Claimant – Certified Mail, Return Receipt Requested.

A copy set via e-mail to the following:

- ██████████, Fair Hearing Representative
- ██████████, DPA Director
- ██████████, DPA Director's Office
- ██████████, DPA director's Office
- ██████████, Chief of Field Services
- ██████████, Policy & Program Development
- ██████████, Staff Development & Training

J. Albert Levitre, Jr.
Law Office Assistant I