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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-632
)
 Claimant.) DPA Case No. [REDACTED]
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) applied for Alaska Temporary Assistance Program (ATAP), Food Stamp, and Medicaid benefits on October 14, 2009 (Ex. 2.0). The State of Alaska Division of Public Assistance (DPA or Division) denied the Claimant's application for Food Stamp benefits via written notice dated December 3, 2009 (Ex. 9.4). The Division subsequently denied the Claimant's application for ATAP and Medicaid benefits via written notice dated January 26, 2010 (Ex. 13).

On December 7, 2009 the Claimant requested a fair hearing with regard to the Division's denial of her application for ATAP, Food Stamp, and Medicaid benefits (Exs. 9.3, 9.5). On December 10, 2009 the Claimant notified the Division that she was withdrawing her hearing request as to the Food Stamp Program, but that she still wanted a hearing with regard to her applications for ATAP and Medicaid benefits (Ex. 11).

This Office has jurisdiction to resolve this case pursuant to 7 AAC 49.010.

A hearing was held on February 2, 2010 before Hearing Examiner Patricia A. Huna.¹ The Claimant attended the hearing telephonically, represented herself, and testified on her own behalf. [REDACTED], a Public Assistance Analyst with the Division, attended the hearing in person and represented and testified for the Division. The parties' testimonies were received and the parties' exhibits were admitted into evidence. At the end of the hearing the record was closed and the case was submitted for decision.

¹ Following the hearing this case was reassigned to Hearing Examiner Jay Durych. He reviewed the hardcopy case file, and listened to the digital recording of the hearing, prior to preparing and issuing this decision.

At the end of the February 2, 2010 hearing, the DPA's Hearing Representative tentatively conceded Medicaid eligibility, subject to subsequent confirmation. The DPA hearing representative confirmed the concession of Medicaid eligibility in writing on February 16, 2010 (Ex. 45). The DPA representative subsequently confirmed, at the request of this Office, that the only benefit program still at issue in this case is the Alaska Temporary Assistance Program (Ex. 47).

ISSUE

Was the Division correct when on January 26, 2010 it denied the Claimant's application for Alaska Temporary Assistance Program benefits based on the Claimant's failure to timely submit a completed Form TA-10 (or other acceptable medical evidence from a health care provider) to support the Claimant's assertion of inability to work?

FINDINGS OF FACT

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

1. The Claimant submitted an application for Alaska Temporary Assistance Program (ATAP), Food Stamp Program,² and Medicaid Program³ benefits to DPA on October 14, 2009 (Ex. 2.0).
2. The Division initially denied the Claimant's Application for ATAP benefits on December 3, 2009 (Exs. 8, 9.2). This denial was based on an alleged failure to provide certain specific information and documentation, and an alleged failure to apply for and pursue unemployment insurance benefits. *Id.* However, on December 8, 2009 the Claimant submitted a document (Ex. 9.1) in which the Claimant asserted a disability. This caused the Division to reverse its position or concede on the issues (noted above) based on which it had previously denied the Claimant's ATAP application (Ex. 9.0).⁴ Accordingly, the Division pended the Claimant's ATAP application for submission of a form from her health care provider (Form TA-10) supporting her claim of disability. *Id.*
3. On December 10, 2009 DPA mailed a written notice to the Claimant which stated in relevant part as follows (Ex. 12.0):

² The Division denied the Claimant's Application for Food Stamp benefits on December 3, 2009 (Ex. 9.4). However, the Claimant withdrew her hearing request as to the Food Stamp Program on December 10, 2009 (Ex. 11). Accordingly, the Claimant's application for Food Stamp benefits is no longer at issue and need not be discussed further in this decision.

³ The Division denied the Claimant's Application for Medicaid benefits on December 3, 2009 (Exs. 8, 9.2) and again on January 26, 2010 (Ex. 13). However, as discussed in the Statement of the Case, above, the Division conceded Medicaid eligibility on February 16, 2010 (Ex. 45). Accordingly, the Claimant's application for Medicaid benefits is no longer at issue and need not be discussed further in this decision.

⁴ The majority of the written record in this case concerns the Division's *initial* denial of the Claimant's ATAP and Medicaid applications on December 3, 2009. This initial denial was based on the Claimant's alleged failure to provide certain specific information and documentation (not pertaining to her alleged inability to work), and her alleged failure to apply for and pursue unemployment insurance benefits. However, as discussed above, the Division ultimately conceded ATAP and Medicaid eligibility as to these issues. Accordingly, the issues addressed in the Division's *initial* denial are no longer relevant and thus need not be discussed further in this decision.

Your application for [ATAP] and Medicaid, received on October 14, 2009, is being held because I need more information. Please give me the items listed at the bottom of this notice by December 21, 2009 or your application may be denied.

This action is supported by [Alaska state ATAP regulation] 7 AAC 45.175

* * * * *

Items you need to send in: **We are sending you some forms in another envelope. One is a health status report form⁵ that must be filled out by your doctor to verify that you are not currently able to work** The other form is an authorization for release of [medical] information that will allow us to speak with your doctor if we have any questions about your medical condition or how the first form was filled out. [Emphasis added].

4. On January 26, 2010 DPA mailed a written notice to the Claimant which stated in relevant part as follows (Ex. 13):

Your application for [ATAP] and Medicaid, received on October 14, 2009, is denied. We asked you to give us information and proofs by December 21, 2009 to determine your eligibility. We did not receive the items listed at the bottom of this notice.

* * * * *

This action is supported by [Alaska state ATAP regulation] 7 AAC 45.175

Items we needed but did not get: **We sent you a TA-10 form in the mail, and requested that you have your health care provider fill it out and return it to this office no later than 12/21/09.** Since we have not received this form back, we have no choice but to deny your request for [ATAP] and Medicaid [benefits]. [Emphasis added].

5. The Claimant requested a fair hearing with regard to the Division's denial of her applications for ATAP, Food Stamp, and Medicaid benefits on December 7, 2009 (Exs. 9.3, 9.5).

6. At the hearing of February 2, 2010 the Claimant testified that:

- a. She is manic-depressive and has borderline personality disorder. In Colorado she was in a special program which provided her with the necessary medication. Since moving to Alaska she no longer has access to this program. She cannot afford to pay for her medications on her own. Accordingly, she has been off her medications since moving to Alaska.

⁵ The Division uses a document known as the Health Status Report Form (TA#10) to document any medical limitations on an ATAP applicant or recipient's ability to participate in work activities. See Alaska Temporary Assistance Manual Section 730-2. Use of the form is not mandatory, however; other documentation from a physician or other licensed medical professional, that describes the duration of the condition and the limitations on the individual's ability to participate in work activities, will suffice. *Id.*

b. She could not get a doctor's statement because she could not afford to go to a doctor. She did not attempt to find a free health clinic at which to obtain a doctor's statement because she had just moved to Fairbanks and was not yet familiar with locally available services.

7. At the end of the hearing of February 2, 2010 the DPA Hearing Representative tentatively conceded Medicaid eligibility, subject to subsequent confirmation. The DPA Hearing Representative confirmed the concession of Medicaid eligibility in writing on February 16, 2010 (Ex. 45). The DPA Hearing Representative subsequently confirmed that the only benefit program still at issue in this case is the Alaska Temporary Assistance Program (Ex. 47).

PRINCIPLES OF LAW

I. Burden of Proof and Standard of Proof.

This case involves the Division's denial of an initial application for Alaska Temporary Assistance Program (ATAP) benefits. The party seeking a change in the status quo normally has the burden of proof.⁶ In this case the Claimant is attempting to change the status quo or existing state of affairs by obtaining ATAP benefits. Accordingly, the Claimant 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.⁷ This 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.⁸

II. The Alaska Temporary Assistance Program – in General.

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.

⁶ *State of Alaska Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

⁷ 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).

⁸ *Black's Law Dictionary* at 1064 (West Publishing, 5th Edition, 1979).

III. ATAP Statutes and Regulations Relevant to this Case.

7 AAC 45.175, titled “Verification and Documentation,” provides in relevant part as follows:

(a) Except as provided by 7 AAC 45.180 and 7 AAC 45.255, *an applicant's claim for assistance must be supported by verification satisfactory to the department that the applicant meets all eligibility requirements.* An applicant or a recipient who refuses to provide the department with verification of eligibility required under this section is not eligible to receive ATAP benefits. [Emphasis added]

(b) The department will determine whether the verification and documentation received is satisfactory by considering (1) its necessity for making an eligibility determination; (2) whether it reasonably proves the fact that requires verification or documentation; (3) all other information contained in the application and case file; and (4) what alternative types of verification or documentation are obtainable and which are not obtainable.

7 AAC 45.185, titled “Completing Required Forms,” provides in relevant part as follows:

It is the applicant's responsibility to complete the application form and any other supporting documentation required by the department.

7 AAC 45.235, titled “Determining Physical or Mental Ability to Perform Gainful Activity,” provides in relevant part as follows:

(b) To substantiate a claim of inability under (a)(2) of this section, medical evidence from a licensed medical or health care practitioner as to the nature, extent, and expected duration of the condition is required. The evidence must be submitted on a form provided or in a format specified by the department, and may be obtained at reasonable cost at the department's expense, when authorized by the department . . . [Emphasis added].

7 AAC 45.260, titled “Work Activities,” provides in relevant part as follows:

(b) . . . The department will also exempt from the work activities requirement a parent or caretaker described in AS 47.27.035(c). The exemption provided in AS 47.27.035 (c)(2) is applicable only to the extent that the medical reasons prevent the parent or caretaker from participating in the work activities. The documentation required by AS 47.27.035 (c)(2) must be submitted on a form provided, or in a format specified, by the department. [Emphasis added].

* * * * *

AS 47.27.035(c) provides in relevant part as follows:

(c) A parent or caretaker may be exempt from work participation requirements in the family self-sufficiency plan if . . . (2) the parent or caretaker establishes an inability to participate for medical reasons supported by documentation from a physician or other licensed medical professional . . . [Emphasis added].

* * * * *

ANALYSIS

I. Introduction; The Parties' Contentions; Definition of Issue.

On December 7, 2009 the Claimant requested a fair hearing with regard to the Division's denial of her application for ATAP, Food Stamp, and Medicaid benefits (Exs. 9.3, 9.5). However, on December 10, 2009 the Claimant notified the Division that she was withdrawing her hearing request as to the Food Stamp Program (Ex. 11). Further, after the hearing (on February 16, 2010) the Division conceded Medicaid Program eligibility (Ex. 45). Accordingly, the only benefit program still at issue in this case is the Alaska Temporary Assistance Program (Ex. 47).

The DPA's Hearing Representative asserted at the hearing of February 2, 2010 as follows:

1. The Division originally denied the Claimant's ATAP application for not pursuing unemployment benefits. The Claimant did not assert that she was unable to work until after her application had initially been denied.
2. The Claimant then asserted that she is disabled. DPA pended her case for verification of disability. The Claimant was asked to provide a statement from a medical provider stating that she was unable to pursue employment.⁹ However, this verification of disability was never provided by the Claimant.

In response, the Claimant testified at the hearing of February 2, 2010 that:

1. She is not currently able to work because she is manic-depressive, has borderline personality disorder, and cannot afford to pay for her medications on her own.
2. She could not get a doctor's statement because she could not afford to go to a doctor.

⁹ The Division uses a document known as the Health Status Report Form (TA#10) to document any medical limitations on an ATAP applicant or recipient's ability to participate in work activities. See Alaska Temporary Assistance Manual Section 730-2. Use of the form is not mandatory, however; other documentation from a physician or other licensed medical professional, that describes the duration of the condition and the limitations on the individual's ability to participate in work activities, will suffice. *Id.*

Accordingly, the precise issue for resolution is whether the Division was correct to deny the Claimant's application for Alaska Temporary Assistance Program benefits, based on the Claimant's failure to timely provide a Form TA-10 or other medical evidence of disability, even though the Claimant could not afford to pay a doctor to have her disability verified.¹⁰ The Claimant bears the burden of proof on this issue by a preponderance of the evidence (see Principles of Law, above).

II. Was The Claimant Required to Submit a Form TA-10 in the Absence of Her Ability to Pay a Physician?

The Alaska Temporary Assistance Program generally requires that an applicant or recipient engage in work activities (see generally 7 AAC 45.260). However, pursuant to AS 47.27.035(c) and 7 AAC 45.260(b), an applicant or recipient is excused from the work activities requirement if medical reasons prevent the applicant or recipient from participating in work activities (see Principles of Law, above).

Where (as here) a claimant is alleging an inability to work due to medical disability, the claimant's allegation must be supported by medical documentation. See 7 AAC 45.235(b), set forth in the Principles of Law, above. The Claimant has the initial responsibility for providing all necessary medical information and documentation. See 7 AAC 45.175(a-b), 7 AAC 45.185, and AS 47.27.035(c)(2), set forth in the Principles of Law, above.

In this case, the Division requested that the Claimant complete and return to it a Form TA-10 on December 10, 2009 (Ex. 12.0). The Division advised the Claimant at that time that the completed Form TA-10 needed to be received by DPA by December 21, 2009 or the Claimant's application might be denied (Ex. 12.0). By January 26, 2010 the Division had still not received a completed Form TA-10 from the Claimant, and so the Claimant's ATAP application was denied on that date (Ex. 13).

The Claimant did not assert that she had not received the Division's notice requesting completion of the Form TA-10 or other medical evidence of disability. Similarly, the Claimant never asserted that she ever completed and returned the Form TA-10, or other medical evidence of disability, to the Division. Accordingly, the Division's assertion that it did not receive the Form TA-10 (or other medical evidence of disability) from the Claimant is uncontested and has been proven by a preponderance of the evidence.

The only remaining issue is whether the Claimant was excused from providing the completed Form TA-10, or other acceptable medical evidence of disability, based on her assertion that she could not afford to see a doctor. 7 AAC 45.235(b) addresses this issue and provides in relevant part as follows:

¹⁰ The Division uses a document known as the Health Status Report Form (TA#10) to document any medical limitations on an ATAP applicant or recipient's ability to participate in work activities. See Alaska Temporary Assistance Manual Section 730-2. Use of the form is not mandatory, however; other documentation from a physician or other licensed medical professional, that describes the duration of the condition and the limitations on the individual's ability to participate in work activities, will suffice. *Id.*

(b) To substantiate a claim [of medical disability that is severe enough to prevent the individual from working at full-time employment], *medical evidence from a licensed medical or health care practitioner as to the nature, extent, and expected duration of the condition is required. The evidence must be submitted on a form provided or in a format specified by the department, and may be obtained at reasonable cost at the department's expense, when authorized by the department* [Emphasis added].

7 AAC 45.235(b) thus requires medical evidence from a licensed health care practitioner to substantiate the Claimant's assertion of a medical disability severe enough to prevent her from working full time. It is also clear that, pursuant to 7 AAC 45.235(b), (quoted above), the Division may pay the reasonable cost of a physician's preparation of a Form TA-10 on behalf of a claimant ("*may be obtained at reasonable cost at the department's expense*"). However, it is equally clear that, pursuant to 7 AAC 45.235(b), the Division cannot be expected to pay the physician's fee for completing a Form TA-10, or providing equivalent medical documentation of disability, *unless the Claimant first requests that the Division do so.*

The Claimant did not assert that she ever requested that the Division pay the physician's fee for completing a Form TA-10 (or providing equivalent medical documentation of disability), and there is no evidence in the record that she did so. In the absence of such a request, the Division was correct to deny the Claimant's application for ATAP benefits for failure to provide the Division with a completed Form TA-10 or equivalent medical documentation of disability.

CONCLUSIONS OF LAW

1. As an applicant for ATAP benefits, the Claimant had a general duty, pursuant to 7 AAC 45.175 and 7 AAC 45.185, to timely provide the Division with information and documentation sufficient to prove that the Claimant satisfied all applicable eligibility requirements, including proof of an inability to work due to medical disability.

2. Pursuant to 7 AAC 45.235(b), the Division may assist an ATAP applicant or recipient by paying the reasonable cost of a health care professional's preparation of a Form TA-10 (or equivalent medical documentation) on behalf of a claimant. However, pursuant to 7 AAC 45.235(b), any obligation on the part of the Division to pay a reasonable fee for completing a Form TA-10 does not arise until a Claimant requests that the Division do so.

3. The Division carried its burden and proved, by a preponderance of the evidence, that (a) it requested that the Claimant provide it with a completed Form TA-10 (or other acceptable medical evidence from a health care provider) documenting an inability to work; (b) the Claimant did not do so; and (c) the Claimant did not request that the Division pay the reasonable cost of a physician's preparation of the Claimant's Form TA-10.

4. Accordingly, the Division was correct when on January 26, 2010 it denied the Claimant's application for Alaska Temporary Assistance Program benefits based on the Claimant's failure to timely submit a completed Form TA-10 (or other acceptable medical evidence from a health care provider) to support the Claimant's assertion of an inability to work.

