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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-639  
 )  
 Claimant. ) Division Case No. [REDACTED]  
 )  
 \_\_\_\_\_ )

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

[REDACTED] (Claimant) applied for Adult Public Assistance and Medicaid benefits on October 28, 2009. (Ex. 2). On November 12, 2009, the Division of Public Assistance (Division) approved Claimant's benefits. However, his benefit payment was not to be issued directly to the him, but to a third party payee on his behalf. (Ex. 3 – 3.2) Claimant requested a fair hearing on December 7, 2009 (Ex. 5.1-5.2).

This office has jurisdiction pursuant to 7 AAC 49.010.

The hearing was scheduled for February 9, 2010. (December 14, 2009, Notice of Scheduled Telephone Fair Hearing) On January 25, 2010, Claimant verbally withdrew his fair hearing request. (Ex. 7). On February 9, 2010, at the time of the scheduled hearing, Claimant requested going forward with his fair hearing regarding his Adult Public Assistance benefits. The Division requested a continuance. The Division's request was granted and a hearing was scheduled for February 23, 2010.

A hearing was held on February 23, 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<sup>1</sup>

Was the Division correct when it paid Claimant's Adult Public Assistance to a third party payee after his benefits were approved on November 12, 2009?

## FINDINGS OF FACT

The following facts are not in dispute and are established by a preponderance of the evidence.

1. Claimant signed and submitted an application for Adult Public Assistance and Medicaid on October 28, 2009. (Ex. 2 – 2.9)

1. The Division approved Claimant's Adult Public Assistance application on November 12, 2009, with a third party payee receiving the benefits. (Ex. 3)

2. Claimant, at the time of approval and as of the date of the hearing, was receiving Supplemental Security Income (SSI) benefits from the Social Security Administration. The Federal Administration pays Claimant's benefits to a third party. (Ex. 3.1)

3. The Division makes Claimant's Adult Public Assistance benefits payment to the same third party payee that is receiving Claimant's Supplemental Security Income. (Ex. 3.1 testimony of [REDACTED] and Claimant)

4. Claimant argues he wants his Adult Public Assistance benefits paid directly to him. (Testimony at hearing)

## 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)

State regulation 7 AAC 40.400(b) states the following regarding Adult Public Assistance benefits:

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<sup>1</sup> At the hearing Claimant complained about having a payee receive his Public Assistance benefits. The Claimant also raised another issue. In his October 28, 2009 application, he had authorized another individual to represent him. At the hearing Claimant stated he did not want someone representing him with his case. The Division representative stated he would remove the authorized representative from having any authority. Therefore, the issue regarding the authorized representative is not relevant to this case.

**The division may make payment to a third party when the Social Security Administration requires a third party to receive an applicant's Social Security payment on the applicant's behalf.** Unless the division determines that good cause exists not to select the same person, the division shall select the same third party to serve as payee as the Social Security Administration selected. If the payee selected by the Social Security Administration cannot be selected to serve as payee for assistance under this chapter, the division shall select an alternate payee. Under these circumstances, assistance under this chapter will be withheld until an alternative payee is selected by the division. (Emphasis added)

The Division policy **requires** third party payees for all Adult Public Assistance benefits recipients who have a third party payee for Social Security benefits. *Alaska Adult Public Assistance Manual*, § 452-7 B. Payment to a Third Party Payee (Manual).

### ANALYSIS

At the hearing, Claimant simply objected to having a third party payee. Accordingly, there is no factual dispute in this case and there is only the following legal issue: whether the Division was correct when it paid Claimant's Adult Public Assistance to a third party payee after his benefits were approved on November 12, 2009.

Because this case involves an application for benefits, the Claimant is the party seeking to change the status quo, therefore he has the burden of proof by a preponderance of the evidence.

Regulation 7 AAC 40.400 is very clear that the Division may make payment of a Claimant's Adult Public Assistance benefits to a third party when the Social Security Administration requires a third party to receive his Social Security payment. Therefore, the Division has the discretion to make payment to a third party payee.

In exercising its discretion, the Division's policy is to make Adult Public Assistance benefit payments to third party payees in all cases where the recipient has a third party payee for Social Security benefits. *Manual* § 452-7 B. The Social Security Administration pays the Claimant's Social Security benefits to a third party on behalf of the Claimant. The Division treated Claimant consistently with any other recipient similarly situated, when it paid Claimant's benefits to a third party payee. Therefore, pursuant to regulation and policy, the Division acted properly in making Claimant's Adult Public Assistance payments to a third party payee.

### CONCLUSIONS OF LAW

Claimant failed to meet his burden of proof by a preponderance of the evidence that the Division acted improperly when it paid Claimant's Adult Public Assistance benefits to a third party payee, because the Social Security Administration paid the Claimant's Social Security benefits to a third party.

**DECISION**

The Division was correct to pay Claimant's Adult Public Assistance benefits to a third party payee after his application was approved on November 12, 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.

DATED this 3rd day of March, 2010.

[Redacted Signature]

Patricia Huna  
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 3rd day of March 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:

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

J. Albert Levitre, Jr.  
Law Office Assistant I