

Office of Hearings and Appeals
3601 C Street, Suite 1322
P. O. Box 240249
Anchorage, AK 99524-0249
Ph: (907) 334-2239
Fax: (907) 334-2285

**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-642
) Division Case No. [REDACTED]
_____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

Ms. [REDACTED] (Claimant) received Alaska Temporary Assistance (Temporary Assistance) benefits during the months of October and November 2009. (Ex. 2.0) On November 12, 2009, the Division of Public Assistance (Division) sent the Claimant a notice she had received \$1,184.00 more in Temporary Assistance benefits than she was entitled to receive, and that the Division was requiring her to repay that amount. (Ex. 4.0) The Claimant requested a Fair Hearing on November 17, 2009. (Ex. 4.1)

The Division subsequently, on January 7, 2010, amended its position in this case and alleged the Claimant actually owed the Division a total of \$1,699.00, instead of the \$1,184.00 it had originally claimed was owed. (Ex. 13.0)

The Office of Hearings and Appeals (Office) has jurisdiction under authority of 7 AAC 49.010 *et. seq.*

The Claimant's Fair Hearing was held on January 20, 2010 before Hearing Officer Claire Steffens. The Claimant appeared telephonically, represented herself, and testified on her own behalf. Ms. [REDACTED], a Sudanese Dinka interpreter with [REDACTED], appeared telephonically and interpreted for Claimant. Ms. [REDACTED], the Division's Public Assistance Analyst, appeared in person representing the Division and testified on behalf of the Division.

Following the January 20, 2010 hearing, this case was reassigned to Hearing Officer Larry Pederson, who reviewed the entire hearing record and listened to the recording of the entire hearing before issuing this Decision.

ISSUE

Was the Division was correct to seek reimbursement of Alaska Temporary Assistance benefits of \$1,699.00 from Claimant, which were allegedly overpaid for the months of October and November 2009?

FINDINGS OF FACT

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

1. On March 25, 2009, when Claimant applied for benefits from the Alaska Temporary Assistance Program (Temporary Assistance) she was unemployed and a single mother of a 6 child family assistance unit. (Ex. 1; Ex. 4.2)
2. In August 2009, while receiving Temporary Assistance benefits, the Claimant was receiving employment and training services from Nine Star Enterprises. ¹(Claimant testimony).
3. On August 28, 2009, Claimant was hired by [REDACTED]. (Ex. 2.4; Ex. 13.5)
4. The Claimant reported her new job to her Nine Star Enterprises case manager within two days of being hired. (Claimant testimony) The Claimant received a Division of Public Assistance Employment Statement (form Gen 155) from her Nine Star Enterprises case manager to have her employer fill out and return to Nine Star Enterprises. *Id.* That form contained Nine Star Enterprises phone and fax numbers. (Ex. 2.4) The Claimant gave her employer the employment statement. (Claimant testimony)
5. On September 14, 2009, [REDACTED] sent, by facsimile transmission, Claimant's completed Employment Statement to Nine Star Enterprises. (Ex. 2.4)
6. On October 28, 2009, Nine Star Enterprises sent the Division, by facsimile, Claimant's Employment Statement of September 14, 2009. (Ex. 2.3-2.4) This was 45 days after Nine Star received the completed Employment Statement from the Claimant's employer.
7. On November 12, 2009, the Division sent the Claimant written notice she had been overpaid in October and November 2009 for a total of \$1,184.00 in Temporary Assistance benefits because she had not timely reported her employment and it was seeking repayment of that amount. (Ex. 2.5-2.13; Ex. 3) The Division calculated the

¹ Nine Star Enterprises is a private business that is contracted to the Division to provide workforce development services, i.e. job search, employment training, etc., to Public Assistance recipients.

amount using prospective income and applying a “work deduction” against earned income. (Ex. 2.5-2.11)

8. On January 7, 2010, the Division’s Fair Hearing Representative reviewed Claimant’s eligibility for Program benefits and found the Technician’s calculation of the \$1,184.00 amount was not correct. (Ex. 13.0) The Representative did not credit Claimant with a “work deduction” and concluded she had been overpaid in October and November 2009 for a total of \$1,699.00. (Ex. 13.0; Exs. 13.1-13.6)

9. On January 7, 2010, the Fair Hearing representative notified Claimant she had been overpaid \$1,699.00.² (Ex. 13.0)

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)

An Alaska Temporary Assistance benefits recipient is required to notify the Department of Health and Social Services (Department) within ten days of the start or stop date of employment. 7 AAC 45.270(a) and (b)(6)(A):

(a) . . . If an applicant or recipient fails, without good cause, to report within the 10-day period any change described in (b) of this section that would decrease the payment or result in ineligibility, the department will deny a deduction from earned income under 7 AAC 45.500, calculate the

² The Division alleges it also sent Claimant notice of the increased amount of overpaid benefits it was seeking from Claimant in another document, a copy of which it provided as Exhibit 13.6. However, the date the notice allegedly was printed is shown as “999999.” (Ex. 13.6)

amount overpaid, and attempt to recoup the overpayment in accordance with 7 AAC 45.570. **If a change is not reported within the 10-day period but is reported in time for the department to make the necessary adjustments in the ATAP payment, the department will find that no overpayment exists.** A report may be submitted either in person, in a signed and dated writing, or by telephone.

(b) The following changes must be reported under (a) of this section:

* * *

(6) change in the employment of any member of the ATAP economic unit if

(A) the individual starts or stops a job or self-employment.

(Emphasis supplied)

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)³ 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....

ANALYSIS

The issue is whether the Division was correct to seek reimbursement from Claimant of \$1,699.00 in Alaska Temporary Assistance benefits which were overpaid for the months of October and November 2009. Because the Division is seeking to change the status quo by requiring Claimant to repay the Division for the Alaska Temporary Assistance benefits it allegedly overpaid the Claimant in October and November 2009, it has the burden of proof by a preponderance of the evidence.

The following facts are not disputed:

1. The Claimant became employed on August 28, 2009, when she was receiving employment services from Nine Star Enterprises.
2. The Claimant's credible testimony established that she reported her employment to her Nine Star Enterprises case manager within two days of obtaining a job.

³ Subsection (k) addresses the suspension of collection activities under certain circumstances not at issue in this case.

3. The Claimant further credibly testified that her Nine Star Enterprises case manager provided her with the Division's Employment Statement form for her employer to fill out and return to Nine Star Enterprises.
4. The Claimant's testimony is corroborated by the fact that her employer completed and returned the Employment Statement to Nine Star Enterprises on September 14, 2009, 18 days after she started work on August 28, 2009.
5. Nine Star Enterprises, however, did not report the fact the Claimant had obtained employment to the Division until October 28, 2009, which was 45 days after it received the Claimant's completed Employment Statement and almost two months after the Claimant told her Nine Star Enterprises case manager that she had obtained work.
6. Because Nine Star Enterprises did not report the fact of the Claimant's employment to the Division until October 28, 2009, the Claimant received more Temporary Assistance benefits for the months of October and November 2009 than she was otherwise entitled to receive.

The Division is required by regulation to recoup overpaid Program benefits once overpayment is found to have occurred, regardless of the cause of overpayment. *See* 7 AAC 45.570(a). However, the companion regulation, 7 AAC 45.270(a), creates an exception to the general repayment requirement by stating that if a Temporary Assistance recipient reports an employment change late, but "in time for the department to make the necessary adjustments in the ATAP payment, the department **will find that no overpayment exists.**" (emphasis added)

In this case, the Claimant reported her change in employment to her Nine Star Enterprises case manager, both verbally within two days after she started work, and by submission of the September 14, 2009 Employment Statement. If Nine Star Enterprises had promptly communicated the employment change to the Division, the Division would have had time to make changes to the Claimant's October and November 2009 Temporary Assistance payments. Pursuant to the clear language contained in 7 AAC 45.270(a), the Division is mandated ("will find that no overpayment exists") to find that there was not an overpayment to the Claimant. Because there was no overpayment, the Division could not rely upon 7 AAC 45.570(a) to require that the Claimant repay her October and November 2009 Temporary Assistance benefits.

The Division argued at hearing that the Claimant's notice to Nine Star Enterprises of her employment was not adequate notice to the Division. However, Nine Star Enterprises is the Division's authorized agent for workforce development activities. Indeed, Nine Star Enterprises gave the Claimant a Division Employment Statement to fill out and return to Nine Star Enterprises. Additionally, the Employment Statement contained only Nine Star Enterprises telephone and fax numbers, not the Division's. Further, Nine Star Enterprises itself finally reported, albeit not until October 28, 2009, the Claimant's employment to the Division. Under these circumstances, the Claimant informing Nine Star Enterprises of her employment was equivalent to informing the Division itself of her employment.

The fact that Nine Star Enterprises, the Division's agent, did not take action to notify the Division of the Claimant's new job until October 28, 2009, is not a delay that can be attributed to the Claimant.

Therefore, pursuant to 7 AAC 45.270(a), because the Claimant informed Nine Star Enterprises, the Division's agent, of her employment in time for the Division to take action to modify her October and November 2009 Temporary Assistance payments, "**no overpayment exists**" for the purposes of establishing an overpayment claim against the Claimant.

The Division had the burden of proof in this case. It has not met it. Because the Claimant reported her new job to the Division's agent, Nine Star Enterprises, in time for the Division to modify the Claimant's October and November 2009 Temporary Assistance benefits, the Division does not have an overpayment claim against the Claimant for October and November 2009 Temporary Assistance benefits. The Division was therefore not correct to require the Claimant to repay \$1,699.00 in Alaska Temporary Assistance benefits for the months of October and November 2009.

CONCLUSIONS OF LAW

1. The Division had the burden of proof by a preponderance of the evidence to establish that the Claimant was overpaid Temporary Assistance benefits in October and November 2009 because of the Claimant's failure to inform the Division of her new job.
2. The Division did not meet its burden. The Claimant notified the Division's agent, Nine Star Enterprises, of the fact that she had obtained a new job in time for the Division to modify her Temporary Assistance benefits for the months of October and November 2009.
3. Because the Claimant notified the Division's agent, Nine Star Enterprises, both verbally and in writing (the Employment Statement), of her new job in time for the Division to modify her Temporary Assistance benefits, the pertinent regulation, 7 AAC 45.270(a), mandates a conclusion that the Claimant was not overpaid Temporary Assistance benefits for the months of October and November 2009.
4. The Division was therefore not correct to seek recoupment of Alaska Temporary Assistance benefits in the amount of \$1,699.00 that the Claimant received in October and November 2009.

DECISION

The Division was not correct to seek recoupment of Alaska Temporary Assistance benefits in the amount of \$1,699.00 that the Claimant received in October and November 2009.

