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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. 10-FH-85  
 )  
 Claimant. ) Division Case No. 05571523  
 )  
 \_\_\_\_\_ )

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

Ms. [REDACTED], (Claimant) was receiving Alaska Temporary Assistance Program (Program) benefits. (Ex. 1) As a condition of her continued receipt of full benefits, Claimant was required to participate in completing a Family Self-Sufficiency Plan (FSSP). (Exs. 2.0 - 3.3) The Division of Public Assistance (Division) sent Claimant written notice on January 22, 2010 that it was imposing a penalty reducing her Temporary Assistance benefits beginning February 1, 2010. (Ex. 7) Claimant requested a Fair Hearing on March 24, 2009. (Ex. 21) This Office has jurisdiction under authority of 7 AAC 49.010 and AS 47.27.080.

Claimant's Fair Hearing was scheduled for April 20, 2010. The hearing began on that day, but was continued until April 29, 2010, at the request of the Division. On April 27, 2010, the April 29, 2010 hearing was continued until May 6, 2010 at the Division's request. Claimant did not appear for the May 6, 2010 hearing. On that day an order was issued from this office finding the hearing abandoned and dismissing the case. After a response from Claimant, received in this office on May 19, 2010, the hearing was reinstated in an order issued on May 26, 2010. The hearing was rescheduled and held on June 16, 2010.

Claimant appeared telephonically and testified at both the April 20, 2010 and June 16, 2010 hearings. The Division was represented by [REDACTED], Fair Hearing Representative, who appeared in person and testified on behalf of the Division on both days. [REDACTED], Project Operation Manager from Maximus, the agency

administering the FSSP, appeared telephonically and testified on behalf of the Division on both days. [REDACTED], Employment Advocate from Maximus, appeared telephonically and testified on behalf of the Division on June 16, 2010.

### ISSUE

Was the Division correct to impose a penalty against Claimant's Alaska Temporary Assistance benefits beginning February 1, 2010 through April 7, 2010 for her failure to comply with her family self-sufficiency plan?<sup>1</sup>

### FINDINGS OF FACT

The parties have supplied the following facts, which they have proven by a preponderance of the evidence:<sup>2</sup>

1. Claimant was receiving Alaska Temporary Assistance Program benefits. (Ex. 1)
2. As part of her receipt of Alaska Temporary Assistance benefits, Claimant and her caseworker at Maximus Alaska Works (Maximus) developed a family self sufficiency plan (FSSP) on November 23, 2009.<sup>3</sup> (Exs. 2.0 – 2.1)
3. On November 23, 2009, Claimant attended an appointment with her case worker to formulate this plan. (Ex. 2.0 – 2.1) Claimant participated in person in developing the Plan and agreed to the plan before signing it. (Testimony of [REDACTED]) The plan required Claimant to seek to maintain 20 weekly hours of "CWE" with the elementary school chosen for this assignment. The "Changes to this plan" section clearly states: "I understand that I must contact my case manager if I want to make any changes to this plan."(Ex. 2.1)
4. On December 23, 2009, Claimant attended another appointment with her case worker to update the plan in anticipation of the elementary school winter break. (Ex. 3.0-3.1 & testimony of [REDACTED]) This update required the Claimant to do the following:
  - a) When school resumes, seek to maintain 20 weekly hours of "CWE" with the elementary school chosen for this assignment.

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<sup>1</sup> At the hearing and in the Fair Hearing request, Claimant stated she believed her benefits were reduced in January 2010. However, the record remained open after the hearing for the Division to provide an Issuance History. That document, submitted on June 17, 2010, reflects Claimant received her full benefits for the month of January. This document, coupled with the Penalty Notice the Division sent on January 22, 2010, indicate Claimant's benefits were not reduced in January. Therefore, the month of January will not be addressed in this decision.

<sup>2</sup> Claimant filed a recertification application on December 29, 2010. (Ex. 4 – 4.3). That application was eventually approved, with the non-compliance penalty imposed, on March 23, 2010. The events surrounding this application process have little effect on the issue in this case.

<sup>3</sup> Maximus Alaska Works is a designee of the State of Alaska when working with Temporary Assistance recipients.

b) Attend work success daily Mon – Fri 8 am – 5 pm at home or at the Mat-Su Job Center until full time work begins.

The same language regarding changes was also in the update. (Ex. 3.1)

5. During the month of December, Claimant did voluntary babysitting for a friend. The parties did not provide any evidence to indicate she did any other activities in order to comply with the FSSP. (Ex. 7 & 12).

6. On January 6, 2010, Claimant called her case worker. During that call, Claimant stated she had been in a car accident, and because her car was totaled, she no longer had transportation. (Ex. 7.) The case worker did not offer any suggestions for alternative transportation at that time. (Testimony of [REDACTED] and [REDACTED])

7. On January 22, 2010, the Division sent Claimant a notice it was imposing a penalty for failing to comply with the FSSP. (Ex. 7) The notice stated her Temporary Assistance benefits would be reduced beginning with the month of February 2010 because of this penalty. The notice stated the reason given for the penalty was that Claimant “[h]as not provided any structured work search, school, work activities, or volunteer hours for December. No good cause provided to case mgr.” The notice further stated: “To cure the peanly [sic] you will have to participate in 5 days of structured work search, school, work or volunteer activities.” (Ex. 7)

8. On February 19, 2010, Claimant met with her case worker. (Ex. 14.0) During that meeting, they updated the FSSP. (Ex. 14.0 – 14.2) The new plan required Claimant to attend the job center “daily Mon-Fri from 8:00 – 1:00 at Mat-Su Job Center until full time work begins. Sign in at Maximus Front Desk daily at 8 am.” (Ex. 14.1-14.2) At that time it was agreed the Division would provide taxi service to her so that she could comply with the requirements of the updated FSSP. (Testimony of Claimant and [REDACTED])

9. At the June 16, 2010 hearing, the Division further defined what Claimant needed to do to cure the penalty. Claimant must attend the job center from 8:00 a.m. – 1:00 p.m. for five consecutive days. In the alternative, Claimant was allowed to make up at a later date time missed. (Testimony of [REDACTED] and [REDACTED])

10. In February of 2010, Claimant came into the job center at the following dates and times:

February	19	9:00 – 1:00
	22	9:59 – 1:00
	23	10:00 – 1:00
	24	10:00 - 1:00
	25	9:30 – 1:00
	26	9:35 – 1:00

Claimant came into the job center a total of 20 hours during the month of February, 2010. This finding is based on the sign-in sheets Ms. [REDACTED] and [REDACTED] recited into the record.

11. In February 2010, Claimant did not fulfill her FSSP requirements in any other matter. This finding is based on the following:

a. Claimant testified she made up her hours by going into the community, picking up applications, and bringing them to the job center. At the June 16, 2010 hearing, initially she was insistent she complied with the requirements by going to the job center every day from 8:00 – 1:00, as required. It was only after the sign-in sheets were reviewed that she changed her testimony to add that she completed her work hours by looking for work in the community. Her testimony is not credible because she is inconsistent and it is self-serving.

b. ██████ testified if Claimant had brought in applications, those applications would have been in the job file. ██████ testified there are no applications in the file. Her testimony is credible because it is logical and is not self-serving.

12. Claimant went to the job center during the following days and times in March 2010:

March	2	8:30 – 1:00
	3	10:30 no sign out
	4	9:00 – 10:00
	16	8:00 – no sign out
	17	8:00 – 1:30
	18	8:00 – no sign out
	19	8:00 – 2:00
	22	8:05 – 2:30
	23	name was on sheet, but no time
	24	10:00 – 11:30
	25	8:30 – 1:35
	26	8:00 - no sign out
	30	8:10 – 12:30
	31	7:55 – no sign out

This finding is based on Ms. ██████ and ██████’s testimony. Claimant testified that the days she was absent were due to her need to care for her sick child. Claimant’s testimony lacks credibility and is discounted because she only referred to one time when she called into her case worker regarding this excuse for her absence. Furthermore, her case worker testified Claimant never called regarding the days she failed to attend. Therefore, Claimant’s testimony lacks credibility and is discounted.

13. Claimant obtained a vehicle on March 15, 2010. (Ex. 18)

14. Claimant’s penalty was lifted on April 16, 2010, effective April 7, 2010, after her case worker learned Claimant had been working. (Testimony of ██████ and ██████)

## PRINCIPLES OF LAW

### I. Burden and Standard 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).

The regulations applicable to this case do not specify any particular standard of proof. A party in an administrative proceeding can assume that preponderance of the evidence is the standard of proof unless otherwise stated. *Amerada Hess Pipeline v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986)(citing to *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964)).

“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, 495 (Alaska 2003).

Therefore, the “preponderance of the evidence” is the standard of proof applicable to this case. This standard is met when the evidence, taken as a whole, shows that the fact sought to be proved is more probable than not or more likely than not.

### II. Alaska Temporary Assistance Program Family Self-Sufficiency Plan

Alaska Statute (AS) 47.27.010 provides cash assistance to families with physical custody of at least one dependent related child. A recipient of benefits from the Alaska Temporary Assistance Program (Program) is required to sign a cooperatively developed family self-sufficiency plan (FSSP) which sets out steps the family will take to become self-sufficient and establishes the time period for the achievement of self-sufficiency. AS 47.27.030.

A recipient of Alaska Temporary Assistance Program cash assistance is required to “participate in work activities as assigned by the department or its designee in order for the family to continue to receive cash assistance or self sufficiency services....” AS 47.27.035.

A recipient of Alaska Temporary Assistance Program cash assistance may be exempted from a requirement of AS 47.27.030 or AS 47.27.035 for “good cause” as provided by AS 47.27.035 and 7 AAC 45.261.

The “good cause” exceptions by which a recipient may be exempted from the work participation requirement of the Alaska Temporary Assistance Program are several. The “good cause” exceptions established by regulation which apply to the conditions of a family self-sufficiency plan are found at 7 AAC 45.261. That pertinent to this case concerns 7 AAC 45.261(a)(7) which states the following circumstance may constitute good cause: “necessary transportation breaks down or otherwise becomes unavailable, and the recipient lacks a reasonable alternative.”

A recipient who does not comply with the requirements of the family self-sufficiency plan (FSSP) or does not participate in work activities is subject to reductions in the cash assistance or other benefits available from the Alaska Temporary Assistance Program and may have other sanctions imposed. AS 47.27.085. A recipient who fails to comply with the FSSP “shall” have their cash benefits reduced. *Id.*

When a non-compliance penalty is imposed, AS 47.27.085(a)(1) states a reduction in the amount of cash assistance is established “beginning on the date the department makes a finding that the family is not in compliance under this subsection, 40 percent of the maximum cash assistance that would be payable.” The non-compliance penalty ceases on the day the department determines the family has acted in compliance with the FSSP and/or required work activities.” *Id.* This statute further states “the department shall adopt regulations necessary to implement this section.” AS 47.27.085(e).

### III. Notice Requirement

The Alaska Supreme Court, in *Allen v. State, Dep’t of Health & Soc. Servs., Div. of Pub. Assistance*, 203 P.3d 1155, 1167 (Alaska 2009), made it clear that before the Division reduces food stamp benefits, there must be notice of the action proposed to be taken and an opportunity to be heard.

Due process requires that benefit recipients be given ‘timely and adequate notice detailing the reasons for a proposed termination, and an effective opportunity to defend’ before their benefits are reduced or terminated, in order to afford them protection from ‘agency error and arbitrariness.’ *Mathews v. Eldridge* due process balancing test instructs courts to consider what burden can reasonably be placed on an agency to eliminate the risk of erroneously depriving an individual of a benefit in light of the value of that benefit to the individual. Where the recipient has a “brutal need” for the benefit at issue, as is the case with food stamps, “courts have traditionally required that agencies go to greater lengths- incurring higher costs and accepting inconveniences-to reduce the risk of error. Further, “[i]n the context of notice, such effort might amount to erring on the side of providing too much detail respecting the basis for the agency’s decision rather than too little.

*Allen v. State, Dep’t of Health & Soc. Servs., Div. of Pub. Assistance*, 203 P.3d 1155, 1167 (Alaska 2009)(quoting *Baker v. State, Dept’t of health & Soc. Servs.*, 191 P.3d 1005 (Alaska 2008) The Supreme Court’s requirements regarding notice were later extended to foster care reimbursements in *Heitz v. State, Dep’t of Health & Soc. Servs., Div. of Pub. Assistance*, 215 P.3d 302 (Alaska 2009)

The Alaska regulations for public assistance cases require that a public assistance applicant/recipient be given advance notice of an intended agency action that affects their benefits:

The division shall give written notice to client at least 10 days *before* the date the division intends to take action denying, suspending, reducing, or terminating assistance.

7 AAC 49.060. (Emphasis added) These regulations apply to Temporary Assistance benefit cases. 7 AAC 49.010(a).

The Division's policy regarding the imposition of the penalty is: "For recipients, the penalty begins on the first day of the month following the month in which a timely notice of adverse action is provided to the assistance unit." *Alaska Temporary Assistance Policy Manual* §723-2

## ANALYSIS

### I. Issue

Was the Division correct to impose a penalty against Claimant's Alaska Temporary Assistance benefits beginning February 1, 2010 through April 7, 2010 for her failure to comply with her family self-sufficiency plan?

### II. Burden of Proof

This case involves the Division's reduction of Claimant's Alaska Temporary Assistance Program (ATAP) benefits through imposition of a penalty. Reduction of benefits is deemed a change in the status quo. 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). Accordingly, the Division has the burden by a preponderance of the evidence of proving Claimant failed to comply with the terms of her FSSP as required by the Alaska Temporary Assistance Program.

Once the penalty was imposed, Claimant then becomes the party that is seeking to change the status quo. Accordingly, Claimant then has the burden of proving by a preponderance of the evidence she came into compliance with the terms of her FSSP as required by the Alaska Temporary Assistance Program.

### III. Adequate Notice

The Alaska Supreme Court has made it very clear it considers timely and adequate notice necessary before reduction in Food Stamp benefits and recoupment of foster care reimbursement. *Allen*, 203 P.3d 1155 and *Heitz*, 215 P.3d 302. When adequacy of notice is determined, the Court has instructed courts to consider the burden on the agency in eliminating the risk of erroneously depriving an individual of a benefit in light of the value of the benefit to the individual. *Id.* The Court has used this balancing test before, when it determined adequate and timely notice was require before the Division reduced Food Stamp benefits and also before an agency recouped Foster Care reimbursements. *Id.*

Like Food Stamp benefits and Foster Care reimbursement, a recipient has a great need for Temporary Assistance benefits. In contrast, the Division would not require much effort to provide adequate notice to a recipient. Therefore, it is clear the Due Process notice requirements set forth in *Allen* and *Heitz* apply as well to Temporary Assistance benefits.

Alaska Statute 47.27.085 states the reduction of benefits for non-compliance of the FSSP shall begin on the date the Division makes a finding that the family is not in compliance. Alaska Statute 47.27.085 also states the Department of Health and Social Services (Department) is required to adopt regulations necessary to implement the imposed penalties. The Department has adopted 7 AAC 49.060 which states the Division is required to give written notice to a recipient at least 10 days before the date the Division intends to reduce assistance.

The Alaska Supreme Court set forth notice requirements. AS 47.27.085 directs the Department to adopt regulations implementing the non-compliance penalty. Based on this authority, the requirement set forth in AS 47.27.085 that the penalty is to begin on the date the Department makes a finding of non-compliance can only mean that the reduction should occur only after the notice requirements set forth in 7 AAC 49.060 are met. This interpretation is consistent with the Division's own policy. *Alaska Temporary Assistance Manual* §723-2

The Division sent Claimant Notice of the Plan Penalty on January 22, 2010, to be effective February 1, 2010. Since this notice was sent less than ten days before the February 1, 2010 reduction of benefits, it did not satisfy the requirement set forth in 7 AAC 49.060. Therefore, the Division was incorrect to reduce benefits on February 1, 2010.

The January 22, 2010 notice was well before ten days from March 1, 2010, therefore, the notice was timely for any reduction in March 2010 benefits. However, first, it must be determined whether the Division has proven Claimant violated the law or regulations pertaining to the Alaska Temporary Assistance Program such that Claimant may be penalized by a reduction of benefits. Then, whether the penalty was correctly imposed must be determined.

#### IV. Did Claimant comply with the provisions of her family self-sufficiency plan?

A recipient of benefits from the Alaska Temporary Assistance Program (Program) is required to sign a cooperatively developed family self-sufficiency plan (FSSP), which sets out steps the family will take to become self-sufficient and establishes the time period for the achievement of self-sufficiency. AS 47.27.030.

Claimant developed and signed a family self-sufficiency plan (FSSP) on November 23, 2009 (Ex. 2.0-2.1), which was updated on December 23, 2009 (Ex. 3.0 – 3.1) and then again on February 19, 2010. Claimant's case manager's undisputed testimony was Claimant participated in person in developing the Plan, the selection of each step of the FSSP was discussed with Claimant, and Claimant agreed to the FSSP before signing it. Thus, Claimant complied with AS 47.27.030.



A recipient of Alaska Temporary Assistance Program benefits is also required to “participate in work activities as assigned by the department or its designee in order for the family to continue to receive cash assistance or self-sufficiency services....” AS 47.27.035.

By January 22, 2010, the Division had determined Claimant failed to perform the steps of the family self-sufficiency plan she had agreed. (Ex. 7) In December 2009, Claimant was to work 20 hours a week at an elementary school. (Ex. 2.0) Instead, Claimant did voluntary babysitting. (Testimony of [REDACTED] and Ex. 5) Voluntary babysitting was not part of the plan. Thus, Claimant failed to comply with her FSSP. She gave no reason for her failure to comply, therefore, the “good cause” exceptions under AS 47.27.035 and 7 AAC 45.261 do not apply.

Because Claimant has been determined to have failed to complete her plan without good cause, the Division must impose a penalty. AS 47.27.085(a). Once a non-compliance penalty is imposed, a reduction of benefits takes effect. AS 47.27.085(a)(1). The Division’s imposition of a penalty beginning March 1, 2010 on Claimant’s benefits for non-compliance with her FSSP, would be proper if Claimant failed to cure the penalty during the month of February.

#### V. Did the Claimant Come Into Compliance?

AS 47.27.010 states that the non-compliance penalty ceases on the day the Department determines the family has acted in compliance with the FSSP.

In the January 22, 2010 notice, the Division stated to cure the penalty, Claimant must come into the job center from 8:00 a.m. – 1:00 p.m. for five consecutive days. (Ex. 7) The case worker further stated the Division liberalized those requirements to allow Claimant to make up time missed. (Testimony of [REDACTED] and [REDACTED]) Because of the allowance for making up time, essentially Claimant was required to come into the job center for 25 hours in a month.

Claimant came into the job center only 20 hours during the month of February 2010. (See, Finding of Fact 10). Claimant did no other activity to fulfill the requirements of the FSSP during the month of February 2010. (See, Finding of Fact 11). Therefore, Claimant did not come into compliance during the month of February.

Claimant came into the job center many days in March 2010. On a number of occasions, she signed in, but did not sign out. Claimant has the burden of proof on this issue. The sign-in sheets are the only credible evidence of Claimant’s hours at the center. Without her sign-out time, she has failed to meet her burden regarding her hours spent at the center that day. Therefore, only the days where Claimant signed in and out will be considered.

The amount of time Claimant is considered to be at the job center is as follows:

March 2      4.5 hours

4	1 hour
17	5.5 hours
19	6 hours
22	6.5 hours
24	1.5 hours
25	5 hours
30	4.5 hours

(See, Finding of Fact 13) By March 24, 2010, Claimant was at the job center 25 hours. On that day Claimant came in compliance with her FSSP. Once Claimant came in compliance with the FSSP, the non-compliance penalty ceases. AS 47.27.010(a). Therefore, full benefits should have resumed on March 25, 2010, the day after Claimant came into compliance.

### CONCLUSIONS OF LAW

1. Alaska regulation 7 AAC 40.060 requires the Division to provide the Claimant with a minimum of 10 days written notice before the date it intends to take action reducing or terminating her public assistance benefits.
  
2. The Division's January 22, 2010 notices informing the Claimant it intended to reduce her Temporary Assistance benefits effective on February 1, 2010, provided the Claimant with inadequate notice.
  
3. The Division therefore did not comply with the regulatory requirement that it provide the Claimant with a minimum of 10 days written notice before the date of its intended action. *See* 7 AAC 49.060.
  
4. The Division was therefore not correct when it began the reduction of Claimant's Temporary Assistance benefits in February 2010.
  
5. The Division proved by a preponderance of the evidence Claimant failed to comply with one or more provisions of her family self-sufficiency plan in December of 2009, without good cause. AS 47.27.035
  
6. Claimant failed to prove by a preponderance of the evidence that she became compliant with her FSSP in February 2010.
  
7. Therefore, the Division was correct to impose a penalty against the Claimant's Alaska Temporary Assistance Program benefits beginning March 1, 2010 for her failure to comply with her family self-sufficiency plan. AS 47.27.085

