

Office of Hearings and Appeals  
3601 C Street, Suite 1322  
P. O. Box 240249  
Anchorage, AK 99524-0249  
Phone: (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] and )  
 ) OHA Case No. 10-FH-217  
 )  
 Claimants. ) DPA Case No. [REDACTED]  
 )  
 \_\_\_\_\_ )

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

On April 20, 2010 [REDACTED] and [REDACTED] (hereafter “Claimants”) completed and signed an application for benefits under the State of Alaska’s Heating Assistance Program (Exs. 1.0 – 1.8). The Claimants’ application was received by the State of Alaska Division of Public Assistance (DPA or Division) on April 23, 2010 (Ex. 1.0).

On May 3, 2010 the Division mailed to the Claimants a written notice advising that the Claimants’ Heating Assistance Program application had been denied on the grounds that the Claimants’ monthly income exceeded the Heating Assistance Program’s applicable maximum monthly income limit (Ex. 3). The Claimants requested a fair hearing with regard to the Division’s denial of their Heating Assistance Program application on June 7, 2010 (Ex. 4).

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

A hearing was initially scheduled for July 28, 2010. However, on that date the Claimants’ representative advised that the Claimants were out-of-state and unable to participate in the hearing on that date. The Claimants’ representative requested that the hearing be postponed until the Claimants returned to Alaska. The Division did not object to the Claimants’ postponement request. Accordingly, the matter was postponed to August 18, 2010.

The hearing began as scheduled on August 18, 2010 before Hearing Examiner Jay Durych. [REDACTED] participated by telephone to represent the Claimants and to testify on their behalf. Claimant [REDACTED] also participated by telephone and testified on her and her husband’s behalf. [REDACTED], a Public Assistance Analyst with the Division, attended the hearing in person to represent

and testify on behalf of the Division. The parties' testimonies were received and all exhibits submitted were admitted into evidence. At the end of the hearing the record was closed except for the submission of certain post-hearing filings. The Division's post-hearing filing was due by August 27, 2010. Any post-hearing filing on behalf of the Claimants was due by September 3, 2010. The Division's post-hearing filing was received on August 19, 2010. No post-hearing filing was received from the Claimants.

### **ISSUE**

The ultimate issue in this case is whether the Claimants' household's monthly income exceeds the Heating Assistance Program's applicable monthly income limit. However, at the hearing, both the Claimants and the Division agreed that the only disputed issue in this case is whether or not the Medicare Part B premiums, (which are automatically deducted from the Claimants' Social Security benefits by the United States Social Security Administration and paid on the Claimants' behalf), constitute income for purposes of the Alaska Heating Assistance Program (see footnote 4, below). Accordingly, the issues to be determined are:

1. Was the Division correct to include the Claimant's Medicare Part B premiums as countable (non-exempt) income for purposes of the Alaska Heating Assistance Program?
2. Was the Division correct when, on May 3, 2010, it denied the Claimants' application for Heating Assistance Program benefits dated April 20, 2010 based on the assertion that the Claimants' household's gross monthly income exceeded the Heating Assistance Program's applicable gross monthly income limit?

### **SUMMARY OF DECISION**

The Medicare Part B premiums which were deducted from the Claimants' Social Security benefits by the United States Social Security Administration and paid on the Claimants' behalf constitute income for purposes of the Alaska Heating Assistance Program. Accordingly, the Division was correct when on May 3, 2010 it denied the Claimants' application for Heating Assistance Program benefits dated April 20, 2010 because the Claimants' household's gross monthly income exceeded the Heating Assistance Program's applicable gross monthly income limit.

### **FINDINGS OF FACT**

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

1. The Claimants are a couple, over 80 years of age, living in Palmer, Alaska (Ex. 4). They are retired and living on a fixed income (Ex. 4). They have not seen any adjustment to their pension income in 28 years (Ex. 4). They do not get any cost of living increases (Claimant testimony). They will probably continue to have the same fixed income for the rest of their lives. *Id.*
2. On April 20, 2010 the Claimants completed and signed an application for benefits under the State of Alaska's Heating Assistance Program (Exs. 1.0-1.3). Submitted with the Claimants' application were documents showing the Claimants' income and their heating-related expenses (Exs. 1.4-1.8). The Claimants' application was received by the State of Alaska Division of Public Assistance (DPA or Division) on April 23, 2010 (Ex. 1.0).

3. At page 2 of their application, the Claimants stated their monthly income as consisting of a monthly pension payment of \$1,574.50, a monthly Social Security payment of \$1,166.00, and another monthly Social Security payment of \$529.00 (Ex. 1.1).

4. ██████'s 2009 Social Security benefit statement (Ex. 1.6), submitted with the Claimants' application, states that he received a total of \$15,148.80 in Social Security income during 2009 (or \$1,262.40 per month). Of this total amount, \$1,156.80 (or \$96.40 per month) was not actually received by the Claimants, but rather was deducted from ██████'s Social Security benefits by SSA as payment for his Medicare Part B premiums (Ex. 1.6).

5. ██████'s 2009 Social Security benefit statement (Ex. 1.5), submitted with the Claimants' application, states that she received a total of \$7,504.80 in Social Security income during 2009 (or \$625.40 per month). Of this total amount, \$1,156.80 (or \$96.40 per month) was not actually received by the Claimants, but rather was deducted from ██████'s Social Security benefits by SSA as payment for her Medicare Part B premiums (Ex. 1.5).

6. The Claimants' IRS Form 1099-R (Ex. 1.4), submitted with the Claimants' application, states that ██████ received a total of \$18,894.00 in taxable income from his Fidelity Investments pension during 2009. This equates to an average monthly pension payment of \$1,574.50.

7. The Division's Heating Assistance Program eligibility worksheet for the Claimants' case (Ex. 2) indicates that the Division used the figures provided in the Claimants' annual pension statement, and in their IRS Form 1099-Rs, instead of the figures supplied by the Claimants at page 2 of their application. The Division counted ██████'s monthly pension income of \$1,574.50, ██████'s monthly Social Security income of \$1,262.40, and ██████'s monthly Social Security income of \$625.40, for a total gross monthly income of \$3,462.30.

8. On May 3, 2010 the Division mailed to the Claimants a written notice advising that the Claimants' Heating Assistance Program application had been denied on the grounds that the Claimants' monthly income exceeded the Heating Assistance Program's applicable maximum monthly income limit (Ex. 3). The notice stated that the Heating Assistance Program's applicable monthly income limit was \$3,414.00, and that the Claimants' monthly income had been calculated as \$3,462.00 (Ex. 3).

9. The Claimants requested a fair hearing with regard to the Division's denial of their Heating Assistance Program application on June 7, 2010 (Ex. 4).

10. At the hearing of August 18, 2010 ██████ credibly testified in relevant part that:

a. She and her husband's Medicare Part B premiums are automatically deducted from their Social Security checks. They have no control over this whatsoever.

b. The Division's counting or inclusion of the Medicare Part B premiums in her household's income puts them over the applicable monthly Heating Assistance Program limit by only \$48.00.

11. At the hearing of August 18, 2010 the Division's Hearing Representative credibly testified in relevant part that the income which was counted by the Division in making its eligibility determination in this case was (a) ██████'s Social Security income of \$1,262.40 per month; (b) ██████'s Social Security income of \$625.40 per month; and (c) ██████'s employment pension income of \$1,574.50 per month. Based on these figures, the Division calculated that the Claimants' total monthly gross income was \$3,462.30.

## **PRINCIPLES OF LAW**

### I. Burden of Proof and Standard of Proof.

The party seeking a change in the status quo ordinarily bears the burden of proof.<sup>1</sup> This case involves the denial of the Claimants' initial application for Heating Assistance Program benefits. Pursuant to applicable law, the Claimants are held to be attempting to change the existing status quo by obtaining benefits. The Claimants therefore bear the burden of proof in these proceedings.

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.<sup>2</sup> Therefore, "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.<sup>3</sup>

### II. The Alaska Heating Assistance Program – In General.

The Alaska Heating Assistance Program was established by Alaska Statute (AS) 47.25.621 "to provide expanded eligibility for Alaska residents for home heating assistance, to the extent funds are appropriated by the legislature for that purpose."

Pursuant to A.S. 47.25.623:

An individual is eligible for home heating assistance payments under the Alaska heating assistance program if the individual (1) is a resident of the state; (2) is physically present and resides in a home in the state when the home heating costs are incurred; (3) has gross household income above 150 percent but that does not exceed 225 percent of the federal poverty guideline for Alaska set by the United States Department of Health and Human Services and revised under 42 U.S.C. 9902(2); (4) meets other eligibility requirements specified in regulations adopted under AS 47.25.622.

---

<sup>1</sup> *State of Alaska Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

<sup>2</sup> *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Commission*, 711 P.2d 1170 (Alaska 1986).

<sup>3</sup> *Black's Law Dictionary* at page 1064 (West Publishing, Fifth Edition, 1979).

The Alaska Heating Assistance Program regulations are set forth in the Alaska Administrative Code at 7 AAC 44.200 - 7 AAC 44.360. Pursuant to 7 AAC 44.200, “[t]he purpose of the heating assistance program is to provide assistance under the Alaska heating assistance program to low income households to offset the cost of home heating.”

### III. The Alaska Heating Assistance Program – Income Eligibility Standards.

7 AAC 44.230, titled “Eligibility Requirements; Income Calculations,” provides in relevant part as follows:

(a) A household is eligible to participate in the heating assistance program only if . . . (3) the household's annual unsubsidized home heating costs exceed \$200; and (4) the household's gross monthly income is above 150 percent but does not exceed 225 percent of the level set in the federal poverty guidelines for Alaska established annually by the United States Department of Health and Human Services and revised under 42 U.S.C. 9902(2).

\* \* \* \*

(c) The department will calculate the household's gross monthly income by counting *total cash receipts before taxes, earned and unearned, derived from any source* by any member of the household in the calendar month before the date of signature on the completed application . . . . [Emphasis added].

7 AAC 44.900, titled “Definitions,” provides in relevant part as follows:

(2) "Alaska poverty level" means the level set out in the federal poverty guidelines for Alaska established annually by the United States Department of Health and Human Services at 73 Fed. Reg. 3971 - 3972 (January 23, 2008), as amended from time to time, and adopted by reference;

Section 6.9.4 of the Division’s Heating Assistance Program Manual, titled “Countable Income,” specifically lists “Social Security,” “government employee pensions,” and “private pensions” as countable income. It does not specifically list Medicare Part B premiums paid from a person’s Social Security benefits as countable income.

7 AAC 44.250, titled “Exempt Income,” does not specifically list Medicare Part B premiums paid from a person’s Social Security benefits as non-countable (exempt) income.

Section 6.9.5 of the Division’s Heating Assistance Program Manual, titled “Non-Countable Income,” does not specifically list Medicare Part B premiums paid from a person’s Social Security benefits as non-countable (exempt) income.

Section 6.9.8 of the Division’s Heating Assistance Program Manual states that “[a]ll unearned income is counted, *unless it is specifically listed in Section 6.9.5* [which sets forth types of non-countable income]” [Emphasis added].

## ANALYSIS

### I. Introduction; Definition of Issue.

The ultimate issue in this case is whether the Claimants' household's monthly income exceeds the Heating Assistance Program's applicable monthly income limit. Correctly determining this issue would normally entail a determination of whether the Division properly calculated the Claimants' income, and whether the Division applied the correct maximum monthly income limit.

However, at the hearing, both the Claimants and the Division agreed that the only disputed issue in this case is whether or not the Medicare Part B premiums, (which are automatically deducted from the Claimants' Social Security benefits by the United States Social Security Administration and paid on the Claimants' behalf), constitute income for purposes of the Alaska Heating Assistance Program.<sup>4</sup> This is a purely legal issue.

The Claimants' Medicare Part B premiums total \$2,313.60 per year or \$192.80 per month (*see* Findings of Fact at Paragraphs 4-5, above). The Division calculated that the Claimants' monthly gross income is only \$48.00 *over* the currently applicable Heating Assistance Program limit (Ex. 8). Accordingly, if the Claimants' Medicare Part B premiums are found to be *non-countable or exempt*, the Claimants' monthly income would be \$144.80 *under* the applicable monthly Heating Assistance Program income limit. This issue is thus clearly determinative of the financial eligibility issue.

### II. Was The Division Correct to Include the Medicare Part B Premiums as Part of The Claimants' Countable (Non-Exempt) Income?

The issue of whether the Claimants' Medicare Part B premiums constitute countable (non-exempt) income for purposes of the Alaska Heating Assistance Program must be determined by reference to the applicable regulations.

Section 6.9.4 of the Division's Heating Assistance Program Manual, titled "Countable Income," does not specifically list Medicare Part B premiums paid from a person's Social Security benefits as *countable income*. Likewise, 7 AAC 44.250, titled "Exempt Income," does not specifically list Medicare Part B premiums paid from a person's Social Security benefits as *non-countable (exempt) income*. Similarly, Section 6.9.5 of the Division's Heating Assistance Program Manual, titled "Non-Countable Income," does not specifically list Medicare Part B premiums paid from a person's Social Security benefits as *non-countable (exempt) income*.

---

<sup>4</sup> At the hearing, ██████ stated that "the figures are there – I can't dispute the figures – *it's just how they are being used.*" She correctly observes that she and her husband do not actually see (receive) the Medicare Part B premium "income," and she therefore asserts that it is not fair for this "income" to be counted against them for purposes of Heating Assistance Program eligibility. Similarly, at the hearing Ms. ██████ stated that "we're not disputing the facts – the numbers are the numbers." She also indicated that the sole issue is the Division's inclusion of the Medicare Part B premiums as part of the Claimants' gross income – i.e. whether this income should be exempted and whether the Division has any discretion in that regard. Finally, the Division's Hearing Representative agreed that the issue in this case is the purely legal issue of whether the Claimant's Medicare Part B premiums must be included as income for purposes of the Alaska Heating Assistance Program (*see* ██████ hearing testimony). Accordingly, this decision focuses exclusively on that issue.

If the above-referenced provisions were the only regulations bearing on the issue, the question of whether the Medicare Part B premiums should be counted as income would be extremely problematic. However, there are two other regulations which apply here.

First, 7 AAC 44.230(c) requires that the Division “calculate the household's gross monthly income by counting *total cash receipts before taxes, earned and unearned, derived from any source* by any member of the household” (emphasis added). This regulation creates a presumption that all income is countable *unless expressly excluded by another regulation*.

Second, Section 6.9.8 of the Division’s Heating Assistance Program Manual states that “[a]ll unearned income is counted, *unless it is specifically listed in Section 6.9.5 [which sets forth types of non-countable income]*” (emphasis added). This regulation likewise creates a presumption that all income is countable *unless expressly excluded by another regulation*. Because there is no Heating Assistance Program regulation which *specifically exempts* Medicare Part B premiums from countable income, Medicare Part B premiums must be considered as countable income for purposes of the State of Alaska’s Heating Assistance Program.

In summary, based on the applicable regulations, all forms of income are counted in determining Heating Assistance Program eligibility unless the type of income at issue is specifically exempted by regulation. There is no Heating Assistance Program regulation which specifically exempts Medicare Part B premiums from countable income. Accordingly, the Division was correct when on May 3, 2010 it denied the Claimants’ application for Heating Assistance Program benefits dated April 20, 2010 because the Claimants’ household’s gross monthly income exceeded the Heating Assistance Program’s applicable gross monthly income limit.

### **CONCLUSIONS OF LAW**

1. Medicare Part B premiums are countable (non-exempt) income under the State of Alaska’s Heating Assistance Program pursuant to 7 AAC 44.230(c) and Section 6.9.8 of the Division’s Heating Assistance Program Manual.
2. Accordingly, the Division was correct when on May 3, 2010 it denied the Claimants’ application for Heating Assistance Program benefits dated April 20, 2010 because the Claimants’ household’s gross monthly income exceeded the Heating Assistance Program’s applicable gross monthly income limit.

### **DECISION**

The Division was correct when on May 3, 2010 it denied the Claimants’ application for Heating Assistance Program benefits dated April 20, 2010 because the Claimants’ household’s gross monthly income exceeded the Heating Assistance Program’s applicable gross monthly income limit.

### **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, 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

If the Claimant appeals, the 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 12th day of October, 2010.

(signed)

---

Jay Durych  
Hearing Authority

#### CERTIFICATE OF SERVICE

I certify that on this 12th day of October 2010 true and correct copies of the foregoing decision were sent to the Claimant via U.S.P.S. mail, and to the remainder of the service list via e-mail, as follows:

Claimant – Certified Mail, Return Receipt Requested  
[REDACTED], DPA Fair Hearing Representative

[REDACTED], Director  
[REDACTED], Chief of Field Services  
[REDACTED], Policy & Program Development  
[REDACTED], Staff Development & Training  
[REDACTED], Administrative Assistant II  
[REDACTED], Eligibility Technician I

(signed)

---

J. Albert Levitre, Jr.  
Law Office Assistant I