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**STATE OF ALASKA
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
OFFICE OF HEARINGS AND APPEALS**

In the Matter of)
)
 [REDACTED],)
)
 Claimant.) OHA Case No. 10-FH-396
) Division Case No. [REDACTED]
_____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

Ms. [REDACTED] (Claimant) was a continuing recipient of the Alaska Temporary Assistance Program (Program) who re-certified her eligibility in September 2010. (Ex. 1) On November 24, 2010, Division of Public Assistance (Division) notified Claimant in writing that she had been overpaid Program benefits in November 2010 and it was seeking reimbursement of the amount overpaid.¹ (Ex. 3)

On November 30, 2010, Claimant requested a Fair Hearing. (Ex. 4.1) The Office of Hearings and Appeals (Office) has jurisdiction to decide this case by authority of 7 AAC 49.010 *et. seq.*

Claimant's Fair Hearing was held on December 23, 2010. Claimant appeared telephonically, represented herself and testified on her own behalf. Mr. [REDACTED], the Division's Public Assistance Analyst, appeared in person, represented the Division and testified on behalf of the Division.

ISSUE

Was the Division correct to seek reimbursement from Claimant of Alaska Temporary Assistance benefits which allegedly were overpaid in November 2010?

FINDINGS OF FACT

The following facts have been proved by a preponderance of the evidence:

¹ Initially, the Division sought reimbursement of \$605. (Ex. 3) Upon review and after re-calculation, the Division sought \$445 reimbursement. (Ex. 15-15.1; Ex. 16)

1. Claimant applied for re-certification of Alaska Temporary Assistance Program (Program) benefits on September 15, 2010. (Ex. 1; Ex. 6) Claimant had been receiving \$821 of Program benefits, each month beginning January 2010 to and including October 2010. (Ex. 6.1)
2. The Division received an employment statement for Claimant on September 27, 2010 from Claimant's employer, [REDACTED]. (Ex. 5) The employment statement showed Claimant would start working on September 29, 2010, her first pay period would end October 5, 2010 and she would receive her pay on October 6, 2010. (Ex. 5) Claimant's weekly income would be \$232.50. (Ex. 5)
3. Processing of Claimant's application was concluded October 1, 2010. (Ex. 7) The Division erroneously failed to incorporate Claimant's income when it calculated her Program benefits. (Ex. 2-2.1; Hearing Representative's testimony; Claimant's testimony) Claimant was issued the same amount of benefits as she had received before she began working September 29, 2010 and was paid \$821.00 in November 2010. (Ex. 6.1; Ex. 7)
4. On October 1, 2010, Claimant was notified in writing that she would continue to receive \$821 in Program benefits, based on zero (\$0) income. (Ex. 7) Claimant telephoned her caseworker in October questioning the amount of her benefits. (Claimant's testimony)
5. On November 15, 2010, it was determined Claimant had been overpaid in November 2010 because her income had not been included in the calculation of her Program benefit amount. (Exs. 2-2.2) On November 24, 2010, the Division notified Claimant in writing it was seeking to recover the excess Program benefits she had been overpaid in November 2010.² (Ex. 3)
6. On November 30, 2010, Claimant requested a Fair Hearing. (Ex. 4.1) During the Fair Hearing, held December 23, 2010, Claimant proved she had given timely notice of her income to the Division and that she had inquired in October 2010 about the benefit amount. (Ex. 5; Claimant's testimony) Claimant asserted she had done everything required of her, therefore the Division's error was not her fault in any way and she should not be penalized for the Division's error. (Claimant's testimony)
7. During the hearing, the Division admitted Claimant had been overpaid \$445 for the month of November 2010 because the Division had not included Claimant's income when calculating her Program benefits. (Ex. 15-15.1; Ex. 16; Hearing Representative's testimony)
8. Claimant and the Division stipulated the Division's re-calculation of Claimant's benefit amount was accurate and that Claimant had been overpaid \$445 in November 2010.

PRINCIPLES OF LAW

I. Burden of Proof

"Ordinarily the party seeking a change in the status quo has the burden of proof." *State, Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

² Initially, the Division alleged Claimant was overpaid by \$605 in November 2010. (Ex. 3) However, after review and re-calculation, the Division alleged Claimant had been overpaid by \$445. (Ex. 15) For simplicity, this case addresses only the final allegation of overpayment made by the Division, i.e., overpayment of \$445 for the month of November 2010.

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 Corp. 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:

“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) (quoting *Saxon v. Harris*, 395 P.2d 71, 72 (Alaska 1964)).

B. Alaska Temporary Assistance Program (ATAP)

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, unless the overpayment was caused by the department, in which case the department will pursue collection only if the overpayment exceeds \$100. ... The family is responsible for repayment....

(b) An individual who was a member of an assistance unit during a month in which that assistance unit received an overpayment is responsible for repaying the overpayment....

* * *

(e) A current recipient of ATAP benefits must, within 30 days after the date printed on the overpayment notice, repay the total amount of the overpayment to the department, or the department will reduce that assistance unit's future ATAP payments by withholding 10 percent of the maximum amount payable to an assistance unit of the same size with no countable income for the number of months necessary to recover the overpayment.

ANALYSIS

I. Issue

Claimant argues she should not have to repay the Program benefits overpaid to her because it is the Division's fault it issued the excess benefits to her and she did everything she was required to do to receive the correct amount of benefit. The Division asserts the law requires it to recover excess benefits paid if the overpayment exceeds \$100, which it does in this case.

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

The issue is whether the Division is correct to seek reimbursement from Claimant of \$445 of Alaska Temporary Assistance benefits which were overpaid to Claimant in November 2010.

II. Burden of Proof and Standard of Proof

“The party seeking a change in the status quo has the burden of proof.” *State, Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985). The Division is seeking to change the status quo by requiring Claimant to repay the Division for the Alaska Temporary Assistance benefits it alleges it overpaid in November 2010. Therefore, the Division has the burden of proving by a preponderance of the evidence that Claimant was overpaid Program benefits and that she must reimburse the State for the benefits she was overpaid.

III. Repayment of Overpaid Alaska Temporary Assistance Benefits.

Claimant agrees that she was overpaid \$445 of Program benefits in November 2010. The relevant facts are not disputed. The issue is whether the undisputed facts as applied to the relevant law requires Claimant to repay the \$445 of Alaska Temporary Assistance Program benefits she was overpaid.

Claimant argues that she should not be required to reimburse the overpayment because she did nothing wrong and the overpayment resulted exclusively from the Division’s error.

The regulations concerning reimbursement of overpaid ATAP benefits clearly require the Division to recover overpaid benefits in excess of \$100, irrespective of the cause of overpayment. *See* 7 AAC 45.570(a). Here, Claimant was overpaid \$445, which is more than \$100. Therefore, the Division is required to seek reimbursement from Claimant. There is no flexibility: once overpayment is found to have occurred, regardless of fault or cause, the Division must seek reimbursement. 7 AAC 45.570(a). Therefore, the Division did not err in seeking Claimant’s reimbursement of the \$445 excess Alaska Temporary Assistance Program benefits paid her in November 2010.

CONCLUSIONS OF LAW

1. The Division has met its burden of proving by a preponderance of the evidence and by stipulation of the parties that Claimant was overpaid \$445 in Alaska Temporary Assistance Program (Program) benefits in November 2010.
2. The Division is required by Alaska regulation 7 AAC 45.570(a) to recover from Claimant the Alaska Temporary Assistance Program benefits in excess of \$100 which have been overpaid to her.
3. Therefore, the Division was correct to seek reimbursement of the \$445 of Alaska Temporary Assistance Program benefits overpaid to Claimant in November 2010.

DECISION

The Division was correct to seek reimbursement of the \$445 of excess Alaska Temporary Assistance Program benefits paid to Claimant in November 2010.

