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

In the Matter of

██████████,

Claimant.

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OHA Case No. 10-FH-397

Division Case No. ██████████

FAIR HEARING DECISION

STATEMENT OF THE CASE

██████████ (Claimant) applied for Heating Assistance benefits on October 4, 2010.¹ (Exs. 1.0 – 1.3) On November 17, 2010, the Division of Public Assistance (Division) sent the Claimant written notice she was eligible for a Heating Assistance grant in the amount of \$280. (Ex. 4) The Claimant disagreed with the amount of her Heating Assistance grant and requested a Fair Hearing on December 13, 2010. (Ex. 5)

This Office has jurisdiction pursuant to 7 AAC 44.310 and 7 AAC 49.010.

The Claimant's hearing was held on January 11, 2011. The Claimant attended the hearing telephonically; she represented herself and testified on her own behalf. ██████████, Public Assistance Analyst with the Division, attended the hearing in person; he represented the Division and testified on its behalf. On January 11, 2011, immediately after the hearing, the Division submitted revised calculations correcting errors contained in its January 5, 2011 "Fair Hearing Position Statement." The Claimant's response to the Division's revised calculations was also received on January 11, 2011.

ISSUE

Was the Division correct, when it, on November 17, 2010, found the Claimant eligible for a Heating Assistance grant in the amount of \$280?

¹ The Claimant's application is signed and dated October 4, 2010. (Ex. 1.0 – 1.3) However, it was faxed to the Division on October 10, 2010. *Id.* For ease of reference, it will be referred to as her October 4, 2010 application.

FINDINGS OF FACT

The following facts are established by a preponderance of the evidence:

1. The Claimant is 56 years old. (Ex. 1.0) She is not disabled. *Id.* She lives by herself in Homer, Alaska, in a 2 bedroom cabin, which she heats with fuel oil. (Exs. 1.0 - 1.2)
2. The Claimant's gross monthly income during the month of September 2010 consisted of hourly wages in the gross amount of \$2,058.01. (Exs. 1.1; 2 - 2.1) The Claimant's wages for September 2010 were higher than normal due to overtime pay. (Ex. 2.1; Claimant testimony)
3. The Claimant's Heating Assistance application, which was signed by her on October 4, 2010, was faxed to the Division on October 10, 2010. (Exs. 1 - 1.3)
4. On November 17, 2010, the Division determined the Claimant was eligible for a Heating Assistance grant in the total amount of \$280. (Ex. 4) Its determination was based upon the following factors: one person household living in a two bedroom cabin heated with oil, with a gross monthly income of \$2,058. (Ex. 2.3)

PRINCIPLES OF LAW

A party who is seeking a change in the status quo has the burden of proof by a preponderance of the evidence. *State, Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985); *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, n. 14 at 1179 (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, 495 (Alaska 2003) (quoting from *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964)).

The Heating Assistance program provides financial assistance for heating bills to eligible households. 7 AAC 44.200. When determining eligibility, the household's gross monthly income must not exceed the "maximum allowable poverty level" for the household size,² and the household must have "heating cost points" of 2.0 or greater. 7 AAC 44.340(j) and (l).

The Heating Assistance program calculates the household's gross monthly income as follows:

- (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**. The department will prorate income from self-employed occupations and seasonal employment during the 12-month period before the date of

² Household gross monthly income may not "exceed 225 percent of the level set in the federal poverty guidelines for Alaska." 7 AAC 44.230(a)(4).

signature on the completed application over a 12-month period to determine the household's gross monthly income.

7 AAC 44.230(c). (emphasis added).

During October 2010, the federal poverty level for a one person household in Alaska was \$13,530 yearly or \$1,127.50 monthly. 75 Federal Register 45628-02 (August 3, 2010).

The rules for calculating a household's "heating cost points" and the dollar amount of the Heating Assistance benefit are set out in Alaska regulation 7 AAC 44.340 as follows:

7 AAC 44.340. Amount of assistance. (a) The department has assigned heating cost points to each community in the state, based upon the community's annual fuel cost and climatic conditions. These points are listed in Appendix A at the end of this chapter.

(b) If the household uses natural gas and another fuel type for heat, the department will use the community heating cost points for natural gas in Appendix A.

* * *

(g) The department will multiply the community heating cost points determined under (a) - (f) of this section by the first one of the following factors that describes the household's dwelling. If more than one factor applies, the department will use the factor listed first:

- (1) the factor of 1.4 if the household resides in a mobile home with heated living space of 980 square feet or more;
- (2) the factor of 0.4 if the household resides in a travel trailer or mobile home less than 35 feet in length, or in a recreational vehicle, tent, or pickup camper;
- (3) the factor of 0.15 if the household resides in a one-room dwelling such as a studio apartment, hotel, or boarding home;
- (4) the factor of 0.35 if the household resides on a boat;
- (5) the factor of 0.55 if the household resides in a one-bedroom dwelling, or a one-room house or cabin without bedrooms;
- (6) the factor of 1.3 if the household resides in a three-or-more-bedroom single-family, duplex, or triplex home;
- (7) the factor of 0.7 if the household resides in a two-bedroom unit in an apartment building of four or more attached units;

- (8) the factor of 1.0 if the household resides in a two-bedroom single-family home.
- (h) If the household resides in a single residence with one or more other households, the heating cost points determined under (a) - (g) of this section are reduced to the household's proportionate share of the home heating expenses.
- (i) The department will assign each household the following percentage of heating cost points determined under (a) - (h) of this section, based on the household's gross monthly income and family size, expressed as a percentage of the Alaska poverty level:
- (1) 40 percent of points if the household's gross monthly income is more than 150 percent of the Alaska poverty level but no more than 175 percent of the Alaska poverty level;
 - (2) 30 percent of points if the household's gross monthly income is more than 175 percent but no more than 200 percent of the Alaska poverty level;
 - (3) 20 percent of points if the household's gross monthly income is more than 200 percent but no more than 225 percent of the Alaska poverty level;
 - (4) 10 percent of points if the household's gross monthly income is more than 225 percent, but no more than 250 percent of the Alaska poverty level; a household that has a gross monthly income of more than 225 percent, but no more than 250 percent of the Alaska poverty level is only eligible under this paragraph if the average price of oil under AS 47.25.623(c) is more than \$150 a barrel.
- (j) If the household's gross monthly income exceeds the maximum allowable Alaska poverty level, the household is not eligible for assistance under 7 AAC 44.200 - 7 AAC 44.350.
- (k) The department will add one point to the heating cost points determined under (a) - (i) of this section if the household includes one or more members 60 years of age or older, legally disabled, or under six years of age.
- (l) Households with heating cost points determined under (a) - (k) of this section to be less than 2.0 are not eligible.
- (m) The department will round the total heating cost points computed in (a) - (k) of this section to the nearest whole number and multiply by the benefit rate to determine the amount of the household heating assistance. The department will establish the benefit rate annually based upon
- (1) anticipated state money available for heating assistance;
 - (2) the anticipated number of households to be served in this state;

(3) anticipated total household heating costs points calculated in accordance with this section; and

(4) dollar values per point as set out in AS 47.25.623(c).

The “community heating cost points” referred to in 7 AAC 44.340 above are contained in 7 AAC 44.9001 “**Appendix A to 7 AAC 44 COMMUNITY HEATING COST POINTS.**” (Emphasis in original) The community of Homer receives 7 “community heating cost points” for homes heated by oil, electricity, or propane. 7 AAC 44.9001(119).

The “dollar values per point” referenced in 7 AAC 44.340(m)(4) are set in Alaska Statute AS 47.25.623(c), which reads as follows:

(c) The Department of Health and Social Services shall calculate the base amount of the Alaska affordable heating payment for the individual based on points determined under (b) of this section and on the average price a barrel of Alaska North Slope crude oil for sale on the United States West Coast during September through February of the preceding fiscal year as follows:

- (1) \$130 a point when the average price is not more than \$75 a barrel;
- (2) \$140 a point when the average price is more than \$75 and not more than \$100 a barrel;
- (3) \$150 a point when the average price is more than \$100 and not more than \$150 a barrel;
- (4) \$165 a point when the average price is more than \$150 a barrel.

ANALYSIS

The issue in this case is whether Division was correct, when it, on November 17, 2010, found the Claimant eligible for a Heating Assistance grant in the amount of \$280. Because this case involves an application for benefits, the Claimant is the party seeking to change the status quo. As a result, the Claimant has the burden of proof.

There are no disputed facts in this case. The Claimant is 56 years old and not disabled. She lives by herself in Homer in a two bedroom single family home (cabin), and heats with fuel oil. Her gross monthly income, which consisted of hourly wages, was \$2,058 during the month of September 2010.

The only argument the Claimant made regarding her eligibility was that her income in September 2010 was unusually high due to overtime pay. However, the Heating Assistance program only averages income for self-employed or seasonally employed persons; it does not average income for wage earners. 7 AAC 44.230(c). For wage earners, it therefore determines eligibility and benefit levels based

on the income actually received “in the calendar month before the date of signature on the completed application.” 7 AAC 44. 230(c). (emphasis added). In this case, it is undisputed that the Claimant received \$2,058 in gross wages during the month of September 2010, which was the calendar month before her application dated October 4, 2010. Pursuant to the clear terms of the regulation, 7 AAC 44.230(c), the Division was required to use the Claimant’s actual September 2010 gross monthly income figure of \$2,058 because she received hourly wages, regardless of whether that income figure was unusually high.

Applying the “Amount of assistance” regulation, 7 AAC 44.340, to the undisputed facts, the Claimant’s Heating Assistance benefit amount is calculated as follows:

1. Because the Claimant lives in Homer and heats with oil, she is allowed 7 “community heating cost points.” 7 AAC 44.340(b); 7 AAC 44.9001(119).
2. The Claimant’s 7 “community heating cost points” are multiplied by a factor of 1 because she resides in a two-bedroom single-family home. 7 AAC 44.340(g)(8).³ This results in the figure 7.
3. Because the Claimant’s September 2010 gross monthly income was \$2,058, she earned 182.5 percent of the federal poverty guideline income of \$1,127.50 for her one person household.⁴ 75 Federal Register 45628-02 (August 3, 2010). Pursuant to 7 AAC 44.340(i)(2), because her gross monthly income was between 175 and 200 percent of the federal poverty guidelines, her 7 points derived in step 2 above are multiplied by .30.⁵ The result is 2.1 points.
4. Because the Claimant is over the age of 6 years and under the age of 60 years and is not disabled, she does not receive any additional points added to her 2.1 points calculated in step 3 above. 7 AAC 44.340(k).
5. The Claimant’s 2.1 points are rounded to the nearest whole number, pursuant to 7 AAC 44.340(m). The result is 2 points.
6. The Claimant’s 2 points are then multiplied by \$140 to arrive at her Heating Assistance benefit level. 7 AAC 44.340(m); AS 47.25.623(c)(2). The result is \$280.

³ The Division’s January 5, 2011 “Fair Hearing Position Statement” mistakenly stated that the Claimant was only entitled to a residence factor of .55, which is the factor assigned to a one room cabin. 7 AAC 44.340(g)(5). The Division corrected this error in its January 11, 2011 post hearing filing.

⁴ \$2,058 divided by \$1,127.50 is 1.825, i.e. 182.5 percent of the federal poverty guideline.

⁵ The Division’s January 5, 2011 “Fair Hearing Position Statement” mistakenly stated the Claimant was entitled to a multiplier of .50 due to her income. The Division corrected this error in its January 11, 2011 post hearing filing.

As demonstrated above, the Claimant, based upon her age, gross monthly income, community of residence, heating fuel type, type of residence, and the number of persons in her household, was entitled to receive Heating Assistance benefits in the amount of \$280. This was the amount of benefits the Division provided her, as stated in its November 17, 2010 notice. As a result, the Claimant did not meet her burden of proof by a preponderance of the evidence; she failed to establish that the Division incorrectly calculated her Heating Assistance benefit.

The Division was therefore correct when it, on November 17, 2010, notified the Claimant she was eligible to receive a Heating Assistance grant in the amount of \$280.

CONCLUSIONS OF LAW

1. The Claimant had the burden of proof by a preponderance of the evidence to establish that the Division incorrectly calculated the amount of her Heating Assistance grant. She did not meet her burden of proof, as follows:

- a. The Division was required, pursuant to regulation 7 AAC 44.230(c), to use the Claimant's September 2010 gross monthly income of \$2,058 in determining her eligibility for and amount of Heating Assistance benefits, regardless of whether her September 2010 gross monthly income was unusually high.
- b. The Division correctly applied the Heating Assistance regulation, 7 AAC 44.340, when it determined the Claimant was eligible to receive a Heating Assistance grant in the amount of \$280.

2. The Division was therefore correct when it, on November 17, 2010, notified the Claimant she was eligible to receive a Heating Assistance grant in the amount of \$280.

DECISION

The Division was correct when it, on November 17, 2010, notified the Claimant she was eligible to receive a Heating Assistance grant in the amount of \$280.

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

An appeal request must be filed within 15 calendar days from the date of receipt of this Decision. Filing an appeal with the Director could result in the reversal of the Hearing Authority's decision.

DATED this 11th day of March 2011.

/Signed/
Larry Pederson
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 11th day of March 2011, true and correct copies of the foregoing were sent to:

Claimant by Certified Mail, Return Receipt Requested and to other listed persons by e-mail:

██████████, Public Assistance Analyst
██████████, Public Assistance Analyst
██████████, Policy & Program Development
██████████, Staff Development & Training
██████████, Administrative Assistant II
██████████, Eligibility Technician I

/signed/
J. Albert Levitre, Jr.
Law Office Assistant I