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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. 11-FH-207  
 )  
 Claimant. ) DPA Case No. [REDACTED]  
 )  
 \_\_\_\_\_ )

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

Ms. [REDACTED] (Claimant) was receiving Alaska Adult Public Assistance (APA) in addition to Supplemental Security Income (SSI) through the federal Social Security Administration. (Ex. 1) On May 12, 2011, the Alaska Department of Health and Social Services, Division of Public Assistance (Division) notified Claimant her APA benefit amount in June 2011 would be changed to \$184 because her husband was receiving employment income. (Ex. 4) Claimant requested a fair hearing on May 23, 2011. (Ex. 5)

The Office of Hearings and Appeals (Office) has jurisdiction over this case pursuant to 7 AAC 49.010-020.

A Fair Hearing was held on June 21 and June 23, 2011.<sup>1</sup> On each day, Claimant attended the hearing telephonically, represented herself and testified on her own behalf. On each day, Ms. [REDACTED], the Division's Public Assistance Analyst and Hearing Representative, attended the hearing in person, represented the Division, and testified on its behalf.

All exhibits offered were admitted and the parties stipulated to the submission and admission of additional documents.<sup>2</sup> The evidentiary record was held open until July 13, 2011 for the submission of additional documentation by the Claimant and the Division's response. Claimant submitted additional documents on June 23, 2011 and July 5, 2011 and the Division responded on June 24 and July 6, 2011, respectively. (Exs. A and 26; Exs. B and 27) On July 13, 2011, the evidentiary record closed.

<sup>1</sup> The original June 21, 2011 hearing was re-scheduled at Claimant's request and for her benefit.

<sup>2</sup> Claimant requested additional time to supply documentation showing how she believed the Division should have calculated her APA benefit, using the APA Manual Section 460-3, first paragraph, approach of using the SSA deemed income for her husband. The evidentiary record was held open to receive such additional documentation and the Division's response to it. Claimant did not supply the calculations but did provide copies of letters from the Social Security Administration (SSA) showing Claimant's husband's income as of April 30, 2011 was \$584. (Ex. A, pp. 4-7)

## ISSUE

On May 12, 2011, was the Division correct to use the Claimant's spouse's employment income instead of the spouse's deemed<sup>3</sup> income as reported by the Social Security Administration (SSA) when it re-determined Claimant's Adult Public Assistance benefit amount to be \$184 as of June 2011?

Claimant believes the Division incorrectly interpreted and incorrectly applied APA Manual Section 460-3, in particular the paragraph pertaining to SSI and APA "deeming" of her husband's income, when it used her husband's employment income, instead of her husband's income as deemed available to her by the SSA, to re-determine her APA benefit amount. Because Claimant is an SSI recipient, she believes the first paragraph of APA Manual Section 460-3 applied to her circumstances on May 11, 2011.

## FINDINGS OF FACT

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

1. Claimant receives Supplemental Security Income (SSI) through the Social Security Administration (SSA) as a disabled person.<sup>4</sup> (Ex. C, p. 2) Claimant is about 47 years old, married and living with her spouse in their own home, with two children, one of whom is a disabled child who receives SSI benefits, and the other child is ineligible for SSI. Claimant's husband also is ineligible for SSI (ineligible spouse). (Ex. C, p. 2; Ex. 3.0-3.1)
2. Claimant was receiving Adult Public Assistance benefits when her household income changed due to her husband becoming employed on April 18, 2011; Claimant's husband stopped receiving unemployment. (Ex. 3.1) On May 11, 2011, Claimant provided information that her husband was earning \$14.39 per hour and working 40 hours per week. (Ex. 3.0)
3. On May 11, 2011, the Division re-determined Claimant's APA benefit by calculating Claimant's household's income prospectively for June 2011. (Ex. 3.0) The Division used the employment income amount reported to the Division as the basis for determining Claimant's husband's (ineligible spouse's) income. (Ex. 3.0; Division's Hearing Representative's testimony)
4. The Eligibility Technician determined Claimant's APA benefit amount would reduce from \$354 to \$184 per month, because Claimant's husband had reported increased income (from employment). (Division's Hearing Representative's testimony) The change in benefit was due to the increase in household income. (Division's Hearing Representative's testimony)
5. On May 12, 2011, the Division gave Claimant written notice, citing APA Manual Section 452-2B, that her June 2011 APA benefit payment would be \$184 and the reasons for the change were:

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<sup>3</sup> APA Manual Section 460-1B defines "deeming" as Deeming is the process of considering another person's income and resources available to meet the needs of the APA applicant or recipient.

<sup>4</sup> Claimant at times is eligible (financially) for SSI and at times is not, depending on household income. (Claimant's testimony; Ex. A) At all times relevant to this decision, Claimant was an SSI recipient and Claimant's husband was not eligible for SSI (ineligible spouse.) (Ex. 3.0; Claimant's testimony)

[Spouse's] unemployment has ended and his earnings with Municipality of Anchorage are now counting. Based on the Adult Public Assistance budgeting rules and [Spouse's] net countable earnings the countable income for your benefits is the Social Security Supplemental Income (SSI) standard for a couple of \$1011.

(Ex. 4.0)

6. The parties agreed that the dollar amounts used by the Division to calculate Claimant's benefit amount, *using the process that it used*, were correct, except as to her spouse's income.<sup>5</sup> (Division's Hearing Representative's testimony; Claimant's testimony) Claimant disagreed that the Division used the correct amount of income, when deeming the amount of his income available to her, because the Division used the wrong income amount for her spouse's income. (Claimant's testimony)

7. Claimant proved the SSA records showed her husband's income for April 2011 was \$584. (Ex. A, pp. 4-7: April 30, 2011 letter from the SSA stating that Claimant's spouse "has monthly income of \$584 for April 2011....")

8. The Eligibility Technician did not use the SSA's income amount of \$584 for Claimant's husband's April 2011 income to prospectively determine his deemed income. (Ex. 3.0) The Eligibility Technician calculated Claimant's husband's earned income using the information from his paystub for the period ending April 24, 2011 (Ex. 3.3) as follows:

40 hours per week x \$14.39 per hour x 4.3 weeks in a month multiplier<sup>6</sup> = \$2,475.08 per month.

(Ex. 3.0)

9. The Division used Claimant's SSI benefit amount of \$638 as Claimant's SSI income at the time she reported the change in her husband's income. (Division's Hearing Representative's testimony) The Division used \$638 because that was the amount the Division obtained when the Eligibility Technician checked Claimant's SSI records on or about May 11, 2011 when it calculated Claimant's APA benefit. (Division's Hearing Representative's testimony) The Division added the \$638 to her husband's income to determine the household's combined net countable income. (Division's Hearing Representative's testimony)

10. The Division's Hearing representative testified that, at the time the Division calculated Claimant's June 2011 benefit, it appeared the SSA had not yet changed Claimant's SSI benefit amount (based on her husband's changed income) and therefore the Division used the Claimant's past SSI benefit amount of \$638. (Division's Hearing Representative's testimony) When SSA does change Claimant's benefit amount, the Division will "track" the change and re-adjust Claimant's benefit amount using the changed SSI benefit amount. (Division's Hearing Representative's testimony)

11. The parties did not dispute that the Division calculated Claimant's \$184 APA monthly benefit amount as follows (Ex. 3.5; Hearing Representative's testimony):

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<sup>5</sup> Claimant explained that she actually was eligible to receive an SSI benefit amount of \$674 but agreed she actually received \$638 because the amount she was eligible to receive was reduced by SSA, to set-off an SSI overpayment. (Claimant's testimony)

<sup>6</sup> To determine a full month's income when income is reported for one week, a multiplier of 4.3 is applied to the single week's income to determine the average income per month. Because some months have more than 4 weeks, the .3 multiplier applies. MS 440-4.B. 2.

A. Calculation of ineligible spouse's income applied to APA benefit calculation:

1. Claimant's husband's prospective monthly earned income:	\$ 2,475.08
2. Less the "allocation" for Claimant's ineligible child: <sup>7</sup>	- 337.00
3. Less the one time general exclusion from income [7 AAC 40.320(a)(23)]	- 20.00
4. Less the one time exclusion from income [7 AAC 40.320(a)(20)]	- 65.00
Subtotal:	\$ 2,053.08
5. Less one-half of the subtotal [7 AAC 40.33(a)(20)]	- <u>1,026.54</u>
6. Results in a monthly total net earned income (countable)	\$ 1,026.54
7. Plus Claimant's SSI income of	<u>638.00</u>
8. Combined net countable income determines applicable SSI standard	\$ 1,664.54

(Division's Hearing Representative's testimony; Ex. 3.0)

B. The Division then determined the applicable SSI standard as follows:

1. Compared combined net income figure of \$1,664.54 to SSI "couples standard" of \$1,011 (Ex. 21.0; Ex. 3.5; Division's Hearing Representative's testimony).

2. Because the (combined) net countable income is more than the applicable SSI "couples standard," as shown on the APA Manual Addendum 1, the Division is required to use the lesser amount as the household's income to determine eligibility for benefits. (Division's Hearing Representative's testimony) Therefore, the Division determined the difference between Claimant's net countable income of \$1,664.54 and the SSI \$1,011 "couples standard" to be \$653.54 higher than the "couples standard" of \$1,011. (Division's Hearing Representative's testimony)

3. Based on this difference, the Division used the SSI "couples standard" of \$1,011 as the net countable income of Claimant's household. (Ex. 21.0; Division's Hearing Representative's testimony)<sup>8</sup>

C. After determining the household's (attributed) income was \$1,011, the Division identified the couples' APA Need Standard as \$1,504 because the household is a couple living independently (i.e., in their own home) and only one spouse is eligible for SSI. (Ex. 3.5; Exhibit 21.1) Because Claimant's net countable income did not exceed \$1,504, Claimant remained eligible for APA benefits. (Ex. 3.5)

D. After determining the APA Need Standard for Claimant, the Division determined the APA Maximum Payment Standard for a couple, one of whom is eligible for SSI and who are living independently, based on APA Manual Addendum 1. The APA Maximum Payment Standard for Claimant's household is \$1,195. (Ex. 21.2)

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<sup>7</sup> Claimant has one child who receives SSI. (Ex. 3.0; Claimant's testimony)

<sup>8</sup> The Division's Hearing Representative explained that using the lesser amount allows households to remain eligible and/or receive a higher benefit amount than if the true income amount were used. (Division's Hearing Representative's testimony)

E. The Division then calculated the difference between the \$1,195 Maximum Payment Standard and the couples' attributed income of \$1,011 to be \$184 ( $\$1,195 - \$1,011 = \$184$ ). (Ex. 3.5; (Division's Hearing Representative's testimony) Claimant did not dispute the Division's attributing the SSI Payment Standard of \$1,011 as the income for her household for purposes of calculating her benefit. (Claimant's testimony)

11. Neither party produced evidence showing what the SSA reported as Claimant's husband's deemed income on May 11, 2011.

## PRINCIPLES OF LAW

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

"Ordinarily the party seeking a change in the status quo has the burden of proof." *See, State of Alaska Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985) (n. 5, citing 2 *K. Davis, Administrative Law Treatise*, § 14.14(1958).

The standard of proof in an administrative proceeding is a "preponderance of the evidence," unless otherwise stated. *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, 1183 (Alaska 1986) *See, 2 R. Pierce, Administrative Law Treatise*, §10.7 at 973 (5th ed. 2010) (the preponderance of the evidence standard of proof applies to the vast majority of agency actions).

"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).

### II. Adult Public Assistance

This case concerns the choice of deemed income of Claimant's ineligible spouse that the Division of Public Assistance (Division) applied to re-determine Claimant's APA benefit amount.

The State of Alaska, through the Division of Public Assistance (Division), Adult Public Assistance Program,<sup>9</sup> may pay a monthly cash benefit to an eligible individual. Alaska Statute (AS) 47.25.430. If a recipient<sup>10</sup> of Adult Public Assistance, or the spouse of a recipient with whom the recipient is living, acquires income sufficient to maintain the recipient properly, then the assistance granted to the recipient may be reduced or terminated, according to applicable regulations. AS 47.25.460(b).

An recipient must be determined by the Division to be continue to be eligible for Adult Public Assistance (APA) and the benefit amount adjusted according to changes in the recipient's circumstances. AS 47.25.460(b). An applicant or recipient's income is categorized according to whether the applicant is an individual or part of a couple, and also according to the type of housing circumstances. *See Exhibit 21.1*, also

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<sup>9</sup> The Alaska statute authorizing Adult Public Assistance states, in relevant part: "[f]inancial assistance shall be given under AS 47.25.430-47.25.615 so far as practicable under appropriations made by law, to every aged, blind, or disabled needy resident who has not made a voluntary assignment or transfer of property to qualify for assistance." AS 47.25.430(a).

<sup>10</sup> For purposes of this decision, the term "applicant" is interchangeable with the term "recipient" although Claimant at all times relevant to this decision was a recipient of SSI and of APA benefits.

at APA Manual Addendum 1 Program Standards (accessed September 11, 2011 at <http://dpaweb.hss.state.ak.us/manuals/apa/apa.htm>) In 2011, the APA Program Standard for a couple, one of whom is eligible for SSI, living independently together (e.g., not in someone else's home or in assisted living), is \$1,504.00. (*Id.*) If the income exceeds the appropriate APA Program Standard, the recipient may not receive Adult Public Assistance. 7 AAC 40.310.

For purposes of determining an APA recipient's benefit amount, the "income and resources of an applicant's spouse who is living with [her] are considered income and resources of the applicant." 7 ACC 40.240(a) "Income" is defined as "any property, month or service received by an applicant, together with the applicant's spouse under 7 AAC 40.240, which can be used, directly or indirectly to meet the applicant's need for food, clothing, and shelter." 7 AAC 40.300(a)(1).

Regulation 7 AAC 40.300(e) provides:

For an applicant who receives monthly SSI payments, income is equal to the applicable SSI payment standard for the month for which assistance under this chapter is provided, plus any income considered available to the applicant under 7 AAC 40.330(b)(1) that is not counted in determining the SSI payment.

Regulation 7 AAC 40.330(b)(1) provides:

In the case of an applicant required to apply for SSI, the income of an ineligible spouse is treated in accordance with 20 C.F.R. § 416.1163, except that the income of an ineligible spouse that is disregarded under 20 C.F.R. § 416.1163(d)(1) is considered available to the applicant in computing the amount of assistance under 7 AAC 40.350 and 7 AAC 40.370.

To determine the ineligible spouse's contribution to the household's total monthly income, the monthly income available to the recipient, through the recipient's ineligible spouse, is identified and from this amount are subtracted exclusions identified by 7 AAC 40.320 and 40.330; the remaining amount is considered the total monthly income of the ineligible spouse. 7 AAC 40.350. This total monthly income of the ineligible spouse is then added to the recipient's income as income because it is deemed available to the recipient.

Thus, the income of an applicant who receives SSI, and is married to a spouse who is not eligible for SSI (ineligible spouse) and who has income that is available to the dependent spouse, is treated according to specific Alaska and federal SSI regulations. 7 AAC 40.300-370. See Adult Public Assistance (APA) Manual Section 452 et. seq. Regulation 7 AAC 40.330(b)(1) mandates that the income of a spouse remaining after exclusions, is "treated in accordance with 20 C.F.R. § 416.1163."

The provisions of federal regulation 20 C.F.R. § 416.1163 apply to an Alaska APA recipient, who is receiving SSI and is married to an individual who is not eligible to receive SSI and whose income is not excluded by Alaska regulation. 7 AAC 40.330. Federal Social Security Administration SSI regulation 20 C.F.R. § 416.1163 is titled "How we deem income to you from your ineligible spouse."

The provisions of regulation 20 C.F.R. § 416.1163(a) and (b) are similar to the provisions of 7 AAC 40.320 - .330. To the extent that 20 C.F.R. § 416.1163 is incorporated into 7 AAC 40.330, they are the same.<sup>11</sup>

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<sup>11</sup> Regulation 7 AAC 40.330 does not specify an allocation for a child but regulation 20 C.F.R. § 416.1163(b) provides for the "allocation" of some of the non-recipient spouse's income to represent income to meet the needs of children who are not eligible for

Regulation 20 C.F.R. § 416.1163 describes the process the SSA uses to determine eligibility and the amount of SSI benefits for a recipient.

After the ineligible spouse's income is determined, (having been reduced by all exclusions and allocations) it is combined with the income of the eligible spouse to calculate the recipient's benefit according to a complex formulaic process. 20 C.F.R. § 416.1163(d)(2)(i)-(iii). The Division's application of this process is not at issue in this case.

Regulation 20 C.F.R. § 416.1163(e) addresses how the ineligible spouse's deemed income is applied to determine SSI benefit amounts. It expressly provides that, in addition to the other processes of that regulation, the income used for benefit calculation is the "ineligible spouse's income in the second month prior to the current month."<sup>12</sup> 20 C.F.R. § 416.1163(e)(1). For a benefit month of June 2011, the "second month prior to the current month" would be April 2011.

Alaska Adult Public Assistance Manual Section 460-3 "SSI And APA Deeming" states:

**SSA will calculate the deemed income and resource amounts for SSI applicants and recipients.** DPA will then use these deemed income and resource amounts for budgeting. If the case worker discovers a discrepancy in the SSA deeming calculations, he or she will continue to accept SSI deeming amounts, notify SSI of the discrepancy, and make any changes needed after SSI takes action.

For those cases subject to deeming that are not eligible for SSI, the case worker will use the income and resource deeming processes described in this chapter. For example, an APA applicant who is not eligible for SSI because of an ineligible spouse's or alien sponsor's deemed income may still be eligible for APA if the applicant's own countable income in combination with the countable deemed income is equal to or less than the applicable APA need standard. (Emphasis added.)

## ANALYSIS

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

"Ordinarily the party seeking a change in the status quo has the burden of proof." *See, State of Alaska Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985)(n. 5, citing 2 *K. Davis, Administrative Law Treatise*, § 14.14(1958)). Here, the Division is seeking to change Claimant's APA benefit amount and therefore it is seeking to change the status quo. Therefore, the Division has the burden of proof.

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SSI. APA Manual Section 460-1 A. defines allocation as "an amount deducted from income subject to deeming which is considered to be set aside for the support of certain individuals other than the APA applicant or recipient." The allocation amount for a child not eligible for SSI is \$337. This amount is deducted from the non-recipient spouse's income as part of obtaining a combined net income amount for the household. 7 AAC 40.330(b)(1)( incorporating by reference 20 C.F.R. § 416.1163(b)). The Division properly excluded an allocation for Claimant's SSI ineligible child in this case; this is not at issue.

<sup>12</sup> The regulation then distinguishes between recipients whose benefits are continued at a re-determined amount from those recipient's who are in their "first month" of eligibility or "re-eligibility", in which case the ineligible spouse's income in the current month is used.

The standard of proof in an administrative proceeding is a “preponderance of the evidence,” unless otherwise stated. *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Comm’n*, 711 P.2d 1170, 1183 (Alaska 1986) See, 2 R. Pierce, *Administrative Law Treatise*, §10.7 at 973 (5th ed. 2010) (the preponderance of the evidence standard of proof applies to the vast majority of agency actions). The Division must meet its burden of proving its action was correct by a preponderance of the evidence.

## II. Issue

On May 12, 2011, was the Division correct to use the Claimant’s spouse’s employment income instead of the spouse’s deemed income as reported by the Social Security Administration (SSA) when it re-determined Claimant’s Adult Public Assistance benefit amount to be \$184 as of June 2011?

## III. The Division’s Calculation of Claimant’s APA Benefit Amount was Not Correct.

The only question at issue in this case is if the Division was correct to prospectively calculate Claimant’s household’s countable income to re-determine her APA benefit by using her husband’s reported employment income, instead of the deemed income amount reported by the SSA.<sup>13</sup>

Claimant believes the Division should have used the process identified in the first paragraph of APA Manual Section 460-3, which applies to recipients of SSI, such as herself, instead of the second paragraph of APA Manual Section 460-3, which applies to non-SSI recipients. Therefore, she argues, the implication is her APA benefit amount is incorrect.

Claimant believes the Division erred in calculating her APA benefit because it used her husband’s April 2011 employment income (reported to the Division) as the basis for determining household income. Claimant believes this is the process the Division applies to non-SSI APA recipients, according to APA Manual Section 460-3, second paragraph.

For SSI recipients, like herself, Claimant believes the Division should have used the income amount which the SSA had for her husband in April 2011 at the time the Division re-determined her benefits, according to APA Manual Section 460-3, first paragraph. Claimant provided evidence that the SSA’s records deemed her husband’s income on April 30, 2011 to be \$584 for the month of April 2011. Claimant asserts that the Division should have used her husband’s income as reported by the SSA at the time the Division re-determined her benefits. The Division re-determined her benefits on May 11, 2011. Claimant did not provide evidence of what the SSA deemed her husband’s income to be on May 11, 2011.

The Division did not provide evidence of what was the husband’s income as reported by the SSA at any time. Instead, the Division used the husband’s employment income and prospectively determined what he would earn in the benefit month of June 2011.<sup>14</sup> The Division followed the formulaic procedure for calculating

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<sup>13</sup> Claimant requested the Fair Hearing to learn, definitively, if Adult Public Assistance (APA) Manual Section 460-3 applies to her circumstances as an SSI recipient when the SSA has a different income amount as her husband’s income than does the Division. She has received conflicting information from the Division and is unsure how her APA benefit amount is calculated when she is receiving SSI. Claimant believes the Division should have used the process identified in APA Manual Section 460-3 to calculate her benefit, which would mean her benefit amount would be more.

<sup>14</sup> The Division’s Hearing Representative explained that, at the time the Division calculated Claimant’s June 2011 benefit, it appeared the SSA had not yet changed Claimant’s SSI benefit amount (based on her husband’s changed income) and therefore the Division used Claimant’s SSI benefit amount as her income. The Division’s Hearing Representative explained that when SSA does



Claimant's benefit based on this prospected income. *See* Findings of Fact 9 and 10. Claimant did not dispute the procedure the Division used, just the Division's choice to use her husband's employment income for the calculations.

The Division is required to use the ineligible spouse's income (after exclusions) when it determines the income of an ineligible spouse which is available to an APA recipient. 7 AAC 40.330(b)(1). Regulation 7 AAC 40.330(b)(1) specifically incorporates the SSI income amount of the ineligible spouse, which is deemed to the eligible recipient by the SSA, by referencing SSI regulation 20 C.F.R.416.1163 into 7 AAC 40.330(b)(1).

SSI regulation 20 C.F.R.416.1163 sets out a process whereby the SSA determines what income from an ineligible spouse is available to an eligible recipient. The Division uses this process, (with the addition of other exclusions) to determine the Claimant's household's countable monthly income. *See* 7 AAC 40.320-350. The SSA uses the ineligible spouse's income at the foundation of its calculations for SSI benefits.

In this case, the Division used the ineligible spouse's employment income at the foundation of its calculation but (apparently) did not check to see if that income matched the income used by the SSA. Claimant argued there was a discrepancy between the SSA's reported income amount for her spouse and the Division's use of the employment income for her spouse. The SSA uses the deemed income amount of the ineligible spouse (Claimant's husband) as it was the "second month prior to the current month." 20 C.F.R. § 416.1163(e). The second month prior to the current (benefit month of June 2011) was April 2011. Therefore, Claimant argued, the Division should have followed Adult Public Assistance Manual Section 460-3 and used her husband's April 2011 income, as deemed by the SSA, of \$584.

The Division has adopted a policy at Adult Public Assistance Manual Section 460-3 which provides that the Division will use the SSA "deemed income and resource amounts for SSI ... recipients" when determining future APA benefits. This Manual Section further provides that if the Division notes a "discrepancy in the SSI deeming calculations" the Eligibility Technician will "continue to accept SSI deeming amounts, notify SSI of the discrepancy, and make any changes needed after SSI takes action."

In this case, Claimant is an SSI recipient whose deemed income (i.e., income from her ineligible spouse that is available to her) has been determined by the SSA. Claimant proved the SSA deemed her spouse's April 2011 income as \$584 on April 30, 2011. There was a discrepancy between the SSA deemed income and the Division's deemed income because the two government entities used substantially different income amounts at the start of their calculations.

The Division should have checked the SSA's ineligible spouse's deemed income amount for Claimant's husband to compare it to the employment income it used when it re-determined benefits on May 11, 2011. Whether or not the Eligibility Technician checked the SSA records is not in the evidentiary record. However, the Division did not use the SSA deemed income amount, but instead used Claimant's spouse's actual income to prospectively calculate income in June 2011. Therefore, the Division failed to abide by its policy as stated in Adult Public Assistance Manual Section 460-3.<sup>15</sup>

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change a recipient's SSI benefit amount, the Division will "track" the change and re-adjust a recipient's APA benefit accordingly. The Division's Hearing Representative did not explain why the same procedure was not used in regards to Claimant's husband's deemed income, as provided by APA Manual Section 460-3, first paragraph.

<sup>15</sup> The APA Manual does not cite to the authority under which its policies are adopted. However, it is reasonable to assume that Manual Section 460-3 was adopted pursuant to 7 AAC 40.330(b)(1), as it pertains to that regulation, titled "Excluded Income of Spouses" and incorporates the SSA's SSI rules for deeming income from ineligible spouses (20 C.F.R. § 416.1163) by direct

Also, because there was a discrepancy between Claimant's husband's employment income and the SSA deemed income for her husband, the Division Eligibility Technician should have 'continued to accept' the SSA's SSI deemed amount, as provided by APA Manual Section 460-3. Alternatively, the Eligibility Technician could have obtained the SSA's deemed income amount on May 11, 2011 for Claimant's husband and used that amount for its calculations, until the SSA incorporated Claimant's husband's changed income amount.

Therefore, the Division has failed to prove by a preponderance of the evidence that it properly followed applicable regulations and policies, specifically Adult Public Assistance Manual Section 460-3, when it used Claimant's spouse's earned income, instead of his SSA deemed income, to calculate Claimant's APA benefit.

### **CONCLUSIONS OF LAW**

1. The Division did not prove by a preponderance of the evidence that it applied the correct income amount when it calculated Claimant's June 2011 APA benefit amount.
2. The Division calculated Claimant's June 2011 APA benefit amount erroneously using her husband's prospective employment income when it should have followed APA Manual Section 460-3 and calculated the benefit amount using the Social Security Administration's Supplemental Security Income 'ineligible spouse's deemed income' as required by 7 AAC 40.330(b)(1) and 20 C.F.R. § 416.1163.

### **DECISION**

On May 12, 2011, the Division was not correct when it re-determined Claimant's APA benefit amount as \$184 beginning June 2011.

### **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. 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. To appeal, 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

DATED September 13, 2011.

\_\_\_\_\_  
*/signed/*  
Claire Steffens  
Hearing Authority

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reference, and by incorporating the provision to use the second month prior to the current month as required by 20 C.F.R. § 416.1163(e)(1).

CERTIFICATE OF SERVICE

I certify that on September 13, 2011 a copy of this document was sent to Claimant via USPS Certified Mail, Return Receipt Requested

By: \_\_\_\_\_ */signed/* \_\_\_\_\_

I certify that on September 14, 2011 copies of this document were sent to the following by secure, encrypted e-mail, as follows:

\_\_\_\_\_, DPA Hearing Representative  
\_\_\_\_\_, DPA Hearing Representative  
\_\_\_\_\_, Policy & Program Development  
\_\_\_\_\_, Staff Development & Training  
\_\_\_\_\_, Administrative Assistant II  
Margaret Mattson, Eligibility Technician I

By: \_\_\_\_\_ */signed/* \_\_\_\_\_

J. Albert Levitre, Jr.  
Law Office Assistant I