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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-252
)	
Claimant.)	Division Case No. [REDACTED]
_____)	

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) was a Temporary Assistance recipient in June 2011. (Ex. 1) On June 28, 2011, the Claimant requested that her newborn child be added to her case. (Ex. 3) On July 8, 2011, the Claimant was verbally notified by the Division of Public Assistance (Division) that her monthly Temporary Assistance benefit amount would be reduced from \$759 to \$653 beginning with the month of August 2011. (Exs. 4.0 – 4.1) The Claimant requested a Fair Hearing on July 8, 2011. *Id.* The Division then sent the Claimant written notice of her Temporary Assistance benefit reduction on July 11, 2011. (Ex. 5.0)

This Office has jurisdiction pursuant to 7 AAC 49.010.

The Claimant's hearing was held on August 16, 2011. The Claimant participated telephonically. She represented herself and testified on her own behalf. [REDACTED], Public Assistance Analyst with the Division of Public Assistance, participated in person. She represented the Division and testified on its behalf.

ISSUE

Was the Division correct when it notified the Claimant, verbally on July 8, 2011 and in writing on July 11, 2011, that her Temporary Assistance benefit payment would be reduced from \$759 per month to \$653 per month beginning with the month of August 2011?

FINDINGS OF FACT

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

1. The Claimant received monthly Temporary Assistance benefits in the amount of \$550 in the month of January 2011, based upon her having a two person household with \$430 in gross countable monthly income. (Ex. 4.8) In February 2011, her Temporary Assistance monthly benefit payment increased to \$759 based upon her having a two person household with \$100 in gross countable monthly income. *Id.*
2. On June 28, 2011, the Claimant requested that her newborn child be added to her Temporary Assistance case, which increased her household size to three persons. (Ex. 3)
3. As of June 28, 2011, the Claimant was receiving unemployment benefits of \$100 weekly for unemployment income of \$430 per month;¹ she had been paid those benefits from at least April 18, 2011 forward.² (Ex. 4.2) Her unemployment benefits were expected to continue through the first part of September 2011. (Ex. 4.0) In addition, the Claimant's monthly shelter costs are \$975 for rent, \$30 for telephone, and \$200 for electric. (Ex. 2.2; Claimant testimony)
4. The Claimant received Temporary Assistance benefits for the months of February 2011 through July 2011 in the amount of \$759. (Ex. 4.8) This benefit amount was based upon her having a two person household with monthly income of \$100. *Id.*
5. On July 8, 2011, the Division reviewed the Claimant's Temporary Assistance case and calculated that the Claimant was entitled to receive a monthly Temporary Assistance benefit payment in the amount of \$653 per month for her increased household size of three persons. (Ex. 4.0; ████████ testimony) The calculations were as follows:
 - a. The Claimant's only income of \$430 in unemployment income was deducted from the need standard of \$1,464 for her 3 person household, for a figure of \$1,034.
 - b. The Claimant's housing costs were \$975 for rent and \$87 for electrical standard utility costs. There was no deduction for her housing costs.
 - c. The result of \$1,034 (the need standard of \$1,464 less the \$430 unemployment income) was not reduced for any penalties. The result of \$1,034.00 was then multiplied by 63.22 percent to arrive at a total monthly Temporary Assistance benefit amount of \$653 (rounded down to the nearest dollar).

¹ If a Temporary Assistance recipient is paid weekly, the Division multiplies the weekly income by 4.3 to arrive at the recipient's monthly income. *See* 7 AAC 45.425(d).

² The Claimant testified that she had been receiving unemployment benefits for at least seven months. However, the unemployment benefit printout provided by the Division, dated July 19, 2011, only listed payments beginning April 18, 2011. (Ex. 4.2)

(Exs. 4.4 – 4.7)

6. The Division’s calculation of the Claimant’s Temporary Assistance benefits actually resulted in her monthly Temporary Assistance benefit amount being reduced from \$749 per month to \$653 per month, a reduction of \$106 per month, despite the fact that her household size had increased from two persons to three persons by the addition of her newborn child.

7. The reduction resulted because the Division had not taken the Claimant’s unemployment income into account when it had previously calculated her monthly Temporary Assistance benefit amount for her assistance unit during the months of February 2011 through July 2011. (██████ testimony; Ex. 4.8) This resulted in the Claimant receiving more Temporary Assistance benefits than she was entitled to receive. *Id.*

8. The Claimant testified as follows:

- a. The Division was aware the Claimant was receiving unemployment benefits. (Claimant testimony) In fact, it was Division personnel who advised her that she was eligible for unemployment benefits. *Id.*
- b. She was assured by a Division Eligibility Technician in January 2011 that her monthly Temporary Assistance benefit payment would increase when she had her child.
- c. The Division has made multiple errors in handling her public assistance benefits, including losing her documents on several occasions.

9. The Division notified the Claimant, verbally on July 8, 2011 and in writing on July 11, 2011, that her Temporary Assistance benefit payment would be reduced to \$653 per month beginning with the month of August 2011. (Exs. 4.0 – 4.1, 5)

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)).

Temporary Assistance is a program that provides “cash assistance . . . to needy children and their families.” AS 47.27.005(1). The regulations that control how Temporary Assistance eligibility and benefit amounts are determined are contained at 7 AAC 45.149 – 45.990.

The Temporary Assistance program uses the term “assistance unit” for “those individuals whose needs are considered in determining eligibility for assistance and the amount of the ATAP payments.” 7 AAC 45.335(a). In order for an assistance unit to be eligible for Temporary Assistance, the assistance unit must have a dependent child in the home, and the assistance unit

must meet financial eligibility requirements. AS 47.27.010; 7 AAC 45.210(a)(4) and (b); 7 AAC 45.225(a). A parent (or parents) and the dependent children who reside with them are mandatory members of the assistance unit. 7 AAC 45.195(a).

Temporary Assistance financial eligibility and monthly benefits levels are based upon the “need standard” for the appropriate assistance unit size and the assistance unit’s gross monthly income. 7 AAC 45.470. The need standard for a three person assistance unit is \$1,464. 7 AAC 45.520; *Alaska Temporary Assistance Manual Addendum 2*.

The income of parents, who reside with their dependent child or children, is normally considered to be part of the assistance unit’s income for eligibility and benefit determination purposes. 7 AAC 45.325(b)(1). Unemployment income is classified as “unearned” income and is counted for the purposes of determining Temporary Assistance eligibility and benefit levels. 7 AAC 45.375(b).

The assistance unit’s monthly Temporary Assistance benefit payment is determined by first calculating the total non-exempt gross monthly assistance unit income, and then subtracting deductions as specified in the Temporary Assistance regulations. 7 AAC 45.470; 7 AAC 45.525. The Temporary Assistance regulations do not allow for any deductions from unearned income. *See* 7 AAC 45.475 – 485. The Temporary Assistance regulations also do not provide an income deduction for shelter costs (rent/mortgage and utilities). 7 AAC 45.525(b)(2); 7 AAC 45.527(a). Instead, if a Temporary Assistance recipient’s shelter costs are less than 30 percent of the appropriate need standard (in this case \$439 is 30 percent of the \$1,464 three person assistance unit need standard), the Temporary Assistance benefit amount is reduced. *Id.*

The resulting net monthly assistance unit income figure (gross monthly income less deductions) is then subtracted from the applicable Temporary Assistance need standard. 7 AAC 45.470(c); 7 AAC 45.525(b). The need standard for a three person assistance unit, consisting only of a parent and two dependent children, is \$1464. 7 AAC 45.520; *Alaska Temporary Assistance Manual Addendum 2*. That result is then multiplied by 63.22 percent to arrive at the monthly benefit amount. 7 AAC 45.525(c); *Alaska Temporary Assistance Manual Section 780-1G*. The benefit amount is rounded down to the nearest dollar, “[f]or example, if the payment is calculated as \$25.99 the payment amount would be \$25.” 7 AAC 45.525(d).

ANALYSIS

The issue in this case is whether the Division was correct to reduce the Claimant’s monthly Temporary Assistance benefit amount from \$759 to \$653 beginning with the month of August 2010. The Division has the burden of proof, because it is seeking to change the status quo by its reduction of the Claimant’s Temporary Assistance benefit amount.

Resolution of this issue requires the application of the relevant Temporary Assistance regulations to undisputed facts. Those undisputed facts are:

1. As of July 8, 2011, the Claimant’s only income was \$430 per month in unemployment benefits, which was expected to continue through the first part of September 2011. Her

monthly housing costs, per the Claimant's testimony, are \$975 for rent, \$30 for telephone, and \$200 for electric. *See* Finding of Fact 3 above.

2. The Claimant's assistance unit consisted of two people, the Claimant and one minor child, until June 2011, when the assistance unit increased to three people due to the addition of the Claimant's newborn child. *See* Findings of Fact 1 and 2 above.
3. The Division provided the Claimant with Temporary Assistance benefits for her two person assistance unit for the months of February through July 2011 in the amount of \$759 per month. *See* Finding of Fact 4 above. That Temporary Assistance benefit amount was based on the Claimant having countable income \$100 per month. *Id.* The Division did not count the Claimant's \$430 in monthly unemployment income when it calculated the \$753 per month Temporary Assistance benefit amount.³ *See* Findings of Fact 1, 4 and 7 above.
4. When the Division recalculated the Claimant's Temporary Assistance benefit payment, on July 8, 2011, for her three person assistance unit, it counted the Claimant's \$430 in monthly unemployment income. *See* Finding of Fact 5 above. This resulted in a monthly Temporary Assistance benefit payment in the amount of \$653. *See* Findings of Fact 5 and 6 above.

The Claimant objects to the fact that the Division decreased her Temporary Assistance benefits from \$759 per month to \$653 per month after her assistance unit increased by one person, her newborn child, in June 2011. The Claimant's objection is understandable. As she was told by a Division Eligibility Technician in January 2011 (*see* Finding of Fact 8(b) above), the addition of another person to her assistance unit would normally result in an increase in Temporary Assistance benefit, not a decrease.

However, a review of the record shows that the reason the Claimant's two person assistance unit was receiving \$759 per month in Temporary Assistance benefits was because the Division was only counting \$100 in monthly income, i.e. it was not counting the Claimant's \$430 per month in unemployment benefits. *See* Findings of Fact 1, 4 and 7 above. The Claimant's unemployment income is required to be counted when calculating a Temporary Assistance recipient's monthly benefit amount. 7 AAC 45.375(b).

The Division's failure to count the Claimant's unemployment income was a mistake. Even though the Claimant testified that the Division was aware of her unemployment income (*see* Finding of Fact 8(a) above), i.e., the mistake was the Division's, the Division is not required to perpetuate its mistake.⁴ Once the Division became aware of the mistake, it was required to

³ This is not a factual finding that the Claimant was actually receiving unemployment benefits in February or March, 2011. There is some ambiguity in the evidence because the Dept. of Labor unemployment printout furnished by the Division (Ex. 4.2) only shows unemployment payments being made from April 18, 2011 forward. *Also see* footnote 2 above.

⁴ This Decision does not require nor does it arrive at a conclusion as to whether the failure to count the Claimant's unemployment income was caused by either the Division or the Claimant.

correct it. The Division was therefore correct to count the Claimant's unemployment income and recalculate the Claimant's monthly Temporary Assistance benefit amount.

The Claimant's gross monthly unemployment income was \$430. The Temporary Assistance program does not allow any deductions from unemployment income, including a deduction for shelter costs. *See* 7 AAC 45.475 – 485; 7 AAC 45.525(b)(2); 7 AAC 45.527(a). Because there are no deductions from the unemployment income, the assistance unit's countable income was \$430. In order to determine the monthly benefit amount, the assistance unit's countable monthly income of \$430 was subtracted from the three person assistance need standard of \$1,464. 7 AAC 45.525(b). That result was \$1,034. This result was then multiplied by .6322 to arrive at the monthly benefit amount. 7 AAC 45.525(c); *Alaska Temporary Assistance Manual* Section 780-1G. The result is \$653.69, which was rounded down to \$653 as required by 7 AAC 45.525(d). This is the exact process the Division used. *See* Finding of Fact 5 above. The Division was therefore correct when it calculated that the Claimant was only entitled to receive \$653 in monthly Temporary Assistance benefits.

The Division had the burden of proof in this case. It met its burden. It followed the applicable regulations, as explained above, and properly calculated that the Claimant's monthly Temporary Assistance benefit amount was \$653. The Division was therefore correct when it reduced the Claimant's Temporary Assistance benefit amount from \$759 monthly to \$653 monthly beginning with the month of August 2011.

CONCLUSIONS OF LAW

1. The Division met its the burden of proof by a preponderance of the evidence, as follows:
 - a. The Division did not count the Claimant's \$430 in monthly unemployment income when it calculated her Temporary Assistance benefits for the months immediately prior to and including July 2011.
 - b. The fact the Division did not count the Claimant's monthly unemployment income resulted in the Claimant receiving more Temporary Assistance benefits than she was entitled to receive during the months immediately prior to and including July 2011.
 - b. Because the Claimant was receiving unemployment income of \$430 per month as of July 8, 2011, and was expected to continue receiving that same amount of unemployment income through the first part of September 2011, the Claimant was entitled to only receive \$653 in monthly Temporary Assistance benefits for her three person household.
2. The Division was correct to decrease the Claimant's monthly Temporary Assistance benefit payment from \$759 to \$653 beginning with the month of August 2011, despite the fact the Claimant's household size had increased from two persons to three persons.

