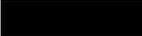


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**STATE OF ALASKA
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
OFFICE OF HEARINGS AND APPEALS**

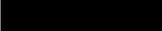
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|---|---|---|
| In the Matter of |) | |
| |) | |
|  |) | OHA Case No. 11-FH-280 |
| |) | |
| Claimant. |) | Division Case No.  |
| _____ |) | |

FAIR HEARING DECISION

STATEMENT OF THE CASE

 (Claimant) applied for Temporary Assistance and Medicaid benefits on July 26, 2011. (Exs. 2.0 – 2.9) On July 27, 2011, the Division of Public Assistance sent the Claimant two separate written notices informing her that her application for Temporary Assistance and Medicaid benefits was denied for both programs.¹ (Exs. 3.0 – 3.1)

The Claimant requested a Fair Hearing on August 3, 2011. (Ex. 4.1) This Office has jurisdiction pursuant to 7 AAC 49.010.

The Claimant's hearing was held on August 23, 2011. The Claimant participated telephonically. She represented herself and testified on her own behalf. , Public Assistance Analyst with the Division of Public Assistance, participated in person. She represented the Division and testified on its behalf.

ISSUE²

Was the Division correct when it notified the Claimant on July 27, 2011 that her July 26, 2011 application for Temporary Assistance benefits was denied?

¹ The Division sent the Claimant "corrective notices" with regard to both programs on August 11, 2011, which provided a more extensive explanation of the reasons the Claimant's application was denied. (Exs. 3.2 – 3.3)

² The Claimant initially requested a hearing with regard to both the Temporary Assistance and Medicaid benefit denials. (Ex. 4.1) At hearing, she clarified that she was not pursuing appealing the Medicaid benefit denial and only wished to appeal the Division's denial of her application for Temporary Assistance benefits.

FINDINGS OF FACT

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

1. The Claimant and her husband reside with two minor children. (Ex. 2.1)
2. The two minor children are not biologically or legally related to the Claimant or her husband for the following reasons:
 - a. They are the Claimant's husband's sister's step-grandchildren (or looking at it slightly differently, they are the Claimant's husband's step-grandniece and step-grandnephew). (Ex. 2.13; Claimant testimony)
 - b. The mother of the minor children is the Claimant's sister-in-law's stepchild, i.e. there is no biological relationship between the Claimant's sister-in-law and her stepdaughter's children. (Claimant testimony) The Claimant's sister-in-law did not legally adopt her stepdaughter, who is the mother of the minor children. *Id.*
3. The Claimant and her husband have legal guardianship of the minor children and have raised them for most of their lives. (Claimant testimony) They have also received public assistance benefits for the children before in another state. *Id.*
4. The Division denied the Claimant's application for Temporary Assistance because the minor children were not related to the Claimant or her husband within the 5th degree of kinship. (Ex. 3.0)

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. "To be eligible for [Alaska Temporary Assistance Program] benefits a dependent child must be living with a caretaker relative in the home of that caretaker relative." 7 AAC 45.225(a).

The Alaska Temporary Assistance regulations define a caretaker relative as follows:

- (8) "caretaker relative" means an individual who provides the care and control of a dependent child; a "caretaker relative" does not include a guardian, friend, neighbor, unrelated godparent, second cousin of a dependent child, or an

individual who has been given a dependent child to take care of; a caretaker relative must be

(A) a biological or legally adoptive relative of the dependent child to the fifth degree of consanguinity; a biological relative must be of full or half blood; a biological relative may be a caretaker relative even though the legal relationship has been terminated;

(B) a stepfather, stepmother, stepbrother, or stepsister of the dependent child; or

(C) the spouse of an individual described in (A) or (B) of this paragraph, even after the marriage is terminated by death or divorce;

7 AAC 45.990(a)(8).

“Administrative agencies are bound by their regulations just as the public is bound by them.” *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010).

State of Alaska Fair Hearing regulation 7 AAC 49.170 provides that “the role of the hearing authority is limited to the ascertainment of whether the laws, regulations, and policies have been properly applied in the case and whether the computation of the benefit amount, if in dispute, is in accordance with them.”

ANALYSIS

The issue in this case is whether the Division was correct to deny the Claimant’s July 26, 2011 application for Temporary Assistance benefits. The Claimant, as the applicant for public assistance benefits, is the party seeking to change the status case. She 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).

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

1. The Claimant and her husband are the legal guardians of two minor children, with whom they reside. *See* Findings of Fact 1 and 3 above.
2. The Claimant and her husband do not have a biological or legally adoptive relationship with the two minor children. *See* Finding of Fact 2 above. They are not the minor children’s stepparents. *Id.* Their relationship could best be described as the minor children’s step-great aunt and step-great uncle. *Id.*

The Alaska Temporary Assistance regulations specifically require that “[t]o be eligible for [Alaska Temporary Assistance Program] benefits a dependent child must be living with a caretaker relative in the home of that caretaker relative.” 7 AAC 45.225(a). A “caretaker

relative” is either a biological or legally adoptive relative within the fifth degree of consanguinity or a stepparent, stepbrother, or stepsister. 7 AAC 45.990(a)(8). A legal guardianship does not create a “caretaker relative” relationship. *Id.*

A review of the facts of this case, as recited above, demonstrate that neither the Claimant nor her husband are “caretaker relatives” as defined by the Alaska Temporary Assistance regulation 7 AAC 45.990(a)(8): they are not biological or legally adoptive relatives; they are step-great aunt and step-great uncle, not stepparents or stepsiblings. Their legal guardianship of the children does not create a “caretaker relative” relationship. 7 AAC 45.990(a)(8).

The fact that the Claimant and her husband have raised the minor children for most of the children’s lives does not create a “caretaker relative” relationship. While this might create an “informal” adoption, the regulation requires that it be a legally adoptive relationship. 7 AAC 45.990(a)(8)(A). In addition, the fact that the Claimant may have received public assistance benefits in another state for these children does not create an exception to the Alaska Temporary Assistance program’s “caretaker relative” requirement. The Division is required to follow its own regulations. *Burke v. Houston NANA, L.L.C.*, 222 P. 3d 851, 868 – 869 (Alaska 2010). Further, this Office is required to apply the Division’s regulations. 7 AAC 49.170.

Because neither the Claimant nor her husband are “caretaker relatives” of the minor children as defined by regulation 7 AAC 45.990(a)(8), they are not eligible for Temporary Assistance benefits. 7 AAC 45.225(a).

The Claimant had the burden of proof by a preponderance of the evidence in this case. She did not meet her burden and did not establish that either she or her husband were “caretaker relatives” for the two minor children in their household. As a result, the Claimant was not eligible for Temporary Assistance benefits. The Division was therefore correct when it denied the Claimant’s July 26, 2011 Temporary Assistance application.

CONCLUSIONS OF LAW

1. The Claimant had the burden of proof by a preponderance of the evidence in this case. She did not meet her burden and did not establish that either she or her husband were “caretaker relatives” as defined by regulation 7 AAC 45.990(a)(8).
2. Because neither the Claimant nor her husband were “caretaker relatives” of the minor children, as required by 7 ACC 45.225(a), the Claimant was not eligible for Temporary Assistance benefits.

DECISION

The Division was correct when it notified the Claimant on July 27, 2011 that her July 26, 2011 application for Temporary Assistance benefits was denied

