Office of Hearings and Appeals 3601 C Street, Suite 1322 P. O. Box 240249

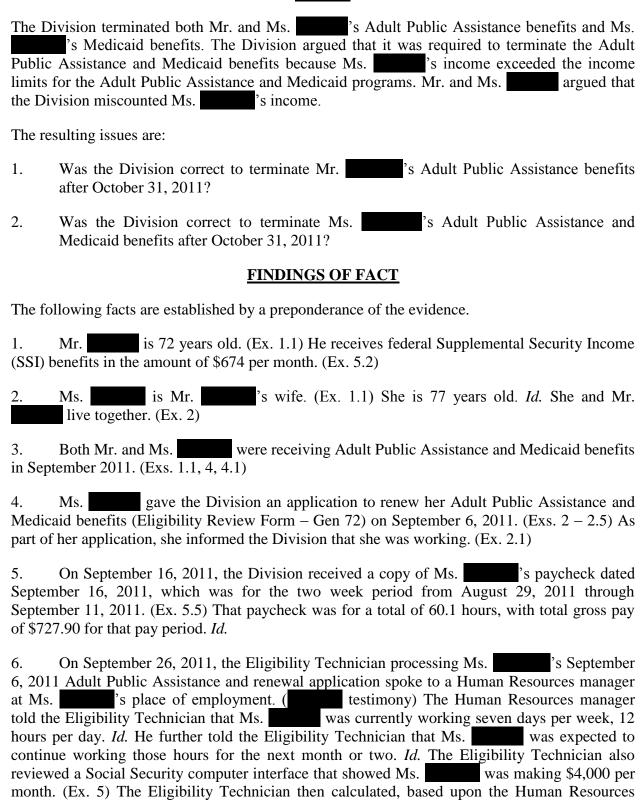
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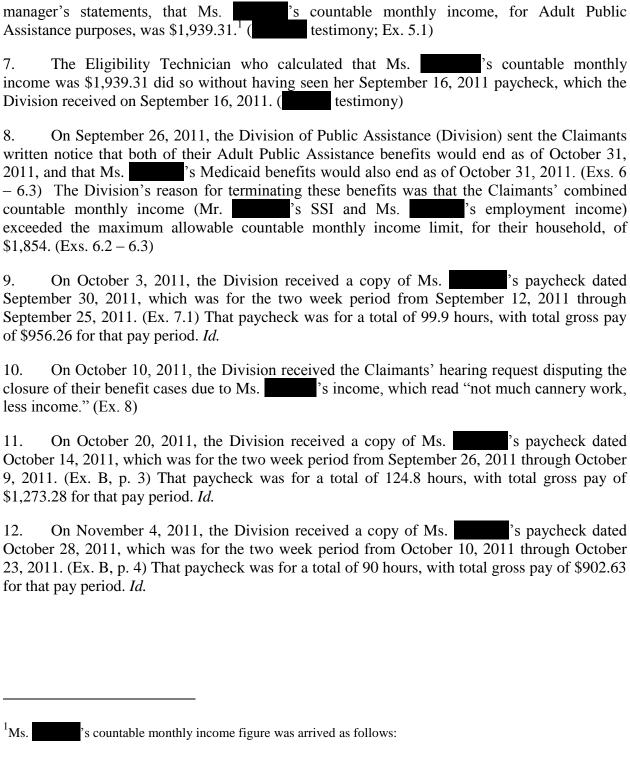
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STATE OF ALASKA DEPARTMENT OF HEALTH AND SOCIAL SERVICES OFFICE OF HEARINGS AND APPEALS

In the Matter of)		
and	,) ,)	OHA Case No. 11-FH-380	
Claimant.)	Division Case Nos.	
FAIR HEAR	RING DE	<u>CISION</u>	
<u>STATEMEN</u>	T OF TH	IE CASE	
and (Claimants) receiving Adult Public Assistance and Medica 2011, the Division of Public Assistance (Division Adult Public Assistance benefits would employed benefits would also end after October a fair hearing on October 10, 2011. (Ex. 8)	aid benefi sion) sent end after C	the Claimants written notice that both of October 31, 2011, and that Ms.	6, of 's
This Office has jurisdiction pursuant to 7 AAC	C 49.010.		
	s, represent honically a T hearing o	nted himself, and testified on his and his on November 17, 2011. Mr. Tagalog interpreter employed by In Syndates and translated.	a
, a Public Assistance Analyst with dates; he represented the Division and test Technician employed by the Division, attertestified on the Division's behalf.	tified on		y

ISSUES





a. The Division calculated her gross monthly income, based on her working 84 hours per week (12 hours per day seven days per week), as being \$3,943.62. (Ex. 5.1)

b. The Division then applied the earned income deduction to the gross monthly income, by deducting \$65 plus one-half of the remaining balance, from the gross monthly income figure of \$3,943.62. This resulted in countable monthly income for Ms. alone, of \$1,939.31. *Id*.

PRINCIPLES OF LAW

A. Burden of Proof and Standard of Proof

A party who is 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 normal standard of proof in an administrative proceeding, unless otherwise stated, is the preponderance of the evidence standard. *Amerada Hess Pipeline 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).

B. Adult Public Assistance

Adult Public Assistance is a cash benefit program provided to financially eligible persons who are over 65, blind, or disabled. AS 47.25.430; 7 AAC 40.120.

Financial eligibility is determined, in part, by an applicant's income (which also includes a spouse's income, if the applicant is married and living with his/her spouse). 7 AAC 40.240(a). Countable monthly income for Adult Public Assistance purposes is calculated by totaling an applicant's gross monthly income, both earned and unearned, and subtracting allowable income deductions. 7 AAC 40.300; 7 AAC 40.310(a); 7 AAC 40.350. Earned income consists of wages and self-employment income. 7 AAC 40.300(a)(2). Unearned income consists of "income that is not earned" and includes such items as Social Security payments, disability benefits, pensions, workers compensation payments, and retirement payments. 7 AAC 40.300(a)(3).

The Adult Public Assistance program's list of allowable deductions from an applicant's income and his spouse's income is provided in 7 AAC 40.320 and 7 AAC 40.330. There is a general deduction of \$20. 7 AAC 40.330(a)(23).

The Adult Public Assistance program also allows a deduction from household earned income of "65 per month of any earned income plus one-half of the remainder." 7 AAC 40.320(a)(20). There is no deduction provided for utilities or mortgage payments. *See* 7 AAC 40.320 - 330.

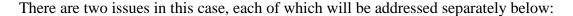
If an applicant, who is married and lives with his/her spouse in their home, where both are otherwise eligible² for Adult Public Assistance, has a countable monthly income that exceeds \$1,854 the applicant is not financially eligible for Adult Public Assistance. 7 AAC 40.310(a)(5) and (c); *Alaska Adult Public Assistance Manual* Addendum 1 (for calendar year 2011).

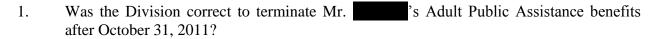
C. Medicaid

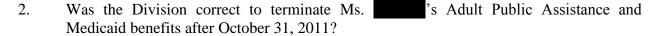
A person who has been approved for Adult Public Assistance is automatically eligible for Medicaid benefits. 7 AAC 100.002(d)(1); 7 AAC 100.410(b).

² 65 years of age or older, blind, or permanently and totally disabled. See 7 AAC 40.020 and 7 AAC 40.120.

ANALYSIS







Each of the above issues involves the question of whether the Division was correct to terminate benefits. Because this case involves the termination of benefits, the Division is the party who is 1170, n. 14 at 1179 (Alaska 1986).

seeking to change the status quo. The Division therefore 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 v. Alaska Public Utilities Comm'n, 711 P.2d Was the Division correct to terminate Mr. 's Adult Public Assistance benefits 1. after October 31, 2011? The Division terminated Mr. 's Adult Public Assistance benefits after October 31, 2011. It did this based upon its determination that Mr. and his wife had monthly countable income that exceeded the Adult Public Assistance program's countable monthly income limit of \$1,854 for their two person household. has a two-person household, which consists only of himself and his wife. See and his wife are elderly, each being over 70 years Finding of Fact 2 above. Both Mr. old. See Findings of Fact 1 and 2 above. This means they are both potentially eligible for Adult Public Assistance based on age. AS 47.25.430; 7 AAC 40.120. Mr. has SSI income of \$674 per month. See Finding of Fact 1 above. Ms. has employment income. In order for to qualify for Adult Public Assistance, his and his wife's countable monthly income cannot exceed \$1,854. 7 AAC 40.310(a)(5) and (c); Alaska Adult Public Assistance Manual Addendum 1 (for calendar year 2011). The Division calculated that Ms. 's monthly countable income was \$1,939.31. See fn. 1 above for the calculations. This calculation was based upon the wage and hour information the Division received from the Human Resources manager at Ms. 's place of employment. 's monthly countable income, as calculated by the See Finding of Fact 6 above. Ms. 's monthly countable income, as calculated by the Division, without counting Mr. 's monthly SSI income, was greater than the Adult Public Assistance monthly income limit of \$1,854.

However, the Division had a copy of paystub, in its possession at the time of the Division's income calculations, which showed Ms. was working far less than 84 hours per week. That paystub dated September 16, 2011, proved that Ms. worked a total of 60.1 hours in the two week period from August 29, 2011 through September 11, 2011, with total gross pay of \$727.90 for that pay period. See Finding of Fact 5 above. The Division Eligibility Technician, who calculated, on September 26, 2011, that Ms. earned gross monthly income of \$3,843.62 and countable monthly income of \$1,939.31 did not know about the September 16, 2011 paycheck when he made his income calculations. *See* Finding of Fact 7 above.

The substantial disparity in hours between the Human Resources manager's statement, 84 hours

The substantial disparity in hours between the Human Resources manager's statement, 84 hours per week (168 in a two week period), and the 60.1 hours over a two week period (30.05 hours in one week) reflected in the September 16, 2011 paystub, should have led the Division to not rely on the Human Resources manager's statement and to rely upon the actual hours worked as reflected by Ms. "'s paystub. The Human Resources manager's hearsay statement's unreliability is underscored by the fact that Ms. "'s next paystub, September 30, 2011, for the two week period from September 12, 2011 through September 25, 2011, was for 99.9 hours and \$956.26 in gross wages. See Finding of Fact 9. It must be noted that this comes to 55 hours of work per week for the pay period ending September 25, 2011, substantially less than the 84 hours per week the Human Resources manager said on September 26, 2011 that Ms. was currently working. "S eligibility for Adult Public Assistance benefits. It relied upon Ms. "employer's Human Resources manager's September 26, 2011 statements when it had a September 16, 2011 paystub reflecting her actual work hours in its possession.

Because the Division did not correctly calculate Ms. "'s income for the purpose of determining Mr. "'s eligibility for Adult Public Assistance benefits, it is necessary to recalculate her income based upon the financial information in the evidentiary record.

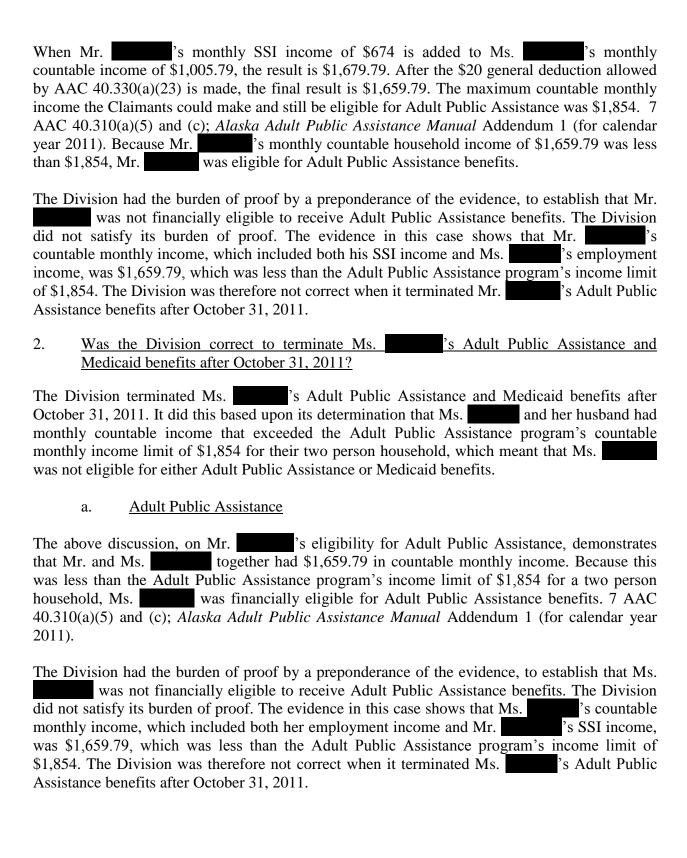
Ms. has four paystubs in the record, which cover her work hours from August 29, 2011 through October 28, 2011. See Findings of Fact 5, 9, 11, and 12 above. The paystub dated September 16, 2011 shows \$727.90 in gross wages. See Finding of Fact 5 above. The paystub dated September 30, 2011 shows \$959.60 in gross wages. See Finding of Fact 9 above. The paystub dated October 14, 2011 shows \$1,273.28 in gross wages. See Finding of Fact 11 above. The paystub dated October 28, 2011 shows \$902.63 in gross wages. See Finding of Fact 12 above. When these four amounts are added together and averaged, Ms. saverage gross income for a two week period comes to \$965.85.

Because Ms. was paid every two weeks, her biweekly gross income of \$965.85 is multiplied by 2.15 to arrive at her monthly income. Her gross monthly income is therefore \$2,076.58. Because this is earned income, her countable earned income is arrived at by deducting "65 per month of any earned income plus one-half of the remainder." 7 AAC 40.320(a)(20). Her countable monthly earned income comes to \$1,005.79.

³ If the Division had only the Human Resources manager's statement that Ms. worked 84 hours per week, as validated by the Social Security interface printout showing her making \$4,000 per month (Ex. 5.1), the Division's conclusion that Ms. had monthly countable income of \$1,939.31 would have been reasonable. However, the Division failed to take Ms. september 16, 2011 paystub, which directly and conclusively contradicted both the Human Resources manager's statement and the Social Security interface printout, into account.

^{4 \$727.90 + \$959.60 + \$1,273.28 + \$902.63 = \$3,863.41}. \$3,863.41 divided by 4 = \$965.85.

 $^{^{5}}$ \$2,076.58 - \$65 = \$2,011.58. \$2,011.58 divided by 2 = \$1,005.79.



b. <u>Medicaid</u>
As the above discussion on Adult Public Assistance shows, Ms. was financially eligible for Adult Public Assistance benefits. Because she was eligible for Adult Public Assistance benefits, she was also eligible for Medicaid benefits. 7 AAC 100.002 (d)(1); 7 AAC 100.410(b).
The Division had the burden of proof by a preponderance of the evidence to establish that Ms. was not eligible for Medicaid benefits. The Division did not satisfy its burden of proof. The evidence in this case shows that Ms. was financially eligible for Adult Public Assistance benefits. Because she was eligible for Adult Public Assistance benefits, she was also eligible for Medicaid benefits. The Division was therefore not correct when it terminated Ms. 's Medicaid benefits after October 31, 2011.
CONCLUSIONS OF LAW
1. The Division did not meet its burden of proof by a preponderance of the evidence and did not prove that Mr. was not financially eligible to receive Adult Public Assistance benefits. It did not consider a paystub of Ms. 's that was in its possession when it erroneously calculated that Mr. 's countable monthly income exceeded the Adult Public Assistance program's countable monthly income limit. Consequently, the Division failed to prove that Mr. 's monthly countable income exceeded the Adult Public Assistance program's countable monthly income limit.
2. The Division was therefore not correct when it terminated Mr. Assistance benefits after October 31, 2011.
3. The Division did not meet its burden of proof by a preponderance of the evidence and did not prove that Ms. was not financially eligible to receive Adult Public Assistance benefits. It did not consider a paystub of Ms. 's that was in its possession when it erroneously calculated that Ms. 's countable monthly income exceeded the Adult Public Assistance program's countable monthly income limit. Consequently, the Division failed to prove that Ms. 's monthly countable income exceeded the Adult Public Assistance program's countable monthly income limit.
4. Because Ms. was financially eligible for Adult Public Assistance benefits, she was also eligible for Medicaid benefits.
5. The Division was therefore not correct when it terminated Ms. and 's Adult Public Assistance and Medicaid benefits after October 31, 2011.

DECISION

1. The Division was not correct to terminate Mr. s Adult Public Assistance benefits after October 31, 2011.

2. The Division was not correct to terminate Ms. and 's Adult Public Assistance and Medicaid benefits after October 31, 2011.

APPEAL RIGHTS

If for any reason the Claimants are not satisfied with this decision, the Claimants have the right to appeal by requesting a review by the Director. If the Claimants appeal, 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 this 17th day of January, 2012.

____/Signed/ Larry Pederson Hearing Authority

Certificate of Service

I certify that on this 17th day of January, 2012, true and correct copies of the foregoing were sent to:

Claimants by U.S.P.S First Class Certified Mail, Return Receipt Requested and to the following by secure e-mail:

, Public Assistance Analyst
, Public Assistance Analyst
, Policy & Program Development
, Staff Development & Training
, Administrative Assistant II

______/Signed/ J. Albert Levitre, Jr.

Law Office Assistant I