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

In the Matter of)
)
 [REDACTED] and [REDACTED],) OHA Case No. 11-FH-503
)
 Claimants.) Division Case Nos. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] and [REDACTED] (Claimants) are husband and wife, who are each Adult Public Assistance recipients. (Exs. 1 – 1.1) On December 19, 2011, the Division of Public Assistance (Division) sent the Claimants notice that their total monthly Adult Public Assistance benefit amount would be changed to \$71 (\$36 to Mr. [REDACTED] and \$35 to Ms. [REDACTED]) beginning with the month of January 2012. (Exs. 3, 3.2) The Claimants requested a fair hearing on December 27, 2011. (Ex. 4)

This Office has jurisdiction pursuant to 7 AAC 49.010.

The Claimants' hearing was held on January 31, 2012. Mr. [REDACTED] appeared telephonically; he represented both himself and Ms. [REDACTED], and testified on their behalf. Ms. [REDACTED] did not attend the hearing. [REDACTED], a Public Assistance Analyst with the Division, appeared in-person; he represented the Division and testified on its behalf.

ISSUE

The issue in this case is whether the Division was correct to change the Claimants' joint monthly Adult Public Assistance benefit amount to \$71, beginning with the month of January 2012. The Claimants did not disagree with the Division's calculation of their monthly income. The Claimants also did not argue or claim that the Division's calculation of the benefit amount was not in compliance with the applicable regulations.

Instead, the Claimants made the following legal arguments:

1. The Adult Public Assistance regulations discriminate against the Claimants, based on disability and marital status, in violation of the Alaska Human Rights Act.
2. Adult Public Assistance regulation, 7 AAC 40.370, which sets the Adult Public Assistance “payment standard,” is inconsistent with the underlying statute AS 47.25.430(b), and the statute takes precedence over the regulation.

FINDINGS OF FACT

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

1. The Claimants are adults, married to and residing with each other, who receive Adult Public Assistance benefits due to a disability. (Exs. 1 – 1.1)
2. On November 23, 2011, the Division was informed that there would be a 3.6 percent increase in Social Security disability payments starting with January 2012 payments. (Exs. 2.2 – 2.3) This resulted in an increase in the Social Security Supplemental Security Income (SSI) payment standard for a couple, where both are eligible for Adult Public Assistance and are living independently in their own household, from \$1,011 to \$1,048, a dollar increase of \$37. (Ex. 13)
3. On December 17, 2011, the Division determined that Ms. ██████’s monthly SSI payment would increase to \$698 effective with her January 2012 payment. (Ex. 2)
4. On December 17, 2011, the Division determined that Mr. ██████’s monthly Social Security disability payment (Social Security Disability Insurance) would increase to \$827 effective with his January 2012 payment. (Ex. 2)
5. On December 19, 2011, the Division sent the Claimants written notice that their monthly Adult Public Assistance benefit amount would be changed to a total of \$71, beginning with the month of January 2012.¹ (Exs. 3, 3.2) The reason the Division provided for the change was that both of the Claimants were expected to have an increase in their monthly Social Security disability payments to \$827 for Mr. ██████ and \$698 for Ms. ██████. *Id.*
6. The Social Security Administration increased Mr. ██████’s monthly disability payment (Social Security Disability Insurance) to \$827 effective December 20, 2011. (Ex. 2.4)
7. The Social Security Administration increased Ms. ██████’s monthly disability payment (SSI) to \$698 effective January 1, 2012. (Ex. 2.4)
8. Effective January 1, 2012, the Division increased its Adult Public Assistance “Need Standard” for a couple, where both are eligible for Adult Public Assistance and are living

¹ As explained by the Division during the hearing, the Division added up the Claimants’ expected 2012 joint income (\$827 + \$698 = \$1,525), subtracted the \$20 income disregard (\$1,525 - \$20 = \$1,505), to arrive at countable income for the Claimants of \$1,505. The Division then subtracted the Claimants’ countable income of \$1,505 from the 2012 Adult Public Assistance “Maximum Payment Standard” for a couple, where both are eligible for Adult Public Assistance and are living independently in their own household, of \$1,576 to arrive at their household’s total Adult Public Assistance monthly benefit payment of \$71 (\$1,576 - \$1,505 = \$71). The Division then allocated the \$71 monthly award between the Claimants: \$36 to Mr. ██████ and \$35 to Ms. ██████.

independently in their own household, from \$1,854 to \$1,921. (Ex. 13.1) This was a 3.6 percent increase.

9. Effective January 1, 2012, the Division increased its Adult Public Assistance “Maximum Payment Standard” for a couple, where both are eligible for Adult Public Assistance and are living independently in their own household, from \$1,539 to \$1,576. (Ex. 13.2) This was a \$37 and 2.4 percent increase.

PRINCIPLES OF LAW

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).

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.

Adult Public Assistance financial eligibility standards and benefit amount standards are subject to periodic adjustment, which is linked to increases in SSI benefits. The Alaska statute, AS 47.25.430, that underlies the Alaska Adult Public Assistance program reads, in pertinent part:

Assistance shall be in an amount that will provide the applicant with reasonable subsistence compatible with decency and health in accordance with standards established by the department and with the standards established under 42 U.S.C. 1381 – 1383 (Title XVI, Social Security Act Supplemental Security Income Program). . . . When benefit amounts under 42 U.S.C. 1381 – 1383 are increased as a result of an increase in the cost of living, the state shall pass along the increase to recipients and shall increase the amount of the state contribution to recipients. . . by a percentage of the state contribution equal to the percentage increase in the benefit amounts under 42 U.S.C. 1381 – 1383 if the legislature has appropriated money specifically for the purpose of increasing the state contribution because of an increase in federal benefit amounts under 42 U.S.C. 1381 – 1383;

AS 47.25.430(b).

The Alaska regulation which addresses income eligibility standards for Adult Public Assistance applicants states “[t]he income eligibility standards . . . are increased each year on January 1 by a percentage equal to the annual percentage increase in Social Security benefits.” 7 AAC 40.310(c).

The 2011 Adult Public Assistance “need standard” (the income eligibility standard) for a couple, where both are eligible for Adult Public Assistance and are living independently in their own household, was \$1,854. *Alaska Adult Public Assistance Manual Addendum 1* (Ex. 13.1) It was increased to \$1,921 for 2012. *Id.*

The Alaska regulation which details how the monthly benefit that an Adult Public Assistance recipient receives is calculated, reads, in pertinent part:

(b) For individuals and for couples, the amount of assistance provided in any month is the difference between the appropriate payment standard specified in (c) of this section and the total monthly income determined under 7 AAC 40.350, or \$1, whichever is greater.

* * *

(d) Subject to (e) of this section, the payment standards of (c) of this section are adjusted each year by adding the dollar amount of any increase in the comparable payment standard for SSI for that year.

* * *

(e) Notwithstanding (d) of this section, if the legislature appropriates money specifically for the purpose of increasing the state contribution to recipients to match an increase in SSI benefit amounts, the payment standards of (c) of this section are adjusted by a percentage increase equal to the percentage increase in SSI benefit amounts.

7 AAC 40.370.

The 2011 Adult Public Assistance “payment standard” for a couple, where both are eligible for Adult Public Assistance and are living independently in their own household, was \$1,539. *Alaska Adult Public Assistance Manual Addendum 1* (Ex. 13.2) It was increased to \$1,576 for 2012. *Id.*

“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 underlying issue in this case is whether the Division was correct to change Claimant’s joint monthly Adult Public Assistance benefit amount to \$71, beginning with the month of January

2012. Because this case involves a modification of ongoing benefits, the Division is the party 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 1170, n. 14 at 1179 (Alaska 1986).

The Claimants, however, did not raise any factual issues. Nor did they disagree with the Division's calculation of their monthly income. Nor did they argue or claim that the Division's calculation of the benefit amount was not in compliance with the applicable regulations.

Instead, the Claimants made the following legal arguments, each of which will be addressed below:

1. The Adult Public Assistance regulations discriminate against the Claimants, based on disability and marital status, in violation of the Alaska Human Rights Act.
2. Adult Public Assistance regulation, 7 AAC 40.370, which sets the Adult Public Assistance "payment standard" is inconsistent with the underlying statute AS 47.25.430(b), and the statute takes precedence over the regulation.

1. Human Rights Act Claim

The Claimants made a general argument that the Adult Public Assistance regulations discriminated against them, based upon their disability status and marital status, in violation of the Alaska Human Rights Act. The Alaska Human Rights Act prohibits discrimination based upon physical and mental disabilities, and changes in marital status, along with other conditions such as sex, race, age, and national origin. *See* AS 18.80.200.

This Office does not have jurisdiction to address discrimination complaints. Those fall within the exclusive jurisdiction of the Alaska Office of Administrative Hearings, pursuant to AS 18.80.120(b). As a result, the Claimants' argument is noted for the record, but is not otherwise addressed or resolved.

2. Is 7 AAC 40.370 inconsistent with AS 47.25.430(b)?

The facts that are relevant to this argument are as follows:

- a. The SSI payment standard for a couple, where both are eligible for Adult Public Assistance and are living independently in their own household, increased from \$1,011 in 2011 to \$1,048 for 2012, a dollar increase of \$37. This was a 3.6 percent increase.
- b. The Division increased its Adult Public Assistance "Maximum Payment Standard" for a couple, where both are eligible for Adult Public Assistance and are living independently in their own household, from \$1,539 in 2011 to \$1,576 in 2012, a dollar increase of \$37. This was a 2.4 percent increase.

The Claimants argued that the Adult Public Assistance statute, AS 47.25.430(b) required the Division to increase the Adult Public Assistance payment standard by 3.6 percent instead of the 2.4 percent/\$37 increase, because the SSI payment standard increase was 3.6 percent. The Claimants' argument, if successful, would result in an increase in the Claimants' total monthly Adult Public Assistance benefit payment from \$71 to \$89.²

The Claimants' argument, however, is based upon a misreading of the statute. The statute, when read in its entirety, requires the Division to increase Adult Public Assistance benefits by the same percentage as an SSI payment standard increase only "if the legislature has appropriated money specifically for the purpose of increasing the state contribution because of an increase in federal benefit amounts under 42 U.S.C. 1381 – 1383." AS 47.25.430(b). In other words, the statute does not require an increase in Adult Public Assistance benefits unless there is a specific legislative appropriation for that purpose.

The relevant Adult Public Assistance regulation, 7 AAC 40.370, provides that the Adult Public Assistance payment standard is to be increased by the "the dollar amount of any increase in the comparable payment standard for SSI for that year." 7 AAC 40.370(d). The same regulation provides that "if the legislature appropriates money specifically for the purpose of increasing the state contribution to recipients to match an increase in SSI benefit amounts, the payments standards of (c) of this section are adjusted by a percentage increase equal to the percentage increase in SSI benefit amounts." 7 AAC 40.370(e). In other words, the regulation, while requiring an increase in the Adult Public Assistance payment standard if there is an SSI payment standard increase, only requires a dollar for dollar match, and does not require a percentage match absent a specific legislative appropriation.

The regulation, 7 AAC 40.370, is therefore consistent with the underlying statute AS 47.25.430(b): a percentage increase in Adult Public Assistance benefits that is the same as the percentage increase in the SSI payment standard is only required if there is a specific legislative appropriation for the Adult Public Assistance benefit increase. A review of the legislation passed to date for the 27th Alaska Legislature (2011 – 2012) shows that there has been no such specific legislative appropriation.

Because the regulation is consistent with the underlying statute and because there has been no specific legislative appropriation, the Division's requirement to increase the Adult Public Assistance payment standard is contained in 7 AAC 40.370(d). That requirement is only that the Adult Public Assistance payment standard be increased by the "the dollar amount of any increase in the comparable payment standard for SSI for that year." 7 AAC 40.370(d). The SSI payment standard for a couple, where both are eligible for Adult Public Assistance and are living independently in their own household, increased from \$1,011 in 2011 to \$1,048 for 2012, a dollar increase of \$37. The Division increased the Adult Public Assistance payment standard for a couple, where both are eligible for Adult Public Assistance and are living independently in their own household, from \$1,539 in 2011 to \$1,576 in 2012, a dollar increase of \$37. The

² Footnote 1 above contains the methodology for calculating the Adult Public Assistance benefit payment. The Claimants' monthly income would remain the same, \$1,505. However, if the Claimants' argument is followed, the Adult Public Assistance payment standard would be \$1,594 (a 3.6 percent increase from the 2011 payment standard of \$1,539 results in a figure of \$1,594) rather than \$1,576. When the Claimants' income of \$1,505 is subtracted from \$1,594, the result is \$89.

Division therefore followed the terms of its regulation exactly, and increased the Adult Public Assistance payment standard by the exact dollar amount as the SSI payment standard.

In summary, the Division's regulation requiring an increase in the Adult Public Assistance payment standard, 7 AAC 40.370, is consistent with the underlying statute, AS 47.25.430(b). As a result, the Claimants' legal argument fails. The Division correctly followed the applicable regulation, 7 AAC 40.370(d), and increased the Adult Public Assistance payment standard by \$37, the exact dollar amount by which the SSI payment standard was increased. As a result, the Division was correct to change the Claimants' monthly Adult Public Assistance amount to \$71 (\$36 for Mr. [REDACTED] and \$35 to Ms. [REDACTED]).

CONCLUSIONS OF LAW

1. The Claimants' argument that the Division discriminated against them based upon their disability and marital status is noted. However, discrimination complaints are outside this Office's jurisdiction, and therefore cannot be addressed further.
2. The Division's regulation, 7 AAC 40.370, regarding the effect of SSI payment standard increases upon Adult Public Assistance benefit calculations, follows and is consistent with the underlying Adult Public Assistance statute AS 47.25.430(b). Consequently, the Division was correct when it followed the regulation, 7 AAC 40.370(d), and increased the Adult Public Assistance payment standard by \$37, the exact dollar amount as the increase in the SSI payment standard, instead of increasing the Adult Public Assistance payment standard by the percentage of the increase in the SSI payment standard.
3. The Division was therefore correct when it changed the Claimants' monthly Adult Public Assistance benefit amount to \$71 ((\$36 for Mr. [REDACTED] and \$35 to Ms. [REDACTED]) effective with the month of January 2012.

DECISION

The Division was correct when it, on December 19, 2011, sent the Claimants notice that their monthly Adult Public Assistance benefit amount would be changed to a total of \$71 (\$36 to Mr. [REDACTED] and \$35 to Ms. [REDACTED]) beginning with the month of January 2012.

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:


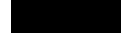
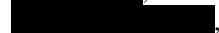
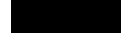
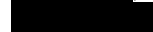
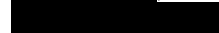
Director of the Division of Public Assistance
Department of Health and Social Services
PO Box 110640
Juneau, AK 99811-0640

DATED this 27th day of March, 2012.

/Signed/
Larry Pederson
Hearing Authority

Certificate of Service

I certify that on this 27th day of March, 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
, Policy & Program Development

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