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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. 12-FH-61
)
 Claimant.) DPA Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION and ORDER

I. Introduction

This case concerns whether the Division of Public Assistance (Division) was correct to close [REDACTED]'s (Claimant) Alaska Temporary Assistance (Temporary Assistance) benefit case after she lost her job.

On February 3, 2012, the Division sent the Claimant written notice it was terminating her Temporary Assistance benefits for a one month period; she would not receive benefits after February 28, 2012 and was not eligible to reapply for them until April 1, 2012.¹ The Claimant requested a fair hearing on February 22, 2012.²

The Office of Hearings and Appeals held a hearing on March 20, 2012. The Claimant appeared telephonically; she represented herself and testified on her own behalf. [REDACTED], Public Assistance Analyst with the Division, appeared in person; she represented the Division and testified on its behalf. The hearing was recorded.

The record was left open after the hearing until April 6, 2012, to allow the Claimant time to submit additional evidence³ and for the Division to submit its written response to that evidence.⁴

¹ Ex. 5.0.

² Ex. 6.1.

³ Ex. A.

⁴ Ex. 19.

Based upon the record as whole, the Division has met its burden of proof by a preponderance of the evidence and established that it was justified in terminating the Claimant's Temporary Assistance benefits. The Division's decision to terminate the Claimant's Temporary Assistance benefits is AFFIRMED.

II. Facts

The Claimant is a single parent with two young children, both of whom are under six years of age.⁵ She was receiving Temporary Assistance benefits in January and February 2012.⁶ She began working for a hotel in January 2012.⁷ She did not show up for work several days in a row in January 2012. On January 17 and 18, 2012, she called the hotel and said she would not be in to work.⁸ On January 19, 2012, the Claimant was scheduled for work.⁹ The Claimant did not show up for work on January 19, 2012.¹⁰

The Claimant's employer decided that the Claimant had quit her job by not showing up for work on January 19, 2012, not calling in, and not answering her telephone when called.¹¹ The employer hired someone else to replace the Claimant.¹²

The Claimant testified the reason she missed work on January 19, 2012 was a combination of transportation difficulties and having a sick child. She testified that she called her employer on January 19, 2012 and told her she was going to be late, but that her employer did not want her to come in late. However, the phone records the Claimant supplied do not show a phone call with her employer, either placed by the Claimant or placed by the employer on January 19, 2012.¹³ In her post-hearing statement, the Claimant states that she actually called her employer on the next day, January 20, 2012.¹⁴ It is more likely true than not true that the Claimant did not call her employer on January 19, 2012.

⁵ Ex. 1.

⁶ Ex. 1.

⁷ Ex. 2.1.

⁸ Ex. 18.

⁹ Ex. 18.

¹⁰ Ex. 18.

¹¹ Ex. 3, 18.

¹² Ex. 7.0.

¹³ Ex. A, pp. 3 – 4.

¹⁴ Ex. A., p. 1.

III. Discussion

The issue in this case is whether the Division was correct when it imposed a one-month job quit penalty against the Claimant, which closed her Temporary Assistance case after February 28, 2012, and made her ineligible to reapply for Temporary Assistance benefits until April 1, 2012. The Division has the burden of proof in this case by a preponderance of the evidence because it is seeking to impose the penalty.¹⁵

The Temporary Assistance program imposes a job quit penalty, which disqualifies a recipient from receiving Temporary Assistance benefits for one month for a first occurrence, if the recipient quits a job or is fired from a job for cause.¹⁶ The regulations contain exceptions to the job quit penalty, which include unavailability of childcare for a single parent of a child who is under six years of age, and transportation problems (a transportation breakdown, unavailability of transportation, and weather conditions).¹⁷ These exceptions, however, do not apply to the situation where the recipient fails to contact her employer when she cannot show up for work as scheduled.

The Claimant lost her job on January 19, 2012 because she did not show up for work and because she did not call her employer to tell her she would be absent.

The Claimant argued that her failure to show at work was justified by her child being ill and her transportation problems. While the Claimant may have been justified in not showing up for work on January 19, 2012 because of her transportation problems and her child's illness, she did not lose her job due to her absence. Instead, she lost her job because she did not contact her employer and tell the employer that she was going to be absent. Her failure to call her employer was an action clearly within her control. As a result, the Claimant lost her job for cause.

The Division has met its burden of proving that the Claimant lost her job for cause. The Division was therefore justified when it imposed a one-month job quit penalty against the Claimant.

¹⁵The 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).

¹⁶ AS 47.27.015(c)(1); 7 AAC 45.970(e); 7 AAC 45.990(b).

¹⁷ See 7 AAC 45.261(a)(1), (7), (8).

