

Office of Hearings and Appeals  
3601 C Street, Suite 1322  
P. O. Box 240249  
Anchorage, AK 99524-0249  
Ph: (907)-334-2239  
Fax: (907)-334-2285

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

In the Matter of	)	
	)	
██████████,	)	OHA Case No. 10-FH-282
	)	
Claimant.	)	Division Case No. ██████████
_____	)	

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

██████████ (Claimant) was an Alaska Temporary Assistance recipient. (Ex. 1) On July 16, 2010, the Division of Public Assistance (Division) sent the Claimant written notification he was required to repay \$996.00 in Temporary Assistance benefits he had allegedly been overpaid during the months of May and June 2010. (Ex. 4) The Claimant requested a fair hearing on July 20, 2010. (Ex. 5)

This Office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to the Claimant's request, a hearing was held on September 7, 2010. The Claimant attended the hearing in person; he represented himself and testified on his own behalf. ██████████, the Claimant's girlfriend and mother of the Claimant's child, attended the hearing in person; she assisted in the Claimant's representation and testified on his behalf. ██████████, the Claimant's mother, attended the hearing in person; she testified on the Claimant's behalf.

██████████, Public Assistance Analyst with the Division, attended the hearing in person; she represented the Division and testified on its behalf.

The record was left open until September 17, 2010 for the Division to submit additional documents and for the Claimant's written response. The Division's documents were received on September 7, 2010. (Exs. 18 – 31) The Claimant did not submit a response.

## ISSUE

The Division required repayment of \$996.00 in Temporary Assistance benefits it claimed was overpaid to the Claimant during the months of May and June 2010. The Division argued it had incorrectly classified the Claimant and his girlfriend's income as being exempt from being counted for Temporary Assistance benefit amount calculations, which resulted in the Claimant receiving \$996.00 more in Temporary Assistance benefits than he should have received. The Division further contended that even though the overpayment was caused by its error, because the overpayment amount was over \$100.00, it was required to recover the overpayment.

The Claimant argued that because he and his girlfriend are both minors and fulltime students who reside with his mother, their income is exempt from being counted for Temporary Assistance benefit calculation purposes. The Claimant further argued that because the overpayment, if any, was caused by the Division's error, he should not be required to repay it. The Claimant did not disagree with the Division's income calculations or its Temporary Assistance benefit calculations, only with the classification of the income and the obligation to repay.

The resulting issues are:

1. Are the Claimant and his girlfriend's incomes exempt from being counted as income for Temporary Assistance benefit calculation purposes?
2. If the Claimant and his girlfriend's incomes are properly countable as income for Temporary Assistance benefit calculation purposes, does the fact that the income was misclassified as exempt due to Division error, relieve the Claimant from being required to repay the \$996.00 in overpaid benefits?

## FINDINGS OF FACT

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

1. The Claimant applied for Alaska Temporary Assistance benefits on April 19, 2010. (Ex. 18) He applied for benefits for himself, his girlfriend, and their child. (Ex. 18.1) At all times relevant to this case, both the Claimant and the girlfriend were minors under the age of 18 years old.<sup>1</sup> (Ex. 18.1)
2. The Claimant, his girlfriend, and their child, all reside with the Claimant's mother. (Girlfriend testimony)
3. The Claimant and his girlfriend are each fulltime students and employed part time. (Girlfriend testimony)
4. The Division calculated that the Claimant's gross monthly income during the months of May and June 2010 was \$756.47. The Division calculated that his girlfriend's gross monthly

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<sup>1</sup> The Claimant reached the age of 18 years in September 2010. (Ex. 18.1)

income during the months of May and June 2010 was \$719.13. Neither the Claimant nor his girlfriend disagreed with the Division's income calculations.

5. When the Claimant applied for Temporary Assistance benefits on April 19, 2010, his and his girlfriend's incomes were coded as "RE" (regular job), meaning that their income was taken into account when calculating their monthly Temporary Assistance benefit amount. (Ex. 2.0 – 2.1; ██████ testimony)

6. On April 29, 2010, an Eligibility Technician, who was processing a separate Public Assistance case for the Claimant's mother, changed the income coding for the Claimant and his girlfriend's Temporary Assistance case from "RE" (regular job) to "SC" ("Child/Student under 18 – Exempt"). (Exs. 2.0 – 2.1; ██████ testimony) This had the effect of excluding their income from being counted in calculating their monthly Temporary Assistance benefit amount. (██████ testimony) As a result, the Division issued the Claimant a supplemental Temporary Assistance payment of \$498.00 for the month of May 2010. (Ex. 2.0) This meant the Claimant received a total Temporary Assistance payment of \$648.00 in May 2010. (Ex. 3.1) The Claimant also received a total Temporary Assistance payment of \$648.00 in June 2010. *Id.*

7. On June 14, 2010, an Eligibility Technician reviewed the Claimant's Temporary Assistance case. (Ex. 3.0; ██████ testimony) That Eligibility Technician determined that the Claimant and his girlfriend's income were originally coded correctly as "RE" (regular job) and that recoding their income as "SC" ("Child/Student under 18 – Exempt") was a mistake. *Id.* The Eligibility Technician then recalculated that the Claimant's correct monthly Temporary Assistance benefit amount for each of the months of May and June 2010 was \$150.00 instead of the \$648.00 he had received during each of those months. (Exs. 3.0 – 3.1) The Claimant did not disagree with the Division's calculations, merely the classification of the income as countable.

8. On July 16, 2010, the Division sent the Claimant notice he had been overpaid a total of \$996.00 in Temporary Assistance benefits during May and June 2010, and requested he repay that amount. (Ex. 4)

9. On July 20, 2010, the Claimant requested a fair hearing disputing the Division's July 16, 2010 repayment request. (Ex. 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, Alcohol 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). "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).

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). The income of a parent of a dependent child, who resides with the dependent child, is considered income available to meet the child’s needs. 7 AAC 45.325(a) and (b)(1).

The assistance unit’s monthly Temporary Assistance benefit payment is determined by totaling up the total non-exempt household income, subtracting deductions as specified in the Temporary Assistance regulations, adjusting for shelter costs (housing and utility), and then subtracting that result from the applicable Temporary Assistance need standard. 7 AAC 45.525. The 2010 need standard for a three person assistance unit is \$1,464.00. (Exs. 29 – 30)

The income of a dependent child, who is a fulltime student, is not counted as part of the assistance unit income when calculating Temporary Assistance eligibility or benefit amounts. 7 AAC 45.470; 7 AAC 45.475(a); 7 AAC 45.525(b)(1). A “dependent child” is a person who is under the age of 18, or under the age of 19 and a fulltime student, who is not an applicant for Temporary Assistance benefits. 7 AAC 45.990(a)(13); AS 47.27.900(9).

The Division “will pursue collection from a current recipient of ATAP benefits or a former recipient of ATAP . . . benefits who received an overpayment.” 7 AAC 45.570(a). If an overpayment is caused by the Division’s mistake, it is still required to “pursue collection . . . if the overpayment exceeds \$100.” *Id.*

### ANALYSIS

Because this case involves the Division seeking to recover alleged overpaid benefits, it seeks to change the status quo. Accordingly, the Division has the burden of proof in this case by a preponderance of the evidence. *State, Alcohol 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).

It should be noted that there are no disputed facts in this case. There are two legal issues. The first legal issue is whether the Claimant and his girlfriend’s income are exempt from being counted as income for Temporary Assistance benefit calculation purposes. If this issue is resolved in the Division’s favor, then the issue that needs to be resolved next is whether the fact that the income was misclassified as exempt by Division error, relieves the Claimant from being required to repay the \$996.00 in overpaid benefits? If the second issue is also resolved in favor of the Division, the Claimant is responsible for repayment of the benefits.

## 1. Income Classification.

The Division initially classified the Claimant's and his girlfriend's income as regular income, which was counted for Temporary Assistance benefit determination purposes. According to the Division's undisputed calculations, counting their income resulted in a monthly Temporary Assistance payment of \$150.00. However, on April 29, 2010, a Division Eligibility Technician reclassified the Claimant's and his girlfriend's income as being exempt from being counted, which resulted in the Claimant receiving an additional \$498.00 in benefits for May 2010 and then received \$648.00 in benefits for June 2010. Consequently, the Claimant receiving \$498.00 in additional benefits for each of the months of May and June 2010, for a total of \$996.00 allegedly overpaid to the Claimant.

The Claimant and his girlfriend are both minors and fulltime students, who were under the age of 18 during the relevant period. They both work part-time. They reside with the Claimant's mother. The Temporary Assistance regulations provide that the income of a dependent child, who is a fulltime student, is not counted as part of the household income when calculating Temporary Assistance eligibility or benefit amounts. 7 AAC 45.470; 7 AAC 45.475(a); 7 AAC 45.525(b)(1). The Claimant and his girlfriend appear to fall under this exempt income category, because they were each fulltime students and under the age of 18. However, in order to qualify for this exemption, they must be "dependent children."

The Claimant applied for Temporary Assistance benefits, as the parent of a child, for himself, his girlfriend, and their child. The Alaska Temporary Assistance regulations and statutes specifically define the term "dependent child" as a person who is under the age of 18, or under the age of 19 and a fulltime student, **who is not an applicant for Temporary Assistance benefits.** 7 AAC 45.990(a)(13); AS 47.27.900(9). Regardless of the fact that the Claimant and his girlfriend reside with the Claimant's mother, because the Claimant was an **applicant** for Temporary Assistance benefits for his assistance unit (himself, his girlfriend – the mother of the child, and their child), he and his girlfriend were no longer "dependent children" as defined by the relevant Temporary Assistance statute AS 47.27.990(9). They therefore did not qualify for having their income excluded for Temporary Assistance benefit calculation purposes.

Because the Claimant and his girlfriend's income was countable income for Temporary Assistance benefit calculations, they were only entitled to receive \$150.00 in Temporary Assistance benefits for each of the months of May and June 2010.<sup>2</sup> They received \$648.00 in Temporary Assistance benefits for each of the months of May and June 2010. This resulted in the Claimant receiving \$498.00 in excess benefits for each of the months of May and June 2010, for a total of \$996.00 overpaid to the Claimant.

## 2. Division Error

The Division admittedly made a mistake in the Claimant's Temporary Assistance case when it reclassified his and his girlfriend's incomes as exempt. The Division's mistake resulted in the Claimant receiving a total of \$996.00 in Temporary Assistance benefits, which he was not

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<sup>2</sup> The Claimant did not dispute or otherwise disagree with the Division's monthly benefit calculations.

entitled to receive. The Claimant, not unreasonably, believes the Division should bear the brunt of its error. However, the applicable regulation, 7 AAC 45.570(a), specifically provides that the Division is required to seek Temporary Assistance benefit overpayment recovery, when the overpayment is caused by its error, when the overpayment amount exceeds \$100.00.

In this case, the overpayment amount is \$996.00. Because the overpayment amount exceeds \$100.00, the Division must require the Claimant to repay the overpaid amount of \$996.00, regardless of the fact that the Division's error caused the overpayment.

### **CONCLUSIONS OF LAW**

1. The Claimant and his girlfriend's income were properly classified as regular income and therefore countable for Temporary Assistance benefit calculation purposes. This was because the Claimant, as an **applicant** for Temporary Assistance benefits, and his girlfriend were not "dependent children" as defined in the Temporary Assistance statute AS 47.27.900(9).
2. Because the Claimant and his girlfriend's income were properly classified as regular income, the Claimant was only entitled to receive \$150.00 in Temporary Assistance benefits for each of the months of May and June 2010. The Claimant's receipt of \$648.00 in Temporary Assistance benefits for each of the months of May and June 2010 therefore resulted in him being overpaid \$448.00 in benefits for each of those months, for a total overpayment of \$996.00.
3. Although the Claimant's receipt of overpaid Temporary Assistance benefits in the total amount of \$996.00 was caused by the Division's error, Temporary Assistance regulation 7 AAC 45.570(a) requires that the Claimant repay the overpaid benefits.
4. As a result, the Division was correct when it, on July 16, 2010, sent the Claimant notice he was required to repay \$996.00 in Temporary Assistance benefits that he had been overpaid during the months of May and June 2010.

### **DECISION**

The Division was correct when it, on July 16, 2010, sent the Claimant notice he was required to repay \$996.00 in Temporary Assistance benefits that he had been overpaid during the months of May and June 2010.

### **APPEAL RIGHTS**

If for any reason the Claimant is not satisfied with this decision, the Claimant has the right to appeal by requesting a review by the Director. To do this, the Claimant must 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

An appeal 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.

DATED this 28th day of October 2010.

/signed/  
Larry Pederson  
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 28th day of October, 2010, true and correct copies of the foregoing were sent to:  
Claimant by Certified Mail, Return Receipt Requested  
and to other listed persons by e-mail:

[REDACTED], Public Assistance Analyst  
[REDACTED], Director  
[REDACTED], Policy & Program Development  
[REDACTED], Staff Development & Training  
[REDACTED], Administrative Assistant II  
[REDACTED], Eligibility Technician I  
[REDACTED], Chief of Field Services

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Larry Pederson