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

In the Matter of	)	
	)	
██████████,	)	OHA Case No. 10-FH-284
	)	
Claimant.	)	Division Case No. ██████████
_____	)	

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

██████████ (Claimant) was a Temporary Assistance recipient. (Ex. 1) On July 28, 2010, the Division of Public Assistance (Division) sent the Claimant written notification she was required to repay \$689.00 in Temporary Assistance benefits she had allegedly been overpaid during the month of July 2010. (Ex. 3) The Claimant requested a fair hearing on August 5, 2010. (Exs. 5 – 5.1)

This Office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to the Claimant's request, a hearing was held on September 9, 2010. The Claimant attended the hearing telephonically; she represented herself and testified on her own behalf. ██████████, Public Assistance Analyst with the Division, attended the hearing in person; he represented the Division and testified on its behalf.

**ISSUE**

The Claimant was issued two Temporary Assistance payments, each in the amount of \$689.00, for the month of July 2010. The Division argued that the Claimant was only entitled to receive one July 2010 Temporary Assistance payment in the amount of \$689.00, and that the Claimant was required to repay the Division \$689.00, the amount of the second July 2010 payment.

The Claimant argued that when the Division issued her the first Temporary Assistance payment in the amount of \$689.00, it was an underpayment because the Division had incorrectly

penalized her, and as a result she was entitled to receive the second Temporary Assistance payment of \$689.00.

The resulting issue is:

Was the Division correct when it sent the Claimant written notification, on July 28, 2010, that she was required to repay \$689.00 in Temporary Assistance benefits she had allegedly been overpaid during the month of July 2010?

### **FINDINGS OF FACT**

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

1. The Claimant was receiving Temporary Assistance benefits for a 5 person household (herself and 4 dependent children) in July 2010. (Claimant testimony)
2. The Claimant's only income, other than Temporary Assistance, in July 2010 was \$700.00 in child support. (Claimant testimony) The Claimant has a monthly mortgage payment of \$650.00. *Id.* She also pays condominium dues and utility costs. *Id.* The Division used a figure of \$1,001.81 for the Claimant's total housing costs. (Ex. 11) The Claimant did not present any evidence disputing that figure.
3. The Division issued the Claimant \$689.00 in Temporary Assistance benefits on July 1, 2010. (Ex. 2.1) The Division then issued the Claimant an additional \$689.00 in Temporary Assistance benefits that same day, July 1, 2010. *Id.*
4. On July 19, 2010, the Division determined that the Claimant had received 2 Temporary Assistance payments on July 1, 2010. (Ex. 2) The second payment was issued by mistake on the Division's part. (██████ testimony) The Division then sent the Claimant a notice on July 28, 2010, that she had been overpaid \$689.00 in Temporary Assistance benefits because "the Agency issued you ATAP benefits twice in error." (Ex. 3) That notice informed the Claimant that her monthly Temporary Assistance benefit payment would be reduced until the \$689.00 was paid back, or that she could pay back the amount earlier. *Id.*
5. The Claimant testified the first July Temporary Assistance payment was a reduced amount because the Division had improperly assessed a penalty against her. (Claimant testimony) The Claimant stated that she went to the Division and spoke to her Eligibility Technician who issued her the second July Temporary Assistance benefit payment in the amount of \$689.00. (Claimant testimony)
6. ████████ testified the Claimant did not have any Temporary Assistance penalties in effect against her that reduced her July 2010 Temporary Assistance payment. (██████ testimony)
7. The Division calculations for the Claimant's July 2010 Temporary Assistance benefit amount, for a 5 person household, were based on the Claimant having only child support income in the monthly amount of \$700.00, and housing costs of \$1,001.81. (██████ testimony, Ex. 11). The calculations were as follows:

- a. The Claimant's only income of \$700.00 in child support was deducted from the need standard of \$1,790.00 for her 5 person household, for a figure of \$1,090.00.
- b. The Claimant's housing costs were \$1,001.81. There was no deduction for her housing costs.
- c. The result of \$1,090.00 (the need standard of \$1,790.00 less the \$700 child support income) was not reduced for any penalties. The result of \$1,090.00 was then multiplied by 63.22 percent to arrive at a total Temporary Assistance benefit amount of \$689.00.

(Ex. 11)

### **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.

A Temporary Assistance recipient's benefit amount is calculated starting with the applicable need standard. The need standard for a family of five persons, one of whom is a parent, is \$1,790. 7 AAC 45.520(a)(1); *Alaska Temporary Assistance Manual Addendum 2*. The need standard is then adjusted based upon a recipient's income and allowable deductions.

An employed recipient is allowed a work deduction from her gross employment income consisting of \$150 plus 25 percent of the remainder of her gross employment income. 7 AAC 45.480(b)(2). An unemployed recipient only receives deductions from her income for child care costs or the cost of caring for a child's incapacitated parent. 7 AAC 45.485.

The Temporary Assistance program does not provide a deduction for shelter costs; it assumes that shelter costs (rent/mortgage and utilities) are a minimum of 30 percent of the appropriate need standard for her family size and type. 7 AAC 45.527(a)(1). If a Temporary Assistance recipient's shelter costs are less than 30 percent of the appropriate need standard, the recipient is actually penalized for low shelter costs; a Temporary Assistance recipient does not receive a larger Temporary Assistance benefit for high shelter costs. 7 AAC 45.525(b)(2); 7 AAC 45.527(a).

The Claimant's income, after applicable deductions, is then subtracted from the need standard. 7 AAC 45.525(b)(1). That result is then multiplied by 63.22 percent to arrive at the monthly benefit amount. 7 AAC 45.525(c); *Alaska Temporary Assistance Manual* Section 780-1G.<sup>1</sup>

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 is undisputed that the Claimant received two Temporary Assistance payments for the month of July 2010. Both payments were in the amount of \$689.00. The Claimant testified that she was issued the second payment because her initial benefit payment was reduced due to a penalty that was improperly assessed against her. The Claimant did not present any evidence on this point other than her testimony.

The Division's representative (██████) testified that there were no penalties in place and that the total amount payable to the Claimant, based on her income of \$700.00 per month in child support, was \$689.00.

A review of the Division's calculations, as contained in its exhibit 11, demonstrates, based upon her child support income of \$700.00 and no other income, the Claimant's Temporary Assistance benefit amount for the month of July 2010 was correctly calculated as being \$689.00. The Division's calculation was arrived at by:

1. Counting the Claimant's only income of \$700.00 in child support, deducting that from the need standard of \$1,790.00 for her 5 person household, for a figure of \$1,090.00.
2. The Division did not allow a deduction for the Claimant's housing costs. The Claimant, based upon her testimony, has substantial housing costs (mortgage of \$650.00, unspecified condominium dues, and utilities).<sup>2</sup> However, the Temporary Assistance program assumes that shelter costs (rent/mortgage and utilities) are a

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<sup>1</sup> The 63.22 percent figure is arrived at by taking the maximum amount payable to a 2 person household and dividing it by the need standard for that 2 person household. 7 AAC 45.525(c). In this case, the maximum amount payable to a 2 person household is \$821.00 and the need standard for that 2 person household is \$1,301.00. 7 AAC 45.520(a)(1) and (b); 7 AAC 45.523(a)(1); *Alaska Temporary Assistance Manual* Addendum 2.

<sup>2</sup> The Division used the figure of \$1,001.81 for the Claimant's total monthly housing costs. (Ex. 11)

minimum of 30 percent of the appropriate need standard for a recipient's family size. 7 AAC 45.527(a)(1). A Temporary Assistance recipient does not receive a deduction for high shelter costs. 7 AAC 45.525(b)(2); 7 AAC 45.527(a).

3. The result of \$1,090.00 (the need standard of \$1,790.00 less the \$700 child support income) was not reduced for any penalties. The result of \$1,090.00 was then multiplied by 63.22 percent to arrive at a total Temporary Assistance benefit amount of \$689.00.

(Ex. 11)

The Division's calculations, as set out above, comply with the Temporary Assistance regulations. The Claimant is not entitled to a deduction for her housing costs. 7 AAC 45.525(b)(2); 7 AAC 45.527(a). Her only income is child support (\$700), which was properly deducted from the need standard of \$1,709.00. The result (\$1,090.00) was multiplied, as required by regulation 7 AAC 45.525(c), by 63.22 percent to arrive at a total monthly Temporary Assistance benefit amount of \$689.00. The calculations, as reviewed and explained above, demonstrate that the \$689.00 benefit amount does not contain any penalties or reductions. The Claimant's explanation that she received a second check, in the amount of \$689.00 for July 2010, because the Division's first payment of \$689.00 underpaid her, is simply not supported.

The Division had the burden of proof in this case. It has met it. As the Division representative testified, the Claimant was entitled to receive a Temporary Assistance benefit for the month of July 2010 in the amount of \$689.00, which amount was not reduced for any penalties. That amount is the full amount she was entitled to receive. As a result, the Claimant was not entitled to receive a second Temporary Assistance payment for the month of July 2010 in the amount of \$689.00.

The Division admittedly made a mistake in the Claimant's Temporary Assistance case when it issued her a second benefit payment in the amount of \$689.00 for the month of July 2010. The Claimant 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 \$689.00. Because the overpayment amount exceeds \$100.00, the Division must, pursuant to 7 AAC 45.570(a), require the Claimant to repay the overpaid amount of \$689.00, regardless of the fact that the Division's error caused the overpayment.

### **CONCLUSIONS OF LAW**

1. The Division had the burden of proof in this case by a preponderance of the evidence. It met its burden and established that the Claimant was only entitled to receive a total of \$689.00 in Temporary Assistance benefits for the month of July 2010.

2. Because the Claimant actually received two separate payments of \$689.00 in Temporary Assistance benefit for the month of July 2010, she received \$689.00 more in Temporary Assistance benefits in the month of July 2010 than she was entitled to receive.
3. Although the Claimant's receipt of the second Temporary Assistance benefit payment in the amount of \$689.00 was caused by the Division's error, Temporary Assistance regulation 7 AAC 45.570(a) requires that the Claimant repay the overpaid benefits because the overpaid amount is greater than \$100.00.
4. As a result, the Division was correct when, on July 28, 2010, it sent the Claimant notice she was required to repay \$689.00 in Temporary Assistance benefits that she had been overpaid during July 2010.

### **DECISION**

The Division was correct when it sent the Claimant written notification, on July 28, 2010, that she was required to repay \$689.00 in Temporary Assistance benefits she had been overpaid during the month of July 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 3rd day of November 2010.

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*/Signed/*  
Larry Pederson  
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 3rd day of November, 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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J. Albert Levitre, Jr.  
Law Office Assistant I