

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. 11-FH-003
)	
Claimant.)	Division Case No. 
_____)	

FAIR HEARING DECISION

STATEMENT OF THE CASE

 (Claimant) was a Temporary Assistance benefit recipient in December 2010. (Ex. 37.3) On December 17, 2010, the Division of Public Assistance (Division) sent the Claimant two separate written notices regarding her Temporary Assistance benefits. The first notice informed her that her December 13, 2010 Temporary Assistance application was denied because her income was greater than the Temporary Assistance program's income limit for her household size. (Ex. 12.1) The second notice informed her that her December 13, 2010 Temporary Assistance application was denied because she was subject to a one month job quit penalty (January 2011). (Ex. 12.2)

The Division sent the Claimant an additional notice on December 22, 2010. That notice informed the Claimant the Division was requesting she repay it \$1,202 in allegedly overpaid Temporary Assistance benefits. (Ex. 13)

The Claimant requested a Fair Hearing on January 5, 2011.¹ (Ex. 15.1) Division received the Claimant's Fair Hearing request on January 20, 2011. (Exs. 6.1 – 6.2)

This Office has jurisdiction pursuant to 7 AAC 49.010.

The Claimant's hearing was held on February 1 and March 16, 2011. The Claimant attended the

¹ The Fair Hearing request form, which was completed by a Division Eligibility Technician, indicates the Claimant also requested a hearing regarding her Food Stamp benefits. (Ex. 15.1) The Claimant, however, stated at hearing that Food Stamp benefits were not an issue. Accordingly, this decision will only address the Temporary Assistance program.

hearing telephonically, represented herself and testified on her own behalf. [REDACTED], Public Assistance Analyst with the Division, attended the hearing in person; she represented the Division and testified on the Division's behalf.

The record was left open after the March 16, 2011 hearing to allow the parties to submit additional documentation in support of their positions. The Division's documents were received on March 17, 2011. (Exs. 37 – 37.12) The Claimant's documents were received on March 31, 2011. (Exs. A1 – A8)

ISSUES²

Was the Division correct to impose a penalty against the Claimant on December 17, 2010, which made her not eligible for Temporary Assistance benefits for a one month period, the month of January 2011, because she quit her job?

FINDINGS OF FACT

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

1. The Claimant was a Temporary Assistance recipient continuously from November 2009 through December 2010. (Ex. 37.3) Her household consisted of herself, her domestic partner, and their young child. (Ex. 1)
2. The Claimant was working as a part-time school bus attendant in September 2010. (Exs. 2.0 – 2.2) The job did not have a set schedule and her hours varied. (Claimant testimony) The Claimant filed a report of change with the Division on September 27, 2010 that stated she was employed part-time, and that her mailing address had changed. (Exs. 2.0 – 2.1)
3. The Division put the Claimant's Temporary Assistance payments on hold after the Temporary Assistance payment she received on October 1, 2010. (Claimant testimony; Ex. 37.3) The Division's November 30, 2010 casenote indicates the Claimant's Temporary Assistance case was been closed because "family is over income." (Ex. 6.0)
4. The Claimant's domestic partner was employed from August 2010 through November 24, 2010. (Exs. 6.0, 8.0) He quit his job in November, 2010 because his paychecks were "bouncing" (there were insufficient funds in the business' account to cover the checks). *Id.* His last day of work was November 24, 2010. *Id.*

² The initial issues in this case included the Division's claim that the Claimant was required to repay the Division \$1,202 that she had allegedly been overpaid for November and December 2010 Temporary Assistance benefits. (Ex. 13) The Division conceded the overpayment claim on February 23, 2011. (Division correspondence dated February 23, 2011)

In addition, the parties clarified, through the hearing, that Temporary Assistance denial due to income (Ex. 12.1) was not a hearing issue. This left only the issue of whether the Division was correct to impose a one month job quit penalty against the Claimant. (Ex. 12.2)

5. On November 22, 2010, the Claimant gave two weeks notice to her employer that she was going to quit her job. (Claimant testimony; Ex. A2) The Claimant testified she quit her job for several reasons:

- a. She lived an approximately 50 minute drive away from her work.³ There were transportation problems because the family had only one car, gas was expensive, she was not receiving a Temporary Assistance payment, and she was having to get rides to work.
- b. While she had child care assistance, she was about to be phased into a form of child care assistance (PASS 2), which required her to pay a larger share of the child care costs. She could not afford to pay the higher cost.

6. On December 8, 2010, the Claimant informed the Division that her job ended on December 6, 2010. (Ex. 7) The Division Eligibility Technician's December 8, 2010 casenote states the Claimant "[c]laims she was working full-time and due to day care for 10 hrs/dy she could not do full-time. ...claims she quit as she wasn't getting enough hours, that she was part-time, that she was seasonal and that her hours flexuated (sic). Claims she had to quit for those reasons." *Id.*

7. On December 13, 2010, during an in person interview, the Claimant "stated she quit her job do (sic) to day care issues stated that her son could not be in day care for 10 hours per day. Stated that her hours were adjusted but it was hassle for her to be able to get to work pick up son from day care and the gas expenses were huge. Stated that she needed to quit in order to find reasonable work." (Ex. 8.0)

8. The Claimant's employer's employment statement, received by the Division on December 15, states the Claimant quit her job because "unable to work shift assigned." (Ex. 10.1)

9. The Claimant stated she tried to get help with gas vouchers, but was unable to because her caseworker at Nine Star Enterprises (Nine Star)⁴ required a referral from the Division. (Ex. A1 – A2) The Claimant stated she made numerous attempts to contact the Division and obtain a referral, but was unable to do so. *Id.*

10. The Claimant testified she did not quit her job in order to qualify for Temporary Assistance benefits. At the time she gave her two week notice to her employer, November 22, 2010, she was not receiving Temporary Assistance benefits, and had not received them since October 1, 2010, and did not expect to continue receiving them. (Exs. 37.3; A1; Claimant testimony)

³ The Division's March 16, 2011 post-hearing documents refers to the Claimant living 50 miles from her job site. (Ex. 37.1) However, the Claimant's March 16, 2011 testimony clearly states that she was living a 50 minute drive away from her job site, not 50 miles from her job site. (March 16, 2011 recording at 22:00 – 23:00)

⁴ Nine Star Enterprises is a private company contracted by the Division that provides employment training and support services for Temporary Assistance recipients.

11. On December 2, 2010, which was after the Claimant gave her two week notice she was quitting her job, the Division issued the Claimant \$1,202 in Temporary Assistance benefits. (Ex. 37.3) This amount consisted of her Temporary Assistance benefit payments for November and December 2010. (Ex. 37.3) At that time, the Claimant's employer had already hired a replacement for her. (Ex. A2)

12. The Claimant's last day of work was December 6, 2010. (Ex. 8.0)

13. The Claimant applied for Food Stamp benefits on December 13, 2010.⁵ (Exs. 8.1 – 8.10) Food Stamps was the only benefit program applied for on that date. *Id.*

14. On December 17, 2010, the Division sent the Claimant written notice that her "application for the Alaska Temporary Assistance Program, received on December 13, 2010, [was] denied." (Ex. 12.2) The reason supplied for the denial was that "a job quit penalty applies to you for one month for Temporary Assistance which decreased your household size from 3 to 2." *Id.*

15. The Claimant requested a hearing on January 5, 2011. (Ex. 15.1) The hearing was scheduled for February 1, 2011.

16. On January 25, 2011, one week before the scheduled February 1, 2011 hearing, the Division sent the Claimant written notice that her "application for Alaska Temporary Assistance received on December 13, 2010 is denied because a member of your family quit or refused a job, or reduced their work hours without a good reason. . . . [Claimant] quit her job . . . on December 6, 2010. You received [Temporary Assistance] for December, so January is the first penalty month." (Ex. 16.8)

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 cash benefit program provided "to needy children and their families." AS 47.27.005(a)(1). The adults in a Temporary Assistance household are normally required to either be employed or engaged in job search or job training activities. AS 47.27.030 – 47.27.035.

If Temporary Assistance applicants or recipients voluntarily quit their job, without good cause, and their "demonstrated need for cash assistance is due" to their quitting the job, they are not eligible for Temporary Assistance benefits for a period of time. AS 47.27.015(c). The penalty period for a first time "job quit" is one month. AS 47.27.015(c)(1).

⁵ The Claimant's Food Stamp application is dated December 8, 2010. (Ex. 8.1) The Division has the application date stamped as received on December 13, 2010. *Id.*

ANALYSIS

This case involves the Division's imposition of a one month job quit penalty against the Claimant with regard to her Temporary Assistance benefits. This penalty meant the Claimant would not receive Temporary Assistance benefits for a one month time period, January 2011. The Division, as the party seeking to change the status quo, has the burden of proof by a preponderance of the evidence. The relevant facts in this case are not disputed. They are as follows:

1. The Claimant was a Temporary Assistance recipient in October 2010. She received a Temporary Assistance payment on October 1, 2010. The next Temporary Assistance payment she received was on December 2, 2010, which was for the months of November and December 2010. *See Findings of Fact 1, 3, 11 above.*
2. The Claimant gave a two week notice that she was quitting her job on November 22, 2010. Her last day of work was December 6, 2010. *See Findings of Fact 5, 12 above.*
3. The Claimant applied for Food Stamp benefits on December 13, 2010. She did not apply for Temporary Assistance benefits on December 13, 2010. *See Finding of Fact 13 above.*
4. On December 17, 2010, the Division sent the Claimant notice that her December 13, 2010 application for Temporary Assistance benefits was denied because "a job quit penalty applies to you for one month for Temporary Assistance which decreased your household size from 3 to 2." *See Finding of Fact 14 above.*
5. On January 25, 2011, one week before the Claimant's scheduled February 1, 2011 hearing, the Division sent the Claimant written notice that her "application for Alaska Temporary Assistance received on December 13, 2010 is denied because a member of your family quit or refused a job, or reduced their work hours without a good reason. . . . [Claimant] quit her job . . . on December 6, 2010. You received [Temporary Assistance] for December, so January is the first penalty month." *See Finding of Fact 16 above.*

The Alaska Statute governing Temporary Assistance job quit penalties states that if a Temporary Assistance recipient voluntarily quits her job, without good cause, and her "demonstrated need for cash assistance is due" to her quitting the job, she is not eligible for Temporary Assistance benefits for a period of time. AS 47.27.015(c).

There is no dispute that the Claimant voluntarily quit her job. However, in order for the Division to impose a penalty against the Claimant, even if the Claimant did not have a good cause to quit her job, "her demonstrated need for cash assistance" must have been due to the job quit. AS 47.27.015(c). Claimant's "demonstrated need for cash assistance" was not caused by or due to her quitting her job. Before quitting her job, she had continuously received Temporary Assistance starting in November 2009 through December 2010. Thus, she already had a demonstrated need for Temporary Assistance benefits, as is shown by the fact she had been a Temporary Assistance recipient since November 2009. In other words, the Claimant had a preexisting need for Temporary Assistance benefits, and her financial need for Temporary

Assistance did not result from her quitting her job; she did not quit her job in order to qualify for Temporary Assistance benefits

As explained by the Claimant, she did not quit her job in order to qualify for Temporary Assistance benefits. At the time she gave her two week notice to her employer, November 22, 2010, she had not received a Temporary Assistance benefit payment since October 1, 2010, and she did not expect to continue receiving Temporary Assistance benefits. *See* Finding of Fact 10 above.

It must also be noted that the Claimant did not apply for Temporary Assistance benefits after she quit her job. Her December 13, 2010 application was made for Food Stamp benefits alone. *See* Finding of Fact 13 above.

The fact that the Claimant's last day of work was December 6, 2010, which was after the Claimant received Temporary Assistance payments on December 2, 2010, for both November and December 2010, does not alter the above conclusion. This is because, as of December 2, 2010, she could not have withdrawn her resignation from her job, because the position had already been filled. *See* Finding of Fact 11 above.

The Division has the burden of proof in this case to demonstrate that the Claimant's financial need for Temporary Assistance was due to her having voluntarily quit her job. As demonstrated above, the Division has not proven its case. As a result, the Division was not correct, when it on December 17, 2010, imposed a one month job quit penalty against the Claimant.⁶

CONCLUSIONS OF LAW

1. The Division had the burden of proof in this case to demonstrate that the Claimant's financial need for Temporary Assistance was due to her having voluntarily quit her job. AS 47.27.015(c).
2. Claimant did not quit her job in order to qualify for Temporary Assistance benefits because she continuously received benefits from 2009 through December 2, 2010. Claimant's financial need preexisted her giving her two week notice of her intent to quit her job, which occurred in November 2010. The Division therefore did not meet its burden of proof to demonstrate the Claimant's financial need for Temporary Assistance was due to her having voluntarily quit her job, as required by regulation AS 47.27.015(c).
3. Because the Division did not prove the Claimant's financial need for Temporary Assistance occurred due to her voluntary job quit, as required by AS 47.27.015(c), the Division was not correct to impose a one month job quit penalty against the Claimant.

⁶ At the March 16, 2011 hearing, this Hearing Examiner raised the issue of whether the Division's job quit notices (December 17, 2010 and January 25, 2011 – Exhibits 12.2 and 16.8) were legally sufficient. *See Baker v. State, Dept. of Health & Social Services*, 191 P.3d 1005, 1010 (Alaska 2008); *Allen v. State, Dept. of Health & Social Services*, 203 P.3d 1155, 1168 – 1169 (Alaska 2009). Given the resolution of this case on the merits, it is not necessary to examine the notice issue.

