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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. 11-FH-198  
 )  
 Claimant. ) Division Case No. [REDACTED]  
 )  
 \_\_\_\_\_ )

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

[REDACTED] (Claimant) was receiving Senior Benefits in May 2011. (Ex. 1) On May 16, 2011, a Division of Public Assistance (Division) Eligibility Technician verbally informed the Claimant that her Senior Benefits payment amount would be reduced beginning with her June 2011 payment. (Ex. 3) The Claimant verbally requested a Fair Hearing on May 16, 2011. (Ex. 3) On May 17, 2011, the Division sent the Claimant written notification that her Senior Benefits payment would be reduced from \$250 per month to \$175 per month beginning with the June 1, 2011 payment. (Ex. 5)

This Office has jurisdiction pursuant to AS 47.45.306, 7 AAC 47.559, and 7 AAC 49.010.

The Claimant's hearing was held on July 26, 2011. The Claimant attended the hearing in person; she represented herself, and testified on her own behalf. [REDACTED], a Public Assistance Analyst with the Division, attended the hearing in person; he represented the Division and testified on its behalf.

**STATEMENT OF ISSUES**

Was the Division correct when it notified the Claimant on May 17, 2011 that her Senior Benefit payment would be reduced from \$250 per month to \$175 per month beginning with the payment due for the month of June 2011?

**FINDINGS OF FACT**

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

1. The Claimant was a Senior Benefit recipient from March 2011 forward. (Ex. 1) In May 2011, she received a monthly Senior Benefit payment in the amount of \$250. (Ex. 5; ██████ testimony)

2. The Claimant's only non-public assistance income in 2011 is her Social Security income. The gross amount of her monthly Social Security income payment is \$753. (Ex. 10) In January and February 2011, she did not receive that full amount because \$110.50 was deducted for her healthcare premium. (Claimant testimony) Beginning with the month of March 2011, she is no longer having her healthcare premium deducted from her Social Security check and is receiving the full \$753 per month. *Id.*

3. The Claimant applied for and was approved for Adult Public Assistance benefits in March 2011. (Ex. 2) She received her first Adult Public Assistance payment in the amount of \$253 for the month of March 2011. (Exs. 2.1 - 2.2) As of April 2011, her Adult Public Assistance payments are \$303 per month. *Id.*

4. On May 16, 2011, a Division Eligibility Technician became aware that the Claimant's Adult Public Assistance income had not been counted when the amount of her monthly Senior Benefit payment had been calculated. (Ex. 3) The Eligibility Technician recalculated the amount of gross income the Claimant had received and was expected to receive in calendar year 2011 as follows:

Social Security Income:	\$753 per month x 12 months	\$ 9,036
Adult Public Assistance:	March 2011 Payment	\$ 235
Adult Public Assistance	\$303 x 9 months (April – December)	<u>\$ 2,727</u>
	Total 2011 income:	\$11,998

(Ex. 3)

5. The Eligibility Technician then determined that the Claimant's monthly Senior Benefits payment should be lowered to \$175 per month because her yearly income was more than 75 percent, but less than 100 percent, of the federal poverty guideline amount of \$13,600. (Ex. 3; ██████ testimony)

6. On May 17, 2011, the Division sent the Claimant written notice notifying her that her monthly Senior Benefit payment amount would decrease from \$250 to \$175 starting with her June 2011 payment because her income had increased due to her receipt of Adult Public Assistance benefits. (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, 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). "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).

The Alaska Senior Benefits Payment Program (Senior Benefits) is a cash assistance program that pays a monthly cash benefit to eligible Alaska residents who are 65 years of age or older. AS 47.45.301 – 302. The amount of an applicant’s monthly Senior Benefits payment is based upon an applicant’s annual gross income. 7 AAC 47.549(a). The monthly Senior Benefits payment amount is:

(1) \$250 if the individual's household income does not exceed 75 percent of the federal poverty line for Alaska;

(2) \$175 if the individual's household income does not exceed 100 percent but is above 75 percent of the federal poverty line for Alaska;

(3) \$125 if the individual's household income does not exceed 175 percent but is above 100 percent of the federal poverty line for Alaska.

AS 47.45.302(b). The 2011 federal poverty guideline for a one person household located in Alaska is \$13,600. (Ex. 9 – 2011 U.S. Health and Human Services Poverty Guidelines located at <http://aspe.hhs.gov/poverty/11poverty.shtml>)

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 issue in this case is whether the Division was correct when it notified the Claimant on May 17, 2011 that her Senior Benefit payment would be reduced from \$250 per month to \$175 per month beginning with the payment due for the month of June 2011.

The Division has the burden of proof, by a preponderance of the evidence, because it is the party seeking to change the status quo by reducing the Claimant’s monthly Senior Benefits payment.

The Claimant did not challenge the income figures used by the Division. Instead, she raised two purely legal arguments:

1. The Division should have used her net Social Security income rather than her gross Social Security income when it calculated her yearly income.
2. The Division should not utilize the federal poverty guidelines to calculate Senior Benefit eligibility and benefit levels.

1. Net versus Gross Social Security Income

In May 2011, the Claimant was receiving a \$250 monthly Senior Benefit payment. *See* Finding of Fact 1 above. This is the Senior Benefit monthly payment amount for a person whose yearly

gross income is less than 75 percent (\$10,200) of the 2011 federal poverty guideline (\$13,600) for a one person Alaska household. AS 47.45.302(b)(1).

The Division determined that the Claimant was only eligible to receive \$175 per month in Senior Benefits. *See* Finding of Fact 5 above. It arrived at this determination based upon the calculation that the Claimant's expected income for 2011 was \$11,998, which consisted of her gross Social Security income and her Adult Public Assistance income. *See* Findings of Fact 4 and 5 above. This amount is more than 75 percent (\$10,200) but less than 100 percent of the 2011 federal poverty guideline amount (\$13,600) for a one person Alaska household.<sup>1</sup> Alaska Statute AS 47.45.302(b)(2) explicitly provides that the monthly Senior Benefit payment is "\$175 if the individual's household income does not exceed 100 percent but is above 75 percent of the federal poverty line for Alaska."

The Claimant argued that the Division should not have used her gross Social Security income when it calculated her yearly income, and that it should have used her net Social Security income (i.e. the amount she received after deductions were taken from her monthly Social Security payment) instead.

The Senior Benefits regulations specifically provide that monthly benefits levels are based upon an applicant's "total annual **gross** income." 7 AAC 47.549(a) (emphasis supplied). The Division is therefore required by law to use yearly gross income rather than yearly net income when determining the monthly Senior Benefit amount. This means the Division was correct to use the Claimant's gross Social Security income amount, rather than her net Social Security income, when it calculated her yearly gross income and arrived at her \$175 monthly Senior Benefit payment.

## 2. Federal Poverty Guidelines

The Claimant made a broad policy argument that the federal poverty guidelines did not accurately reflect the cost of living. The implication of her argument was that the Division should not use the federal poverty guidelines as a benchmark when determining the Senior Benefit monthly payment.

The Alaska statute that authorizes the Senior Benefit program is explicit. The monthly amount that a Senior Benefit recipient is paid is directly linked to the federal poverty guidelines. The monthly payment is:

(1) \$250 if the individual's household income does not exceed 75 percent of the federal poverty line for Alaska;

(2) \$175 if the individual's household income does not exceed 100 percent but is above 75 percent of the federal poverty line for Alaska;

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<sup>1</sup> The 2011 Federal Poverty Guideline for a one person household in the State of Alaska is \$13,600. (Ex. 9) 75 percent of \$13,600 is \$10,200. (Ex. C, p. 1)

(3) \$125 if the individual's household income does not exceed 175 percent but is above 100 percent of the federal poverty line for Alaska.

AS 47.45.302(b). The Division is required by the statute's explicit language to use the federal poverty guidelines when it sets an applicant's monthly Senior Benefit payment.<sup>2</sup> The Claimant's argument that the Division should not use the federal poverty guidelines therefore fails.

In summary, the Claimant's gross yearly income for 2011, which consisted of her gross Social Security income and her Adult Public Assistance income, is \$11,998. This is more than 75 percent (\$10,200) and less than 100 percent (\$13,600) of the 2011 federal poverty guideline for a one person Alaska household. Pursuant to AS 47.45.302(b)(2), the Claimant is entitled to receive a monthly Senior Benefit payment of \$175. The Division was therefore correct to reduce the Claimant's Senior Benefit payment from \$250 per month to \$175 per month beginning with the payment due for the month of June 2011.

### **CONCLUSIONS OF LAW**

1. The Division was required, pursuant to 7 AAC 47.549(a), to use the Claimant's gross Social Security income when calculating her yearly income.
2. The Division was required, pursuant to AS 47.45.302(b), to set the Claimant's monthly Senior Benefit payment based on the federal poverty guidelines.
3. The Claimant's gross yearly income of \$11,998 for 2011 is more than 75 percent (\$10,200) of the 2011 federal poverty guideline (\$13,600) for a one person Alaska household. Consequently, the Claimant is only entitled to receive, pursuant to AS 47.45.302(b)(2), a monthly Senior Benefit payment of \$175 instead of the \$250 monthly payment she had been receiving.

### **DECISION**

The Division was correct when it notified the Claimant on May 17, 2011 that her Senior Benefit payment would be reduced from \$250 per month to \$175 per month beginning with the payment due for the month of June 2011.

### **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. If the Claimant appeals, the request must be sent

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<sup>2</sup> It should also be noted that the 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." This means this Office does not have the legal authority to set aside or revise a statute. The Claimant's argument is noted for the record.

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 18th day of August, 2011.

/Signed/  
Larry Pederson  
Hearing Authority

Certificate of Service

I certify that on this 18th day of August, 2011, true and correct copies of the foregoing were sent to:  
Claimant by U.S.P.S First Class Certified Mail, Return Receipt Requested  
and to the following by secure e-mail:

[REDACTED], Public Assistance Analyst  
[REDACTED], Public Assistance Analyst  
[REDACTED], Policy & Program Development  
[REDACTED], Staff Development & Training  
[REDACTED], Administrative Assistant II  
[REDACTED], Eligibility Technician I

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