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

In the Matter of )  
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 [REDACTED] and [REDACTED] [REDACTED] ) OHA Case No. 11-FH-380  
 )  
 Claimant. ) Division Case Nos. [REDACTED] and  
 )  
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**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

[REDACTED] and [REDACTED] [REDACTED] (Claimants) are husband and wife. (Ex. 1) They were both receiving Adult Public Assistance and Medicaid benefits in September 2011. On September 26, 2011, the Division of Public Assistance (Division) sent the Claimants written notice that both of their Adult Public Assistance benefits would end after October 31, 2011, and that Ms. [REDACTED]'s Medicaid benefits would also end after October 31, 2011. (Exs. 6 – 6.3) The Claimants requested a fair hearing on October 10, 2011. (Ex. 8)

This Office has jurisdiction pursuant to 7 AAC 49.010.

The Claimants' hearing was held on November 8 and November 17, 2011. Mr. [REDACTED] appeared telephonically on both hearing dates, represented himself, and testified on his and his wife's behalf. Ms. [REDACTED] appeared telephonically on November 17, 2011. Mr. [REDACTED] represented her with her consent. [REDACTED], a Tagalog interpreter employed by In Sync Interpreters, attended telephonically on both hearing dates and translated. [REDACTED], a Tagalog interpreter employed by In Sync Interpreters, also attended telephonically on November 17, 2011 and translated.

[REDACTED], a Public Assistance Analyst with the Division, appeared in-person on both hearing dates; he represented the Division and testified on its behalf. [REDACTED], an Eligibility Technician employed by the Division, attended telephonically on November 17, 2011 and testified on the Division's behalf.

## ISSUES

The Division terminated both Mr. and Ms. ██████'s Adult Public Assistance benefits and Ms. ██████'s Medicaid benefits. The Division argued that it was required to terminate the Adult Public Assistance and Medicaid benefits because Ms. ██████'s income exceeded the income limits for the Adult Public Assistance and Medicaid programs. Mr. and Ms. ██████ argued that the Division miscounted Ms. ██████'s income.

The resulting issues are:

1. Was the Division correct to terminate Mr. ██████'s Adult Public Assistance benefits after October 31, 2011?
2. Was the Division correct to terminate Ms. ██████'s Adult Public Assistance and Medicaid benefits after October 31, 2011?

## FINDINGS OF FACT

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

1. Mr. ██████ is 72 years old. (Ex. 1.1) He receives federal Supplemental Security Income (SSI) benefits in the amount of \$674 per month. (Ex. 5.2)
2. Ms. ██████ is Mr. ██████'s wife. (Ex. 1.1) She is 77 years old. *Id.* She and Mr. ██████ live together. (Ex. 2)
3. Both Mr. and Ms. ██████ were receiving Adult Public Assistance and Medicaid benefits in September 2011. (Exs. 1.1, 4, 4.1)
4. Ms. ██████ gave the Division an application to renew her Adult Public Assistance and Medicaid benefits (Eligibility Review Form – Gen 72) on September 6, 2011. (Exs. 2 – 2.5) As part of her application, she informed the Division that she was working. (Ex. 2.1)
5. On September 16, 2011, the Division received a copy of Ms. ██████'s paycheck dated September 16, 2011, which was for the two week period from August 29, 2011 through September 11, 2011. (Ex. 5.5) That paycheck was for a total of 60.1 hours, with total gross pay of \$727.90 for that pay period. *Id.*
6. On September 26, 2011, the Eligibility Technician processing Ms. ██████'s September 6, 2011 Adult Public Assistance and renewal application spoke to a Human Resources manager at Ms. ██████'s place of employment. (██████ testimony) The Human Resources manager told the Eligibility Technician that Ms. ██████ was currently working seven days per week, 12 hours per day. *Id.* He further told the Eligibility Technician that Ms. ██████ was expected to continue working those hours for the next month or two. *Id.* The Eligibility Technician also reviewed a Social Security computer interface that showed Ms. ██████ was making \$4,000 per month. (Ex. 5) The Eligibility Technician then calculated, based upon the Human Resources

manager's statements, that Ms. ██████'s countable monthly income, for Adult Public Assistance purposes, was \$1,939.31.<sup>1</sup> (██████ testimony; Ex. 5.1)

7. The Eligibility Technician who calculated that Ms. ██████'s countable monthly income was \$1,939.31 did so without having seen her September 16, 2011 paycheck, which the Division received on September 16, 2011. (██████ testimony)

8. On September 26, 2011, the Division of Public Assistance (Division) sent the Claimants written notice that both of their Adult Public Assistance benefits would end as of October 31, 2011, and that Ms. ██████'s Medicaid benefits would also end as of October 31, 2011. (Exs. 6 – 6.3) The Division's reason for terminating these benefits was that the Claimants' combined countable monthly income (Mr. ██████'s SSI and Ms. ██████'s employment income) exceeded the maximum allowable countable monthly income limit, for their household, of \$1,854. (Exs. 6.2 – 6.3)

9. On October 3, 2011, the Division received a copy of Ms. ██████'s paycheck dated September 30, 2011, which was for the two week period from September 12, 2011 through September 25, 2011. (Ex. 7.1) That paycheck was for a total of 99.9 hours, with total gross pay of \$956.26 for that pay period. *Id.*

10. On October 10, 2011, the Division received the Claimants' hearing request disputing the closure of their benefit cases due to Ms. ██████'s income, which read "not much cannery work, less income." (Ex. 8)

11. On October 20, 2011, the Division received a copy of Ms. ██████'s paycheck dated October 14, 2011, which was for the two week period from September 26, 2011 through October 9, 2011. (Ex. B, p. 3) That paycheck was for a total of 124.8 hours, with total gross pay of \$1,273.28 for that pay period. *Id.*

12. On November 4, 2011, the Division received a copy of Ms. ██████'s paycheck dated October 28, 2011, which was for the two week period from October 10, 2011 through October 23, 2011. (Ex. B, p. 4) That paycheck was for a total of 90 hours, with total gross pay of \$902.63 for that pay period. *Id.*

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<sup>1</sup>Ms. ██████'s countable monthly income figure was arrived as follows:

- a. The Division calculated her gross monthly income, based on her working 84 hours per week (12 hours per day seven days per week), as being \$3,943.62. (Ex. 5.1)
- b. The Division then applied the earned income deduction to the gross monthly income, by deducting \$65 plus one-half of the remaining balance, from the gross monthly income figure of \$3,943.62. This resulted in countable monthly income for Ms. ██████, alone, of \$1,939.31. *Id.*

## PRINCIPLES OF LAW

### A. Burden of Proof and Standard of Proof

A 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). "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).

### B. Adult Public Assistance

Adult Public Assistance is a cash benefit program provided to financially eligible persons who are over 65, blind, or disabled. AS 47.25.430; 7 AAC 40.120.

Financial eligibility is determined, in part, by an applicant's income (which also includes a spouse's income, if the applicant is married and living with his/her spouse). 7 AAC 40.240(a). Countable monthly income for Adult Public Assistance purposes is calculated by totaling an applicant's gross monthly income, both earned and unearned, and subtracting allowable income deductions. 7 AAC 40.300; 7 AAC 40.310(a); 7 AAC 40.350. Earned income consists of wages and self-employment income. 7 AAC 40.300(a)(2). Unearned income consists of "income that is not earned" and includes such items as Social Security payments, disability benefits, pensions, workers compensation payments, and retirement payments. 7 AAC 40.300(a)(3).

The Adult Public Assistance program's list of allowable deductions from an applicant's income and his spouse's income is provided in 7 AAC 40.320 and 7 AAC 40.330. There is a general deduction of \$20. 7 AAC 40.330(a)(23).

The Adult Public Assistance program also allows a deduction from household earned income of "65 per month of any earned income plus one-half of the remainder." 7 AAC 40.320(a)(20). There is no deduction provided for utilities or mortgage payments. *See* 7 AAC 40.320 - 330.

If an applicant, who is married and lives with his/her spouse in their home, where both are otherwise eligible<sup>2</sup> for Adult Public Assistance, has a countable monthly income that exceeds \$1,854 the applicant is not financially eligible for Adult Public Assistance. 7 AAC 40.310(a)(5) and (c); *Alaska Adult Public Assistance Manual Addendum 1* (for calendar year 2011).

### C. Medicaid

A person who has been approved for Adult Public Assistance is automatically eligible for Medicaid benefits. 7 AAC 100.002(d)(1); 7 AAC 100.410(b).

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<sup>2</sup> 65 years of age or older, blind, or permanently and totally disabled. *See* 7 AAC 40.020 and 7 AAC 40.120.

## ANALYSIS

There are two issues in this case, each of which will be addressed separately below:

1. Was the Division correct to terminate Mr. ██████'s Adult Public Assistance benefits after October 31, 2011?
2. Was the Division correct to terminate Ms. ██████'s Adult Public Assistance and Medicaid benefits after October 31, 2011?

Each of the above issues involves the question of whether the Division was correct to terminate benefits. Because this case involves the termination of benefits, the Division is the party who is seeking to change the status quo. The Division therefore 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).

1. Was the Division correct to terminate Mr. ██████'s Adult Public Assistance benefits after October 31, 2011?

The Division terminated Mr. ██████'s Adult Public Assistance benefits after October 31, 2011. It did this based upon its determination that Mr. ██████ and his wife had monthly countable income that exceeded the Adult Public Assistance program's countable monthly income limit of \$1,854 for their two person household.

Mr. ██████ has a two-person household, which consists only of himself and his wife. *See* Finding of Fact 2 above. Both Mr. ██████ and his wife are elderly, each being over 70 years old. *See* Findings of Fact 1 and 2 above. This means they are both potentially eligible for Adult Public Assistance based on age. AS 47.25.430; 7 AAC 40.120. Mr. ██████ has SSI income of \$674 per month. *See* Finding of Fact 1 above. Ms. ██████ has employment income. In order for Mr. ██████ to qualify for Adult Public Assistance, his and his wife's countable monthly income cannot exceed \$1,854. 7 AAC 40.310(a)(5) and (c); *Alaska Adult Public Assistance Manual Addendum 1* (for calendar year 2011).

The Division calculated that Ms. ██████'s monthly countable income was \$1,939.31. *See* fn. 1 above for the calculations. This calculation was based upon the wage and hour information the Division received from the Human Resources manager at Ms. ██████'s place of employment. *See* Finding of Fact 6 above. Ms. ██████'s monthly countable income, as calculated by the Division, without counting Mr. ██████'s monthly SSI income, was greater than the Adult Public Assistance monthly income limit of \$1,854.

However, the Division had a copy of paystub, in its possession at the time of the Division's income calculations, which showed Ms. ██████ was working far less than 84 hours per week. That paystub dated September 16, 2011, proved that Ms. ██████ worked a total of 60.1 hours in the two week period from August 29, 2011 through September 11, 2011, with total gross pay of \$727.90 for that pay period. *See* Finding of Fact 5 above. The Division Eligibility Technician, who calculated, on September 26, 2011, that Ms. ██████ earned gross monthly income of

\$3,843.62 and countable monthly income of \$1,939.31 did not know about the September 16, 2011 paycheck when he made his income calculations. *See* Finding of Fact 7 above.

The substantial disparity in hours between the Human Resources manager's statement, 84 hours per week (168 in a two week period), and the 60.1 hours over a two week period (30.05 hours in one week) reflected in the September 16, 2011 paystub, should have led the Division to not rely on the Human Resources manager's statement and to rely upon the actual hours worked as reflected by Ms. ██████'s paystub. The Human Resources manager's hearsay statement's unreliability is underscored by the fact that Ms. ██████'s next paystub, September 30, 2011, for the two week period from September 12, 2011 through September 25, 2011, was for 99.9 hours and \$956.26 in gross wages. *See* Finding of Fact 9. It must be noted that this comes to 55 hours of work per week for the pay period ending September 25, 2011, substantially less than the 84 hours per week the Human Resources manager said on September 26, 2011 that Ms. ██████ was currently working.<sup>3</sup>

In summary, the Division incorrectly calculated Ms. ██████'s income for the purposes of determining Mr. ██████'s eligibility for Adult Public Assistance benefits. It relied upon Ms. ██████'s employer's Human Resources manager's September 26, 2011 statements when it had a September 16, 2011 paystub reflecting her actual work hours in its possession.

Because the Division did not correctly calculate Ms. ██████'s income for the purpose of determining Mr. ██████'s eligibility for Adult Public Assistance benefits, it is necessary to recalculate her income based upon the financial information in the evidentiary record.

Ms. ██████ has four paystubs in the record, which cover her work hours from August 29, 2011 through October 28, 2011. *See* Findings of Fact 5, 9, 11, and 12 above. The paystub dated September 16, 2011 shows \$727.90 in gross wages. *See* Finding of Fact 5 above. The paystub dated September 30, 2011 shows \$959.60 in gross wages. *See* Finding of Fact 9 above. The paystub dated October 14, 2011 shows \$1,273.28 in gross wages. *See* Finding of Fact 11 above. The paystub dated October 28, 2011 shows \$902.63 in gross wages. *See* Finding of Fact 12 above. When these four amounts are added together and averaged, Ms. ██████'s average gross income for a two week period comes to \$965.85.<sup>4</sup>

Because Ms. ██████ was paid every two weeks, her biweekly gross income of \$965.85 is multiplied by 2.15 to arrive at her monthly income. Her gross monthly income is therefore \$2,076.58. Because this is earned income, her countable earned income is arrived at by deducting "65 per month of any earned income plus one-half of the remainder." 7 AAC 40.320(a)(20). Her countable monthly earned income comes to \$1,005.79.<sup>5</sup>

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<sup>3</sup> If the Division had only the Human Resources manager's statement that Ms. ██████ worked 84 hours per week, as validated by the Social Security interface printout showing her making \$4,000 per month (Ex. 5.1), the Division's conclusion that Ms. ██████ had monthly countable income of \$1,939.31 would have been reasonable. However, the Division failed to take Ms. ██████'s September 16, 2011 paystub, which directly and conclusively contradicted both the Human Resources manager's statement and the Social Security interface printout, into account.

<sup>4</sup>  $\$727.90 + \$959.60 + \$1,273.28 + \$902.63 = \$3,863.41$ .  $\$3,863.41$  divided by 4 = \$965.85.

<sup>5</sup>  $\$2,076.58 - \$65 = \$2,011.58$ .  $\$2,011.58$  divided by 2 = \$1,005.79.

When Mr. ██████'s monthly SSI income of \$674 is added to Ms. ██████'s monthly countable income of \$1,005.79, the result is \$1,679.79. After the \$20 general deduction allowed by AAC 40.330(a)(23) is made, the final result is \$1,659.79. The maximum countable monthly income the Claimants could make and still be eligible for Adult Public Assistance was \$1,854. 7 AAC 40.310(a)(5) and (c); *Alaska Adult Public Assistance Manual* Addendum 1 (for calendar year 2011). Because Mr. ██████'s monthly countable household income of \$1,659.79 was less than \$1,854, Mr. ██████ was eligible for Adult Public Assistance benefits.

The Division had the burden of proof by a preponderance of the evidence, to establish that Mr. ██████ was not financially eligible to receive Adult Public Assistance benefits. The Division did not satisfy its burden of proof. The evidence in this case shows that Mr. ██████'s countable monthly income, which included both his SSI income and Ms. ██████'s employment income, was \$1,659.79, which was less than the Adult Public Assistance program's income limit of \$1,854. The Division was therefore not correct when it terminated Mr. ██████'s Adult Public Assistance benefits after October 31, 2011.

2. Was the Division correct to terminate Ms. ██████'s Adult Public Assistance and Medicaid benefits after October 31, 2011?

The Division terminated Ms. ██████'s Adult Public Assistance and Medicaid benefits after October 31, 2011. It did this based upon its determination that Ms. ██████ and her husband had monthly countable income that exceeded the Adult Public Assistance program's countable monthly income limit of \$1,854 for their two person household, which meant that Ms. ██████ was not eligible for either Adult Public Assistance or Medicaid benefits.

a. Adult Public Assistance

The above discussion, on Mr. ██████'s eligibility for Adult Public Assistance, demonstrates that Mr. and Ms. ██████ together had \$1,659.79 in countable monthly income. Because this was less than the Adult Public Assistance program's income limit of \$1,854 for a two person household, Ms. ██████ was financially eligible for Adult Public Assistance benefits. 7 AAC 40.310(a)(5) and (c); *Alaska Adult Public Assistance Manual* Addendum 1 (for calendar year 2011).

The Division had the burden of proof by a preponderance of the evidence, to establish that Ms. ██████ was not financially eligible to receive Adult Public Assistance benefits. The Division did not satisfy its burden of proof. The evidence in this case shows that Ms. ██████'s countable monthly income, which included both her employment income and Mr. ██████'s SSI income, was \$1,659.79, which was less than the Adult Public Assistance program's income limit of \$1,854. The Division was therefore not correct when it terminated Ms. ██████'s Adult Public Assistance benefits after October 31, 2011.

b. Medicaid

As the above discussion on Adult Public Assistance shows, Ms. [REDACTED] was financially eligible for Adult Public Assistance benefits. Because she was eligible for Adult Public Assistance benefits, she was also eligible for Medicaid benefits. 7 AAC 100.002 (d)(1); 7 AAC 100.410(b).

The Division had the burden of proof by a preponderance of the evidence to establish that Ms. [REDACTED] was not eligible for Medicaid benefits. The Division did not satisfy its burden of proof. The evidence in this case shows that Ms. [REDACTED] was financially eligible for Adult Public Assistance benefits. Because she was eligible for Adult Public Assistance benefits, she was also eligible for Medicaid benefits. The Division was therefore not correct when it terminated Ms. [REDACTED]'s Medicaid benefits after October 31, 2011.

**CONCLUSIONS OF LAW**

1. The Division did not meet its burden of proof by a preponderance of the evidence and did not prove that Mr. [REDACTED] was not financially eligible to receive Adult Public Assistance benefits. It did not consider a paystub of Ms. [REDACTED]'s that was in its possession when it erroneously calculated that Mr. [REDACTED]'s countable monthly income exceeded the Adult Public Assistance program's countable monthly income limit. Consequently, the Division failed to prove that Mr. [REDACTED]'s monthly countable income exceeded the Adult Public Assistance program's countable monthly income limit.

2. The Division was therefore not correct when it terminated Mr. [REDACTED]'s Adult Public Assistance benefits after October 31, 2011.

3. The Division did not meet its burden of proof by a preponderance of the evidence and did not prove that Ms. [REDACTED] was not financially eligible to receive Adult Public Assistance benefits. It did not consider a paystub of Ms. [REDACTED]'s that was in its possession when it erroneously calculated that Ms. [REDACTED]'s countable monthly income exceeded the Adult Public Assistance program's countable monthly income limit. Consequently, the Division failed to prove that Ms. [REDACTED]'s monthly countable income exceeded the Adult Public Assistance program's countable monthly income limit.

4. Because Ms. [REDACTED] was financially eligible for Adult Public Assistance benefits, she was also eligible for Medicaid benefits.

5. The Division was therefore not correct when it terminated Ms. [REDACTED]'s Adult Public Assistance and Medicaid benefits after October 31, 2011.

**DECISION**

1. The Division was not correct to terminate Mr. [REDACTED]'s Adult Public Assistance benefits after October 31, 2011.

