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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-409
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) is an Adult Public Assistance recipient. (Ex. 1) On October 21, 2011, the Division of Public Assistance (Division) sent the Claimant notice that her monthly Adult Public Assistance benefit amount would be changed to \$184 beginning with the month of November 2011. (Ex. 4.0) The Claimant requested a fair hearing on October 25, 2011. (Exs. 5.0 – 5.1)

This Office has jurisdiction pursuant to 7 AAC 49.010.

The Claimant's hearing was held on November 30, 2011. The Claimant appeared telephonically; she represented herself, and testified on her own behalf. [REDACTED], a Public Assistance Analyst with the Division, appeared in-person; she represented the Division and testified on its behalf.

ISSUE

Was the Division correct to change the Claimant's monthly Adult Public Assistance benefit to \$184 beginning with the month of November 2011?¹

¹ This is the second case filed by the Claimant with regard to her 2011 Adult Public Assistance benefits. The first case, Case No. 11-FH-207, was filed by the Claimant in May 2011 to challenge a reduction in her Adult Public Assistance benefits. The Division restored her Adult Public Assistance benefits to their prior amount while that case was pending. This Office issued a decision on September 13, 2011 in Case No. 11-FH-207, which found the Division did not calculate the Claimant's Adult Public Assistance benefits correctly beginning in the month of June 2011.

The Division then recalculated the Claimant's Adult Public Assistance benefits for the months of June 2011 through October 2011 based upon the decision in Case No. 11-FH-207. The Division determined that the Claimant had been

FINDINGS OF FACT

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

1. The Claimant is an adult who receives Adult Public Assistance benefits due to a disability. (Ex. 1) She is married and lives with her husband. (Ex. 1)
2. On September 20, 2011, the Social Security Administration determined that the Claimant's husband earns \$2,302.40 per month, beginning with the month of June 2011. (Ex. 3.15)
3. The Claimant currently receives, and has since August 2011, \$70.80 per month in Social Security Supplemental Security Income (SSI) benefits. (Ex. 3.14) Her monthly SSI benefit amount is based upon her husband's monthly income of \$2,302.40 per month, after allowing a \$337 living allowance deduction due to an SSI ineligible child residing in the household. (Ex. 3.15)
4. On October 21, 2011, the Division sent the Claimant notice that her Adult Public Assistance monthly benefit amount would be changed to \$184 beginning with the month of November 2011. (Ex. 4.0) The Division stated it arrived at this figure because "Social Security is currently budgeting [her] benefits on [her husband's] earning of \$2302.40." *Id.* It further notified the Claimant that her "APA benefits are calculated based on the SSI couple standard of \$1,011." *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.

overpaid her Adult Public Assistance benefits in the months of June 2011 through October 2011, because she had been receiving those benefits at a higher level while Case No. 11-FH-207 was pending. *See* Division Position Statement, para. 3. However, the Division has not sought repayment of these alleged Adult Public Assistance benefit overpayments. *See* Division Position Statement, para. 4. As a result, this case only concerns the issue of the Claimant's Adult Public Assistance benefit payment amount beginning with the month of November 2011.

Adult Public Assistance monthly benefit payment amounts are normally 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).

The Adult Public Assistance program treats SSI recipients' income differently than that of non-SSI recipients. If an Adult Public Assistance recipient also receives SSI payments, her countable monthly income is considered to be the SSI payment standard, regardless of what her actual SSI payment is, plus her spouse's countable income. 7 AAC 40.300(e); *Alaska Adult Public Assistance Manual* § 452-1B.² The SSI payment standard for 2011 was \$1,011. *Alaska Adult Public Assistance Manual* Addendum 1. However, if the husband's income is counted by the Social Security Administration in arriving at a recipient's monthly SSI benefit, it is not counted by the Division for the purposes of calculating her monthly Adult Public Assistance benefit amount. *Id.*

A recipient's Adult Public Assistance monthly benefit amount is arrived at by subtracting her countable household income from the Adult Public Assistance payment standard. 7 AAC 40.370(b). The result is the applicant's monthly Adult Public Assistance benefit amount. *Id.* The 2011 payment standard for a married couple residing together in their own home, when only one is eligible for Adult Public Assistance, is \$1,195. 7 AAC 40.370(c)(2) and (d). *Alaska Adult Public Assistance Manual* Addendum 1.

ANALYSIS

The issue in this case is whether the Division was correct to change the Claimant's Adult Public Assistance monthly benefit amount to \$184. Because this case involves a modification of ongoing 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).

The pertinent facts in this case are as follows:

1. The Claimant resides with her husband, who is not eligible for SSI.
2. The Claimant's monthly SSI income is \$70.40. The Claimant's husband's gross monthly earned income is \$2,302.40. His income was counted by the Social Security Administration when it arrived at the Claimant's monthly SSI benefit amount.

Applying the Adult Public Assistance regulation, 7 AAC 40.300(e), the Claimant's monthly income for Adult Public Assistance purposes, because she receives SSI payments, is \$1,011, the SSI payment standard for a couple. *Alaska Adult Public Assistance Manual* Addendum 1 (2011

² "SSI recipients are budgeted differently than non-SSI recipients. APA payments to SSI recipients are calculated by using the appropriate SSI payment standard for the APA benefit month as the amount of countable income, regardless of the SSI benefit amount." *Alaska Adult Public Assistance Manual* § 452-1B.

standard). Her husband's income is not added to this amount, because it was considered by the Social Security Administration when it calculated her monthly SSI payment. 7 AAC 40.300(e).

The Division is required to calculate the Claimant's Adult Public Assistance benefit amount by subtracting the Claimant's income from the Adult Public Assistance payment standard of \$1,195. 7 AAC 40.370(b); *Alaska Adult Public Assistance Manual* Addendum 1. The Claimant's income of \$1,011 (the SSI payment standard) subtracted from \$1,195 (the Adult Public Assistance payment standard) results in the figure of \$184. This is the amount that the Division changed the Claimant's benefit amount to beginning with the month of November 2011.

In summary, the Division has met its burden of proof by a preponderance of the evidence. Because the Claimant is an SSI recipient, whose husband's income was used by the Social Security Administration to arrive at her monthly SSI benefit amount, the Claimant's monthly countable income for Adult Public Assistance purposes is \$1,011, regardless of the fact that her actual monthly SSI payment is only \$70.40. Because her monthly countable income for Adult Public Assistance purposes is \$1,011, the Claimant is only entitled to receive \$184 in monthly Adult Public Assistance benefits.³

CONCLUSIONS OF LAW

1. The Division met its burden of proof by a preponderance of the evidence and established that the Claimant's Adult Public Assistance monthly benefit amount was \$184.
2. The Division was therefore correct when it modified the Claimant's Adult Public Assistance benefit amount to \$184 beginning with the month of November 2011.

DECISION

The Division was correct when it notified the Claimant, on October 21, 2011, that her Adult Public Assistance monthly benefit amount would be changed to \$184 beginning with the month of November 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 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:

³ The Claimant has directed this Office's attention to the holding in the predecessor case, Case No. 11-FH-207, which held against the Division. That case is quite different from the present case. Case No. 11-FH-207 involved a situation where the Social Security Administration did not take the Claimant's husband's income into account when it calculated her monthly SSI benefit amount. *See* Ex. A, p. 4 in Case No. 11-FH-207. In addition, the Division failed to use the correct income amount for the husband. In the present case, the Social Security Administration did take the Claimant's husband's income into account when it calculated her monthly SSI benefit amount. (Ex. 3.15)

Director of the Division of Public Assistance
Department of Health and Social Services
PO Box 110640
Juneau, AK 99811-0640

DATED this 26th day of January, 2012.

/Signed/
Larry Pederson
Hearing Authority

Certificate of Service

I certify that on this 26th day of January, 2012, true and correct copies of the foregoing were sent to:

Claimants 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

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