

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL  
BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of )

C J )  
\_\_\_\_\_ )

OAH No. 15-0662-APA  
Agency No.

**DECISION**

**I. Introduction**

C J was receiving Adult Public Assistance (APA) benefits. The Division of Public Assistance (Division) notified Mr. J that his monthly benefit amount would decrease beginning in June of 2015. The Division determined that his benefits should be reduced from \$28 to \$24 per month. Mr. J requested a hearing.

Mr. J's hearing was held on June 26, 2015. Mr. J represented himself and testified on his own behalf. Public Assistance Analyst Michelle Cranford represented the Division.

The reduction in Mr. J's monthly APA benefit occurred because his monthly Social Security payment increased and there was another increase in his household income. Because the Social Security payment increased, the Division was required to recalculate and decrease his monthly APA benefit amount. Mr. J did not dispute the Division's calculation or that the reduction was in accordance with the applicable regulations. Mr. J argued that the applicable regulations are invalid because those regulations violate the Americans with Disabilities Act by not increasing the Adult Public Assistance benefit as much as the Alaska Temporary Assistance Program does in response to an SSI cost of living increase.

Because the Division correctly applied the current law in this case, the Division's action reducing Mr. J's monthly APA benefit amount is affirmed.

**II. Facts**

Mr. J has a four-person household.<sup>1</sup> Mr. J's household income consists of Social Security Administration (SSA) and SSI payments and APA payments. Mr. J's monthly APA payment was \$28 in 2014. His monthly SSA payment, which had been \$853 in 2014, was increased to \$868 and Ms. H, who is also in his household, had her SSI increase from \$721 to \$733 beginning in January of 2015.<sup>2</sup> In May of 2015, the Division recalculated Mr. J's APA

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<sup>1</sup> Exhibit 2.

<sup>2</sup> Exhibits. 3-3.3.

payment based upon his and Ms. H's increased SSA and SSI payments, which increased his countable household income from \$1574 to \$1601. The result was a reduction to monthly APA benefit to \$24 per month.<sup>3</sup> The Division notified Mr. J of this change and he appealed arguing that the reduction violated the Americans with Disabilities Act.<sup>4</sup>

At the hearing, Mr. J explained his position was that since APA benefits are made to disabled adults, those adults should be treated equally under Alaska law when their benefits are adjusted based on an SSI cost of living increase relative to cash benefits that are paid to other low income adults who are generally not disabled through the Alaska Temporary Assistance Program.<sup>5</sup>

### **III. Discussion**

The APA program provides cash payments to financially eligible persons who are over 65, blind, or disabled.<sup>6</sup> The payment amount is calculated based upon a recipient's income.<sup>7</sup> The APA program counts SSA payments as unearned income, and a recipient is entitled to a deduction of \$20 from the SSA income amount when determining the recipient's countable income.<sup>8</sup> A recipient's countable income is subtracted from the applicable APA payment standard to arrive at the recipient's monthly APA payment.<sup>9</sup>

The Division followed the calculation process correctly. It took Mr. J's household's SSA income, and made the appropriate deduction.<sup>10</sup> Subtracting Mr. J's household's countable income APA payment standard resulted in an APA payment of \$24 per month.

Mr. J's disagreement with the reduction in his APA payment is not with Division's application of its regulations, but rather the regulations themselves. Mr. J pointed out that these regulations effectively reduce the State's contribution to his household's APA support whenever he gets an increase from SSA.

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<sup>3</sup> Exhibit 7.

<sup>4</sup> Exhibit 8.

<sup>5</sup> Recording of Hearing.

<sup>6</sup> AS 47.25.430; 7 AAC 40.120.

<sup>7</sup> 7 AAC 40.370(b).

<sup>8</sup> 7 AAC 40.300(a)(3); 7 AAC 40.320(a)(23); 7 AAC 40.350.

<sup>9</sup> 7 AAC 40.370(b).

<sup>10</sup> 7 AAC 40.370(c)(1), (3); *Alaska Adult Public Assistance Manual Addendum 1* (Ex. 2.1).

At the hearing, Mr. J pointed that the calculation of his APA payment creates an economic hardship for households like his, with members of the household who are dependent on APA payments.

Mr. J compared the APA treatment of an SSI cost of living increase with the treatment given such an increase by the Alaska Temporary Assistance Program. Mr. J explained that under 7 AAC 45.520(b) the qualifying standards and benefits for the Alaska Temporary Assistance Program increase annually by the same percentage as any SSI cost of living increase, while under the APA program only the dollar amount of any SSI increase is effectively added to the qualifying standard and under 7 AAC 40.370(b) & (e).

Mr. J asserted that the way this difference in the two programs works is that while an ATAP recipient receiving \$800 per month would receive \$880 per month if there was a 10% increase in SSI, an APA recipient receiving \$500 in SSI and \$300 in APA, for a total of \$800 per month, would only get a net total of \$850 per month due to the mechanics of how the two different programs adjust benefits when there is a SSI cost of living increase. Mr. J argues that this is contrary to the Americans with Disabilities Act because the differences in these two benefit programs for below poverty level households result in a disparate treatment of those with disabilities, while the Americans with Disabilities Act requires that a benefit program treat those with disabilities equally with those that do not have a disability.

While this result may not be fair, Division is required to follow its own regulations.<sup>11</sup> The Division was required, by its regulations, to reduce Mr. J's monthly APA payment to \$24 because his monthly SSA payment increased. It should also be noted that ATAP and APA are different programs.

**IV. Conclusion**

The Division's reduction in Mr. J's monthly APA payment is affirmed.

DATED this 29<sup>th</sup> day of June, 2015.

*Signed*  
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Mark T. Handley  
Administrative Law Judge

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<sup>11</sup> *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010).

## Adoption

The undersigned, by delegation from the Commissioner of Health and Social Services, adopts this Decision, under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 4<sup>th</sup> day of August, 2015.

By: Signed  
Name: Jared C. Kosin, J.D., M.B.A.  
Title: Executive Director  
Agency: Office of Rate Review, DHSS

[This document has been modified to conform to the technical standards for publication.]