

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

In the Matter of)	
)	OAH No. 12-0321-ATP
F T-J)	Division No.
_____)	

FAIR HEARING DECISION

I. Introduction

On July 16, 2012, the Division of Public Assistance (division) sent Ms. T-J notice that it was imposing a penalty which decreased her Temporary Assistance amount.¹ Ms. T-J requested a hearing.

Ms. T-J’s hearing was held on September 7, 2012. Ms. T-J represented herself and testified on her own behalf. Terri Gagne, Public Assistance Analyst, represented the division. The hearing was recorded.

This decision concludes that Ms. T-J failed to comply with the terms of her Family Self-Sufficiency Plan (FSSP). As a result, the division’s decision to reduce her Temporary Assistance benefit amount is AFFIRMED.

II. Facts

Ms. T-J receives Temporary Assistance benefits.² On April 24, 2012, she signed an FSSP addendum that required her to complete and turn in a monthly “[w]ork activities timesheet” documenting “40 hours of work activity a week.”³ On May 25, 2012, she signed a new FSSP addendum containing the same requirement.⁴

Ms. T-J volunteers with her church and with the division; both activities constitute a portion of her 40 hours of required weekly work activities.⁵ Her May 25, 2012 FSSP addendum required her to look for fulltime paid employment, either from home or the job center, to document her work search, and to provide her job development caseworker with copies of her daily work search logs.⁶

¹ Ex. 1.
² Ex. 1.
³ Ex. 2.0.
⁴ Ex. 2.1.
⁵ Exs. 2.0 – 2.1.
⁶ Ex. 2.1.

On July 12, 2012, the division and Ms. T-J's church supplied documentation of the hours Ms. T-J had spent in volunteer work activities with them during the month of June 2012. She spent 69 hours with the division and 27 hours with her church, a total of 96 hours.⁷ On July 12, 2012, Ms. T-J provided her job development caseworker with a written statement, dated July 11, 2012, in which she refused to provide a daily log of her work activities because "doing a daily log of every activity is a waste of paper as well as time."⁸

Ms. T-J's reasoning for not providing the daily log was that it was unnecessary because she completed over 40 hours per week of work activities, and that her work activity time was witnessed by division personnel as well as job center staff, and justified by the reports of her volunteer activity with the division and her church.⁹ Ms. T-J did not provide any other documentation of work activity for the month of June 2012. Her job development caseworker determined that she only documented 97¹⁰ hours of work activity for the entire month when her FSSP required her to document 40 hours of work activity for each week during the month, which would come to a minimum of 160 hours per month.¹¹

On July 16, 2012, the division reduced Ms. T-J's monthly Temporary Assistance payment amount to \$617, effective August 2012, as a penalty for not complying with the terms of her FSSP.¹² She had been receiving \$1,025 per month before imposition of the penalty.¹³ Ms. T-J has two prior Temporary Assistance work activity penalties.¹⁴ On July 23, 2012, Ms. T-J completed and submitted work activity timesheets documenting additional work activity hours for the month of June 2012.¹⁵

III. Discussion

The issue in this case is whether a penalty should be imposed against Ms. T-J reducing her Temporary Assistance payment amount for not complying with the terms of her FSSP.

⁷ Exs. 2.6 – 2.7.

⁸ Exs. 2.2, 2.12.

⁹ Ex. 2.2; T-J testimony.

¹⁰ This appears to be a clerical error, inasmuch as 69 hours with the division and 27 hours with the church totals 96 hours, not 97.

¹¹ The division's case notes inexplicably refer to 120 hours per month, rather than 160. *See* Exs. 2.11, 2.12.

¹² Ex. 2.18.

¹³ Ex. 2.28.

¹⁴ Exs. 2.13 – 2.15.

¹⁵ Exs. 2.8 – 2.10.

The Alaska Temporary Assistance program requires that its adult participants cooperate with the division in developing and signing an FSSP.¹⁶ If a Temporary Assistance recipient, without good cause, does not comply with the terms of his or her FSSP, the division “will impose a penalty upon the family in accordance with 7 AAC 45.980.”¹⁷ The penalty is a reduction in the amount of the Temporary Assistance the family receives.¹⁸

The Alaska Temporary Assistance program regulations provide allowable good cause exceptions to the requirement that a recipient engage in work related activities. Those exceptions relate to a recipient’s inability to engage in work activities due to child care issues, illnesses, age related impairments, transportation issues, court attendance, incarceration, or other similar items.¹⁹

It is undisputed that Ms. T-J initially refused to document that she engaged in 40 hours per week of work activity during the month of June 2012. On its face, this was a violation of the explicit terms of her FSSP, specifically the requirement that she document 40 hours per week of work activity. This was a documentation requirement, which does not fall within any of the good cause exceptions to compliance with an FSSP. Ms. T-J’s reasoning that she did not need to provide the documentation because the information was available from other sources ignores the fact that her FSSP required her to provide the information. She cannot unilaterally choose which portions of the FSSP she complies with. Consequently, she is subject to a penalty which reduces her Temporary Assistance benefit amount because she chose, without good cause, not to comply with a term of her FSSP.

After Ms. T-J’s penalty was imposed on July 16, 2012, she provided additional documentation of her work activities on July 23, 2012. This raises the question of whether her after-the-fact compliance should eliminate the penalty.

A penalty imposed due to a recipient’s failure to comply with a provision of an FSSP continues “until the date the department determines that the family is in compliance,” at which time “the department shall begin to pay the family the full amount of cash assistance for which the family is eligible.”²⁰ A recipient, who has two or more prior penalties, must demonstrate

¹⁶ AS 47.27.030(a).

¹⁷ 7 AAC 45.257(d).

¹⁸ AS 47.27.085(a); 7 AAC 45.980(a)(1).

¹⁹ 7 AAC 45.261(a).

²⁰ AS 47.27.085(a)(1).

compliance “by performing the requisite activity” for a 30 day time period before the penalty can be lifted.²¹

Ms. T-J’s required activity under her FSSP, with which she did not comply, was documenting 40 hours per week of work activities. The regulation stating that a recipient demonstrates compliance “by performing the requisite activity”²² means that compliance must be demonstrated by future performance, not past performance. In other words, Ms. T-J cannot eliminate her penalty by providing the June work activity statement after imposition of the penalty. She can only eliminate her penalty by complying with her FSSP for a 30 day period that begins after the imposition of her penalty. Consequently, Ms. T-J’s after-the-fact compliance with the documentation requirement for June 2012 does not eliminate her penalty.

IV. Conclusion

The division’s decision to impose a penalty against Ms. T-J reducing her Temporary Assistance payment amount is AFFIRMED.

DATED this 24th day of September, 2012.

Signed

Lawrence A. Pederson
Administrative Law Judge

Adoption

The undersigned, by delegation from of 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 9th day of October, 2012.

By: *Signed*

Name: Lawrence A. Pederson
Title: Administrative Law Judge

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

²¹ 7 AAC 45.980(i)(2); *Alaska Temporary Assistance Manual* § 723-3A(2).

²² 7 AAC 45.980(i)(2).