

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

In the Matter of)	
)	
C N)	OAH No. 12-0364-ATP
<hr style="width:40%; margin-left:0"/>)	DPA Case No.

DECISION

I. Introduction

The Alaska Temporary Assistance Program (ATAP) generally requires that participants create and follow-through with a Family Self-Sufficiency Plan (FSSP). If a participant fails to do so, the Division of Public Assistance (DPA or Division) is required to institute a non-compliance penalty which decreases the amount of the participant's ATAP benefits. The issues in this case are (1) whether the Division imposed a non-compliance penalty on Mr. N without giving him adequate notice that it considered him to be non-compliant, and (2) whether the Division imposed a non-compliance penalty on Mr. N without giving him an adequate opportunity to demonstrate compliance or to become compliant. This decision concludes, based on the evidence in the record, that the Division's imposition of the noncompliance penalty at issue was appropriate.

II. Facts

A. Mr. N's Family

C N has a household of four persons consisting of himself, his wife, and their two young children.¹ Mr. N's wife is disabled and receives Title II disability benefits from the Social Security Administration (SSA).² One of Mr. N's minor children is also disabled and receives Supplemental Security Income (Title XVI) disability benefits from the Social Security Administration.³

B. Relevant Procedural History⁴

On June 4, 2012 Mr. N and his wife submitted an application for ATAP and other public assistance benefits.⁵ On June 6, 2012 Mr. N participated in an eligibility interview

¹ Ex. 1.

² Ex. 2.14.

³ Ex. 2.15.

⁴ Because the defenses which Mr. N asserts with regard to the imposition of the non-compliance penalty at issue relate to notice and are essentially procedural, it is necessary to provide a more detailed procedural history of the case than would normally be required.

with a DPA representative.⁶ During this interview, Mr. N stated that he is the sole caregiver for his disabled wife and child, and asked a DPA employee to print out for him the ATAP manual provisions discussing exemptions from ATAP work requirements.⁷

On June 7, 2012 Employment Security Specialist II Sue Ellen Gordon had a telephone conversation with Mr. N, in which she reminded him that he needed to complete an Employability Assessment (EA) and a Family Self-Sufficiency Plan (FSSP), or provide evidence showing good cause for failing to do so.⁸ Mr. N, apparently in response to this voice mail, e-mailed Ms. Gordon inquiring as to the "exceptions that may be granted that excuse an individual from the requirements to participate."⁹ Mr. N also advised that he preferred to communicate by e-mail.¹⁰ Ms. Gordon responded by e-mail, stating in relevant part:¹¹

As an applicant, or recipient, of [ATAP] you are required to meet with a case manager and develop a Family Self-Sufficiency Plan. Upfront interviews to accomplish this are conducted daily from 8:00 [am] to 3:30 [pm]. You may come in at any time . . . and check in and a staff member will let the case manager know you are here

Ms. Gordon e-mailed Mr. N back a second time later that day, advising him in relevant part as follows:¹²

The exemptions you are referring to have to do with participation in work activities. These exemptions do not excuse someone from the requirement to meet with a case manager and develop a Family Self-Sufficiency Plan (FSSP) In addition, you will meet with a case manager, usually once a month, to update your FSSP. Failure to develop a FSSP will result in a penalty which will reduce your benefits.

On June 8, 2012 the Division mailed a notice to Mr. N, advising that his application for ATAP and Medicaid benefits had been approved.¹³ Also on June 8, 2012 the Division mailed a second notice to Mr. N, which stated in relevant part:¹⁴

⁵ Exs. 2.0 - 2.9.

⁶ Ex. 2.13.

⁷ Exs. 2.10, 2.13.

⁸ Exs. 2.16, 2.23.

⁹ Ex. 2.18.

¹⁰ Ex. 2.17. This request is significant because, as recounted below, various Division employees subsequently provided written notification of various program requirements to Mr. N via e-mail, rather than by mail, pursuant to Mr. N's specific request.

¹¹ Ex. 2.17.

¹² Ex. 2.18.

It is very important . . . to complete a Family Self-Sufficiency Plan We will contact you soon for an appointment Going to Work Search may be part of your plan You must follow-through with the activities on your Plan, including going to work If you choose not to follow your plan, we must reduce your family's [ATAP] benefits

Also on June 8, 2012 DPA Protective Services Specialist Terri Ramsey left voice mail for Mr. N reminding him that he needed to complete an EA/FSSP or show good cause for failing to do so.¹⁵ On *June 11, 2012* the Division mailed a notice to Mr. N stating that, unless he contacted his case manager to complete his EA/FSSP (or show good cause for failing to do so) by *June 21, 2012* (i.e. within 10 days), his family's ATAP benefits would decrease, *beginning in July 2012*.¹⁶ The notice further stated that the penalty would be assessed against him for failing to "meet with a case manager and develop a Family Self-Sufficiency Plan."¹⁷ Finally, the notice advised that the penalty would remain in effect until the required activities stated in the notice had been completed.

Mr. N failed to complete an in-depth EA/FSSP interview with Ms. Ramsey by the June 21, 2012 deadline.¹⁸ On July 11, 2012 Ms. Ramsey telephoned Mr. N twice and left two separate voice mails for him. The first message advised him that he still had an open ATAP case, that she needed him to call her back to reschedule the in-depth EA/FSSP meeting that he was to have completed by June 21, 2012, and that when he completed an EA/FSSP interview, she could recommend that his penalty that began on July 1, 2012 be lifted.¹⁹ The second message reminded Mr. N to submit his June 2012 work activities timesheets and medical appointment report forms to her by July 12, 2012.²⁰

On July 13, 2012 Ms. Ramsey mailed a follow-up notice to Mr. N which stated in relevant part as follows:²¹

¹³ Ex. 2.19.

¹⁴ Ex. 2.20 (formatting of original notice modified/condensed here for brevity).

¹⁵ Exs. 2.21, 2.22, 2.23.

¹⁶ Ex. 2.25. Some other communications from the Division indicate that Mr. N was given until June 25, 2012 to contact his case manager to complete his EA/FSSP or to show good cause for failing to do so. However, this discrepancy is not material because the record is clear that Mr. N did not complete his EA/FSSP (or show good cause for failing to do so) even by the later date (June 25, 2012).

¹⁷ Ex. 2.25.

¹⁸ Ex. 2.26.

¹⁹ Ex. 2.27.

²⁰ Ex. 2.28.

²¹ Ex. 2.29.

C, I am writing to you because you did not complete your scheduled in-depth Employability Assessment and Family Self-Sufficiency Plan appointment [by] 6/25/12. Even though you are caring for a disabled spouse, you still have an open cash assistance case and you are still required to complete the above appointment. Please call me . . . to reschedule your missed . . . appointment and discuss what you need to do to cure the current family plan penalty. Please remember all work activities timesheets and medical appointment report forms are due to me the first week each month. Please call if you have questions²²

On August 2, 2012 a DPA representative telephoned Mr. N and left a voice mail reminding him to submit his July 2012 work activities timesheets and medical appointment report forms to Ms. Ramsey by August 3, 2012.²³ On August 30, 2012 DPA employee Diane Dexter telephoned Mr. N to respond to a voice mail that he had left, but she could not reach him.²⁴ On August 30, 2012 Mr. N sent a fax to the Division in which he asked about the status of his case and reiterated his request for a hearing.²⁵ On August 31, 2012 DPA Eligibility Technician IV Jeri Hughes telephoned Mr. N to respond to a fax which Mr. N had sent to DPA, but he could not reach him.²⁶ Mr. N then sent a fax to Mr. Hughes.²⁷ The fax stated in relevant part (1) that Mr. N had never received written notice of the imposition of any penalty; and (2) that Mr. N had never received written acknowledgment of a request for hearing which he claimed to have made. The fax also requested information regarding the current status of the ATAP case, and asked that further communications be made in writing.

On September 9, 2012 Mr. N sent two faxes to the Division.²⁸ The faxes are summarized by the following passage:²⁹

My first and most pressing concern is simply establishing an on going conversation in some written form with someone at [DPA] until all my matters are resolved. After that the next concern is getting information on the status of the request for a hearing on my [ATAP] case. I also want to know the status of my [ATAP] case.

²² Two other notices containing essentially the same information were also mailed to Mr. N on July 13, 2012.

See Exs. B2, B3, B4.

²³ Ex. 2.30.

²⁴ Ex. 2.34.

²⁵ Exs. 2.31, C227, C228.

²⁶ Ex. 2.34.

²⁷ Ex. 2.33.

²⁸ Exs. C259 - C262.

²⁹ Ex. C260.

On September 10, 2012 Jeri Hughes responded to Mr. N's faxes, stating that his case had "been sent to the fair hearing office" and that she was no longer "in possession" of Mr. N's case."³⁰

Mr. N's hearing was held on October 23, 2012. Mr. N participated in the hearing by telephone, represented himself, and testified on his own behalf. Terri Gagne, a DPA Public Assistance Analyst, participated in the hearing by telephone, represented the Division, and testified on its behalf. The record was left open at the end of the hearing to allow for the submission of certain specified post-hearing filings.³¹ The record closed on November 14, 2012.

III. Discussion

A. ATAP Family Self-Sufficiency Plan Requirements

The Alaska Temporary Assistance Program (ATAP) is a program created by the Alaska Statutes to implement the federal TANF program.³² See A.S.47.05.010(1); A.S.47.27.005 – A.S.47.27.990.³³ Alaska Statute (A.S.) 47.27.030, titled "Family Self-Sufficiency Services," requires in relevant part that "(a) A participant in the Alaska temporary assistance program shall cooperate with the department, or its designee, to develop and sign a family self-sufficiency plan" The results of the family self-sufficiency planning process are documented on the Family Self-Sufficiency Plan form (TA 2).³⁴

There are consequences should an applicant or recipient fail to "develop and sign a family self-sufficiency plan." AS 47.27.085(a) provides that "the department shall reduce the amount of cash assistance provided to the family of an [ATAP] program applicant or participant who, without good cause, fails to comply with a condition of the family self-sufficiency plan"

³⁰ Exs. C356, C360.

³¹ On November 13, 2012 this Office received an e-mail from Mr. N, attached to which were a number of electronic documents. Those attached documents (totaling 363 pages) were printed-out and marked for the record as Exs. C1 - C363.

³² On August 22, 1996 the United States Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (Pubic Law No. 104-193, 110 Stat. 2105). This legislation, popularly known as the Welfare Reform Act, is codified at 42 U.S.C. § 601 *et seq.* The legislation repealed the Aid to Families with Dependent Children (AFDC) program (the federal program which had long provided cash assistance to poor families) and replaced it with the Temporary Aid to Needy Families (TANF) program. Under TANF, each state receives a predetermined block of funding to distribute as the state sees fit. 42 U.S.C.A. § 601 *et seq.* TANF significantly increased the states' discretion to design their federally supported welfare plans.

³³ The Alaska Temporary Assistance Program's regulations are set forth at 7 AAC 45.149 – 7 AAC 45.990.

³⁴ Alaska Temporary Assistance Program Manual Section 719-3.

Similarly, ATAP regulation 7 AAC 45.257(d) states in relevant part that, [i]f an applicant or recipient, without good cause as defined in 7 AAC 45.261, fails to cooperate with the department to develop and to sign the FSSP . . . the department will impose a penalty upon the family in accordance with 7 AAC 45.980."

As indicated in 7 AAC 45.257(d), above, there are exemptions from the FSSP requirement. 7 AAC 45.261(a) provides in relevant part as follows:

(a) For the purposes of determining "good cause" under . . . AS 47.27.085(a) (failure to comply with a condition of the FSSP under AS 47.27.030 . . . the following circumstances may constitute good cause:

- (1) the recipient is a single parent of a child under age six years and child care is not appropriate or available
- (2) participation would interfere with the recipient's attempt, or the attempt by a member of the recipient's immediate family, to escape domestic violence
- (3) the limited strength and stamina of a recipient over age 59;
- (4) a sudden and temporary situation beyond the control of the family, affecting health of a member or ability to comply, including family illness or death or tragedies of nature;
- (5) the recipient must appear in court or serve on a jury;
- (6) [the recipient] is in detention under AS 47.12.240 or incarcerated;
- (7) necessary transportation breaks down or otherwise becomes unavailable, and the recipient lacks a reasonable alternative;
- (8) weather conditions prohibit travel;
- (9) the recipient accepts a job with gross wages and employee benefits equal to or greater than those at the job left;
- (10) the recipient is separated from paid employment for a reason outside the recipient's control and not due to the recipient's action or inaction;
- (11) the recipient's wages are reduced for a reason outside the recipient's control and not due to the recipient's action or inaction;
- (12) the job is available because of a labor dispute or is otherwise involved in a labor dispute;
- (13) the work is more hazardous to the individual than to the average worker employed in a similar job;
- (14) the wages do not meet the Alaska minimum wage requirement;
- (15) the recipient cares for the recipient's child under 17 weeks of age;
- (16) the recipient has been subjected to discrimination, in violation of AS 18.80.220;
- (17) the recipient refuses or voluntarily separates from employment to participate in an approved vocational education or training opportunity that is included in the FSSP;

(18) the recipient refuses or voluntarily leaves employment to accept employment included in the FSSP that might not initially provide wages and benefits equal to or greater than those at the job refused or left, but is more likely to provide greater gross wages and benefits in the future.

If none of the above "good cause" exemptions apply, a noncompliance penalty is imposed. The initial penalty consists of a reduction of the recipient's ATAP by "40 percent of the maximum cash assistance that would be payable" ³⁵ Pursuant to AS 47.27.085(a)(1), the penalty begins "on the date the department makes a finding that the family is not in compliance" The Division's regulations interpret AS 47.27.085(a)(1) as instituting the penalty on recipients effective "the first day of the month following the month the department provides the recipient with a notice of proposed agency action" concerning the noncompliance. ³⁶ The penalty continues "until the date the department determines that the family is in compliance" ³⁷

B. Was Mr. N Given Adequate Notice and an Opportunity to Comply?

Mr. N's position in this case is well summarized in his e-mail of November 13, 2012:

A close look at the record will clearly show that the action to penalize the case was initiated well before I ever had a chance to become compliant or non-compliant The action to impose a penalty was initiated two days after the intake interview The issue is not whether or not I was compliant ^[38] but [rather] whether the case manager's action to impose a penalty was an action taken prematurely according to the rules

Mr. N is correct that there are notice requirements which must be satisfied before an FSSP penalty may be imposed. Alaska Temporary Assistance Program Manual Section 723-6(A) provides in relevant part that, before an individual can be penalized, they must (1) be given written notice that explains (a) the requirement they must meet; (a) the activity that must be completed and when it must be completed; and (c) the consequence of not meeting the requirement; (2) be given at least 10 days to meet the requirement; and (3) be given the opportunity to demonstrate good cause for not meeting the program requirement. Were the requirements of ATAP Manual Section 723-6(A) satisfied in this case?

1. Written Notice of the Requirement / Activity to be Completed

³⁵ AS 47.27.085(a)(1).

³⁶ 7 AAC 45.980(d).

³⁷ 7 AAC 45.980(d).

³⁸ Mr. N has not asserted in these proceedings that he actually completed his FSSP, or that he has provided adequate proof to the Department of his satisfaction of any exemption from the FSSP requirements. Review of the record indicates that Mr. N accomplished neither of these alternative tasks.

On June 7, 2012 Sue Ellen Gordon advised Mr. N by e-mail³⁹ that, as an ATAP recipient, he was required to meet with a case manager and develop a Family Self-Sufficiency Plan (FSSP).⁴⁰ This requirement was reiterated in a separate e-mail from Ms. Gordon of the same date,⁴¹ as well as in a notice mailed to Mr. N on June 8, 2012.⁴² Accordingly, the Division adequately notified Mr. N that he was required to complete an FSSP.

2. Written Notice of the Date by Which the FSSP was to be Completed

On June 11, 2012 the Division mailed a notice to Mr. N stating that, unless he contacted his case manager to complete his EA/FSSP (or show good cause for failing to do so) by June 21, 2012, his family's ATAP benefits would decrease, beginning in July 2012.⁴³ Thus, the Division notified Mr. N of the actions required of him ten days in advance of the specified deadline, and 19 days before the penalty actually went into effect.

3. Written Notice of the Consequences for not Completing the FSSP

On June 7, 2012 Ms. Gordon advised Mr. N by e-mail that failure to develop a FSSP would result in a penalty which would reduce his ATAP benefits.⁴⁴ On June 8, 2012 the Division mailed a notice to Mr. N, which stated in relevant part that "[i]f you choose not to follow your [Family Self-Sufficiency Plan], we must reduce your family's [ATAP] benefits."⁴⁵ On June 11, 2012 the Division mailed a notice to Mr. N stating that, unless he contacted his case manager to complete his Family Self-Sufficiency Plan (or show good cause for failing to do so) by June 21, 2012, his family's ATAP benefits would decrease.⁴⁶ Accordingly, DPA provided adequate notice of the consequences of not completing the FSSP.

4. Allowance of Ten Days to Meet the FSSP Requirement

Mr. N was given at least 10 days to meet the FSSP requirement. He was first informed of the requirement in writing on June 7, 2012;⁴⁷ he was advised of the June 21, 2012 completion

³⁹ E-mail is Mr. N's preferred form of communication regarding the public assistance matters at issue (Ex. 2.17).

⁴⁰ Ex. 2.17.

⁴¹ Ex. 2.18.

⁴² Ex. 2.20 (formatting of original notice modified/condensed here for brevity).

⁴³ Ex. 2.25.

⁴⁴ Ex. 2.18.

⁴⁵ Ex. 2.20.

⁴⁶ Ex. 2.25.

⁴⁷ Exs. 2.17, 2.18.

deadline, in writing, on June 11, 2012; and he was advised on June 11, 2012 that the penalty would not actually take effect until July 2012.⁴⁸

5. Opportunity to Demonstrate Good Cause for not Completing the FSSP

On June 7, 2012 Ms. Gordon e-mailed Mr. N and advised him that the exemptions that he was seeking (based on his asserted need to stay home to care for his disabled spouse and child) pertained to participation in work activities, and thus did not excuse him from the requirement to meet with a case manager and develop a Family Self-Sufficiency Plan.⁴⁹ On June 11, 2012 the Division mailed a notice to Mr. N which stated in relevant part that he had until June 21, 2012 to show a good-cause exemption from the FSSP requirement.⁵⁰ Accordingly, the Division gave Mr. N an adequate opportunity to show good cause for not completing a Family Self-Sufficiency Plan.

IV. Conclusion

The Division has shown that Mr. N was given legally sufficient notice of the applicable Family Self-Sufficiency Plan (FSSP) requirements, but failed to either complete an FSSP or demonstrate that he is exempt from FSSP requirements. Accordingly, the penalty (reduction in ATAP benefits), imposed effective July 1, 2012, is upheld.

Dated this 26th day of November, 2012.

Signed

Jay Durych
Administrative Law Judge

⁴⁸ Ex. 2.25.

⁴⁹ Ex. 2.18.

⁵⁰ Ex. 2.25.

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 14th day of December, 2012.

By: Signed
Name: Ree Sailors
Title: Deputy Commissioner, DHSS

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