

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

In the Matter of	)	
	)	OAH No. 12-0574-ATP
K S-W X	)	Agency No.
f/k/a K S	)	
_____	)	

**FAIR HEARING DECISION**

**I. Introduction**

On May 7, 2012, the Division of Public Assistance (Agency) sent Ms. S-W X written notice it was imposing a penalty which terminated her eligibility for Temporary Assistance benefits for a six month period: she would not receive benefits after May 31, 2012 and was not eligible to reapply for them until December 1, 2012.<sup>1</sup> Ms. S-W X requested a hearing on May 22, 2012.<sup>2</sup>

Ms. S-W X's hearing was held on July 5, 2012. Ms. S-W X represented herself and testified on her own behalf. Jeff Miller, Public Assistance Analyst with the Agency, represented the Agency. The hearing was recorded.

This decision concludes that the Agency was not justified in imposing a six month penalty against Ms. S-W X's Temporary Assistance benefits. As a result, the Agency's decision to terminate her Temporary Assistance benefits after May 31, 2012 and making her ineligible to apply for them until December 1, 2012 is REVERSED.

**II. Facts**

Ms. S-W X was a Temporary Assistance recipient with two minor children.<sup>3</sup> She began working a part-time clerical job in March 2011. Her job performance resulted in her being placed in a corrective action plan in August 2011 to address issues regarding her "attendance, attention to detail, and accuracy."<sup>4</sup>

Ms. S-W X was terminated from her part-time clerical job on or about December 28, 2011. Her last day of work was December 28, 2011.<sup>5</sup> Her former employer completed a March 16, 2012 written statement that reads as follows:

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<sup>1</sup> Ex. 4.  
<sup>2</sup> Ex. 6.1.  
<sup>3</sup> Ex. 1.  
<sup>4</sup> S-W X testimony; Ex. 2.1.  
<sup>5</sup> Ex. 2.1.

She was released from her duties when the corrective action plan we implemented for her to improve attendance, attention to detail, and accuracy was not followed. Her employment with us ended when her personal issues interfered with her performance and reliability. She in no way acted with misconduct, or with disregard for our organization.<sup>[6]</sup>

Ms. S-W X testified she missed some work days in November 2011 due to a gall bladder attack and in December 2011 because she did not have childcare during the school holiday break. She testified, however, that her employer terminated her for work accuracy issues, not due to her attendance. No one testified to contradict her testimony.

The Agency imposed a penalty against Ms. S W-X's Temporary Assistance benefits on May 7, 2012 because she had been terminated from her job. That penalty consisted of her Temporary Assistance benefits being terminated after May 31, 2012 and her not being eligible to reapply for them until December 1, 2012.<sup>7</sup> Ms. S W-X has one prior Temporary Assistance penalty.<sup>8</sup>

### **III. Discussion**

The issue in this case is whether the Agency was correct when it imposed a six-month job quit penalty against the Ms. S-W X, which closed her Temporary Assistance case after May 31, 2012.

The Temporary Assistance program imposes a job quit penalty. This penalty disqualifies a recipient from receiving Temporary Assistance benefits for six months, for a second occurrence, for voluntary separation from employment without good cause.<sup>9</sup> Voluntary separation is defined as a person quitting a job or being fired from a job due to misconduct or a failure to show up for work.<sup>10</sup>

Ms. S-W X testified that she lost her job due to accuracy concerns and not due to attendance issues. The only other evidence regarding the cause of her job loss consists of her former employer's March 16, 2012 letter stating that she was terminated when a corrective action plan designed to "improve [her] attendance, attention to detail, and accuracy was not followed." That same letter states that "her personal issues interfered with her performance and reliability." While the term "reliability" is imprecise and could refer to Ms. S-W X's attendance,

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<sup>6</sup> Ex. 2.1.

<sup>7</sup> Ex. 4.

<sup>8</sup> Ex. 3.2.

<sup>9</sup> AS 47.27.015(c)(2); 7 AAC 45.970(e).

<sup>10</sup> 7 AAC 45.990(b).

the employer's letter does not specifically identify her attendance as the cause for her termination, and it specifically states that she was not terminated for misconduct.<sup>11</sup> In addition, the only other evidence in the record regarding the cause for her termination was Ms. S-W X's un rebutted sworn testimony. As a result, the evidence shows that it is more likely true than not true that Ms. S-W X lost her job, not due to misconduct or failure to show up for work or other attendance problems, but instead due to concerns about the accuracy of her work, as she testified.

Ms. S-W X did not quit her job. She did not lose her job due to not showing up for work or for misconduct. She therefore did not "voluntarily separate" from her employment. As a result, the Agency was not justified in imposing a job quit penalty against her Temporary Assistance benefits.

#### **IV. Conclusion**

The Agency's decision to impose a six-month job quit penalty against the Ms. S-W X, which terminated her Temporary Assistance benefits after May 31, 2012 and made her ineligible for those benefits until December 1, 2012, is REVERSED.

DATED this 24th day of August, 2012.

*Signed*  
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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 5<sup>th</sup> day of September, 2012.

By: *Signed*  
\_\_\_\_\_  
Name: Lawrence A. Pederson  
Title: Administrative Law Judge

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

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<sup>11</sup> Ex. 2.1.  
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