

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

In the Matter of)	
)	OAH No. 12-0615-ATP
G O)	Agency No.
_____)	

DECISION

I. Introduction

G O is a recipient of Alaska Temporary Assistance Program (ATAP) benefits. Effective November 1, 2011, the Division of Public Assistance (DPA) reduced her benefits as a penalty for failure to comply with her Family Self-Sufficiency Plan, or FSSP. Ms. O requested a fair hearing, contending that she has complied with the FSSP or has good cause for any failure to do so. The calculation of the penalty is not at issue; the only question to be decided is whether the penalty should be imposed.

Three hearing sessions were held in January and February of 2012. The evidentiary record consists of the testimony taken during these hearings,¹ DPA exhibits 1 - 23, and Ms. O's exhibits A1 - A10.² Based on this evidence, the imposition of the noncompliance penalty is appropriate.

II. Facts

G O is unemployed and is the mother of a young child, D. She receives a monthly cash benefit from ATAP. As part of that program, on August 12, 2011 she signed an FSSP, designed to help her find work and end her need for government support.³ The first goal on her FSSP was for her to find suitable child care, which she was to begin on August 15 and accomplish by August 18, 2011. The following week, she was to begin work or work activities (such as a job search) for 40 hours per week.⁴

¹ Ms. O testified on her own behalf. In addition, Alaska No Name Program Manager M W was called by both sides and testified during two hearing sessions.

² All of these exhibits were admitted without objection, except that Ms. O objected to DPA exhibits 3.0 and 3.1 on the basis that she disagrees with what those exhibits say. The objection was overruled.

³ Ex. 2.

⁴ *Id.*

Ms. O apparently began her search for child care, as required, on August 15,⁵ continuing that effort until August 25. During this period she reports that she determined that the following child care facilities are unacceptable:

Carousel
Little Red School House
Anchorage Christian Preschool
Child Early Learning Center
Kid Corps
Bayshore Early Learning Center
Anchorage Montessori
Bright Beginnings
Children's World Bilingual Montessori
Crystal Child Development Center
Early Learning Academy
Easter Seals CDC
Tundra Tykes
Hillcrest Children's Center
Imagination Station
Northern Lights Preschool
Rural Cap Child Development Center
Tanaina Child Development Center
Klever Kids⁶

She indicates that these child care programs are unacceptable because they have been noncompliant with regulations.⁷ There is, however, no documentation of the alleged noncompliance in the record, and it is impossible to assess the timing or seriousness of the purported violations, if any. Ms. O does not contend that the licenses of these facilities have been revoked or restricted. Ms. O did not visit any of the day care programs listed above; she made her assessment from online sources.⁸

Finding no day care she deemed suitable, Ms. O did not begin looking for work.⁹

Ms. O has advanced two explanations for not completing the tasks in the FSSP. The explanation for failing to complete the FSSP that she currently emphasizes is focused on the compliance of the available day care programs with regulatory requirements, as detailed above. In her dealings with DPA and No Name in the fall of 2011, however, Ms. O focused

⁵ Ex. A-2.1.

⁶ Ex. A-2. She indicates that two other facilities were acceptable but had no openings.

⁷ *Id.*; testimony of Ms. O.

⁸ Testimony of Ms. O (2/1/12).

⁹ Testimony of Ms. O (2/29/12).

instead on a contention that D’s health made him unsuitable for daycare. As she stated on October 27, 2011:

Since May 2010, I have expressed my concern regarding D’s already vulnerable health and preventing the spread of MRSA . . . I believe I have proven the physicians’ refusals to provide a TA10 form or required physician note may not be in D’s best interest, I have also proven a diagnosis of MRSA.^[10]

In this connection, she submitted evidence that D had pneumonia in 2009; that he was *at that time* a carrier of methicillin-resistant staphylococcus aureus (albeit not the cause of the pneumonia); that in early September of 2010 he was undergoing a workup for possible immune deficiency scheduled to be completed later that month, and that pending completion of that workup his physician thought he should “avoid attending daycare.”¹¹ There was no documentation of medical issues in 2011 apart from an indication that he was going to have a culture for intestinal bacteria in April of that year (if this was done, the results are not in the record).¹²

DPA uses a document known as the Health Status Report Form (TA #10) to document any medical limitations on an ATAP applicant or recipient’s ability to participate in work activities.¹³ Ms. O reports that D’s health providers have been unwilling to sign such a form in his case.¹⁴ She theorizes that their refusal may have “ulterior motives.”¹⁵ The only “evidence” she has submitted in support of that theory is a 2010 letter from an *attorney* opining that there are “unusual events” in the D’s medical records, but also noting that they were “without serious or permanent effects to D.”¹⁶

III. Discussion

ATAP is a program created by the Alaska Statutes.¹⁷ Alaska Statute 47.27.030, titled “Family self-sufficiency services,” provides in relevant part as follows:

(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

¹⁰ Ex. 8.5.
¹¹ Ex. 8.
¹² Ex. 8.7.
¹³ See Alaska Temporary Assistance Manual Section 730-2.
¹⁴ Testimony of Ms. O; Ex. 8.0; 8.2; 8.6.
¹⁵ Testimony of Ms. O (2/1/12).
¹⁶ Ex. A-1; testimony of Ms. O (2/1/12).
¹⁷ See AS 47.05.010(1); AS 47.27.005 – AS 47.27.990.

In addition, Alaska law provides that ATAP participants must:

. . . participate in work activities as assigned by the department or its designee in order for the family to continue to receive cash assistance or self-sufficiency services . . . unless the participant is exempt from the work participation requirements under one or more of the exemptions^[18]

Alaska Statute 47.27.085 and regulation 7 AAC 45.257(d) provide that a penalty reduction of benefits will be imposed on an ATAP participant who, without good cause, fails to comply with a provision of the FSSP or fails to participate in assigned work activities.¹⁹

In this case, the FSSP required Ms. O to find child care by August 18 and to begin work activities (such as a job search) on August 22. Neither of these milestones was met. A penalty must be imposed unless there was good cause for failing to meet them. Ms. O has, in effect, sought an exemption from completing the FSSP requirements under two provisions.²⁰

First, she has contended that D is medically unsuitable to attend day care. Alaska Statute 47.27.035(c)(1) provides an FSSP exemption if “medical reasons” prevent participation in the FSSP, but only if “the parent or caretaker establishes” those reasons. Ms. O has not done this. She has established only that D had some medical problems in 2009 and 2010, and that there was a recommendation for him to avoid day care for a brief period in September 2010, more than a year before the penalty was imposed. She has also admitted that his medical providers refuse to sign documentation supporting her contention. The attorney’s letter she has furnished in an attempt to show that their refusal is not in good faith says nothing to support that contention; to the contrary, it indicates that the attorney is aware of “no serious or permanent effects to D.”²¹

Second, she has contended that 19 child care facilities she investigated are unsuitable. Alaska Statute 47.27.035(c)(4) provides an FSSP exemption if “appropriate child care is not available”, but only if “the parent or caretaker demonstrates” that situation.²² Again, Ms. O has not made the required demonstration. Her broad assertion that 19 child care facilities are unacceptable because of regulatory noncompliance—without any details or documentation about the alleged deficiencies in a single one of the facilities—simply is not credible. Indeed, she admits that she did not even trouble to visit any of the 19 programs she found deficient.

¹⁸ AS 47.27.035(a).

¹⁹ See also 7 AAC 45.980.

²⁰ Both are found in AS 47.27.035(c). Ms. O has raised no issue regarding the adequacy of the department’s financial support for day care under AS 47.27.035(d).

²¹ Ex. A-1.

²² See also 7 AAC 45.261(a)(1).

In sum, Ms. O has not made the required demonstration to bring herself within one of the exceptions that might excuse her from fulfilling the FSSP.

IV. Conclusion

DPA demonstrated at the hearing that Ms. O failed to comply with her FSSP, and Ms. O failed to demonstrate that she is exempt from or unable to comply with the plan's requirements. The penalty imposed effective November 1, 2011 is upheld.

Dated this 11th day of September, 2012.

Signed

Jay Durych
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 28th day of September, 2012.

By: *Signed*

Name: Ree Sailors
Title: Deputy Commissioner, DHSS

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