

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

IN THE MATTER OF:)	
)	OAH No. 12-0666-ATP
M L. D)	Agency No.
_____)	

DECISION

I. Introduction

M L. D submitted an application for temporary assistance benefits on March 16, 2012. Her application noted her job had ended in the last sixty days. After reviewing additional information Ms. D provided, the Department of Health and Social Services, Division of Public Assistance (division) denied her application due to the imposition of a one-month job quit penalty. She requested a hearing on April 24, 2012.

Ms. D’s hearing was held on July 24, 2012. She appeared by telephone. Terri Gagne, Public Assistance Analyst, represented the division by telephone. The hearing was recorded. The record was left open after the hearing until August 3, 2012, to allow Ms. D time to submit additional evidence and for the division to file a written response to it.

Based on the record as a whole and after due deliberation, the division’s decision to impose a one-month job quit penalty on Ms. D’s application for temporary assistance is **AFFIRMED**.

II. Facts

Ms. D is a single parent with two young children who are five and six years of age.¹ She formerly received Temporary Assistance benefits.² In March 2012, she was working for a day care program.³

On March 9, 2012, Ms. D did not appear for work and did not contact V, her employer, to explain her absence before her shift was to begin, or at any time soon thereafter.⁴ V attempted to contact Ms. D, but to no avail.⁵ V even asked Ms. D’s boyfriend, who also worked for V, if he knew where Ms. D was and why she had not appeared for work. According to V, the boyfriend

¹ Ex. 1.
² Ex. 1.
³ Ex. 4.
⁴ Ex. 4.
⁵ Ex. 4.

said he did not know where Ms. D was or why she was not at work.⁶ V said she did receive a text message from Ms. D, but the content and time of the message is unknown.⁷ In any event, according to V, she had previously informed her employees that text messaging was not an acceptable form of communication for employment purposes.⁸ Because she was not able to reach Ms. D and Ms. D only sent her a text message, V considered her employee's actions a voluntary termination.⁹

Ms. D testified the reason she missed work on March 9, 2012, was because her son had hit his head and she had to take him to the emergency room. She said she was at the hospital from about 6:00 a.m. until 3:00 p.m., and that in the afternoon she was able to reach V's assistant, who told her V did not want to talk to her and had wanted to fire her anyway.

While processing her application for temporary assistance, the division asked Ms. D to provide verification from the hospital that she was there with her son that day. She agreed to provide the information but did not submit it to the division.¹⁰ At the hearing, Ms. D explained that the division insisted on receiving her actual medical records, which she was not willing to provide. The record was left open for an additional ten days after the hearing for Ms. D to provide admittance records for her son on that day. She was assured that her medical records were not necessary. Ms. D agreed to provide hospital documentation that her son was seen on March 9, 2012, but she did not submit any hospital records after the hearing.

Based on the evidence as a whole, it is more likely than not true that Ms. D did not take her son to the hospital on March 9, 2012, and that she did not timely call her employer to report her job absence that day.

III. Discussion

The issue in this case is whether the division correctly imposed a one-month job quit penalty against Ms. D from March 9, 2012, the day she did not appear for work, and April 9, 2012. Ms. D¹¹ has the burden of proving by a preponderance of the evidence that the division's

⁶ Ex. 4.

⁷ Ex. 4.

⁸ Ex. 4.

⁹ Ex. 4.

¹⁰ Division pre-hearing statement at p 2.

¹¹ 2 AAC 64.290(e).

decision was incorrect, either because she was at the hospital with her son or because she did not timely contact her employer to report her absence from work.¹²

The Temporary Assistance program imposes a job quit penalty, which disqualifies a recipient from receiving Temporary Assistance benefits for one month for a first occurrence, if the recipient quits a job or is fired from a job for cause.¹³ The regulations contain exceptions to the job quit penalty, which include the unavailability of childcare for a single parent of a child who is under six years of age, and transportation problems (a transportation breakdown, unavailability of transportation, or weather conditions).¹⁴ These exceptions, however, do not apply to the situation where the recipient fails to contact her employer when she cannot appear for work as scheduled.

Ms. D lost her job on March 9, 2012 because she did not appear for her scheduled work shift and because she did not contact her employer to tell her she would be absent.

Ms. D argued that her failure to appear for work was justified by her child hitting his head and her being at the hospital with him. Although Ms. D may have been justified in not appearing for her work shift on March 9, 2012 because she was at the emergency room with her son, she did not lose her job due to her absence. Instead, Ms. D lost her job because she did not contact her employer and tell the employer that she was going to be absent. Her failure to contact her employer was an action clearly within her control. As a result, Ms. D lost her job for cause.

IV. Conclusion

Ms. D did not meet her burden of proving by a preponderance of the evidence that the division's decision to impose a one-month job quit penalty on her application for temporary assistance was incorrect. The division was therefore justified in imposing the one-month job quit penalty and its determination should be affirmed.

¹² Preponderance of the evidence is defined as: "Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. *Black's Law Dictionary* 1064 (5th Ed. 1979).

¹³ AS 47.27.015(c)(1); 7 AAC 45.970(e); 7 AAC 45.990(b).

¹⁴ See 7 AAC 45.261(a)(1), (7), (8).

V. Decision

The division's decision to impose a one-month job quit penalty on Ms. D's application for temporary assistance is AFFIRMED.

DATED this 24th day of August, 2012.

By: Signed _____
Kay L. Howard
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 6th day of September, 2012.

By: Signed _____
Name: Kay L. Howard
Title: Administrative Law Judge

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