

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

In the Matter of:)
)
 N O) OAH No. 16-0149-ATP
) DPA Case No.
_____)

DECISION

I. Introduction

The Alaska Temporary Assistance Program (ATAP) generally requires that able-bodied participants who are not caring for young children find and maintain employment.¹ If a participant terminates his or her employment without good cause to do so, the Division of Public Assistance (DPA or Division) is required to impose a non-compliance penalty known as a "job-quit penalty."² This penalty makes the recipient's household ineligible for ATAP benefits for a period of time.³ A first-time job-quit penalty disqualifies the household for one month; a second-time job-quit penalty disqualifies the household for six months; and a third-time job-quit penalty disqualifies the household for 12 months.⁴

The Division imposed a six-month, second-time job-quit penalty on Ms. O's household, based on its determination that Ms. O quit suitable employment without "good cause" as that term is defined by applicable ATAP regulations.⁵ Ms. O asserts, however, that she quit her job to help her ailing father move to another state with a climate better suited to his medical problems, and that the need to assist her father constituted good cause for leaving her job. This decision concludes that, although it was not unreasonable for Ms. O to quit her job to assist her father, Ms. O's situation does not fall within the temporary assistance program's somewhat narrow definition of "good cause." Accordingly, the Division was correct to impose a six-month, second-time job-quit penalty on Ms. O's household. The Division's imposition of that job-quit penalty is therefore affirmed.

¹ 7 AAC 45.260.
² AS 47.27.015.
³ AS 47.27.015(c); 7 AAC § 45.970.
⁴ AS 47.27.015(c); 7 AAC § 45.970.
⁵ Ex. 3.

II. Facts

A. *Material Facts*

The relevant facts are not in dispute. Ms. O has three children, ranging in age from 12 to 17 years old.⁶ Her father, C U, is 65 years old.⁷ He has diabetes, high blood pressure, and gout, and is under the care of a rheumatologist.⁸ In August or September 2015 his condition became so bad that he was no longer able to get out of bed, walk, or perform other activities of daily living without assistance from family members.⁹ This situation lasted through December 2015, at which time Mr. U was finally able to be seen at the Veterans' Administration clinic.¹⁰

During the period in which Mr. U was incapacitated, he was cared for primarily by his wife.¹¹ However, Ms. O would assist periodically by helping to lift her father out of bed and by driving him to his medical appointments.¹²

By December 2015 it had become apparent to Mr. U and his family that Alaska's cold weather was making his medical problems worse, or at least increasing his pain.¹³ Accordingly, Mr. U's family made the decision to relocate to No Name, Nevada, where it was felt the warmer climate would help alleviate Mr. U's symptoms.¹⁴

Ms. O was employed by the State of Alaska during the period from August through December 2015.¹⁵ However, her mother and father needed her assistance to help with their move to Nevada.¹⁶ Accordingly, Ms. O made the decision to move to Nevada with her parents so she could help them before, during, and after the move.¹⁷ To facilitate this, Ms. O quit her job with the State effective January 1, 2016.¹⁸ Ms. O, her children, and her sister then moved in with her parents to prepare for the move.¹⁹

⁶ Ex. 1.
⁷ Ex. B; N O's hearing testimony.
⁸ Ex. 5; N O's hearing testimony.
⁹ Ex. B; Exs. 5, 5.1; N O's hearing testimony.
¹⁰ Exs. 5, 5.1; N O's hearing testimony.
¹¹ Exs. 5, 5.1; N O's hearing testimony.
¹² Exs. 5, 5.1; N O's hearing testimony.
¹³ Exs. 5, 5.1; N O's hearing testimony.
¹⁴ Exs. 2, 5, 5.1; N O's hearing testimony.
¹⁵ Ex. 2; N O's hearing testimony.
¹⁶ Exs. 2, 5, 5.1; N O's hearing testimony.
¹⁷ Ex. 2; N O's hearing testimony.
¹⁸ Ex. 2; N O's hearing testimony.
¹⁹ Ex. 2; N O's hearing testimony.

At the time she quit her job, Ms. O submitted the paperwork necessary to cash-out a portion of her retirement benefits, intending to use that money to support herself and her children until she could obtain new employment in Nevada.²⁰ However, she discovered that it could take up to 65 days for her to actually receive those funds.

Accordingly, on January 28, 2016 Ms. O submitted an application for public assistance, which included a request for ATAP benefits.²¹ On February 4, 2016 Ms. O participated in an eligibility interview with an eligibility technician (ET) employed by the Division.²² The ET concluded that, because Ms. O had left her job voluntarily to move to Nevada, he was required to impose a job-quit penalty against her. The ET reviewed information on the Division's electronic information system (EIS) and found that one prior job-quit penalty had been imposed on Ms. O in August 2001, so this would be her second.²³

B. Relevant Procedural History

On February 5, 2016 the Division issued a notice advising Ms. O that her application for ATAP benefits had been denied, and that a six-month, second-time job-quit penalty was being imposed, because Ms. O quit her job on January 1, 2016.²⁴ The Division's notice further indicated that the penalty period would begin effective January 1, 2016 (the date Ms. O quit her job); that it would last through June 30, 2016; and that her household would be eligible to reapply for ATAP benefits on July 1, 2016.

Ms. O requested a hearing to contest the Division's decision on February 12, 2016.²⁵ Ms. O's hearing was held on March 10, 2016. Ms. O participated in the hearing from Nevada by phone, represented herself, and testified on her own behalf. Sally Dial participated in the hearing by phone and represented the Division. The record closed after the hearing.

III. Discussion

A. Applicable Burden of Proof and Standard of Proof

This case involves the Division's denial of Ms. O's ATAP application and its assessment of a six-month job-quit penalty. Under the Division's "fair hearings" regulations, in cases (like

²⁰ All factual findings in this paragraph are based on Ex. 2 and N O's hearing testimony.

²¹ Exs. 2.2 - 2.19.

²² All factual findings in the remainder of this paragraph are based on Exs. 2 - 2.1 unless otherwise stated.

²³ At hearing, Ms. O did not dispute that a first-time job-quit penalty was imposed against her in 2001.

²⁴ All factual findings in this paragraph are based on Ex. 3 unless otherwise stated.

²⁵ Ex. 4.

this one) involving an application for new or additional benefits, the burden of proving the facts demonstrating the applicant's eligibility for benefits rests with the applicant (here, Ms. O).²⁶

The Division's "fair hearings" regulations do not specifically address the burden of proof in cases involving the *imposition of a penalty*. However, the Office of Administrative Hearings' own burden of proof regulation (which applies by default because penalties are not covered by the Division's "fair hearings" regulations), places the burden of proof on the party who requested the hearing (in this case, Ms. O).²⁷ Accordingly, Ms. O also bears the burden of proof on the penalty aspect of the case.

The standard of proof applicable to this case is the preponderance of the evidence standard.²⁸ To prove a fact by a preponderance of evidence, a party must show that it is more likely than not or more probable than not, that the relevant facts are as asserted by that party.²⁹

B. Relevant ATAP Statutes and Regulations

The Alaska Temporary Assistance Program (ATAP) is a program created by the Alaska Statutes to implement the federal Temporary Aid to Needy Families (TANF) program.³⁰ ATAP generally requires that able-bodied participants, who are not caring for young children, find and maintain employment in order to receive benefits.³¹ If a participant terminates his or her employment without "good cause," as defined by the applicable regulations, the Division is required to impose a job-quit penalty.³²

"Good cause" for terminating one's employment is defined by 7 AAC 45.261. Under 7 AAC 45.261(a), "good cause" for refusal of, or voluntary separation from, suitable employment is limited to 18 specific situations. The only one which could potentially apply

²⁶ See Department of Health and Social Services' (DHSS) "Fair Hearings" regulations at 7 AAC 49.135.

²⁷ The Office of Administrative Hearings' own burden of proof regulation, 2 AAC 64.290(e), provides in relevant part that, "[u]nless otherwise provided by applicable statute or regulation, the burden of proof and of going forward with evidence is on the party who requested the hearing."

²⁸ 7 AAC 49.135; 2 AAC 64.290(e).

²⁹ 7 AAC 49.135; 2 AAC 64.290(e); *Black's Law Dictionary* at page 1064 (West Publishing, 5th Edition, 1979).

³⁰ See A.S.47.05.010(1); A.S.47.27.005 – A.S.47.27.990. The Alaska Temporary Assistance Program's regulations are set forth at 7 AAC 45.149 – 7 AAC 45.990.

³¹ 7 AAC 45.260.

³² AS 47.27.015, titled "Disqualifying Conditions," provides in relevant part:
(c) A family is not eligible for cash assistance for the following time periods if the family's demonstrated need for cash assistance is due to a refusal of or voluntary separation from suitable employment by the adult applicant, or a custodial parent or caretaker, without good cause: (1) one month for the first refusal or separation without good cause; (2) six months for the second refusal or separation without good cause; and (3) 12 months for the third and subsequent refusal or separation without good cause.

here is 7 AAC 45.261(a)(4), which provides that "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," constitutes good cause.

In this case, there is no dispute that Ms. O was employed, that her employment was "suitable" under A.S. 47.27.015(c), or that she was "voluntarily separated" from her employment for purposes of A.S. 47.27.015(c).³³ The only issue is whether Ms. O's need to help take care of her father, and to move with her family to Nevada, constituted "good cause" to terminate her employment under 7 AAC 45.261(a)(4).

C. Did Ms. O Have Good Cause to Leave her Job Under 7 AAC 45.261(a)(4)?

In order for Ms. O to demonstrate good cause for leaving her employment under 7 AAC § 45.261(a)(4), she must satisfy three criteria. First, to constitute good cause, the circumstances must affect "the health of a [family] member or ability to comply." In this case, the evidence clearly shows that Ms. O quit her job due to "the health of a family member," specifically her father. Accordingly, the first criterion is satisfied here.

Second, to constitute good cause, the circumstances must be "beyond the control of the family." In this case, there is no indication that Ms. O's father's health problems are in any way within his control or his family's control. The second criterion is thus also met here.

The third and final element requires that Ms. O show that she had to leave her job due to "a sudden and temporary situation." In this case, Mr. U first became unable to care for himself in August or September 2015, and this situation lasted until December 2015. By January 2016, when Ms. O quit her job, her need to help care for her father had existed for at least four months. Accordingly, the circumstances which caused Ms. O to quit her job could not, by January 2016, be described as "sudden." Also, the fact that Ms. O felt it necessary to permanently relocate with her family to Nevada shows that the situation was not "temporary." Accordingly, Ms. O's reasons for leaving her job do not fall within the narrow confines of 7 AAC § 45.261(a)(4).

In summary, Ms. O's decision to quit her job to help her father, and to help her family move to a state with a climate more conducive to her father's health, was perfectly

³³ 7 AAC 45.990(b) defines "voluntary separation" under AS 47.27.015 as including "(1) voluntary termination of employment by an employee; (2) intentional misconduct by an employee on the job, causing the employer to terminate the employment; or (3) failure of an employee to show up for work as scheduled."

reasonable in the general sense. However, because her father's situation was no longer "sudden" or "temporary" by the time Ms. O quit her job, she does not satisfy the specific requirements for showing "good cause" under 7 AAC § 45.261(a)(4).

IV. Conclusion

Ms. O's decision to assist her father and her family is commendable. However, under the circumstances of this case, Ms. O did not have good cause, as that term is strictly defined by the applicable ATAP regulations, to terminate her employment. Accordingly, the Division was correct when, on February 5, 2016, it denied Ms. O's application for ATAP benefits and imposed a second-time, six-month job-quit penalty.³⁴ The Division's denial of Ms. O's application for ATAP benefits, and its imposition of the six-month job-quit penalty, are therefore affirmed.

DATED this 25th day of April, 2016.

Signed

Jay D. 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 4th day of May, 2016.

By: Signed

Name: Jay D. Durych
Title: Administrative Law Judge, DOA/OAH

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

³⁴ The start date and end date of a job-quit penalty is determined under 7 AAC 45.970(d). That regulation provides in relevant part as follows:

(d) For the purposes of enforcing the period of ineligibility under AS 47.27.015 (c), a month is considered 30 calendar days. For an applicant, the period begins on the date that suitable employment is refused or voluntarily terminated. If an applicant refuses or voluntarily terminates employment after the date of application but before eligibility is determined, the period begins on the date of application Once begun, the period of ineligibility runs uninterrupted until the period expires.