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

In the Matter of	)	
	)	OAH No. 17-0271-ATP
D C	)	Agency No.
	)	

DECISION

I. Introduction

On October 5, 2016, the Division of Public Assistance (Division) denied Ms. C's application for Alaska Temporary Assistance (ATAP) benefits, which resulted in her ineligibility for Pass I child care assistance. The Division's reason for this denial was that Ms. C had voluntarily reduced her work hours.[1] In addition, a one-month penalty period was imposed, which made Ms. C's family ineligible to reapply for ATAP benefits until September 20, 2016. Ms. C requested a hearing to contest these findings.[2]

The hearing commenced on June 6, 2017 and was continued until July 18, 2017, to allow both parties time to supplement the record. The parties appeared telephonically at both hearing sessions. Ms. C represented herself. Sally Dial, Public Assistance Analyst with the Division, represented the Division and testified on its behalf.

This decision concludes that: (1) the Division should have approved Ms. C's ATAP application, and (2) the Division was not justified in imposing a one-month penalty barring Ms. C's family from receiving ATAP benefits. As a result, the Division's decision is REVERSED on both issues.

II. Facts

This case has a torturous history. Initially, DPA declined to refer Ms. C's case to a hearing, claiming that her September 27, 2016 written request for a hearing concerning the August 15, 2016 determination that she was over income and thus not eligible for ATAP benefits, was untimely. Ms. C appealed DPA's decision refusing to refer her appeal, and a telephonic hearing solely on the timeliness issue was held before Deputy Chief Administrative

---

1 *See* Exh. 6.

2 Initially, DPA denied Ms. C's requests for a hearing, claiming they were untimely. Ms. C appealed the decision not to refer her appeal on the basis of untimeliness. After a hearing on the issue of whether Ms. C's appeal had been timely, the administrative law judge hearing that aspect of the case concluded that DPA had been unable to show that Ms. C was late in seeking an appeal. *See* Decision on Timeliness and Notice of Hearing on the Merits, OAH No. 17-0271-ATP (April 24, 2017), hereinafter referred to as the "Timeliness Decision." Since this decision made her appeal timely, the case proceeded to a hearing on the merits.

Law Judge Chris Kennedy on April 18, 2017. The decision on the timeliness issue concluded that DPA had failed to show that Ms. C was late in seeking an appeal.[3] The case then proceeded to a hearing on the merits.

The hearing on the merits of Ms. C's appeal of the denial of her ATAP benefits arose out of Ms. C's recertification application, date-stamped July 28, 2016, for ATAP benefits.[4] To receive these ATAP benefits, Ms. C must satisfy certain income requirements.[5]

During the first half of August of 2016, Ms. C actively communicated with DPA about her application and supplied additional documents that DPA was requesting concerning her income and household expenses.[6] She was advised by phone on August 8, 2016 that her benefits had been terminated because she had not completed her recertification application on time.[7]

On August 15, 2016, Ms. C learned from DPA that her ATAP recertification application was being denied because she was over income.[8] DPA generated a written notice, dated August 15, 2016, "Pass II CHILD care referral," which was accompanied by a notice entitled "ATAP DENIED, OVER INCOME."[9] Ms. C does not recall receiving these notices.[10] However, Ms. C was aware that her benefits were being denied based upon her conversations with DPA during the first half of August.[11]

After learning on August 15, 2016 that DPA had denied her application because she was "over income," Ms. C requested a redetermination of her income.[12] It is undisputed that Ms. C's

---

[3] DPA contended that Ms. C's written request for a hearing was 12 days late. However, DPA failed to act on that request as required by law within 10 days. Instead, DPA's field office did nothing with Ms. C's request until February 17, 2017, when the request was forwarded to DPA's Fair Hearing unit – a delay of 143 days. *See* Timeliness Decision, p. 3.

[4] Ms. C claims she initially filed her recertification application on June 24, 2016. *See* Exh. 2.2-2.9. When her case manager advised Ms. C that the earlier copy was not on file, she resubmitted the application on July 28, 2016. *See* Timeliness Decision, p. 2; *see also* Exh. H, p. 4. While the application appears to have been signed on June 24, 2016 and Ms. C's release of information form is dated June 26, 2016, the application bears a July 28, 2016 date stamp. *Compare* Exh. 2.6 & 2.8 *with* Exh. 2.2.

[5] Testimony of Ms. Dial. Since Ms. C is in "refuse cash status," she was not receiving cash assistance from the State. *See* Exh. 2. However, Ms. C was receiving PASS I child care for her two children in her care on a full-time basis and other services from the Division. Ms. C needed the Pass I child care because, unlike Pass II child care, it provides child care when Ms. C needs to attend medical appointments out of town for her serious medical condition. *See* Testimony of Ms. C; Exh. D, p. 7; Exh. J, p.3; Exh. H, p.9.

[6] Timeliness Decision, p. 2; *see also* Exh. H, pp. 5-6.

[7] Exh. H, p. 5; Testimony of Ms. C.

[8] Exh. H, p. 7.

[9] Exhs. 3 & 3.1.

[10] Timeliness Decision, p. 2; *see also* Testimony of Ms. C; Exh. H, p. 5.

[11] Testimony of Ms. C.

[12] Exh. 5.

income in June and July of 2016 was higher than it was in August and September.[13] Ms. C explained that she had a temporary increase in her working hours in June and July resulting from her covering a shift for another employee who was ill.[14] Ms. C claims she immediately requested a fair hearing on August 16, 2016 regarding the denial of her ATAP benefits on the grounds she was "over income."[15] She reiterated her request for a fair hearing in a letter dated September 2, 2016.[16] There was no response from DPA. Finally, she sent an e-mail dated September 27, 2016, again requesting a fair hearing.[17]

On September 29, 2016, DPA determined that Ms. C *was* eligible for ATAP benefits based on her income, which would enable her to receive Pass I child care assistance.[18] Ms. C was advised over the phone of this redetermination, but was then told that her recertification application might be denied because she had voluntarily reduced her work hours.[19] During that phone call, Ms. B, an Eligibility Office Manager at DPA, said that "T" told DPA that Ms. C and "D" (Ms. C's employer) had an arrangement to keep her hours low due to her losing child care.[20] However, in a subsequent phone call with Ms. B, T [N] maintained that he was simply a co-worker of Ms. C, not her manager, and had told Ms. B that he didn't want to get involved.[21] Ms. B advised Ms. C that she would need to speak to D [N], the owner of Company A, in order to determine why Ms. C's hours had been reduced.[22]

---

13 Exh. 5.

14 Exh. 2; *see also* Exh. 6; Exh. 9.1.

15 Exh. J, p. 3. This letter requesting a hearing was produced by Ms. C but there was no date-stamped copy of it. Since this letter was not part of the agency record, it is difficult to verify whether this letter was actually submitted or received by the agency.

16 Exh. J, p.4. This letter was not part of the agency record and Ms. C did not have a date-stamped copy of it. Consequently, it is difficult to verify whether this letter was actually submitted or received by the agency.

17 Exh. H, pp. 5, 7 & 8; Exh. J, pp. 3-4; Exh. 4. DPA must, by law, act on a request for a hearing within ten days after receiving the request. *See* AS 44.64.060(b); 7 AAC 49.080. It was this final request for a hearing that, 143 days after it was submitted to DPA, ironically was rejected as being "untimely."

18 Exh. 6.

19 Exh. 6. In that telephone call, DPA's R B told her that DPA is assuming that Ms. C "voluntarily reduced [her] hours for benefits." *See* audio recording (phone conversation among Ms. C, Ms. B, and T N).

20 Exhs. 5 & 6.

21 T N is an employee of Company A and the son of D N, the owner of the business. *See* Exhs. 5 & 6. Ms. C submitted for the record an audio recording of a telephone conversation involving herself, T N, and R B, an Eligibility Office Manager with DPA. In this conversation, Ms. B told Ms. C that although T is her coworker, he is "still your employer and acted on your behalf" when he initially was called by DPA about the purported reduction in Ms. C's hours. T, however, vehemently objected to Ms. B's characterization of his prior conversation with her. Ms. C and T then provided D's number so that Ms. B could contact him. *See* audio recording of phone conversation among Ms. C, Ms. B, and T N [hereinafter referred to as "Audio Recording"].

22 Exh. 6.

After receiving contact information for Ms. C's manager, Ms. B contacted him about Ms. C's work hours.[23] Mr. N told Ms. B that "work hours are very flexible at the shop."[24] Ms. B then inquired whether he had more hours available for work.[25] He stated that "right now is slow down, but it should pick up soon."[26] On October 3, 2016, Mr. N wrote a letter to Ms. B further detailing Ms. C's work arrangement at Company A. This letter noted that Ms. C was hired on May 3, 2016 "to work *part time*, with flexible hours around her medical appointments."[27] Mr. N stated that the "hours are very flexible, and will vary" but said that Ms. C "*should not anticipate working more than 18 hours a week*" and that the hours are "likely to decrease depending on her medical appointments."[28] Finally, he explained that Ms. C's hours had increased for a while when a full-time employee was on medical leave but that Ms. C had "returned to her original hours she was initially hired for" after that employee returned to work.[29] Mr. N's statements were consistent with what Ms. C had told DPA: her hours had been reduced in August of 2016 after she was no longer covering a shift for another employee.[30]

Despite receiving this information from Ms. C's employer, DPA found that Ms. C had "reduced her hours" to attend school, and that she had done so without approval from her case manager.[31] On October 5, 2016, DPA sent Ms. C a notice that her ATAP recertification application was denied.[32] This time, DPA claimed that Ms. C's application for ATAP had been denied because "a member of your family quit or refused a job, or refused a job, or reduced their work hours without a good reason."[33] The notice also further explained: "YOU REDUCED YOUR WORK HOURS TO ATTEND THE COMMUNITY COLLEGE WITH OUT THE APPROVAL OF YOUR CASEMANAGER AND WRITTEN FSSP."[34] Finally, the notice

---

23 Exh. 6.
24 Exh. 6.
25 Exh. 6.
26 Exh. 6.
27 Exh. 9.1(emphasis added).
28 Exh. 9.1(emphasis added).
29 Exh. 9.1.
30 _Compare_ Exh. 9.1 *with* Exh. 6 & Exh. 2.
31 Exhs. 8-9.
32 Exh. 8.
33 Exh. 8.
34 Exh. 8. Although DPA's final reason for denying Ms. C's application for ATAP benefits was not issued until October 5, 2016, it arose out of the denial of her application date-stamped July 28, 2016. While DPA's reasons for denying that application changed over time, it is this denial which resulted in Ms. C's various requests for a fair hearing between August 16, 2017 and September 27, 2016.

stated that DPA was imposing a "1st penalty for refusing work" that would "last until 9/30/16" and that Ms. C would need to reapply for ATAP after this penalty period was over.[35]

At the hearing, Ms. Dial testified that Ms. C was attending No Name College and had reduced her work hours with the permission of her supervisor, D N. However, the only evidence she presented in support of this contention was Ms. C's transcript from No Name College and Ms. B's case notes, which are flatly contradicted by Mr. N's October 3, 2016 letter to DPA and Ms. C's testimony.[36] Ms. C's transcript during the relevant time period shows that she was enrolled in four courses during the Fall 2016 semester, which ran from August 29, 2016 to December 17, 2016.[37] The class schedule shows that two of the courses Ms. C took were entirely on-line; the other two courses were evening courses.[38] Ms. C testified that she did not use child care to attend school, that she did her classwork on her own personal time, and that she did not voluntarily reduce her hours. The Division produced no evidence to rebut her testimony.

Ms. Dial also testified that it was appropriate for DPA to deny benefits to Ms. C, even if attending college had not interfered with her work hours or caused a reduction in those hours.[39] According to Ms. Dial, this is because attending college was not part of Ms. C's family self-sufficiency plan (FSSP), so she was not in compliance with her plan.[40]

In response to this argument, Ms. C pointed out that she had no work requirement whatsoever in her family self-sufficiency plan.[41] In fact, her family self-sufficiency plan excused her from work until February 28, 2017.[42]

---

35 Exh. 8.

36 *See* Exh. 23-23.9; *Compare* Exh. 6 *with* Exh. 9.

37 Ms. C's college transcript also showed that she had taken courses during the Spring 2016 semester *before* she began her job with Company A and that she took courses during the Spring 2017 semester, which ran from January 17, 2017 to May 6, 2017. *See* Exh. 23.2—23.5 &23.10-23.13. For purposes of this appeal, the only relevant time period is the Fall 2016 semester. *See* Exh. 23.6—23.9.

38 Ms. C testified that the classes she took were on-line, but the class schedule that the Division entered into the record shows that two of the classes were evening classes held after normal business hours. *Compare* Testimony of Ms. C *with* Exh. 23.6-23.9.

39 Testimony of Ms. Dial.

40 Testimony of Ms. Dial; *see also* Exh. 8 (stating that Ms. C's application for ATAP had been denied because she reduced her work hours to attend the community college without the approval of her case manager and written FSSP). A review of that plan listed three goals for Ms. C: obtain good medical health, obtain good mental health, and maintain income by continuing "to work at on-call part time job at Company A." *See* Exh. 25. The plan contains no references whatsoever regarding educational goals for Ms. C or a requirement that she *not* attend college classes.

41 Testimony of Ms. C; *see also* Exh. 25.1.

42 Exh. 25.1.

III. Discussion

The Temporary Assistance program imposes a penalty upon recipients for a refusal of or voluntary separation from suitable employment without good cause.[43] That penalty disqualifies a recipient from receiving Temporary Assistance benefits for one month, for a first-time offense.[44] The two issues in this case are: (1) whether the Agency correctly denied Ms. C's recertification application; and (2) whether the Agency was correct when it imposed a one-month penalty against Ms. C for voluntarily reducing her work hours. The Division has the burden of proof in a case where, as here, it seeks to terminate benefits.[45] In order to meet that burden, it must show that Ms. C voluntarily reduced her work hours without "good cause."

A review of the facts in this case shows that the Division did not meet its burden. Ms. C credibly explained why her work hours temporarily were higher in June and July of 2016: her increased hours were due to the illness of another employee. D N, Ms. C's employer, corroborated Ms. C's explanation regarding why her work hours had decreased in August and September of 2016, when the other employee returned to work. Moreover, Mr. N advised DPA that he did not have additional hours available at that time for Ms. C.[46]

The Division's argument that Ms. C was not in compliance with her FSSP only has validity if Ms. C *voluntarily reduced* her hours to attend college *and* did so without a revision to her FSSP.[47] Here, the evidence established that Ms. C did not voluntarily reduce her hours to attend college.[48] In fact, she attended college in the evening or through an on-line course and not at a time when she would have been working.[49] Moreover, Ms. C 's FSSP only required her to work "at an on-call part time job at Company A" and she was excused from work and work readiness activities until *February 28, 2017*.[50] Thus, Ms. C appears to have been in full compliance with her FSSP regarding her work obligations. Since Ms. C's plan does not preclude

---

43 AS 47.27.015(c).

44 AS 47.27.015(c)(1); 7 AAC 45.970(a).

45 7 AAC 49.135.

46 *See* Ex. 6.

47 The Division's notice listing the reasons why Ms. C's recertification application had been denied stated that it was because she had *voluntarily reduced* her work hours without the approval of her case manager and FSSP. *See* Exh. 8 (emphasis added).

48 Ms. C did not reduce her work hours. Rather, it was her employer who reduced her work hours because the employee Ms. C was temporarily covering for at work in June and July had returned to work on a full-time basis. *See* Testimony of Ms. C; *see also* Exh. 9.1. In addition, evidence produced by the Division showed that Ms. C took her college courses in the evening or on-line. *See* Exh. 23.6-23.9.

49 *See* Exh. 23.6-23.9.

50 Exh. 25-25.1.

her from taking college courses in her free time and she did not voluntarily reduce her hours of work to attend college, the Division's argument that Ms. C was not in compliance with the FFSP plan and thus should not receive ATAP benefits is without merit.[51]

IV. Conclusion

The Agency's decision to deny Ms. C's ATAP application date-stamped July 28, 2016 is REVERSED. The Agency's decision to impose a one-month penalty against Ms. C, which terminated her Temporary Assistance benefits and made her ineligible for those benefits for one month, is also REVERSED.

DATED this 31st day of August, 2017.

Signed
Kathleen A. Frederick
Chief 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 18th day of September, 2017.

By: *Signed*
Name: Andrew M. Lebo
Title: Administrative Law Judge

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

[51] The Division's argument that Ms. C should be penalized for attending college if she does so on her personal time is a specious one. The overall goal of a family self-sufficiency plan is to assist a family to become self-reliant. Taking college classes after work is a positive step forward in terms of self-sufficiency -- one that should be encouraged, not penalized.