

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

In the Matter of)
) OAH No. 17-0278-ATP
 L S) Agency No.
)
_____)

DECISION

I. Introduction

The Alaska Temporary Assistance Program (ATAP) has a 60-month lifetime limit for receipt of benefits. Under limited circumstances, however, the Division of Public Assistance may grant extensions to that limit. L S requested a second extension to his family’s ATAP benefits on the grounds that he is incapacitated and requires around the clock care from his wife. The Division denied this second extension request.

The Division’s denial was reasonable based on the record, and is upheld.

II. Facts

A. Family history

L and T S are married and have five minor children, whom they homeschool. Mr. S experiences significant weakness due to a disease of the spinal cord.¹ He uses a wheelchair. Mr. S also suffers from depression and anxiety, and takes strong medications to treat his conditions.² According to his psychiatrist, N L C, DO, Mr. S is unable to work full or part time.³ Mr. S applied for Social Security Disability, but has so far been denied. Mrs. S cares for Mr. S and their five children. Their eldest daughter also helps care for Mr. S.

The family receives Women, Infants & Children (WIC) benefits, housing assistance, Medicaid, and \$1,245 per month in Food Stamps.⁴

B. Procedural history

The Ss received \$1,323 in monthly ATAP benefits.⁵ They reached their 60-month lifetime limit in October 2016.⁶ Mr. S requested an extension based on incapacity and hardship.⁷

¹ Letter, E A, MD, May 10, 2017.
² Ex. 38 - 39; Letter, E A, MD, May 10, 2017; T S testimony.
³ Ex. 2.5 - 2.6.
⁴ Position statement, at 2; Ex. 16.
⁵ Ex. 1.2; Ex. 38.4.
⁶ Ex. 38.

On October 20, 2016, the Division held a meeting with Doug McQueen, the Ss' case worker, Tara Crosslan, employment services technician, and the Ss, who appeared telephonically.⁸ After reviewing the case, the Division granted a three-month extension through January 2017.⁹ As part of the extension approval, the Division and the Ss developed a Family Self-Sufficiency Plan (FSSP) for the Ss to complete.

Under the FSSP, Mrs. S would perform a number of tasks, including completing her doula certification and massage therapy training by January 31, 2017.¹⁰ She would also help Mr. S apply for personal care assistance (PCA) and care coordination services by November 15, 2016.¹¹ Mrs. S also agreed to contact a local agency about becoming a paid care provider by November 30, 2016.¹² The Ss were also going to explore having other family members provide paid care for Mr. S.¹³ Mr. S agreed to pursue Social Security Disability (SSDA) and Supplemental Security Income (SSI).¹⁴

Mr. and Mrs. S each signed an FSSP, which states, "I understand that my family may lose some or all of our temporary assistance benefits if I fail to follow through with this plan and complete work activities or other activities related to my family's self-sufficiency or my ability to work."¹⁵ They also agreed to contact their case manager twice monthly, or if they wanted to make any changes to the FSSP.¹⁶

Mrs. S requested an additional extension on January 20, 2017.¹⁷ Mrs. S sought additional time to get her doula business up and running and attend massage school. Mrs. S also noted that she is the caretaker for Mr. S, who is disabled and suffers panic attacks at the thought of her going to school and work.¹⁸

The Division spoke with Mrs. S on January 24, 2017, inquiring about the family's FSSP progress. Mrs. S informed the Division that they faced delays due to car troubles, Mrs. S being quarantined for several weeks, and Mr. S's anxiety about having an in-home caregiver besides

7 Ex. 2.3.

8 Ex. 2; Mr. S testimony.

9 Ex. 2.2

10 Ex. 3.

11 Ex. 2.1; Ex. 3.

12 Ex. 2.1; Ex. 3.

13 Ex. 2.1; Ex. 3.

14 Ex. 3.2.

15 Ex. 3.1 – 3.3.

16 Ex. 3.1 – 3.3.

17 Ex. 4.1.

18 Ex. 4.1.

Mrs. S.¹⁹ Additionally, the Ss' extended family member was unable to explore providing paid care for Mr. S because of health problems.²⁰ Based on this information, the Division informed Mrs. S that it was unlikely that the second extension request would be approved.²¹

The Division held another extension meeting with the Ss on February 27, 2017.²² Sue McCarty, Ms. Crosslan, and Mr. and Mrs. S attended in person.²³ Mr. McQueen was on extended leave and could not attend the meeting.²⁴ He remained on leave at the time of the hearing.

At the meeting, the Ss confirmed that they had not applied for PCA or care coordination services yet.²⁵ Mrs. S had not applied with an agency to be a paid caregiver. Mrs. S also let the Division know that she completed the student loan application for massage school the week of February 6, 2017.²⁶ Under the FSSP's terms, Mrs. S was to complete massage training by the end of January 2017.²⁷ Mrs. S also reported other delays with massage school due to instructor absence.²⁸ Mrs. S informed the Division that she would complete her doula training by March 9, 2017, and that she was now selling essential oils.²⁹ She reported that her first paying doula client owed her \$550 from a February birth.³⁰ Mr. S was waiting to hear from his attorney about his SSI appeal.³¹

The Division concluded that Mrs. S was work-ready, hireable, and pursuing self-employment.³² The Division denied the extension request.³³

The Ss appealed the denial.³⁴ Before the hearing, Mr. S discussed the family's situation with Jeff Miller, Public Assistance Analyst. Mr. S requested that the family's ATAP benefits

¹⁹ Ex. 6.

²⁰ Ex. 6.

²¹ Ex. 6.

²² Ex. 13.

²³ Ex. 13. Mr. McQueen did not attend the meeting as he was on extended leave.

²⁴ Ms. Crosslan testimony.

²⁵ Ex. 13.

²⁶ Ex. 13.

²⁷ Ex. 3.

²⁸ Ex. 13.1.

²⁹ Ex. 13.1.

³⁰ Ex. 13.1.

³¹ Ex. 13.

³² Ex. 13.2.

³³ Ex. 13.2; Ex. 17.

³⁴ Ex. 14; Ex. 14.2.

continue to run through the fair hearing decision, understanding that the family may be required to repay the benefits.³⁵ The family continued to receive ATAP benefits as of the hearing date.³⁶

Mr. S's telephonic hearing was held on April 26, 2017. Mr. S represented himself and testified on his behalf. Mrs. S, L K, Alaska Housing program specialist, and S U, also with Alaska Housing, testified on the Ss' behalf. Mr. Miller presented the Division's position. Ms. Crosslan testified on the Division's behalf.

At hearing, the Division asserted that the Ss did not meet the extension criteria, and did not adequately follow through on the FSSP. The Ss stated that they complied with the FSSP as best they could and needed more time. According to the Ss, their caseworker, Mr. McQueen told them that they would likely need more time to complete the FSSP. Mrs. S testified that, at the time they applied for the second extension, they wanted an extension through May, when she could begin work at the local farmers market. Mrs. S also testified that income from her doula business is inconsistent.

Mr. S spoke about his pain and anxiety, how he would much prefer to be able to work, and how hard Mrs. S works to care for the family. Mr. S also expressed frustration with the Division's request that he and Mrs. S travel to Fairbanks to attend the second extension meeting in-person and Mr. McQueen's absence from that meeting.

Ms. K and Ms. U testified regarding the Alaska Housing program. Ms. K explained the classic program, which the Ss are applying for, where rent is tied to income, without the regular increases found in other rental assistance programs. Ms. U testified that the Ss began working with her in August 2016, and that Mrs. S has made consistent progress on her plans to build self-sufficiency. Mrs. S's action items with AK Housing included attending three births and providing postpartum care for doula training, keeping up with the WIC program, and completing a business plan.

The record remained open, over the Division's objection, until May 11, 2017, in order for Mr. S to submit forms from his medical providers regarding his need for a live-in aid.³⁷ Mr. S submitted AK Housing forms signed by his doctor, E A, MD, and his psychiatrist N C, DO. His

³⁵ Mr. S testimony.

³⁶ Ex. 1.2; Mr. Miller testimony.

³⁷ Mr. S's deadline was May 2, 2017, and the Division had time to reply. Mr. S submitted additional forms in response to the Division's May 5, 2017, letter. The OAH accepted Mr. S's late-filed submissions.

providers certified that “a live-in aide is medically necessary, and this person must reside in the unit to provide the care.”³⁸ The form states:

A live-in aide is defined as a specific person, or multiple/rotating caregivers provided through state-funded agencies, who resides with one or more elderly, near-elderly, or disabled person and meets all of the following conditions:

- Is qualified to provide the medical care essential to the well-being of the household member;
- Is not obligated for the support of that person; and
- Would not be living in the unit except to provide the necessary supportive services.³⁹

Mr. S also submitted a letter from Dr. A. The letter states that Mr. S suffers from a spinal disease, is treated for anxiety, and that he needs around the clock care.⁴⁰

The Division responded to Mr. S’s submission of the Medical Verification for a Live-in Aide. The Division asserted that Mrs. S does not qualify to be a live-in aide. The Division noted, “There is no competent medical evidence showing Ms. S is the only person able to care for Mr. S and currently needs to be home providing care for Mr. S and that he requires her care on a 24 hours a day, 7 days a week basis.”⁴¹ While there is evidence that Mr. S requires round the clock care, it appears that Mrs. S does not meet the live-in aide definition for another reason. She does not meet the requirement that “the live-in aide would not be living in the unit except to provide the necessary supportive services.” Mrs. S is married to Mr. S; she cares for their five children. It is illogical that Mrs. S would not live with Mr. S except to provide for his care.

III. Discussion

The issue in this case is whether the Division was correct to deny Mr. S's second request for an extension of ATAP benefits. Mr. S bears the burden of proof to establish that the Division’s denial was incorrect.⁴² The Ss did not meet this burden.

ATAP is a program created by the Alaska Statutes to implement the federal program for Temporary Aid to Needy Families, or TANF.⁴³ ATAP is designed to help financially eligible

³⁸ Medical verification for live-in aide form. Dr. A, April 27, 2017, and May 10, 2017; Dr. C, May 2, 2017.

³⁹ Medical verification for live-in aide form. Dr. A, April 27, 2017, and May 10, 2017; Dr. C, May 2, 2017.

⁴⁰ Letter, E A, MD, May 10, 2017.

⁴¹ Division’s response to Mr. S’s post-hearing filings, May 5, 2017. The Division also noted there was no title after Dr. A’s name. In response, Mr. S provided an updated form with Dr. A’s title and the May 10, 2017 letter.

⁴² The burden of proof is a “preponderance of evidence.” Mr. S has to show that the Division’s decision was more likely than not incorrect. *See* 7 AAC 49.135.

⁴³ *See* AS 47.05.010(1); AS 47.27.005 – AS 47.27.990; 42 U.S.C. § 601 *et. seq.* ATAP’s governing regulations are found in the Alaska Administrative Code at 7 AAC 45.149 – 7 AAC 45.990.

families with minor children.⁴⁴ A family may not normally receive ATAP benefits from the state for a total period of more than 60 months.⁴⁵ However, the ATAP regulations provide an exception to the 60-month lifetime limit when domestic violence, a physical or mental inability to work, the need to care for a disabled child or relative, or hardship interferes with a recipient's ability to work.⁴⁶ In order to receive an extension, each adult parent must meet at least one extension criteria.⁴⁷

A. Extension request

The Ss sought the second extension under two exceptions: 1) Mr. S's incapacity; and 2) family hardship.⁴⁸

In order to qualify for the incapacity exception, the recipient must be physically or mentally unable to perform gainful activity.⁴⁹ The department considers someone unable to perform gainful activity if the person qualifies for SSI, SSDI, or adult public assistance.⁵⁰ Alternatively, a licensed medical professional may identify the nature, extent, and expected duration of the individual's physical or mental condition which is severe enough to prevent the person performing full-time work.⁵¹ If an incapacity extension is granted, the individual must develop and follow an FSSP, or a non-compliance penalty may be imposed.

Mr. S is not currently eligible for SSI, SSDI, or APA benefits. However, Mr. S is still in the SSI appeal process, as required by his FSSP. Furthermore, the record contains a "Health Status Report Form" from Dr. C. The Division's form, issued in August 2016, states that Mr. S has a physical or mental condition, expected to last at least 12 months, which limits his ability to work either full or part time.⁵² It appears that Mr. S could qualify for the incapacity exception.⁵³

In order to be eligible for an extension under the "hardship" exception, the family must be experiencing circumstances outside of its control that prevent the caretaker from participating

⁴⁴ AS 47.27.010.

⁴⁵ AS 47.27.015(a)(1).

⁴⁶ See AS 47.27.015(a)(1)(A)-(C); 7 AAC 45.610(d) – (f). The ATAP regulations also allow an exception to the 60-month lifetime limit for family hardship. AS 47.27.015(a)(1)(D); 7 AAC 45.610(g). However, this exception is not at issue here.

⁴⁷ 7 AAC 45.610(b).

⁴⁸ 7 AAC 45.610(d), emphasis added.

⁴⁹ AS 47.27.015(a)(1)(B).

⁵⁰ 7 AAC 45.235(a)(1).

⁵¹ 7 AAC 45.235(a)(2)-(b)

⁵² Ex. 2.5-2.6.

⁵³ Aside from the Health Status form and two short provider letters, no other medical evidence is in the record.

in work activities or becoming self-sufficient, *and* the loss of ATAP benefits would result in conditions that threaten the family’s health or safety.⁵⁴ “Circumstances outside the family’s control” include “specific catastrophic events” that meet formal disaster criteria, functional impairment, or caring for a disabled family member.⁵⁵ Work activities include job readiness assessments, on-the-job training, education and vocational training, job sampling, job search requirements, subsidized and unsubsidized work, and community work service.⁵⁶ Conditions that threaten health and safety include having insufficient resources to provide housing, food, transportation, or other essential needs, and not having access to appropriate childcare needed in order to maintain employment.⁵⁷ If a hardship extension is granted, the family must develop and comply with the FSSP or the extension may be denied or ended.⁵⁸

First, we ask if the family is experiencing circumstances outside of its control that prevent the caretaker from participating in work activities or becoming self-sufficient. Mrs. S provides care for Mr. S, and has for many years. Although the live-in aide information supports the assertion that Mr. S needs a high level of care, it does not indicate that Mrs. S must provide that care. Despite Mr. S requiring “around the clock care,” Mrs. S was able to complete her doula training, begin selling essential oils, and begin preparation for selling jams, beadwork, and other handmade goods at the farmers market. It appears that Mrs. S is able to participate in work activities even while caring for Mr. S. This supports the Division’s denial.

Next, we examine whether loss of ATAP benefits would result in conditions that threaten the family’s health and safety. Their base expenses are \$1,233.42 per month, not including food.⁵⁹ The family receives Food Stamps, WIC, and housing assistance. The Ss may contact Alaska Housing if their income decreases and explore options for rent reduction.⁶⁰ They own a car and have received gas vouchers in the past.⁶¹ Mrs. S is now able to perform doula services and sell essential oils. Mrs. S can begin selling at the farmer’s market in May.

Although the family has no other income aside from ATAP and Mrs. S’s new and inconsistent income sources (farmers market, doula, essential oils), it appears they will be able to

⁵⁴ 7 AAC 45.610(g); 7 AAC 45.990(c), emphasis added.

⁵⁵ 7 AAC 45.610(g)(1).

⁵⁶ AS 47.27.900(13).

⁵⁷ 7 AAC 45.610(g)(2).

⁵⁸ ATAP manual, available here: <http://dpaweb.hss.state.ak.us/manuals/ta/ta.htm>

⁵⁹ Ex. 38.4.

⁶⁰ Ms. K testimony.

⁶¹ Ex. 38.3.

maintain adequate food and shelter for the family.⁶² Therefore, the Division's refusal to grant a second extension under the hardship exception is reasonable. Consideration of the FSSP also supports denial.

B. FSSP compliance

The Division argues that the family did not comply with the FSSP. Mrs. S asserts she complied as much as possible given the circumstances. The Division's point of view is more persuasive.

First, the Ss agreed to apply for PCA services for Mr. S by mid-November 2016.⁶³ The Ss did not contact the PCA program until January 2017.⁶⁴ The Ss explained that Mr. S experiences anxiety attacks at the thought of Mrs. S working and taking classes, and of a stranger caring for him. The Ss did not report this concern when they agreed to the FSSP. They did not contact the Division when they missed their compliance deadlines, nor did they report that circumstances arose which hindered their ability to comply with the FSSP until well into January.

Next, Mrs. S agreed to complete both doula and massage training by the end of January. Although she made great progress on her doula training by the deadline, she had not begun massage training. Instead, she continued to explore massage school options and delayed applying for financial aid until January. Additionally, she did not pursue becoming a paid caregiver with a local agency. Overall, Mrs. S did not complete her FSSP, and did not reach out to the Division to request changes to the plan. Although the Ss faces several challenges during the FSSP period, this fact did not alleviate their responsibilities under the FSSP. This is not to say Mrs. S did not make strides towards self-sufficiency. The record is clear – Mrs. S works hard to support her family.

After considering all the evidence, the Division acted within its authority to deny the S family's second extension request.

IV. Conclusion

In sum, while Mr. S's health issues may be outside of the family's control, preparing the family for life after ATAP is not. The ATAP program's 60-month lifetime maximum is well

⁶² Food Stamp benefits are considered income, but cannot be spent on insurance, fuel, or other non-food expenses. Also, if the Ss are unable to provide adequate food and shelter, they may reapply for an extension.

⁶³ Ex. 3.

⁶⁴ Mrs. S testimony.

known. The Ss knew or should have known that they needed to develop alternate income streams and support. The Division granted a three-month extension, but was not required to grant an additional extension.

The Division's decision to deny Mr. S's ATAP extension is affirmed.

DATED May 22, 2017.

Signed

Bride Seifert
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 8th day of June, 2017.

By: *Signed*

Name: Bride Seifert
Title/Division: ALJ/OAH

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